

**WSR 24-03-000A**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed December 28, 2023, 3:58 p.m., effective January 28, 2024]

**ERRATUM**

The health care authority inadvertently filed, and the code reviser's office published, a duplicate permanent rule-making order, WSR 24-02-056, to the previously filed and published permanent rule-making order WSR 24-01-100. WAC 246-817-440 and 246-817-445 are unchanged by the duplicate filing. However, the WAC histories will reflect the duplicate filing.

## WSR 24-03-001

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 3, 2024, 2:01 p.m., effective January 3, 2024]

Effective Date of Rule: January 3, 2024.

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 2024.

Purpose: The department is amending:

- WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2023, which is used when refunding property taxes paid in 2024, 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 2024 assessment year, as required by RCW 84.34.065.
- WAC 458-30-590 to provide the rate of inflation published in 2023, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2024, as required by RCW 84.34.310.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 23-22-017 on October 19, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.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: January 3, 2024.

Atif Aziz  
Rules Coordinator

OTS-4990.1

AMENDATORY SECTION (Amending WSR 23-01-007, filed 12/7/22, effective 1/1/23)

**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 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%
2023	2022	2.50%
<u>2024</u>	<u>2023</u>	<u>5.26%</u>

**OTS-4991.1**

AMENDATORY SECTION (Amending WSR 23-01-007, filed 12/7/22, effective 1/1/23)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year (~~(2023)~~) 2024, 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 (~~(5.53)~~) 6.03 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	<del>((1.19))</del> <u>1.05</u>	Lewis	<del>((0.93))</del> <u>0.78</u>
Asotin	1.12	Lincoln	<del>((1.10))</del> <u>1.03</u>
Benton	<del>((1.06))</del> <u>0.88</u>	Mason	<del>((0.98))</del> <u>0.87</u>
Chelan	<del>((0.93))</del> <u>0.81</u>	Okanogan	<del>((1.13))</del> <u>0.93</u>
Clallam	<del>((0.98))</del> <u>0.82</u>	Pacific	<del>((1.03))</del> <u>0.77</u>
Clark	<del>((1.02))</del> <u>0.92</u>	Pend Oreille	<del>((0.94))</del> <u>0.86</u>
Columbia	<del>((1.15))</del> <u>1.11</u>	Pierce	<del>((1.11))</del> <u>0.98</u>
Cowlitz	<del>((0.99))</del> <u>0.89</u>	San Juan	<del>((0.71))</del> <u>0.59</u>
Douglas	<del>((1.03))</del> <u>0.95</u>	Skagit	<del>((0.99))</del> <u>0.88</u>
Ferry	<del>((0.96))</del> <u>0.88</u>	Skamania	<del>((1.01))</del> <u>0.89</u>
Franklin	<del>((0.89))</del> <u>0.84</u>	Snohomish	<del>((0.93))</del> <u>0.76</u>
Garfield	<del>((1.05))</del> <u>1.09</u>	Spokane	<del>((1.13))</del> <u>0.93</u>
Grant	<del>((1.03))</del> <u>0.98</u>	Stevens	<del>((0.91))</del> <u>0.81</u>
Grays Harbor	<del>((1.08))</del> <u>0.89</u>	Thurston	<del>((1.14))</del> <u>0.95</u>

COUNTY	PERCENT	COUNTY	PERCENT
Island	<del>((0.91))</del> <u>0.74</u>	Wahkiakum	<del>((0.74))</del> <u>0.60</u>
Jefferson	<del>((0.94))</del> <u>0.80</u>	Walla Walla	<del>((1.16))</del> <u>1.00</u>
King	<del>((0.95))</del> <u>0.83</u>	Whatcom	<del>((0.94))</del> <u>0.85</u>
Kitsap	<del>((0.96))</del> <u>0.85</u>	Whitman	<del>((1.41))</del> <u>1.42</u>
Kittitas	<del>((0.86))</del> <u>0.77</u>	Yakima	<del>((1.09))</del> <u>0.96</u>
Klickitat	<del>((0.98))</del> <u>0.87</u>		

AMENDATORY SECTION (Amending WSR 23-01-007, filed 12/7/22, effective 1/1/23)

**WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.** (1) **Introduction.** This rule provides the rates of inflation 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 stat-

utory 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
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
2022	6.457	<u>2023</u>	<u>3.67</u>

**WSR 24-03-002**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed January 3, 2024, 3:00 p.m., effective February 3, 2024]

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

Purpose: This is to correct an administrative error in the original filing to match the intended changes, as seen in WAC 139-27-050, that was also reduced from 45 hours to 30 hours in relation to the reduced time frame requiring recertification.

Citation of Rules Affected by this Order: Amending WAC 139-27-060.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 23-22-044 on October 24, 2023.

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 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: January 2, 2024.

Lacey Ledford  
Rules Coordinator

**OTS-5038.1**

AMENDATORY SECTION (Amending WSR 23-19-039, filed 9/13/23, effective 10/14/23)

**WAC 139-27-060 Recertification process.** (1) Requests for recertification must be submitted by the employing agency designee for any coroner, medical examiner, or medicolegal investigative personnel directly affected by the regulation.

(2) Requests shall be submitted in writing, with appropriate documentation, to the commission. Requests shall be accepted up to six months prior to the expiration date and due by or before the expiration date.

(3) Request for recertification:

(a) For a medical examiner:

(i) Proof of continued board certification as a forensic pathologist by the American Board of Pathology or proof of ((45)) 30 hours of continuing education, for which documentation shall include:

(A) Certificate of completion or other documentation showing completion;

(B) Course description;

(C) Agenda/syllabus/program;

(D) Number of education hours.

(ii) Proof of continued licensure by the Washington state medical commission.

(iii) Proof of good standing by the employing agency on agency letterhead.

(b) For a coroner or medicolegal investigation personnel:

(i) Proof of 30 hours of continuing education. Documentation shall include:

(A) Certificate of completion or other documentation showing completion;

(B) Course description;

(C) Agenda/syllabus/program;

(D) Number of education hours.

(ii) Proof of good standing by the employing agency on agency letterhead.

(4) Upon submission of the appropriate documentation, the commission shall review and evaluate relevant materials and issue recertification, if applicable, within 60 days.

(5) If the applicant has not met the qualifications to receive recertification, the commission shall:

(a) Issue recertification upon satisfactory completion of acceptable continuing education to be completed within six months from time application for recertification is deemed not to have met the qualifications, or submission of needed materials; or

(b) Require attendance of the core medicolegal forensic investigation training regardless of previous attendance if certification has lapsed by one year or more.

(6) During the six-month period to complete or rectify missing eligibility requirements for recertification required by the commission as provided in subsection (5)(a) of this section, expiration of the current certificate will be delayed until the end of this six-month period or upon the issuance of a new certificate.



## WSR 24-03-003

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 3, 2024, 3:50 p.m., effective February 3, 2024]

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

Purpose: The department is amending these rules to incorporate SHB 1438 (2021), which allows certain common health care-related expenses to be deducted in determining exemption eligibility, and SHB 1355 (2023), which updates the income thresholds used in determining exemption eligibility. This rule is also being updated to remove outdated information regarding federal income tax filing forms. Updating these rules will provide accurate exemption requirements for applicants and individuals currently receiving the exemption.

Citation of Rules Affected by this Order: Amending WAC 458-16A-100 Senior citizen, disabled person, and disabled veteran exemption—Definitions, 458-16A-120 Senior citizen, disabled person, and disabled veteran exemption—Determining combined disposable income, 458-16A-130 Senior citizen, disabled person, and disabled veteran exemption—Qualifications for exemption, and 458-16A-135 Senior citizen, disabled person, and disabled veteran exemption—Application procedures.

Statutory Authority for Adoption: RCW 84.36.865.

Adopted under notice filed as WSR 23-22-069 on October 25, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at 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 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: January 3, 2024.

Atif Aziz  
Rules Coordinator

## OTS-5042.1

AMENDATORY SECTION (Amending WSR 20-24-066, filed 11/24/20, effective 12/25/20)

**WAC 458-16A-100 Senior citizen, (~~disabled person, and disabled veteran~~) persons with disabilities, and veterans with disabilities exemption—Definitions.** (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen, (~~disabled person, and disabled veteran~~) persons with disabilities, and veterans with disa-

bilities property tax exemption described in RCW 84.36.381 through 84.36.389.

(2) **Annuity.** "Annuity" means a series of long-term periodic payments, under a contract or agreement. It does not include payments for the care of dependent children. For purposes of this ~~((subsection))~~ rule, "long-term" means a period of more than one full year from the annuity starting date.

Annuity distributions must be included in "disposable income," as that term is defined in subsection ~~((13))~~ (12) of this rule, regardless of whether the distributions are taxable under federal law. A one-time, lump sum, total distribution is not an "annuity" for purposes of this rule, and only the taxable portion that would be included in federal adjusted gross income should be included in disposable income.

(3) **Assessment year.** "Assessment year" means the year the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes are due and payable. The assessment year is the year before the claimant receives the reduction in their property taxes because of the senior citizen, ~~((disabled person, and disabled veteran))~~ persons with disabilities, and veterans with disabilities exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property, other than inventory, over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller increases and decreases the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen, ~~((disabled person, and disabled veteran))~~ persons with disabilities, and veterans with disabilities exemption by filing an application with the assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant occupying the residence for the assessment year, reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

- (a) Legally prescribed drugs;
- (b) Home health care as defined in subsection (18) of this rule;
- (c) Nursing home, boarding home, assisted living facility, or adult family home expenses; ~~((and))~~
- (d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act;
- (e) Costs related to medicare supplemental policies as defined in Title 42 U.S.C. Sec. 1395ss;
- (f) Durable medical equipment, mobility enhancing equipment, medically prescribed oxygen, and prosthetic devices as defined in RCW 82.08.0283 (see also WAC 458-20-18801);
- (g) Long-term care insurance as defined in RCW 48.84.020;
- (h) Cost-sharing amounts as defined in RCW 48.43.005;

- (i) Nebulizers as defined in RCW 82.08.803;
- (j) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW;
- (k) Ostomic items as defined in RCW 82.08.804;
- (l) Insulin for human use;
- (m) Kidney dialysis devices; and
- (n) Disposable devices used to deliver drugs for human use, as defined in RCW 82.08.935.

Disposable income is not reduced by (~~these~~) any of the amounts in this subsection (6) if payments are reimbursed by insurance or a government program (e.g., medicare or medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **County median household income.** "County median household income" means the median household income estimates for the state of Washington by county of the legal address of the principal place of residence, as published by the office of financial management.

(9) **Department.** "Department" means the state department of revenue.

(10) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(11) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than (~~twelve~~) 12 months. RCW 84.36.383; 42 U.S.C. Sec. 423 (d) (1) (A).

(12) (~~(Disabled veteran.~~ "Disabled veteran" means a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

~~(a) A combined service-connected evaluation rating of eighty percent or higher; or~~

~~(b) A total disability rating for a service-connected disability without regard to evaluation percent.~~

~~(13))~~ **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all (~~the other~~) items described below to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(ii) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death;

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

~~((14))~~ (13) **Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((15))~~ (14) **Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((16))~~ (15) **Excess levies.** "Excess levies" has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

~~((17))~~ (16) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for federal income tax purposes while others are excluded. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

~~((18))~~ (17) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

~~((19))~~ (18) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

- (a) Medical treatment or care received in the home;
- (b) Physical therapy received in the home;
- (c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or
- (d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in their own home, but does not include improvements or repair of the home itself.

~~((20))~~ (19) **Income threshold 1.** "Income threshold 1" means:

- (a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to ~~((thirty thousand dollars))~~ \$30,000; ((and))
- (b) For taxes levied for collection in calendar ~~((year 2020 and thereafter))~~ years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 1" for the previous year or ~~((forty five))~~ 45 percent of the county median household income ~~((, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8)))~~; and
- (c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 1" for the previous year or 50 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

~~((21))~~ (20) **Income threshold 2.** "Income threshold 2" means:

- (a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to ~~((thirty five thousand dollars))~~ \$35,000; ((and))
- (b) For taxes levied for collection in calendar ~~((year 2020 and thereafter))~~ years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 2" for the previous year or ~~((fifty five))~~ 55 percent of the county median household income ~~((, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8)))~~; and
- (c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 2" for the previous year or 60 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

~~((22))~~ (21) **Income threshold 3.** "Income threshold 3" means:

- (a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to ~~((forty thousand dollars))~~ \$40,000; ((and))
- (b) For taxes levied for collection in calendar ~~((year 2020 and thereafter))~~ years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 3" for the previous year or ~~((sixty five))~~ 65 percent of the county median household income ~~((, adjusted every five years beginning August 1, 2019, as provided in RCW 84.36.385(8)))~~; and

~~justed every five years beginning August 1, 2019, as provided in RCW 84.36.385(8)); and~~

(c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 3" for the previous year or 70 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

~~((23))~~ (22) Lease for life. "Lease for life" means a lease that terminates upon the death of the lessee.

~~((24))~~ (23) Legally prescribed drugs. "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

~~((25))~~ (24) Life estate. "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to themselves the beneficial interest directly in their principal residence, or the part of the trust containing their personal residence, for at least the period of their life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing their principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

~~((26))~~ (25) Owned. "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

~~((27))~~ (26) Ownership by a marital community or domestic partnership. "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. For example, a person qualifying for the exemption by virtue of age, disability, or disabled veteran status may not claim this exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate in that separate estate.

~~((28))~~ (27) Pension. "Pension" generally means an arrangement providing for payments, not wages, to a person or to that person's family, who has fulfilled certain conditions of service or reached a certain age. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

~~((29))~~ (28) Principal residence. "Principal residence" means the claimant owns and occupies the residence as their principal or

main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each calendar year.

(b) Confinement of the claimant to a hospital, nursing home, assisted living facility, adult family home, or home of a relative for the purpose of long-term care, does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs.

(c) For purposes of this subsection, "relative" means any individual related to the claimant by blood, marriage, or adoption.

~~((30))~~ **(29) Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

~~((31))~~ **(30) Regular property tax levies.** "Regular property tax levies" has the same meaning as provided in WAC 458-19-005 for "regular property tax levy."

~~((32))~~ **(31) Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen, ~~((disabled person, and disabled veteran))~~ persons with disabilities, and veterans with disabilities exemption and replaces the prior residence of the person receiving the exemption.

~~((33))~~ **(32) Residence.** "Residence" means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. A residence also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of the structure in which they reside.

(b) A single-family dwelling situated on leased lands and on lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location on land owned or rented by the owner of the mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which the mobile home is located if both the land and mobile home are owned by the same qualified claimant. It also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size.

~~((34))~~ **(33) Veteran.** "Veteran" means a veteran of the armed forces of the United States.

**(34) Veteran with disabilities.** "Veteran with disabilities" means a veteran of the armed forces of the United States entitled to and re-

ceiving compensation from the United States Department of Veterans Affairs (VA) at:

(a) A combined service-connected evaluation rating of 80 percent or higher; or

(b) A total disability rating for a service-connected disability without regard to evaluation percent.

(35) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

AMENDATORY SECTION (Amending WSR 20-04-017, filed 1/24/20, effective 2/24/20)

**WAC 458-16A-120 Senior citizen, ((disabled person, and disabled veteran)) persons with disabilities, and veterans with disabilities exemption—Determining combined disposable income. (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.**

**Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's or domestic partner's, and any cotenant's federal income tax return. If the federal income tax returns are not provided, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). If the federal income tax returns are provided, adjusted gross income is found on the front pages of Form 1040 (~~Form 1040A, and Form 1040EZ~~). Even if a federal income tax return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse or domestic partner.** When a spouse or domestic partner has been absent for over a year and the claimant has no knowledge of their spouse's or domestic partner's location or whether the spouse or domestic partner has income, and the claimant has not received anything of value from the spouse or domestic partner or anyone acting on behalf of the spouse or domestic partner, the disposable income of the spouse or domestic partner is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed under the penalty of perjury. This statement must state that more than one year prior to filing the exemption application:

(i) The claimant's spouse or domestic partner was absent;

(ii) The claimant has not and does not know the location of their spouse or domestic partner;

(iii) The claimant has not had any communication with their spouse or domestic partner; and

(iv) The claimant has not received anything of value from their spouse or domestic partner or anyone acting on behalf of their spouse or domestic partner.



The statement must also agree to provide this income information if the claimant is able to obtain it anytime within the next six years.

(b) (~~Form 1040EZ~~. Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, the adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts which are excluded from adjusted gross income.

(i) ~~Gain from a sold residence~~. Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since excluded capital gains from the sale of a principal residence are generally not reported on the federal income tax return, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in a new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or if only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed on the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned on the sale.

(ii) ~~Interest received on state and municipal bonds~~. Interest received on state or local government bonds is generally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added to the bond owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants own state or local government bonds. If the federal income tax return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have Form 1099-INT, the bond issuer should be able to determine whether the interest is taxable. The bond issuer should also provide the owner with a periodic, or year-end, statement showing the tax treatment of the bond. If the recipient of the bond income invested in the bond through a trust, a fund, or other organization, that organization should provide the recipient with this information.

(iii) ~~Excluded military pay and benefits~~. Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added to the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail in (d) (vii) of this subsection.

(iv) ~~Veterans benefits~~. Veterans benefits are added to the veteran's adjusted gross income to determine the veteran's disposable income. The following veterans benefits are not added to a veteran's adjusted gross income:

~~(A) Attendant care payments and medical aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);~~

~~(B) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and~~

~~(C) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent.~~

~~Veterans benefits are discussed in more detail in (d) (viii) of this subsection.~~

~~(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding to the adjusted gross income, the items described below, but only to the extent these items were excluded or deducted from gross income.~~

~~(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent the excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. Refer to (b) (i) of this subsection for a more complete discussion of excluded capital gain on a sold residence.~~

~~(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back to the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to (b) (ii) of this subsection for a more complete discussion of tax-exempt interest on state and municipal bonds.~~

~~(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference between the total pension and annuity amounts reported and the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.~~

~~(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040A federal income tax return is added to the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference between the total Social Security benefits or equivalent railroad retirement amounts reported and the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the federal income tax return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant, to determine the Social Security benefits or the railroad retirement benefits received.~~

~~(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant care~~

and medical aid payments, are added to the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in (d) (vii) of this subsection.

(vi) **Veterans benefits.** Veterans benefits are added to the veteran's adjusted gross income to determine the veteran's disposable income. The following veterans benefits are not added to a veteran's adjusted gross income:

(A) Attendant care payments and medical aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(B) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and

(C) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent.

Veterans benefits are discussed in (d) (viii) of this subsection.

(d)) **Form 1040.** If a claimant provides a copy of the Form 1040, the assessor will calculate the disposable income for the person or couple filing the return by adding to the reported adjusted gross income all of the items described below, but only to the extent these items were excluded or deducted from gross income.

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income.

(ii) **Capital gains.** If the federal income tax return shows capital gains or losses, the assessor examines a copy of the schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds to adjusted gross income, any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added to the adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for losses are added to adjusted gross income to determine disposable income. Most losses are reported on the federal income tax return in parentheses to reflect that these loss amounts are to be deducted. Net losses are reported on Form 1040 as business losses, capital losses, other losses, rental or partnership-type losses, or as farm losses. The assessor adds these amounts to the adjusted gross income. Additionally, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The claimant only reports the net amount of these losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the tax return to calculate adjusted gross income. The assessor adds to the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. The amount of losses that were used to reduce adjusted gross income must be added to the adjusted gross income to determine disposable income.

For example, a claimant reports a ((five thousand dollar)) \$5,000 capital loss on the front page of the 1040. On the Schedule D, the

claimant reports (~~two thousand dollars~~) \$2,000 in long-term capital gains from the sale of Company X stock and (~~seven thousand dollars~~) \$7,000 in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already added the (~~five thousand dollar~~) \$5,000 loss from the net capital loss reported on the front page of the tax return. The assessor would add onto adjusted gross income only the additional (~~two thousand dollars~~) \$2,000 in losses from the Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income, as this would result in it being added back twice;

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added to the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference between the total pension and annuity amounts reported and the taxable amounts reported. If the total pension and annuity amounts are not reported on the tax return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added to the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference between the total Social Security benefits or equivalent railroad retirement amounts reported and the taxable amounts reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the tax return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than military pay (~~or~~) and benefits for attendant care or medical aid, are added

to the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported on Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Federal law excludes from gross income any veterans benefit payments paid under any law, regulation, or administrative practice administered by the VA. The following veterans benefits are not added to a veteran's adjusted gross income:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(B) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and

(C) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent.

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received.

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added to the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling them the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if they have to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest is reported on the Form 1040 and added to the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** Once the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor will add the disposable incomes together. To calculate the combined disposable income for the claimant, the assessor will subtract from the sum of the disposable income, the amounts paid by the claimant or the claimant's spouse or domestic partner during that calendar year for

(~~their:~~

~~(a) Legally prescribed drugs;~~

~~(b) Home health care;~~

~~(c) Nursing home, assisted living facility, or adult family home expenses; and~~

~~(d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act)) the deductible amounts listed in WAC 458-16A-100(6).~~

AMENDATORY SECTION (Amending WSR 20-24-066, filed 11/24/20, effective 12/25/20)

**WAC 458-16A-130 Senior citizen, ~~((disabled person, and disabled veteran))~~ persons with disabilities, and veterans with disabilities exemption—Qualifications for exemption.** (1) **Introduction.** This rule ~~((describes))~~ provides the qualifications a claimant must meet for the ~~((senior citizen, disabled person, and disabled veteran property tax))~~ exemption on a principal residence as described in RCW 84.36.381. To qualify for the exemption, the claimant must:

(a) Meet the age or disability requirements as described in subsection (2) of this rule;

(b) Have a combined disposable income below the prescribed amounts in subsection (3) of this rule; and

(c) Own the property and occupy it as their principal residence for more than six months each calendar year as described in subsection (4) of this rule.

(2) **Age, retirement, and disability requirements.** To qualify for the exemption:

(a) The senior citizen claiming the exemption must be age ~~((sixty-one))~~ 61 or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The ~~((disabled))~~ person with disabilities claiming the exemption must be at the time of filing, retired from regular gainful employment and unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than ~~((twelve))~~ 12 months.

(c) The veteran with disabilities claiming the exemption must be at the time of filing, a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(i) A combined service-connected evaluation rating of ~~((eighty))~~ 80 percent or higher; or

(ii) A total disability rating for a service-connected disability without regard to evaluation percent.

(d) The surviving spouse or domestic partner of a claimant, who applies to continue their spouse's or domestic partner's exemption, must be age ~~((fifty-seven))~~ 57 or older in the calendar year the claimant dies.

(3) **Income requirements.** To qualify for the exemption, the claimant's combined disposable income must be equal to or less than one of the three income thresholds described in RCW 84.36.383. The income thresholds, which are published by the department beginning August 1, ~~((2019))~~ 2023, and by March 1st every ~~((fifth))~~ third year thereafter, will determine the amount of property tax the claimant is exempt from on their principal residence, as follows:

(a) Income threshold 3. A claimant's combined total disposable income that is equal to or less than income threshold 3 is exempt on their principal residence from the following:

(i) All excess property taxes;

(ii) The additional state property tax imposed under RCW 84.52.065(2); and

(iii) The portion of the regular property taxes authorized pursuant to RCW 84.55.050 to remove the property tax levy limit (lid lift) approved by the voters, if the legislative authority of the county or city imposing the additional regular property taxes identified this exemption in the ordinance placing the lid lift measure on the ballot.

(b) Income threshold 2. A claimant's combined total disposable income that is equal to or less than income threshold 2, but greater than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of (~~fifty thousand dollars or thirty five~~) \$50,000 or 35 percent of the valuation of their residence, but not to exceed (~~seventy thousand dollars~~) \$70,000 of the valuation of their residence.

(c) Income threshold 1. A claimant's combined total disposable income that is equal to or less than income threshold 1, is exempt on their principal residence from the following:

(i) All property taxes listed under income threshold 3; and

(ii) All regular property taxes on the greater of (~~sixty thousand dollars or sixty~~) \$60,000 or 60 percent of the valuation of their residence.

(d) Subsequent adjustments. Beginning with the adjustment made by August 1, 2023, as provided in this subsection (3), and every adjustment thereafter, if an income threshold in a county is not adjusted based on percentage of county median income, then the income threshold must be adjusted based on the growth of the seasonally adjusted consumer price index for all urban consumers (CPI-U) for the prior 12-month period as published by the United States Bureau of Labor Statistics. In no case may the adjustment be greater than one percent. The adjusted thresholds must be rounded to the nearest one dollar. If the income threshold adjustment is negative, the income threshold for the prior year continues to apply.

(e) Changes in combined disposable income. The amount that the claimant is exempt from is calculated based on combined disposable income, as defined in RCW 84.36.383.

(i) If the claimant was retired for two months or more of the assessment year, the combined disposable income of the claimant must be calculated by multiplying the average monthly combined disposable income of the claimant during the months they were retired by 12.

(ii) If the income of the claimant is reduced for two or more months of the assessment year by reason of the death of the claimant's spouse or domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of the claimant must be calculated by multiplying the average monthly combined disposable income of the claimant after the occurrences by 12.

(iii) If the income of the claimant increases as a result of a cost-of-living adjustment to Social Security benefits or supplemental security income in an amount that would disqualify the applicant from eligibility, the applicant is not disqualified but instead maintains eligibility. The continued eligibility under this subsection (e) (iii) applies to applications for property taxes levied for collection in calendar year 2024.

(iv) If it is necessary to estimate income to comply with this subsection (e), the assessor may require confirming documentation of the income prior to May 31st of the year following application.

(4) **Principal residence requirements.**

(a) General qualifications. To qualify for the exemption, the claimant must own the property and occupy it as their principal residence for more than six months each calendar year (~~(. The claimant)~~) and must occupy the principal residence at the time of filing for each year the exemption is claimed.

(b) Valuation of residence. If a claimant qualifies for the exemption and has a combined disposable income equal to or less than income threshold 3, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the claimant first qualifies for the exemption.

(i) If the claimant subsequently fails to qualify only for one year because of high income, this same valuation must be used upon re-qualification. If the claimant fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the claimant requalifies.

(ii) If a claimant transfers the exemption to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the claimant transfers the exemption.

(iii) Valuation for the residence under this subsection (4)(b) may not be greater than the true and fair value of the residence on January 1st of the assessment year.

(iv) This subsection (4)(b) does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

WAC 458-16A-100 and 458-16A-135 provide additional information regarding the definitions of principal residence and residence, and the supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence.

AMENDATORY SECTION (Amending WSR 20-04-017, filed 1/24/20, effective 2/24/20)

**WAC 458-16A-135 Senior citizen, ((disabled person, and disabled veteran)) persons with disabilities, and veterans with disabilities exemption—Application procedures.** (1) **Introduction.** This rule explains ((when and how a senior citizen, disabled person, or disabled veteran may apply for a property tax exemption on their principal residence)) the application procedures for the exemption on a principal residence as described in RCW 84.36.385.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that they meet the age, disability, or ((disabled veteran)) veterans with disabilities requirements for exemption of taxes due in the following year. If the claimant does not apply when they meet the age, disability, or ((disabled veteran)) veterans with disabilities requirements, then they may apply for the exemption in any subsequent year. The exemption may be claimed on their principal residence for previous years by applying with separate applications for each year. However, refunds based on an exemp-



tion made in previous years may be refunded for only up to three years after the taxes were due as provided in RCW 84.69.030.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. When an application is first made, if the claimant applies for more than one year, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where their principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person (~~(in person)~~), by mail (~~(by mail)~~), or by electronic means to the county assessor's office where the principal residence is located. (~~(As an alternative, the county assessor may provide an electronic means for filing if authorized by the department.)~~)

(a) **The application form.** The county assessor (~~(designs)~~) may create the paper or electronic application (~~(form or adapts a master paper form obtained from)~~) or may adapt the application created by the department. (~~(The county is also authorized to design an electronic form for applying.)~~) The county must obtain approval of the final (~~(form)~~) application, paper or electronic, from the department before it may be distributed and used. The claimant must use the application form from the county where the principal residence is located and provide true and accurate information in the application. Additional information regarding approval of forms by the department can be found in WAC 458-12-035 Department approved forms.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

- (i) The claimant;
- (ii) The claimant's designated agent;
- (iii) The legal guardian for the claimant (if applicable); or
- (iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and
- (v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and correct must be placed on the application immediately above the line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax is guilty of perjury under chapter 9A.72 RCW. If a person receives an exemption based on erroneous information, the assessor assesses any unpaid taxes with interest for up to five years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor will assess any unpaid taxes with interest for up to five years, and will assess the (~~(one hundred)~~) 100 percent penalty as provided in RCW 84.40.130.

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts

owed by the claimant to the cooperative by the amount of the property tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay the claimant any amount of the tax exemption remaining after this offsetting reduction.

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed in this subsection with their application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents, they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant must submit the following documents with the application:

(i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;

(ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);

(iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based on a disability, either:

(A) An affidavit from a licensed physician or certified physician's assistant (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of their disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently disabled;

(v) If the claim is based upon the claimant's veteran status, copies of legal documents showing that the claimant is a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs at a combined service-connected evaluation rating of (~~eighty~~) 80 percent or higher or at a total disability rating for a service-connected disability without regard to evaluation percent;

(vi) Copies of documents showing income earned or reported by the claimant, the claimant's spouse or domestic partner and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof must include to the extent it is relevant:

(A) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse or domestic partner, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse or domestic partner has been in a nursing home, assisted living facility, adult family home, or has been receiving in-home care in either their home or in the home of a relative for purposes of long-term care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed care or documentation to verify the claimant or claimant's spouse or domestic partner have been receiving care at the home of a relative;

(E) If the claimant indicates that the nonreimbursed prescription drug expenses for the claimant and the claimant's spouse or domestic partner for the period under review exceeds (~~five hundred dollars~~) \$500, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) Copies of documents showing premiums paid if the claimant or the claimant's spouse or domestic partner pays health care insurance premiums for medicare under Title XVIII of the Social Security Act (i.e., 1099, or medicare plan policy declaration);

(G) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate their income and the income of their spouse or domestic partner and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

(vii) Any other copies of documents the assessor requires in their discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application (~~form~~) may not be disclosed. A copy of the application may be disclosed only if all income information on the (~~form~~) application is redacted so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the income of the claimant, the claimant's spouse or domestic partner, or any cotenant.

## WSR 24-03-004

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 3, 2024, 4:04 p.m., effective February 3, 2024]

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

Purpose: The department is amending this rule to incorporate the language in SHB 1355 (2023), which updates the income thresholds used in determining deferment eligibility. Updating this rule will provide accurate deferment requirements for applicants and individuals currently receiving the deferment.

Citation of Rules Affected by this Order: Amending WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions.

Statutory Authority for Adoption: RCW 84.38.180.

Adopted under notice filed as WSR 23-22-051 on October 25, 2023.

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 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: January 3, 2024.

Atif Aziz  
Rules Coordinator

## OTS-5041.1

AMENDATORY SECTION (Amending WSR 22-04-025, filed 1/24/22, effective 2/24/22)

**WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions.** (1) **Introduction.** This rule provides definitions of the terms used to administer the deferral program in chapter 84.38 RCW and this section through WAC 458-18-100 for special assessments and/or property taxes on residential housing.

(2) **"Boarding house"** means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(3) **"Claimant"** means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050, to defer payment of special assessments and/or real property taxes accrued on their residence by filing a declaration to defer as allowed under chapter 84.38 RCW. Only one individual per household may file a declaration to defer.

(4) **"Cooperative housing"** means any existing structure, including surrounding land and improvements, which contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(5) **"Department"** means the state department of revenue.

(6) **"Devisee"** has the same meaning as provided in RCW 21.35.005: Any person designated in a will to receive a disposition of real or personal property.

(7) **"Domestic partner"** means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(8) **"Domestic partnership"** means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(9) **"Equity value"** means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property, excluding deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(10) **"Fire and casualty insurance"** means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

(11) **"Heir"** has the same meaning as provided in RCW 21.35.005: Any person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent.

(12) **"Income threshold"** means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to \$45,000; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of the income threshold for the previous year, or 75 percent of the county median household income, adjusted every ~~((five))~~ three years beginning August 1, ~~((2019, and by March 1st every fifth year thereafter))~~ 2023, as provided in RCW 84.36.385(8).

(i) Beginning with the adjustment made by ~~((March 1, 2024, and every second adjustment thereafter))~~ August 1, 2023, as provided in RCW 84.36.385(8), if the income threshold in a county is not adjusted based on percentage of county median income, then the income threshold must be adjusted based on the growth of the ~~((seasonally adjusted))~~ consumer price index for all urban consumers (CPI-U) for the prior 12-month period as published by the United States Bureau of Labor Statistics.

(ii) In no case may the adjustment be greater than one percent and if the income threshold adjustment is negative, the income threshold for the prior year continues to apply. The adjusted threshold must be rounded to the nearest one dollar.

(13) **"Irrevocable trust"** means a trust that may not be revoked after its creation by the trustor.

(14) **"Lease for life"** means a lease that terminates upon the death of the lessee.

(15) **"Lien"** means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and/or property taxes deferred and the interest. It also may include any other outstanding balances owed to local governments for special assessments.

(16) **"Life estate"** means an estate that consists of total rights to use, occupy, and control real property but is limited to the lifetime of a designated party; this party is often called a "life tenant."

(17) **"Local government"** means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(18) **"Perjury"** means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(19) **"Real property taxes"** means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(20) **"Residence"** has the same definition in RCW 84.36.383 and is defined as:

(a) A single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. Residence also includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size; ((e))

(b) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that their share represents the specific unit or portion of such structure in which they reside; or

(c) A single-family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality of the United States, including an Indian tribe, or in the state of Washington, notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence is deemed real property.

(21) **"Revocable trust"** means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during their lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(22) **"Rooming house"** means a residence where persons may rent rooms.

(23) **"Special assessment"** means the charge or obligation imposed by a local government upon real property specially benefited by improvements.

## WSR 24-03-005

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed January 3, 2024, 4:55 p.m., effective February 3, 2024]

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

Purpose: Authorizing licensed vehicle dealers to file reports of sale on behalf of customers who sell, trade in, or otherwise transfer ownership to the dealer.

Citation of Rules Affected by this Order: Amending WAC 308-56A-525 Vehicle seller's report of sale.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and 46.12.650 Releasing interest—Reports of sale—Transfer of ownership—Requirements—Penalty, exceptions.

Adopted under notice filed as WSR 23-23-179 on November 22, 2023.

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 1, Repealed 0.

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

Date Adopted: January 3, 2024.

Ellis Starrett  
Rules and Policy Manager

**OTS-5061.1**

AMENDATORY SECTION (Amending WSR 06-23-038, filed 11/7/06, effective 12/8/06)

**WAC 308-56A-525 Vehicle seller's report of sale.** (1) **Who must file a vehicle seller's report of sale?** With the exception of certain vehicle transfers by registered Washington vehicle dealers, and vehicles disposed of by licensed vehicle wreckers, Washington law (RCW 46.12.101) requires filing a vehicle seller's report of sale by any person or business that transfers their interest in a Washington titled vehicle to anyone else. For the purposes of this rule, transferring interest includes, but is not limited to, selling, gifting, trading, or disposing of your vehicle, but does not include the creation, deletion, or change of a security interest. A licensed Washington vehicle dealer may file a report of sale on behalf of the legal and/or registered owner who trades in, sells, or otherwise transfers ownership to the dealership.

(2) **When must a completed vehicle seller's report of sale be filed?** Vehicle seller's report of sale must be received by the depart-

ment within five days of the date of sale, gift, trade, or other disposition of the vehicle, excluding Saturdays, Sundays, and state and federal holidays.

(3) **Who is the seller?** The seller is the current registered owner of record according to the computer file kept by the department. The seller is a person (individual or business) who transfers their right of ownership of a vehicle to another person or business.

(4) **Who is the purchaser?** The purchaser is a person (individual or business) who takes a vehicle into their possession, by voluntary acquisition.

(5) **Why complete and file a vehicle seller's report of sale?** It is in the seller's best interest to file the properly completed vehicle seller's report of sale to protect the seller in the event the buyer does not make application for ownership and then accumulates parking tickets, or towing charges, is involved in an uninsured accident or used in illegal activity, etc.

Vehicle seller's report of sale received by the department of licensing that are incomplete will be filed with the department; however, those that do not meet the requirements of the law may not protect the seller from any civil or legal action if the vehicle is subsequently abandoned or involved in illegal activity.

(6) **How do I file my vehicle seller's report of sale?** You may file your seller's report of sale through:

- (a) Your local vehicle/vessel licensing office; or
- (b) The department by mail; or
- (c) The internet.

(7) **What information is required on the vehicle report of sale?**

You are required to provide information contained in RCW 46.12.101 that includes:

- (a) The date of sale or transfer;
- (b) Name(s) and address of seller;
- (c) Name(s) and address of transferee (buyer);
- (d) Description of vehicle; and
- (e) Purchase price.

When you mail a vehicle seller's report of sale to the department, you will not receive a confirmation or receipt. You may wish to make a photocopy of the report of sale for your records prior to sending it to the department.

(8) **Is there a fee for recording a vehicle seller's report of sale?** Yes. It applies when a report of sale is filed through your local vehicle licensing office as authorized by RCW 46.01.140 (5) (b).

(9) **May a vehicle seller's report of sale be removed from my vehicle record?** Yes. As a registered owner, you may have a vehicle seller's report of sale removed from your vehicle record through your local vehicle licensing office, or by notifying the department in writing. You will need to provide the reason you are removing the vehicle seller's report of sale from your vehicle record.

(10) **How will I show that I filed a completed vehicle seller's report of sale?** When you file a vehicle seller's report of sale at any Washington vehicle licensing office, you will be provided with a receipt.

When you file a vehicle report of sale on the internet, you will have the option of printing your receipt. Both receipts will show the following information:

- (a) Date the report of sale was filed;
- (b) Description of vehicle;



- (c) Name and address of agent/subagent where filed (not included when filing through the internet);
- (d) Date of sale;
- (e) Purchase price if provided;
- (f) Name(s) and address of seller;
- (g) Name(s) and address of transferee (buyer if provided).

Washington law makes it clear that it is a felony to knowingly make a false statement of fact. The penalty, upon conviction, must be a fine of not more than (~~five thousand dollars~~) \$5,000 or imprisonment of not more than (~~ten~~) 10 years, or both the fine and imprisonment. (RCW 46.12.210.)

## WSR 24-03-024

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed January 5, 2024, 2:44 p.m., effective February 5, 2024]

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

Purpose: This rule-making order amends chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards and fees, by adding clarifying language to WAC 16-240-069 which identifies commodity cooperative service agreement fees and Agricultural Marketing Act (AMA), rice cooperative service agreement fees as separate line items from the unit fees charged for each service in compliance with a requirement set by the United States Department of Agriculture's Federal Grain Inspection Services (USDA-FGIS) Directive 9100.07 issued on July 19, 2023.

As an official delegate of the USDA, the department of agriculture must comply with USDA requirements in order to provide these services. The new language will provide transparency to the program's customers related to federal fees the program collects and how they will appear on invoices for applicable services.

Citation of Rules Affected by this Order: Amending WAC 16-240-069.

Statutory Authority for Adoption: RCW 22.09.020, 22.09.790.

Adopted under notice filed as WSR 23-22-045 on October 24, 2023.

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

Number of Sections Adopted at 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 1, Repealed 0.

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

Date Adopted: January 5, 2024.

Derek I. Sandison  
Director

### OTS-5048.1

AMENDATORY SECTION (Amending WSR 22-05-011, filed 2/4/22, effective 3/7/22)

**WAC 16-240-039 USDA, AMS, FGIS administrative and supervision fees.** The United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Federal Grain Inspection Service (FGIS) charges a per metric ton administrative and supervision fee for export and other grain handled by facilities in the Washington state department of agriculture service area.

(1) FGIS administrative tonnage fees. In addition to all other applicable fees, FGIS administrative tonnage fees for export grain shipments inspected and/or weighed, excluding land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified in FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 1. Invoices will identify assessed administrative tonnage fees as separate line items per applicable carrier/unit type.

(2) FGIS supervision fees. In addition to all other applicable fees, FGIS supervision fees for domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico, will be assessed at the current per metric ton rate identified in FGIS Directive 9180.74 Service Fees and Billing Codes, Attachment 2. Invoices will identify assessed supervision fees as separate line items per applicable carrier/unit type.

(3) Commodity cooperative service agreement fees. In addition to all other applicable fees, commodity cooperative service agreement fees for commodity inspection services (pulses, hops, and miscellaneous processed commodities), excluding rice, will be assessed at the current percentage rate identified in FGIS Directive 9180.74 (Service Fees and Billing Codes, Attachment 4.) The assessed fees must exclude travel, mailing expenses, and state and local taxes. Invoices will identify assessed commodity cooperative service agreement fees as separate line items.

(4) AMA rice cooperative service agreement fees. In addition to all other applicable fees, AMA rice cooperative service agreement fees for rice inspection services will be assessed at the current percentage rate identified in FGIS Directive 9180.74 (Service Fees and Billing Codes, Attachment 3.) The assessed fees must exclude travel, mailing expenses, and state and local taxes. Invoices will identify assessed AMA rice cooperative service agreement fees as separate line items.

**WSR 24-03-025**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed January 5, 2024, 3:03 p.m., effective February 5, 2024]

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

Purpose: The purpose of this rule making is to update the mailing and physical address of the department of children, youth, and families board of appeals in WAC 110-03-0585 Index of significant decisions.

Citation of Rules Affected by this Order: Amending WAC 110-03-0585.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Adopted under notice filed as WSR 23-23-163 on November 21, 2023.

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 1, Repealed 0.

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

Date Adopted: January 5, 2024.

Brenda Villarreal  
Rules Coordinator

**OTS-5071.1**

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

**WAC 110-03-0585 Index of significant decisions.** (1) The department's index of significant decisions, prepared under RCW 42.56.070(5), contains BOA orders that include an analysis or decision of substantial importance to the department in carrying out its duties.

(2) A final order may be relied upon, used or cited as precedent by a party if the final order has been indexed in the department's index of significant decisions.

(3) The department selects the orders to be included in its "index of significant decisions" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. The index of significant decisions will include orders meeting the criteria in subsections (1) and (3) of this section, issued by the department.

(4) The index will, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject and program; and pertinent legal citation.

(5) Any person may nominate a BOA order to be evaluated for indexing by submitting the request, reason why the person believes an order should be indexed, and a copy of the nominated order to the Board of Appeals, P.O. Box (~~40983~~) 40982, Olympia, WA 98504. The department will make a final decision as to whether to index the nominated order, and that decision is not appealable.

(6) The department will periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsections (1) and (3) of this section. The department may, at any time, delete a document from an index. Under RCW 42.56.070(6), a public record may not be cited in a proceeding if it has not been indexed.

(7) The index is a public record and is available for public inspection at <https://dcyf.wa.gov/board-of-appeals>. The index of significant decisions is located at the Board of Appeals, (~~1115 Washing-~~  
~~ton~~) 1310 Jefferson St. S.E., Olympia, WA 98501.

## WSR 24-03-033

## PERMANENT RULES

## DEPARTMENT OF COMMERCE

[Filed January 8, 2024, 11:32 a.m., effective February 8, 2024]

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

Purpose: Implementation of 2022 legislation (SSB 5722, chapter 177, Laws of 2022) concerning energy management and benchmarking in buildings requires the state to adopt an energy management and benchmarking requirement for a new category of buildings ("Tier 2" buildings include buildings where the sum of multifamily residential, non-residential, hotel, motel, and dormitory floor areas exceeds 20,000 gross square feet, but does not exceed 50,000 gross square feet, excluding the parking garage area. Tier 2 covered buildings also include multifamily residential buildings where floor areas are equal to or exceed 50,000 gross square feet, excluding the parking garage area). Requirements will relate to energy management planning, operations and maintenance planning, and energy use analysis through benchmarking and associated reporting and administrative procedures (including exemptions for financial hardship and an appeals process for administrative determinations, including penalties imposed by the department). Owners of covered commercial buildings will be required to comply with the standard, which represents a cost-effective strategy to reduce greenhouse gas emissions from the building sector.

Citation of Rules Affected by this Order: New WAC 194-50-160; and amending WAC 194-50-001, 194-50-020, 194-50-030, 194-50-040, 194-50-050, 194-50-060, 194-50-070, 194-50-080, 194-50-090, 194-50-120, 194-50-130, 194-50-140, and 194-50-150.

Statutory Authority for Adoption: RCW 19.27A.210, 19.27A.250.

Adopted under notice filed as WSR 23-21-104 on October 18, 2023.

Changes Other than Editing from Proposed to Adopted Version: Commerce has made the following changes to the adopted rules:

1. The proposed rule's definition of "building owner" included the concept that, in the case of condominiums, the building owner is the owners' association. Commerce determined that additional language referring to master association is unnecessary and may complicate understandings of who the building owner is in relevant situations and has removed the extra language from the final rule for clarity.
2. Amendments to the definition of a "qualified person": Commerce removed the reference to Better Buildings Workforce and added language to explain how and where the authority having jurisdiction will notice determinations when prescribing additional certifications and training which meet minimum qualifications for a qualified person so that the regulated community understands where this information may be accessed in between periodic updates to the rules.
3. Amendments to Table 7-2a and Table 7-4: Commerce added language to further clarify the campus-level reporting pathway and help distinguish it from the campus district heating and cooling system compliance path.
4. Amendments to building activity type definitions: Commerce removed outside areas language from "Building Activity Type Definitions." Outside areas are not regulated in the Clean Buildings Performance Standard criteria for improved energy efficiency and performance in existing buildings. Although the closed stadium includes all space within the building, including the playing field, for consistency and clarity, commerce made the same deletion to the language.

5. Editorial corrections: This includes changes such as adding or removing italics or bold face to terms within the rules, the removal of hyphens from the term "energy use" for consistency, correcting section numbering and column headings, and adding spaces between words. These changes were made for clarity and internal consistency.

A final cost-benefit analysis is available by contacting Anneka McDonald, Washington State Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, phone 360-584-6905, email buildings@commerce.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 13, 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: January 8, 2024.

Amanda Hathaway  
Rules Coordinator

### OTS-5011.3

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-001 Foreword.** *ANSI/ASHRAE/IES Standard 100-2018 Energy Efficiency in Existing Buildings* is hereby adopted by reference with the exceptions noted in this chapter of the Washington Administrative Code (WAC). In the event of a conflict between the standard and rules in this chapter, the provisions of this chapter apply.

*ANSI/ASHRAE/IES Standard 100-2018 Energy Efficiency in Existing Buildings* is adopted by the Washington state department of commerce pursuant to RCW 19.27A.200, 19.27A.210, and 19.27A.220. This standard has been adopted by reference and modified to implement the requirements for *covered ((commercial)) buildings* as directed by the Washington state legislature. The legislature delegated the responsibility of adoption and amendment of this standard to the Washington state department of commerce.

Complying with this rule requires the user to comply with *ANSI/ASHRAE/IES Standard 100-2018* as amended by this rule. When this rule amends a section of *Standard 100*, the entire section is published in the rule. The user will need to have both documents in hand, but detailed comparison within any one section is not necessary. Simply apply the entire section as published in the rule. All other sections in *Standard 100* apply.

The Washington state administrative requirements for this standard are included in Normative Annex Z. For *building owners* that must comply with this standard, reading Normative Annex Z first allows the owner to put the rest of the standard in context. Multiple compliance options are available and should be reviewed prior to beginning implementation of this standard.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-020 ASHRAE Standard 100, 2018—Section 2—Scope.** This standard is mandatory for all covered (~~commercial~~) *buildings* located in the state of Washington. (~~This standard is also applied as a voluntary standard for applicable multifamily residential buildings seeking~~) Multifamily residential buildings exceeding 50,000 square feet of gross floor area, excluding the parking garage areas, may seek early adopter incentives by voluntarily complying with the applicable energy use intensity target consistent with RCW 19.27A.220.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-030 ASHRAE Standard 100, 2018—Section 3—Definitions.**

### 3.1 General

**Agricultural structure:** A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products, and is not a place used by the public or a place of human habitation or employment where agricultural products are processed, treated, or packaged.

**Applicable building codes:** The Washington state building codes as adopted by the Washington state building code council, and as modified by local government amendments.

**Authority having jurisdiction (AHJ):** Washington state department of commerce.

**Benchmarking:** The practice of comparing the measured performance of a device, process, facility, or organization to itself, its peers, or established norms, with the goal of informing and motivating performance improvement. When applied to building energy use, benchmarking serves as a mechanism to measure energy performance over time, relative to other similar buildings.

**Building owner:** An individual or entity possessing title to a *building*. In the event of a land lease, the building owner is the entity possessing title to the building on leased land. Where condominium structures are subject to the standard, "building owner" means the owners' association.

**Building tenant:** A person or entity occupying or holding possession of a building or premises pursuant to a rental agreement.



**Campus:** A *campus* is a collection of *buildings* served by a campus district heating, cooling, water reuse and/or power system owned by the same *building owner*.

**Campus district heating and/or cooling system:** A *district heating and/or cooling system* that serves a *campus* and is owned by the *building owner*.

**Certified commissioning professional:** A person who is certified by an ANSI/ISO/IEC 17024:2012 accredited organization to lead, plan, coordinate, and manage commissioning teams and implement the commissioning process and with experience commissioning at least two projects of similar size and of similar equipment to the current project, and at least one in the last three years. This experience includes the writing and execution of verification checks and functional test plans.

**Complex:** A group of *buildings* interconnected by *conditioned spaces* on *contiguous property*.

**Conditional compliance:** A temporary compliance method:

(a) For Tier 1 covered buildings used by building owners that demonstrates the owner has implemented energy use reduction strategies required by the standard, but has not demonstrated full compliance with the energy use intensity target.

(b) For Tier 2 covered buildings used by building owners that demonstrates the owner has benchmarked the building energy use in accordance with the standard, and provides an additional 180 days for building owner to demonstrate full compliance with the energy management plan (EMP) and operations and maintenance (O&M) program documentation.

**Conditioned space:** An area, room or space that is enclosed within the *building's* thermal envelope and is directly heated or cooled or is indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with *conditioned spaces*, where they are separated from *conditioned spaces* by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling. (also see, *semi-heated space*).

**Connected buildings:** A collection of buildings with shared energy meter(s) on contiguous property.

**Contiguous property:** Adjoining property under sole ownership.

**Covered ((commercial)) building:** ~~((A building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds fifty thousand gross square feet, excluding the parking garage area.))~~ Includes Tier 1 covered buildings and Tier 2 covered buildings.

**Director:** The director of the department of commerce or the director's designee.

**Discounted payback:** The time when the accumulated savings achieved by an investment, discounted by the appropriate discount rate, equals the initial cost of the investment.

**District heating and/or cooling system:** ~~((Is))~~ A system that provides heating or cooling to multiple buildings through a distributed system providing steam, hot water, or cool water to buildings.

**Energy target (EUI<sub>T</sub>):** Not adopted. See energy use intensity target (EUI<sub>T</sub>).

**Energy use intensity (EUI):** A measurement that normalizes a *building's* site energy use relative to its size. A *building's* energy use intensity is calculated by dividing the total net energy consumed in one year by the gross floor area of the *building*, excluding the parking garage. "Energy use intensity" is reported as a value of a thousand British thermal units per square foot per year.

~~((Energy target (EUI<sub>t</sub>): Not adopted.))~~

**Energy use intensity target (EUI<sub>t</sub>):** The target for net energy use intensity of a covered ((commercial)) building ((that has been established for the purposes of complying with the standard)).

**Gross floor area:** The total number of square feet measured between the exterior surfaces of the enclosing fixed walls of a *building*, including all supporting functions such as offices, lobbies, restrooms, equipment, storage areas, mechanical rooms, break rooms, ~~((crawl spaces))~~ and elevator shafts. *Gross floor area* does not include outside bays or docks.

**Gross floor area for residential buildings:** Not adopted.

**Gross floor area for nonresidential buildings:** Not adopted.

**Lighting schedule:** A list that provides a count of all luminaires in the building, lighting controls, fixture types, and product information.

**More recently built buildings:** *Buildings* or additions greater than ~~((fifty thousand))~~ 50,000 square feet in conditioned floor area permitted for construction based on the application permit date of July 1, 2016, or later. For example, *buildings* permitted to the 2015 edition of the Washington State Building Code, chapter 51-50 WAC.

**Multifamily residential building:** A covered multifamily building containing sleeping units or more than five dwelling units where occupants are primarily permanent in nature.

**Net energy use:** The sum of the metered and bulk fuel energy entering the building, minus the sum of metered energy leaving the building or campus. Renewable energy produced on a campus that is not attached to a covered building may be included. The same applies to portions of buildings with submetering. Bulk fuels are included using the equation in Section 5.2.2.1.

**Physical occupancy:** Space that is used by an owner or tenant regardless of occupant density and frequency of use. A building does not have physical occupancy and is considered unoccupied when 50 percent or more of the conditioned floor area is not leased or is otherwise vacant.

**Qualified commissioning authority:** Not adopted.

**Qualified energy auditor:** A person acting as the auditor of record having training, expertise and three years professional experience in building energy auditing and any one of the following:

- (a) A licensed professional architect or engineer ~~((-~~
- ~~(b) An energy auditor/assessor/analyst certified by ASHRAE or the Association of Energy Engineers (AEE) for all building types.))~~;
- (b) A building energy assessment professional (BEAP) certified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);

(c) A certified energy auditor (CEA) certified by the Association of Energy Engineers (AEE).

**Qualified energy manager (QEM):** An individual designated by the *building owner* who:

- (a) Has two years of experience, including educational and/or professional experience, with commercial *building* operations and/or *building* energy management in addition to successful completion of clean buildings tier 2 training program as specified by the AHJ; or
- (b) Meets the definition of a *qualified person*.

**Qualified person:** A person having training, expertise and three years professional experience in *building* (~~(energy-use)~~) energy use analysis and any of the following:

- (a) A licensed professional architect or engineer in the (~~(jurisdiction where the project is located)~~) *state of Washington*;
- (b) A person with Building Operator Certification (BOC) Level II by the Northwest Energy Efficiency Council (NEEC);
- (c) A (~~(certified)~~) *building* commissioning professional certified by an ANSI/ISO/IEC 17024:2012 accredited organization;
- (d) A *qualified energy auditor*;
- (e) A certified energy manager (CEM) in current standing, certified by the Association of Energy Engineers (AEE);
- (f) An energy management professional (EMP) certified by the Energy Management Association (EMA);
- (g) A person with South Seattle College Sustainable Building Science Technology Bachelor of Applied Science degree, or as approved as equivalent by the AHJ.

The AHJ may prescribe additional certifications and training to meet the minimum qualifications of a *qualified person*. When the AHJ prescribes such additional qualifications, it will provide notice of the determination on the agency website and will periodically update these rules to reflect additional qualifications of *qualified persons*.

**Recommissioning:** An application of the commission process requirements to a project that has been delivered using the commissioning process.

**Residential building:** Not adopted.

**Savings-to-investment ratio:** The ratio of the total present value savings to the total present value costs of a bundle of an energy or water conservation measure estimated over the projected *useful life* of each measure. The numerator of the ratio is the present value of net savings in energy or water and nonfuel or nonwater operation and maintenance costs attributable to the proposed energy or water conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy or water conservation measure.

**Semi-heated space:** An enclosed space within a *building*, including adjacent connected spaces separated by an uninsulated component (e.g., basements, utility rooms, garages, corridors) which:

- (a) Is heated but not cooled, and has (~~(a maximum)~~) an installed heating system output capacity (~~(of)~~) greater than or equal to 3.4 Btu/(h-ft<sup>2</sup>) but not greater than 8 Btu/(h-ft<sup>2</sup>);
- (b) Is not a walk-in (~~(or)~~) cooler, walk-in freezer, refrigerated warehouse cooler or refrigerated warehouse freezer space.

**Service life:** See *useful life*.

**Simple payback (years):** The estimated initial cost of an *EEM* divided by the estimated annual cost savings of the measure expressed in years. The cost savings may include energy cost savings and incremental routine operations and maintenance costs or savings.

**State equipment standards:** Appliance and equipment standards listed in chapter 19.260 RCW, Energy efficiency.

**Tier 1 covered building:** A building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area.

**Tier 2 covered building:** A building where the sum of multifamily residential, nonresidential, hotel, motel, and dormitory floor areas exceeds 20,000 gross square feet, but does not exceed 50,000 gross square feet, excluding the parking garage area. Tier 2 covered buildings also include multifamily residential buildings where floor areas are equal to or exceed 50,000 gross square feet, excluding the parking garage area.

**Useful life:** Useful life is the expected remaining service life of building systems or equipment. Used interchangeably with service life.

**Weather normalized:** A method for modifying the measured building energy use in a specific weather year to energy use under normal weather conditions.

**Weather normalized energy ((~~utilization index~~)) use intensity (WNEUI):** Measurement that normalizes a building's site energy use relative to its size based on the buildings weather normalized site energy use. A building's energy use intensity is calculated by dividing the total net weather normalized energy consumed in one year by the gross floor area of the building, excluding the parking garage. Weather normalized energy use intensity is reported as a value of ((~~a thousand~~)) 1,000 British thermal units per square foot per year.

### 3.2 Common abbreviations and acronyms

**AEE** Association of Energy Engineers.

**AHJ** authority having jurisdiction.

**DDC** direct digital control.

**EEM** energy efficiency measure.

**EM** energy manager.

**EMP** energy management plan.

**EUI** ((~~energy use~~)) energy use intensity.

**IRR** internal rate of return.

**LCCA** life cycle cost analysis.

**O&M** operations and maintenance.

**WSEC** Washington State Energy Code.

**WNEUI** Weather normalized energy ((~~utilization index~~)) use intensity.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-040 ASHRAE Standard 100, 2018—Section 4—Compliance requirements.**

**4.1.1.1** A *building or complex of buildings* whose majority of gross floor area has activities in Table 7-1 shall comply with the requirements of Sections 4.2 and 4.3.

**4.1.1.2**

• For Tier 1 covered buildings the qualified person determining compliance shall:

1. Determine whether or not the *building* seeking compliance has an *energy use intensity target (EUI<sub>t</sub>)* according to Section 7;
2. Establish the *energy use intensity target (EUI<sub>t</sub>)* according to Section 7; and
3. Submit forms as specified in Normative Annex Z to the AHJ.

• For Tier 2 covered buildings the qualified energy manager submitting compliance documents shall:

1. Determine whether or not the *building* seeking compliance has an *energy use intensity target (EUI<sub>t</sub>)* according to Section 7;
2. Establish the *energy use intensity target (EUI<sub>t</sub>)* according to Section 7; and
3. Submit forms as specified in Normative Annex Y to the AHJ.

**4.1.2 Residential building** (~~(-- Not adopted)~~).

**4.1.2.1** A multifamily residential building or complex of multifamily residential buildings shall comply with the requirements of Sections 4.2 and 4.3.

**4.1.2.2** For Tier 2 covered buildings the qualified energy manager submitting compliance documents shall:

1. Determine whether or not the *building* seeking compliance has an *energy use intensity target (EUI<sub>t</sub>)* according to Section 7;
2. Establish the *energy use intensity target (EUI<sub>t</sub>)* according to Section 7; and
3. Submit forms as specified in Normative Annex Y to the AHJ.

**4.1.3 Buildings with residential and nonresidential activities** - Not adopted.

**4.2.1 Operations and maintenance.** The building manager shall comply with the operations and maintenance (O&M) requirements of Section 6.

• For Tier 1 covered buildings the qualified person determining compliance shall state in writing on Form A that the operating and maintenance requirements of Section 6 have been met according to the following subsections.

• For Tier 2 covered buildings the qualified energy manager submitting compliance documents shall state in writing on Form A that the operating and maintenance requirements of Section 6 have been met according to the following subsections.

**4.2.1.1 For first-time applicants.**

- Tier 1 covered buildings, for the previous year.
- Tier 2 covered buildings, by the compliance date.

**4.2.2 Energy management plan.** The building manager shall comply with the energy management requirements of Section 5.

• For Tier 1 covered buildings the qualified person determining compliance shall state in writing on Form A that the energy management program described in Section 5 has been developed and is being maintained as of the date on Form A.

• For Tier 2 covered buildings the qualified energy manager submitting compliance documents shall state in writing on Form A that the energy management program described in Section 5 has been developed and is being maintained as of the date on Form A.

#### **4.3.1 Measured EUI.**

• For Tier 1 covered buildings the qualified person shall calculate the building's measured energy use intensity (EUI) by completing Form C according to Section 5.2.

• For Tier 2 covered buildings the qualified energy manager submitting compliance documents shall calculate the building's measured energy use intensity (EUI) by completing Form C according to Section 5.2.

**4.3.2 Buildings with energy targets.** *Covered buildings* with energy targets must meet all the criteria for developing an energy target in Section 7.2 Determining energy use intensity target ( $EUI_t$ ) and provide energy use data as specified by Section 5.2 Building energy monitoring. All other *buildings* shall comply with Section 4.3.3, Buildings without energy targets. Tier 2 covered buildings are not required to meet the target as they are exempt from Sections 4.3.2.1 through 4.3.2.3.

**4.3.2.1 Building meets the energy target ( $EUI_t$ ).** If the Tier 1 covered building's measured weather normalized energy use intensity (WNEUI) is less than or equal to its energy target ( $EUI_t$ ), the building complies.

**4.3.2.2 Tier 1 covered building does not meet the energy use intensity target ( $EUI_t$ ).** A qualified energy auditor shall complete an energy audit according to Section 8, and EEMs that will reduce energy use to meet the energy target shall be implemented according to Section 9. Upon completion of the implementation of all required EEMs, a building shall be granted conditional compliance.

#### **Exceptions to 4.3.2.2:**

1. *More recently built buildings:* For buildings that exceed the target developed in accordance with Section 7.2.1.1, but do not exceed the target developed in accordance with Section 7.2.1, the owner may demonstrate compliance by recommissioning the building using the existing-building commissioning process. The commissioning process consists of the following:

a. A certified commissioning professional shall implement the building commissioning process specified by the most recent edition of the Washington state energy code. The energy code commissioning process shall be modified by the certified commissioning professional for recommissioning purposes as described in ASHRAE Guideline 0.2-2015 Commissioning Process for Existing Systems and Assemblies and ASHRAE Guideline 1.2-2019 Technical Requirements for the Commissioning Process for Existing HVAC&R Systems and Assemblies.

b. Washington state energy code (WSEC) exceptions based on mechanical system or service water heating capacity shall not be applied when developing the scope for commissioning. For example, the 2018 WSEC, Section C408.1 General, the exceptions do not apply.

c. All deficiencies found during the commissioning process shall be resolved including corrections and retesting prior to submitting documentation for compliance or conditional compliance.

d. *Building owners* may omit capital expenditures identified by the commissioning process that are not cost-effective, as documented using the procedures in Normative Annex X.

2. No individual requirement need be met that would compromise the historical integrity of a *building* or part of a *building* designated by a government body for long-term preservation in its existing state, such as historical monuments. *EEMs* that can be implemented without modifying historical parts of the *building* shall be implemented as required by this standard. Documentation of historic significance must be provided to the *AHJ* by submitting Form G in accordance with Normative Annex Z.

**4.3.2.3 Verification of compliance.** Within ((fifteen)) 15 months after the completion of Section 4.3.2.2, the *weather normalized ((EUI)) energy use intensity (WNEUI)* shall be recalculated by the *energy manager (EM)* from ((twelve)) 12 consecutive months of measured energy use, and Form A shall be resubmitted to the *AHJ*. If the *building's* post-implementation measured *EUI* is less than or equal to the energy target (*EUI<sub>t</sub>*), the *building* complies with the standard. If the *building's* post-implementation measured *EUI* is greater than the energy target (*EUI<sub>t</sub>*), the *building* does not comply with the standard and the *conditional compliance* is suspended until either:

a. Additional *EEMs* have been implemented that reduce the subsequently measured *EUI* to below the energy target (*EUI<sub>t</sub>*) and a new Form A is submitted to the *AHJ*; or

b. The *AHJ* revokes *conditional compliance*.

#### **4.3.3 Buildings without energy targets.**

**Exception to 4.3.3: Tier 2 covered buildings.**

**4.3.3.2 Implement EEMs.** The entire *optimized bundle of EEMs identified shall be implemented. Upon completion of the implementation of the optimized bundle of EEMs and the energy management plan, including the operations and maintenance program, is in place as directed by Section Z4.5, a building shall be granted conditional compliance in accordance with Section 9.1.1.2.*

**Exception to 4.3.3.2:** No individual requirement need be met that would compromise the historical integrity of a *building* or part of a *building* designated by a government body for long-term preservation in its existing state, such as historical monuments. Documentation of historic significance must be provided to the *AHJ* by submitting Form G in accordance with Normative Annex Z.

**4.3.3.3 Verification of compliance for buildings with building energy monitoring in compliance with Section 5.2.** If the *building* complies with Section 4.2, then within ((fifteen)) 15 months following the completion of implementation of the *optimized bundle of EEMs*, *building owners* with *conditional compliance* or the *qualified person* representing the *building owner* shall submit verification that measured post-implementation energy savings meet or exceed 75((%)) percent of the energy savings projected in the energy audit report to the *AHJ*. Energy savings shall be compared at the whole-*building* consumption level in common units for electricity, fossil fuels, and other sources. If the measured post-implementation energy savings of the package of *EEMs* do not meet or exceed 75((%)) percent of the energy savings projected in the energy audit, the *conditional compliance* is suspended until ((either)) one of the following:

a. Additional cost-effective EEMs are implemented that reduce the subsequently measured energy savings of the package of *EEMs* so that it meets or exceeds 75((%)) percent of the energy savings projected in the energy audit; or

b. Verification of energy savings using the methods of the *International Performance Measurement & Verification Protocol, Concepts and Options for Determining Energy and Water Savings Volume I*, options A through D. If the measurement and verification protocol identified any outstanding performance issues, they shall be corrected and the verification protocol shall be repeated to ensure optimal performance; or

c. The AHJ revokes conditional compliance.

**4.3.3.4 Verification of compliance for buildings without building energy monitoring in compliance with Section 5.2.** Verification of energy savings using the methods of the *International Performance Measurement & Verification Protocol, Concepts and Options for Determining Energy and Water Savings Volume I* options A through D. If the measurement and verification protocol identified any outstanding performance issues, they shall be corrected and the verification protocol shall be repeated to assure savings estimated in the original audit are realized.

**4.4.1 Administrative requirements.** *Building owners* shall demonstrate compliance with the standard by following the administrative requirements in Normative Annex Z for Tier 1 covered buildings or Normative Annex Y for Tier 2 covered buildings, including:

- Z2/Y2 "Building owner response to notifications."
- Z3/Y3 "Washington state reporting requirements for building owners."  
(~~(Z3 General compliance.)~~)
- Z4/Y4 "Documentation of compliance with the standard."
- Z5/Y5 "Violations, assessment of administrative penalties, mitigation and review of penalty decisions."
- Z6/Y6 "Compliance forms."
- Z7/Y7 "Section 7 tables as modified by Washington state."

**4.4.2 Alternative energy targets (EUI<sub>t</sub>)** - Not adopted.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-050 ASHRAE Standard 100, 2018—Section 5—Energy management plan.**

**Exception to 5.1.1** - Not adopted.

**5.1.2.1** Energy accounting in accordance with Section 5.2.

**5.1.2.2** In the initial year of compliance, the *building's weather normalized energy use intensity (WNEUI)* and (~~(energy use))~~ energy use intensity (EUI).

**5.1.2.3** Annual updates of the *net energy use*, *WNEUI* and *EUI*.

**5.1.2.4** Annual comparison of the net *WNEUI* and *EUI* to the energy target.

**5.1.2.5** Documentation of original, current, and changes in number of occupants, weekly operating hours, or time of day scheduled for occu-



pancy, production rates, and energy using equipment that would have caused change in the measured *WNEUI* and *EUI*.

**Exceptions to 5.1.2.12:**

1. Buildings that meet the *EUI<sub>t</sub>*.
2. Buildings that have implemented a utility program lighting upgrade covering 75 percent of the building's GFA, within the previous five years, can use the lighting schedule provided by the utility program.
3. Tier 2 covered buildings.

**5.1.2.13** The current lighting satisfaction survey and lighting checklist as described in Appendix D of *Performance Measurement Protocols for Commercial Buildings*<sup>1</sup> or as approved by the AHJ.

**Exceptions to 5.1.2.13:**

1. Buildings that meet the *EUI<sub>t</sub>*.
2. Buildings that have implemented a utility program lighting upgrade covering 75 percent of the building's GFA through a utility program within the previous five years.
3. Tier 2 covered buildings.

**5.1.2.14** Operations and Maintenance Plan including:

1. An operations and maintenance (O&M) program as defined in Section 6.
2. An O&M implementation plan as specified in Normative Annex L.
3. Implementation documentation as specified in L2.2.5 Documentation.

**5.1.3** The *EM* shall provide access to the energy management plan to the building occupants annually.

**5.2.1** Provide measured net energy consumption data for each covered building, including all forms of imported and exported energy from at least 12 consecutive months of data monitored in a period not to exceed two years prior to the efficiency audit. The net energy concept is illustrated in Figure 5-1 and Table 5-1 and is calculated in accordance with Section 5.2.4 as follows:

$$\text{Net energy use} = (1a + 1b + 1c + 1d) - (3a + 3b + 3c + 3d + 3e)$$

Where 1a, 1b, 1c, and 1d are metered energy supplies that are used in the building (this includes bulk energy sources), and 3a, 3b, 3c, 3d, and 3e are metered energy excesses that are supplied to another building or grid as useful energy.

**5.2.1.1 Connected buildings.** Where energy consumption is not monitored at the covered building level:

1. Tier 1 covered buildings: Net energy consumption data may be provided at the connected building level.
2. Tier 2 covered buildings: Net energy consumption data shall be provided at the connected building level.

**5.2.1.2 End use deductions.** Where submetered from a building's meter, the following end use energy consumption may be deducted from the building's measured net energy use:

1. Electric vehicle charging equipment that transfers electricity to batteries or other energy storage devices in electric vehicles.
2. Electric loads related to broadcast antennas, on-site cell phone towers or other communications equipment that is unrelated to the primary purpose of the building.

3. The AHJ may add additional end use deductions based on technological advancements.

**5.2.2** (~~(Energy use)~~) Energy use data for each type of energy imported into and exported from the *building* shall be collected from utility or energy delivery bills (that must include the quantity of energy or fuel delivered) or by monitoring local energy meters (either utility or owner-provided meters). Owner-provided energy meters shall meet the metering accuracy, tolerances and testing requirements of Title 480 WAC or WAC 51-11C-40904 (Section C409.4 of the *WSEC*).

**5.2.3 Energy conversion factors.** The *site energy* content of different forms of purchased energy shall be converted from the purchased unit to the standard *site energy* unit using the conversion factors incorporated in Energy Star portfolio manager.

**5.2.4** The *energy accounting system* shall be Energy Star Portfolio Manager as specified in Normative Annex Z.

**5.2.4.1** - Not adopted.

**5.2.4.2** - Not adopted.

**5.2.4.3** - Not adopted.

**Table 5-2a Site Energy Conversion Factors** - Table not adopted.

**Table 5-2b Primary Energy Conversion Factors** - Table not adopted.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-060 ASHRAE Standard 100, 2018—Section 6—(~~Maintenance and operation~~) Operations and maintenance requirements.**

**6.3 Operation and maintenance (O&M) Implementation.** The *O&M* program shall be implemented in accordance with Normative Annex L.

**Exception to 6.3:** *O&M* programs developed and implemented by the *building's* serving utility or local government and approved as equivalent or more stringent by the *AHJ* may be used as an alternative to the requirement in Section 6.3. Where local government programs are more stringent than applicable utility programs, local government programs shall be selected over utility programs.

**6.6.1** When HVAC, domestic hot-water heating, or refrigeration equipment or appliances are replaced, the replacement equipment shall meet (~~(the most stringent)~~) all applicable energy efficiency requirements in the federal equipment standards, *state equipment standards*, and the applicable building code.

**Exception to 6.6.1** - Not adopted.

**6.6.2.1** When lighting equipment is replaced, the replacement equipment shall meet (~~(the most stringent)~~) all applicable energy efficiency requirements in the federal equipment standards, *state equipment standards* and in the applicable building code. Implementation of more efficient equipment shall be evaluated and included as specified for the *capital management plan*, Section 5.1.2.10.

**Exception to 6.6.2.2:** The existing installed lighting power may proportionally increase when the current light levels are below those recommended in the IES *Lighting Handbook 4* or latest version of the Washington State Energy Code.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-070 ASHRAE Standard 100, 2018—Section 7—((Energy-use)) Energy use analysis and target requirements.**

**7.1 Building activity type and energy targets.**

**7.1.1 Building activity type.** *Buildings* are divided into activity types (~~or activities~~) as shown in Table 7-1 Normative Annex Z. Building (~~type definitions are based on Energy Star portfolio manager, unless modified by the notes to Table 7-1~~) activity types are defined by the AHJ in Table 7-4.

**7.1.2 Energy targets** (~~(—)~~). Energy targets for each building activity type are listed in Table 7.2a, Normative Annex Z.

**7.1.3 Building operating shifts normalization factors** (~~(—)~~). *Building operating shifts normalization factors* for each building activity type are listed in Table 7-3, Normative Annex Z.

**7.2.1** For Tier 1 covered buildings the qualified person or for Tier 2 covered building the qualified energy manager shall determine the energy use intensity target ( $EUI_t$ ) according to Section 7.2.2 for single-type/activity buildings and Section 7.2.3 for mixed-use buildings, and shall complete Form B.

**Note:** Covered buildings pursuing compliance at the connected building level shall determine the  $EUI_t$  at the connected building level.

**Exceptions to 7.2.1:**

1. Tier 2 covered buildings unable to develop  $EUI_t$  in accordance with Section 7.2.2 or 7.2.3 of this standard shall report Energy Star portfolio manager median site  $EUI_t$ .

2.  $EUI_t$  programs developed and implemented by the building's local government and approved as equivalent or more stringent by the AHJ may be used as an alternative to the requirement in Section 7.2.1.

**7.2.1.1** Additional target for more recently built buildings: In addition to the requirements of section 7.2.1, *more recently built buildings* shall create a second  $EUI_t$  that is 15(%) percent less than the target developed for compliance with section 7.2.1. This shall be the *building  $EUI_t$*  and shall be included on Form B.

**7.2.2** Energy targets for *buildings* with a single activity shall be calculated as follows:

$$(EUI_t) = S \times (EUI_{t1})$$

where ( $EUI_{t1}$ ) is the *building activity energy target value* in Table 7-2a for the appropriate *building activities/types* and climate, and  $S$  is the *building operating shifts normalization factor* in Table 7-3.

**7.2.3** Energy targets for buildings with multiple activities shall be determined using weighted averages of building activity energy target for each area with a single activity, per the following equation, and reported on Normative Annex C Form B:

$$EUI_t = (A \times S \times EUI_{t1})_1 + (A \times S \times EUI_{t1})_2 + \dots + (A \times S \times EUI_{t1})_i + \dots + (A \times S \times EUI_{t1})_n$$

Where:

- $(A)_i$  = percentage of the gross floor area with single building activity  $i$   
 $(EUI_{t1})_i$  = building activity target from Table 7-2a for space  $i$   
 $(S)_i$  = operating shifts normalization factor from Table 7-3 for space  $i$   
 $(A \times S \times EUI_{t1})_i$  = the weighted space  $EUI$  target for space  $i$

**Exceptions to 7.2.3:** The energy use intensity target ( $EUI_t$ ) of a building may be modified using the following exceptions. None of these exceptions may be used to change the total gross floor area as it applies to Normative Annex Z, Z3.1 Compliance schedule.

1. Spaces where more than 75((%)) percent of the gross floor area has a single building activity listed in Table 7-1 shall be reported as a single-use building or as a multiuse building in accordance with either Section 7.2.2 or Section 7.2.3.

2. Spaces less than 10((%)) percent of the gross floor area with building activity listed in Table 7-1 can combine their floor area with the floor area within the building that has a similar building activity and similar  $EUI_t$  as determined by the qualified person.

3. Spaces in buildings with multiple activities that are not listed in Table 7-1 and have a total combined area  $\Sigma A_{nontarget}$  comprising less than 10((%)) percent of the building gross floor area  $A_{gross}$  can be excluded from building energy target calculations if the energy use of such space is metered separately and the nontarget spaces comply with Sections 4.1 and 4.2. The energy target for the remaining part of the building shall be calculated after deducting the unlisted building type floor area from the building gross floor area ( $A_{gross} - \Sigma A_{nontarget}$ ). Nontarget spaces shall be limited to the floor area occupied by the nontarget activity and shall not include supporting spaces such as corridors, common areas or other space types listed in Table 7-1.

4. Spaces in buildings with multiple activities that are not listed in Table 7-1 and have a total combined area  $\Sigma A_{nontarget}$  comprising less than 50((%)) percent of the building gross floor area  $A_{gross}$  can be excluded from building energy target calculations if the energy use of such space is metered separately and the nontarget spaces comply with Sections 4.1, 4.2, 4.3.1, and 4.3.3. The energy target for the remaining part of the building shall be calculated after deducting the unlisted building type floor area from the building gross floor area ( $A_{gross} - \Sigma A_{nontarget}$ ). Nontarget spaces shall be limited to the floor area occupied by the nontarget activity and shall not include supporting spaces such as corridors, common areas or other activity types listed in Table 7-1.

#### **7.2.4 Energy targets for vacant and partially vacant buildings.**

**Exception to ((Section)) 7.2.4 Vacant and partially vacant buildings:** If the building did not have physical occupancy by owner or tenant for at least ((fifty)) 50 percent of the conditioned floor area throughout the consecutive ((twelve)) 12-month period prior to the building com-

pliance date, the *building owner* may apply for an exemption as specified in Normative Annex Z.

**7.2.4.1** The energy target for vacant spaces shall be based on its pre-vacancy activity if the intended use of the *building* will be unchanged.

**7.2.4.2** If the total floor area of a nonheated, noncooled, and nonilluminated vacant part of a *building* is smaller than 30(%) percent of the *gross floor area*, then it shall be excluded from the *gross floor area*, and the energy target shall be determined based on the remainder of the *building* as described in Section 7.2.3. This allowance may not be used to change the total *gross floor area* as it applies to Normative Annex Z, Z3.1 Compliance schedule.

**7.2.4.3** If the vacant part of a *building* is heated and/or cooled and the *building* ((~~energy-use~~) energy use data for ((~~twelve~~) 12 consecutive month period when the *building* was occupied within two years prior to the compliance date is not available, compliance for this part of the *building* will be determined after it becomes occupied and ((~~energy-use~~) energy use data for ((~~twelve~~) 12 consecutive months becomes available.

**Table 7-1 ((~~Commercial and Residential~~)) Building Activity Types/Activities**

Table 7-1 adopted as modified and published in Section Z7

**Table 7-2a Building Activity Site Energy Targets (EUI<sub>t1</sub>) (I-P Units)**

Table 7-2a adopted as modified and published in Section Z7

**Table 7-2a Building Activity Site Energy Targets (EUI<sub>t1</sub>) (SI Units)** - Not adopted

**Table 7-2b Building Activity Source Energy Targets (EUI<sub>t1</sub>) (I-P**

**Units)** - Not adopted

**Table 7-2b Building Activity Source Energy Targets (EUI<sub>t1</sub>) (SI**

**Units)** - Not adopted

**Table 7-2c Building Activity Electricity Site Energy Use Targets (ELUI<sub>t1</sub>) (I-P Units)** - Not adopted

**Table 7-2c Building Activity Electricity Site Energy Use Targets (ELUI<sub>t1</sub>) (SI Units)** - Not adopted

**Table 7-2d Building Activity Fossil Fuel Site Energy Use Targets (FEUI<sub>t1</sub>) (I-P Units)** - Not adopted

**Table 7-2d Building Activity Fossil Fuel Site Energy Use Targets (FEUI<sub>t1</sub>) (SI Units)** - Not adopted

**Table 7-3 Building Operating Shifts Normalization Factor**

Table 7-3 adopted as modified in Section Z7

**Table 7-4 Building Activity Type Definitions Table**

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-080 ASHRAE Standard 100, 2018—Section 8—((~~Audits~~)) Energy Audit Requirements.**

**8.1** The *qualified energy auditor* shall complete Form D and submit to the *authority having jurisdiction (AHJ)*. If an energy audit is required within this section, a copy of the audit summary results shall

be included in the compliance documentation in a format specified in Normative Annex Z. Compliance with this standard shall be achieved by adopting *energy efficiency measures (EEMs)* that collectively will reduce annual *building* energy use.

**Exception to 8.1:** For Level 1 audit, no Form D is required.

## **8.2 Energy audit requirements for buildings without energy targets.**

**8.2.1 Overall process.** ~~((An))~~ A Level 2 energy audit (as defined in Section 8.4.2) shall be conducted for all Tier 1 covered buildings not having an energy target. The energy audit and the associated energy audit report shall be completed by a *qualified energy auditor* practicing within their field of competency. ~~((The energy audit shall be a Level 2 audit (as defined in Section 8.4.2).))~~

**Exception to 8.2.1:** ~~Buildings ((that have completed an))~~ may use energy audits completed within ~~((the previous three years may use the results of the previous audit))~~ five years prior to the building's compliance date, provided that the scope of the energy audit meets the requirements of this section and that there have been minimal changes to the systems within the audit scope. The energy audit must be evaluated consistent with the investment criteria in Normative Annex X.

**8.2.2** The scope of the energy audit shall include the following required end uses as applicable to the *building*:

- Envelope;
- Lighting;
- Cooling;
- Heating;
- Ventilation and exhaust systems;
- Air distribution systems;
- Heating, chilled, condenser, and domestic water systems;
- Refrigeration except for food processing refrigeration;
- Power generation equipment;
- Uninterruptible power supplies and power distribution units;
- People-moving systems;
- The scope of the energy audit may include *campus district heating and/or cooling systems* when the *campus district heating and/or cooling system* serves the *building* being audited.

### **8.3.2 Buildings that do not meet their energy targets overall process.**

An energy audit shall be conducted, and an associated energy audit report shall be provided, for all *buildings* that do not meet their energy target. The energy audit shall be completed by a *qualified energy auditor* practicing within their field of competency. The energy audit shall be at an audit level specified by the *qualified energy auditor* to be sufficient to identify and evaluate the *EEMs* that, if implemented, would result in the *building* meeting its energy target. The *qualified energy auditor* may refer to the list of potential *EEMs* in Informative Annex E.

After the completion of the audit and the selection of *EEMs* to be implemented, the applicant must calculate an adjusted ~~((energy-use))~~ energy use intensity (EUI) for the *building* based on the estimated energy savings from the selected *EEMs* and the historical energy use of the *building*. This adjusted *EUI* is then compared to the energy target for the *building*. If the adjusted *EUI* is less than the energy target, the applicant shall proceed with implementation as specified in Section 9. If the adjusted *EUI* is greater than the energy target, a more rigorous energy audit investigation is required to identify additional

*EEMs*. This process is repeated until the *building's* adjusted *EUI* is less than its energy target.

Calculation of the adjusted *EUI* is shown in the following equation:

$$EUI_{adj} = (Energy_{hist} - Energy_{saved})/GFA$$

Where:

$Energy_{hist}$  = Historical annual energy use, kBtu

$Energy_{saved}$  = Estimated annual energy savings, kBtu

GFA = Gross floor area, ft<sup>2</sup>

Following the completion of an energy audit that has identified *EEMs* sufficient to meet the *building's* energy target, the applicant shall implement those *EEMs* per the requirements of Section 9.

**Exception to 8.3.2:** *Buildings* may use energy audits completed within five years prior to the *building's* compliance date, provided that the scope of the energy audit meets the requirements of this section and there have been minimal changes to the systems within the audit scope. In this case, the same comparison of adjusted *EUI* to energy target shall be made by the applicant. If the *EEMs* identified in the audit are still applicable, have not been implemented, and if implemented would result in the *building* meeting its energy target, these measures shall be implemented by the facility, and the project shall follow the procedures in Section 9. If the identified *EEMs* do not result in an adjusted *EUI* less than the energy target, a new energy audit shall be conducted as described in Section 8.3.2.

**8.4.1 Level 1 Audit.** *Buildings* shall perform a Level 1 audit (walk-through analysis) as defined in ANSI/ASHRAE/ACCA Standard 211-2018 Standard for Commercial Building Energy Audits, Section 5.3<sup>12</sup>.

**8.4.2 Level 2 Audit.** *Buildings* shall perform a Level 2 Audit (energy survey and engineering analysis) as defined in ANSI/ASHRAE/ACCA Standard 211-2018 Standard for Commercial Building Energy Audits, Section 5.4<sup>12</sup>.

**8.5.1 Audit results.** The energy audit report shall define the actions necessary for the *building owner* to achieve the energy and cost savings that are recommended in the report.

Energy audit results shall be presented in a summary table that includes, at a minimum, an estimate of each of the following:

- A list of recommended *EEMs* that, if implemented, will either meet the energy target for the *building* if it has a target or, if it does not have an energy target, will meet the economic criteria set by the standard in Section 9.

- The estimated energy savings and peak demand savings associated with each recommended *EEM*, expressed in the cost units used on the *building owner's* energy bills, and the units used for comparison with the energy target.

- The estimated (modeled) energy cost savings associated with each recommended *EEM*.

- The estimated cost of implementation for each recommended *EEM*. The costs of implementation shall include the required monitoring of energy savings per the requirements of Section 9.

The economic evaluation of measures are required by Normative Annex X.

**8.5.2 Interactive effects.** Energy savings analysis shall include *interactive effects* of all selected *EEMs*. When considering multiple *EEMs* with *interactive effects*, the order of analysis shall start with load reduction measures and proceed through distribution systems and associated equipment efficiencies and then plant and heat-rejection systems. Any *interactive effects* on equipment sizing and part load performance of equipment shall be accounted for due to reduced loads on subsequent systems.

**8.5.4.1 Nonfederal facilities.** The minimum financial criteria required for reporting is specified in Normative Annex X.

**8.5.4.2 U.S. Federal Facilities** - Not adopted.

**8.5.5 End-use analysis.** The energy audit shall include an end-use analysis that compares the estimated energy use of the facility after implementation of all selected *EEMs* to historical utility consumption. The intent of this requirement is to ensure that estimates of the base-case end-use energy estimates and potential energy-savings estimates in the energy audit report are reasonable.

**Informative Note:** For example, if the audit identifies lighting retrofit opportunities, the *qualified energy auditor* shall compare the identified energy savings for those opportunities with the base-case energy use of the facility and demonstrate that they make up a reasonable fraction of the historical electricity consumption at the site.

**8.5.5.2 Requirements for Level 2 Audits.** The *qualified energy auditor* is required to estimate the energy use of all end uses that individually comprise more than ((5%)) five percent of total historical *building* energy use. The energy estimates for these end uses shall be summed and compared to historical energy consumption for the facility. The sum of the base-case end-use energy estimates must be between 90((%)) percent and 100((%)) percent of the historical energy use at the site.

This comparison shall be conducted separately for each fuel type, such as electricity, natural gas, or fuel oil, for which *EEMs* are identified. On-site energy sources such as solar, photovoltaic, geothermal, and wind shall be included.

Correction for historical weather for the base year versus average weather used in *baseline* estimates may be used.

The same ((~~energy-use~~)) energy use estimates that comprise the end-use analysis shall also be used as the basis for energy savings calculations. The *qualified energy auditor* shall verify that each *EEM* savings estimate is reasonable in comparison to the historical energy consumption of that end use based on energy consumption survey data or experience with similar sites.

The *qualified energy auditor* shall verify that the combined savings from multiple *EEMs* shall take into account *interactive effects* among measures.

Miscellaneous plug loads may be estimated on average equipment power density and *building* area. (See Form D in Normative Annex Z.)



AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-090 ASHRAE Standard 100, 2018—Section 9—Implementation and verification requirements.**

**9.1.1 Requirements.** *Buildings* that have an energy target shall comply with the requirements of Section 9.1.1.1. *Buildings* that do not have an energy target shall comply with the requirements of Section 9.1.1.2. All *buildings* shall implement an energy management plan as described in Section 5. The energy management plan shall be integrated into the *building's capital management plan* as described in Section 5. The energy management plan shall include the elements listed in Section 5.

**9.1.1.1 Buildings with energy targets.** For *buildings* having energy targets, *energy efficiency measures (EEMs)* identified from the energy audit shall be implemented in order to meet the *building's* energy target. Develop a written plan for maintaining the *building's* (~~energy-use~~) energy use intensity (EUI) at or below the energy target.

**Exceptions to Section 9.1.1.1:**

1. *Buildings* may demonstrate compliance by implementing all of the (~~EEM's~~) EEMs that achieve the investment criteria in Normative Annex X.

2. Implementation of *EEMs* to *campus district heating and/or cooling system(s)* in lieu of *EEMs* implemented directly to *campus buildings* is acceptable provided the energy audit demonstrates the energy savings from the *campus district heating and/or cooling system EEMs* will be greater than the *EEMs* identified for the *buildings*. Energy savings shall be measured as a reduction in Btu per year.

3. Implementation of *EEMs* to non-Tier 1 covered buildings complying at the campus-level or connected building level is acceptable, provided the energy audit demonstrates the energy savings from the *EEMs* implemented at the campus-level or connected building level will be at or below the energy target of campus-level or connected building level.

4. Tier 2 covered buildings.

**9.1.1.2 Buildings without energy targets.** *Buildings* that do not have an energy target shall implement all of the *EEMs* that achieve the investment criteria in Normative Annex X.

**Exceptions to 9.1.1.2:**

1. Implementation of *EEMs* to *campus district heating and/or cooling system(s)* in lieu of *EEMs* implemented directly to *campus buildings* is acceptable provided the energy audit demonstrates the energy savings from the *campus district heating and/or cooling system EEMs* will be greater than the *EEMs* identified for the *buildings*. Energy savings shall be measured as a reduction in Btu per year.

2. Tier 2 covered buildings.

**9.1.1.2.1** - Not adopted.

**9.1.1.2.2** - Not adopted.

**9.1.2.1 Training of Building Staff.** An ongoing written training plan shall be implemented. *Building* occupants and staff shall be trained, at a minimum, as established by the operations and maintenance (O&M) program defined in Section 6.

**9.1.2.2 Multiple buildings.** A multiple-building plan shall be implemented to coordinate EEM implementation and measurement of the EUI among buildings when complying at the campus, campus-level or connected building level.

**9.1.2.3 Implementation and commissioning of EEMs.** *EEMs* shall be implemented and commissioned in accordance with the Washington State Energy Code. Washington state energy code (*WSEC*) exceptions based on mechanical system or service water heating capacity shall not be applied when developing the scope for commissioning. For example, the 2018 *WSEC*, Section C408.1 General, the exceptions do not apply. The *qualified energy auditor* or *qualified person* shall review the commissioning report and certify that the *EEMs* are functioning as intended.

**Informative Note:** For guidance on commissioning protocols, refer to ASHRAE Guideline 0.2-2015 Commissioning Process for Existing Systems and Assemblies and ASHRAE Guideline 1.2-2019 Technical Requirements for the Commissioning Process for Existing HVAC&R Systems and Assemblies.

**9.1.2.4 Energy efficiency sequencing.** Implementation of *EEMs* shall be prioritized to take advantage of the life cycle of *building* systems and to minimize the disruption of *building* occupants. Delayed implementation shall be evaluated using the methodology included in Normative Appendix X and reported in the energy management plan.

**9.2.2 Verification of implemented EEMs for Buildings without Energy Targets.** Upon implementation of *EEMs*, the affected end-use systems shall be monitored for one year to verify *EEM* energy savings. The *qualified energy auditor* or *qualified person* shall review the results of the *EEM* energy monitoring and certify that the energy savings of the package of *EEMs* meets or exceeds 75((%)) percent of the energy savings projected in the energy audit as required. For *buildings* unable to meet the requirements of Section 5.2 Building energy monitoring, the *qualified energy auditor* or *qualified person* shall provide verification using the methods of the *International Performance Measurement & Verification Protocol, Concepts and Options for Determining Energy and Water Savings Volume I*<sup>11</sup> options A through D.

**9.3 Compliance.** The *qualified person* shall complete the compliance documentation as required in Normative Annex Z.

**ASHRAE Standard 100, 2018—Section 10** - Not adopted.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-120 Normative Annex C Forms.** For Washington State Compliance Normative Annex C forms adopted as modified and published in Normative Annex Z, Section ((Z7)) Z6. Compliance forms for Tier 1 covered buildings and Normative Annex Y, Section Y6 Compliance forms for Tier 2 covered buildings.

**Informative Annex F Standard 100 Compliance Flow Chart** - Not adopted.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-130 Normative Annex L—Operations and maintenance implementation.**

**L2 Operations and maintenance program.**

Each *building* system shall have an (~~(O&M)~~) O&M program that, at a minimum, preserves the condition of the system and its elements in a manner that enables the system to provide the intended thermal and visual comfort, energy efficiency, and helps to achieve the intended indoor environmental quality required for the *building*.

At a minimum, the (~~(O&M)~~) O&M program shall contain an inventory of equipment, systems and controls to be inspected and (~~(maintained)~~) maintained and a maintenance plan describing the goals, objectives, and execution of the systems maintenance program.

**L2.2.3 Inspection and maintenance tasks.** Inspection and maintenance tasks for inventoried equipment, systems and controls shall be established. Inspection shall include the physical assessment of system components and may include measurement of operating parameters and data provided by sensors or a *building* management system (BMS). Maintenance tasks shall include adjustment, service, or replacement of inventoried equipment and systems. Control systems settings including, but not limited to, set points, schedules, and sequence of operations shall be inspected and (~~(maintained)~~) maintained.

**L2.2.4 Inspection and maintenance task frequencies.** Frequency of inspection and maintenance tasks for inventoried equipment, systems, and controls shall be established. If unacceptable condition indicators or unacceptable performance is found during two consecutive inspections, the owner or owner's designated representative shall investigate and analyze possible causes. At a minimum, the following possible causes shall be investigated:

- *Poor field practices.* Review inspection documentation and/or technician execution to ensure maintenance tasks are performed correctly.
- *Insufficient time budgeted for tasks.* Review time budgeted to the technician to ensure that reasonable time has been given to perform the tasks.
- *Component repairs noted/pending/not made.* Inspect documentation to determine that repair or component replacement has been undertaken.
- *Design issues.* Determine whether underlying design issues are causing successive failures.
- *Obsolete equipment or components.* Determine whether the equipment or component has been in service beyond its (~~(useful-life)~~) useful life.
- *Conditions outside of the building system causing failure.* Investigate whether water leaks, vandalism, a problem in the *building* envelope, a problem with the power supplied to the *building*, or some other external factor is causing the problem.

Based on the analysis, the inspection frequency or the maintenance task shall be modified to resolve the deficiency.

If acceptable condition indicators or acceptable performance is found during three successive inspections, the inspection frequency for that task may be reduced from the existing frequency. The reduced frequency shall be based on the specific findings and shall be documented.

Frequency may be adjusted for climate related or operational reasons. Each adjusted frequency shall be documented, including the reason for the adjustment.

**Informative Note:** Examples include the following:

- **Cooling tower shutdown during the winter.** Inspection and maintenance may be suspended during the shutdown period.
- **A new chiller is installed and the old chiller is retained as a backup.** Inspection and maintenance of the backup unit may be adjusted to reflect fewer operating hours.
- **A new lighting fixture and lamp is installed with a much longer life expectancy.** Inspection and *lamp* replacement frequency may be extended to reflect the new device.

**L2.2.5 Documentation.** A minimum inspection and maintenance documentation package shall consist of the following items:

1. Listings of *building* systems and system components with associated performance criteria pertinent to the facility.
2. Inspection and maintenance tasks and the method of tracking (automated or manual).
3. Identify building systems or components operating beyond their ((~~useful-life~~)) useful life.
4. Sufficient record detail and verification (written or electronic) to demonstrate implementation of the maintenance plan.

The inspection and maintenance document directory shall provide easy access and be well organized and clearly identified. Emergency information shall be immediately available and shall include emergency staff and/or agency notification procedures.

**Informative Annex M Guidance on Building Type Definitions** - Not adopted.

**Informative Annex N Addenda Description Information** - Not adopted.

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-140 Normative Annex X—Investment criteria—This is a normative annex and is part of the Tier 1 covered building requirements of this standard.**

**X1 Demonstrating compliance with the investment criteria.** *Buildings* seeking compliance using the exception to Section 9.1.1.1 or 9.1.1.2 shall demonstrate compliance with the financial investment criteria of this annex. The investment criteria shall be documented using a level 2 energy audit and by performing the life cycle cost analysis (*LCCA*) as per X2.2.

**X1.1 General guidance on cost and benefits for the base case and alternative case.**

The life cycle cost analysis is a process which compares the base case of the existing *building* to the alternative case that implements *EEMS* proposed by the energy audit. Total life cycle cost of each case are produced by the analysis, but the resulting cost and benefits of interest are the incremental life cycle cost difference between each

case. Measures and bundles of measures demonstrating positive life cycle cost compared to the base case are to be implemented in accordance with chapter 9.

The base case will include all costs for energy, operations and maintenance and other related cost scheduled in the analysis period. This may include replacement of existing equipment upon failure with code compliant equipment. All these costs are captured in the base case.

The alternate case captures all cost and benefits associated with implementing additional efficiency features. All costs and all benefits of implementing *EEMs* required by Section 9 should be captured by the analysis. All documented costs may be considered.

Extended implementation periods are allowed by this standard. This allows more *EEMs* to be considered at time of failure resulting in much of the cost of implementation being attributed to the base case. This requires including the implementation timing of the measure in the extended compliance period. Ultimately, this reduces the cost of the alternative case and will likely make *EEMs* that are not cost-effective as an early replacement be cost-effective as replacement upgrades.

## **X2 Energy audits and investment criteria pathway.**

**X2.1 Buildings** qualifying under the investment criteria must complete a *LCCA* and implement an *optimized bundle* of *energy efficiency measures* that provide maximum energy savings without resulting in a *savings-to-investment ratio* of less than one.

**Exception:** *Building owners* may demonstrate compliance with this section by completing the Level 2 energy audit and implementing all *EEMs* determined to have a *simple payback* that is less than the *EEMs* expected *useful life*.

**X2.2** The procedures for developing the investment criteria shall be based on ANSI/ASHRAE/ACCA Standard 211 Section 5.5.2 and Section 5.5.3 Life-Cycle Cost Analysis (*LCCA*) as modified by section X2. The *LCCA* shall also follow, and consider the findings of, the Level 2 Audit as defined by ANSI/ASHRAE/ACCA Standard 211 Section 5.4.

## **X2.3 Investment criteria chronological process.**

**X2.3.1 Level 2 audit.** Evaluate a comprehensive list of individual *EEMs* using *simple payback* as a screening criteria. Individual *EEMs* determined to have a *simple payback* that is greater than the *EEMs* *useful life* may be excluded from further consideration.

**X2.3.2 Life cycle cost assessment.** Identify an *optimized bundle* of *EEMs* that provides maximum energy savings without resulting in a *savings-to-investment ratio* of less than one. The *optimized bundle* of measures shall be implemented based on the schedule established within the energy management plan.

**X2.3.2.1 Life cycle cost assessment on individual measures.** Individual measures that do not meet the life cycle cost test may be excluded from the implementation plan if they are not integral to the implementation of other cost-effective measures in the bundle.

**X2.3.2.2 Phased implementation.** The *LCCA* and energy management plan may include phased implementation such that the *building owner* is not required to replace a system or equipment before the end of the system's or equipment's *useful life*.

## **X3 Included LCCA costs and savings.**

**X3.1** The costs and savings to be included within the life cycle cost analysis shall be based on ANSI/ASHRAE/ACCA Standard 211 Sections 5.4.8.1, 5.5.2 and 5.5.3 as modified by the following:

**X3.1.1 Cost for implementation of EEM, as required by Section 9.**

**Estimate EEM Costs** (based on Standard 211 Sections 5.4.8).

**Estimate the total expected cost of implementation for each practical measure.** Cost estimates shall include the following factors, as applicable:

1. Material costs;
2. Labor costs, contracted or executed by employees;
3. Design fees;
4. Construction management, contracted or executed by employees;
5. Site-specific installation factors;
6. Permits;
7. Temporary services;
8. Testing, adjusting, and balancing;
9. Utility service upgrades;
10. Verification, as required in Section 9.2.2 only;
11. Commissioning;
12. Taxes;
13. Profit;
14. Any additional adjustments that significantly impact the cost estimate of the *EEM*.

**Informative Note:** Multiple measures affecting the same *building* systems or end uses may be combined and their costs estimated as a group. Combining costs may improve the cost-effectiveness of combined measures.

**Hazardous material abatement (based on standard 211, 5.4.8.2).** Estimation of hazardous material abatement costs is not required. If the possible presence of hazardous materials is apparent at the site, either through observation or as reported by others, the possible presence of the hazardous material shall be included in the report (see Standard 211 Section 6.2.5) as potentially affecting health and safety and installation costs.

**Cost and cost savings of recommended EEMs** (based on standard 211 Section 5.5.2).

Estimate the initial and recurring costs, *energy cost* savings, and nonenergy cost savings of each measure and each integrated group of measures. Cost estimates shall either be:

1. Obtained from a vendor at the quoted price; or
  2. Based on quotations of similar projects within the last year;
- or
3. Based on labor cost estimates for employee labor.

**Life-cycle cost analysis (LCCA)** (based on standard 211 section 5.5.2). *LCCA* 7,8,9,10 of each recommended *EEM* shall be conducted for a time frame that spans, at a minimum, the life of the measure with the longest service *useful life* and shall include the following:

1. Initial costs (per Standard 211 Section 5.4.8.1);
2. Financing costs;
3. Annual *energy* costs;
4. Escalation rates as published by the *AHJ* citing the source within the energy audit report;

- 5. Discount rates as published by the AHJ citing the source within the energy audit report;
- 6. Tax credits and deductions;
- 7. Cash incentives, grants, and rebates;
- 8. Expected periodic replacements;
- 9. Estimated recurring nonenergy costs (maintenance, etc.), of each measure or set of measures. Such costs include annual maintenance and service labor costs, routine replacement of worn parts, or annual warranty fees from manufacturers;
- 10. Contingency funds not to exceed 5((%)) percent of estimated EEM implementation cost; and
- 11. Water & sewer savings from EEM. EEMs that provide water and/or wastewater savings shall include the operations and maintenance savings resulting from implementation of the EEM.

**X4 Life cycle cost analysis methodology, form and key variables.**

**X4.1** Life-cycle cost analysis completed for *buildings* qualifying under the investment Criteria shall follow the *National Institute of Standards and Technology (NIST) Life-Cycle Costing Manual Handbook 135* except as specified in this standard in Table X4.

**Table X4 Life Cycle Cost Analysis Variables Independent Of NIST Handbook - 135 Methodology.**

Public owner discount rate	A fixed annual rate based on the cost of borrowing through the Washington state treasurer, certificate of participation programs, the local program and the state lease-purchase program.
Private owner discount rate	Shall be the published <i>Wall Street Journal Prime Rate</i> for based on the average of the previous twelve months.
Financing	Applicants with documented costs of borrowing assuming one hundred percent of the EEM implementation costs are financed at an actual cost of borrowing and stated terms when the property being improved is listed as loan collateral.
Rate of inflation	A fixed annual rate, as published annually by the Washington state office of financial management.
Fuel escalation rate	Based on the most recent edition of <i>NIST Handbook - 135 Annual Supplement - Fuel Escalation Rates</i> .
Study period	Equal to the <i>useful life</i> of the longest-lived EEM within an <i>optimized bundle</i> . (STD 211, 5.5.3)

**X4.2 Publication of analysis variables.** The AHJ shall on an annual basis publish the public owner discount rate, private owner discount rate, rate of inflation and fuel escalation rates on the agency website.

AMENDATORY SECTION (Amending WSR 23-13-081, filed 6/15/23, effective 7/16/23)

**WAC 194-50-150 Normative Annex Z—Washington state Tier 1 covered buildings reporting requirements—This is a normative annex and is part of the Tier 1 covered building requirements of this standard.**

**Z1 Building owner notifications by the AHJ.**

**Z1.1 Notification to building owners of covered ((commercial)) buildings by the AHJ.** Based on records obtained from each county assessor and other available information sources, the AHJ must create a database of *covered ((commercial)) buildings* and *building owners* required

to comply with the standard established in accordance with this section. The database may include *buildings* and *building complexes* presumed to meet the definition of *covered* (~~(commercial)~~) *building* and multifamily *buildings* greater than 50,000 square feet in floor area.

**Z1.1.1** The database will contain information about *buildings* that may be subject to compliance, their owners, and information about *multi-family residential buildings* eligible for incentives. The database will also contain information to assist tracking and reporting on *building owner* compliance, and incentive application and distribution. Commerce will create a method for tracking *building owner* notification responses. Each *building* or *building complex* will be assigned a unique *building* identifier.

**Z1.2** By July 1, 2021, the AHJ must provide the owners of *covered* (~~(commercial)~~) *buildings* with notification of compliance requirements. Notifications will be mailed to the mailing addresses county assessors have on file.

**Z1.3** Failure by the AHJ to provide the notification in Z1.2 does not release the *building owner* of the legal obligation to comply with this law. When a covered building undergoes a change of ownership, it is the buyer's responsibility to contact the AHJ and update the covered building's profile.

**Z1.4** By July 1, 2021, the AHJ must provide notifications to the *building owners* of *multifamily residential building* where the floor area exceeds 50,000 gross square feet, excluding the parking garage area.

## **Z2 Building owner response to notifications.**

**Z2.1 Correction of errors.** *Building owners* are responsible for reviewing the property and *building* information provided by the AHJ through notification including, but not limited to, *building* or *building complex* ownership details, *gross floor area*, and other information as identified by the *building owner*.

**Z2.1.1 Correction of errors documentation form.** *Building owners* who are notified in error may submit a correction form to the AHJ. The correction form will be used to document gross floor area (conditioned and unconditioned) and/or *building* type. *Building owners* that submit the correction form must also submit the documentation required to demonstrate an exception as required in Section Z4.1 prior to the compliance date if applicable.

## **Z3 Washington state reporting requirements for building owners.**

**Z3.1 General compliance.** The *building owner* of a *covered* (~~(commercial)~~) *building* must report compliance with the standard to the AHJ in accordance with the compliance schedule established under Section Z3.1 and every five years thereafter. For each reporting date, the *building owner* must submit documentation to demonstrate that:

1. The *weather normalized energy use intensity* of the *covered* (~~(commercial)~~) *building* measured in a period not to exceed two years prior to the compliance deadline specified in Normative Annex Z3.1 is less than or equal to the *energy use intensity target* (*buildings* that meet their energy targets); or

2. The covered building has met the measurement and verification requirements of Section 4.3.3.3 or Section 4.3.3.4 of the investment criteria; or



3. The covered (~~commercial~~) building has received conditional compliance from the (~~department~~) AHJ based on energy efficiency actions prescribed by the standard; or

(~~3.~~) 4. The covered (~~commercial~~) building is exempt from the standard by demonstrating that the building meets one of the criteria for an exemption.

**((Z3-1)) Z3.2 Compliance schedule.** The building owner of a covered (~~commercial~~) building must report the building owner's compliance with the standard to the (~~department~~) AHJ in accordance with the appropriate initial compliance date as follows and every five years thereafter. Covered buildings complying at a campus-level or connected building level shall use the compliance schedule representing the largest covered building or the compliance schedule can be graduated through conditional compliance based upon individual covered building compliance schedules. Notify the AHJ to update the covered building profile(s) and your compliance deadline.

1. For a building with more than 220,000 gross square feet, June 1, 2026;

2. For a building with more than 90,000 gross square feet but less than (~~220,000 and one~~) 220,001 gross square feet, June 1, 2027; and

3. For a building with more than 50,000 gross square feet but less than (~~90,000 and one~~) 90,001 gross square feet, June 1, 2028.

**((Z3-1.1)) Z3.2.1 Early compliance option.** Building owners may submit for compliance to the AHJ beginning July 1, 2023. (~~The weather-normalized energy use intensity~~) Energy use data for developing the net energy consumption of the covered (~~commercial~~) building shall be measured in a period not to exceed two years prior to the submission of compliance documentation. This section expires June 1, 2028.

**((Z3-1.2)) Z3.2.2 Application for conditional compliance.** Applications for conditional compliance must be submitted to the AHJ no later than 180 days prior to the compliance date to receive conditional compliance approval prior to the compliance date.

**((Z3-1.3)) Z3.2.3 Application for exemption.** Building owners submitting an application for exemption as specified in Section Z4.1 must (~~be submitted~~) submit to the AHJ no sooner than three years prior and no later than 180 days prior to the compliance date to receive exemption approval prior to the compliance date.

**Z4 Documentation of compliance with the standard.** Documentation of compliance shall be submitted to the AHJ demonstrating the building owner has complied with the standard through submission of documentation in accordance with Section Z4.1, Z4.2, Z4.3, Z4.4 or Z4.5. Additional requirements for continued reporting may be required as specified in Z4.6.

**Z4.1 Documentation of compliance through exemption.** Building owners seeking approval of exemption shall submit to the AHJ the Z6.7 Form H, "Application for exemption certificate," documenting the following:

1. **Exemption conditions.** The building qualifies for one of the (~~following~~) exemptions listed in Z4.1(2), and:

a. **Exemption verification.** Compliance with the exemption must be verified by the owner based on the building as it is to be occupied and operating on the compliance date;

b. **Exemption application time frame.** Applications for exemptions may be submitted no sooner than three years prior to the compliance

date and submitted to the AHJ no later than 180 days prior to the compliance date;

c. **Exemption certificate validity.** Exemption certificates are only valid for the current compliance review cycle.

d. **Exemption recertification.** Within six months before the compliance date, *building owners* who have received exemption approval must certify that the *building* still meets the eligibility qualifications for the exemption and that there have been no material changes to qualifying conditions. A template for acceptable declarations will be made available by the AHJ on the agency website.

2. **Exemptions.** Covered (~~(commercial)~~) *buildings* are not eligible for exemption from the standards unless they meet at least one of the following criteria:

a. **Certificate of occupancy.** The *building* did not have a certificate of occupancy or temporary certificate of occupancy for a consecutive 12-month(~~(s)~~) period within two years prior to the compliance date;

b. **Physical occupancy.** The *building* did not have *physical occupancy* by owner or tenant for at least 50 percent of the *conditioned floor area* throughout the consecutive 12-month period prior to the *building* compliance date. Buildings approved for this exemption that have a gross floor area with greater than 20,000 square feet of occupied floor area shall comply with Tier 2 covered building requirements for the occupied floor area;

c. **Unconditioned and semi-heated space.** The sum of the *building's gross floor area* minus unconditioned and semi-~~(conditioned)~~ heated spaces, as defined in the Washington State Energy Code, is less than 50,000 square feet. Buildings approved for this exemption with gross floor area minus unconditioned and semi-heated spaces, as defined in the Washington State Energy Code, greater than 20,000 square feet shall comply with Tier 2 covered building requirements of this standard;

d. **Manufacturing or industrial.** More than 50(~~(%)~~) percent of the *gross floor area* of the *building* is (~~(primarily)~~) used for manufacturing or other industrial purposes, as defined under the following use designations of the Washington state edition of the *International Building Code*:

- i. Factory group F; or
- ii. High hazard group H.

Aggregate gross floor area of spaces with nonexempt occupancy classification greater than 20,000 square feet shall comply with Tier 2 covered building requirements.

e. **Agricultural.** The *building* is an agricultural structure;

f. **Demolition.** The *building* is pending demolition; or

g. **Financial hardship.** The *building* meets at least one of the following conditions of financial hardship:

- i. The *building* had arrears of property taxes or water or wastewater charges that resulted in the *building's* inclusion, within the prior two years, on a city's or county's annual tax lien sale list;
- ii. The *building* has a court appointed receiver in control of the asset due to financial distress;
- iii. The *building* is owned by a financial institution through default by a borrower;
- iv. The *building* has been acquired by a deed in lieu of foreclosure within the previous 24 months;
- v. The *building* has a senior mortgage subject to a notice of default;

vi. The *building owner* has an immediate and heavy financial need which cannot be satisfied from other reasonable available resources and which are caused by events that are beyond their control.

3. **Notification of exemption approved or denied.** After documents have been submitted and reviewed, the *AHJ* will send notification of approval or denial.

a. If the exemption is approved the *AHJ* shall notify the applicant stating the application has been approved and update the *AHJ* records for the *building*.

b. If the exemption is denied the *AHJ* shall notify the applicant stating the application has been denied and update the *AHJ* records for the *building*.

4. **Compliance required when exemption denied.** When an application for exemption is denied the *building owner* must proceed with the process to demonstrate compliance with one of the compliance options in Washington state reporting requirements for *building owners*, Z4.2-Z4.5.

**Z4.2 Buildings that meet the  $EUI_t$ .** *Building owners* must provide the following documentation to verify that the *building weather normalized EUI* is less than the *building  $EUI_t$*  and that the energy management plan ~~((is complete and being))~~ (EMP) must be completed and the operations and maintenance program (O&M) must be implemented.

- Form A;
- Form B;
- Form C.

**Z4.3 Buildings that will meet the building investment criteria prior to the compliance date.** *Building owners* must provide the following documentation to verify that the *building* has implemented all *EEMs* that meet the cost-effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan (EMP) must be completed and the operations and maintenance program (O&M) must be implemented and all *EEMs* must be installed and commissioned prior to the compliance date.

- Form A;
- Form B;
- Form C, except *buildings* unable to meet Section 5.2, Building energy monitoring;
- ~~((Energy audit report: - Level 2 energy audit; - Normative Annex X - Investment Criteria Form))~~ Form D;
- Form F.

**Z4.4 Buildings that will meet the  $EUI_t$  through conditional compliance.** *Building owners* must provide the following documentation to verify that the *building weather normalized EUI* is projected to be less than the *building  $EUI_t$*  at the end of the measurement and verification period and that the energy management plan ~~((is complete and being))~~ (EMP) must be completed and the operations and maintenance program (O&M) must be implemented. *EEMs* required to meet the  *$EUI_t$*  must be installed and commissioned prior to the compliance date. Verification and completion shall be documented as required in Section Z4.6.

- Form A;
- Form B;
- Form C;
- ~~((Energy audit report:~~

~~Level 2 Energy Audit)) Form D.~~

- Continued reporting until completion as specified in Section 24.6.

**Z4.5 Buildings that will meet the building investment criteria through conditional compliance.** *Building owners* must provide the following documentation to verify that the *building* has implemented all *EEMs* that meet the cost-effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan (*EMP*) must be completed and the operations and maintenance program (O&M) must be implemented and all *EEMs* must be installed and commissioned prior to the compliance date. Verification and completion shall be documented as required in Section 24.6.

- Form A;
- Form B;
- Form C, except *buildings* unable to meet Section 5.2 Building Energy Monitoring;

- (~~Energy audit report:~~

- ~~Level 2 energy audit;~~

- ~~Normative Annex X - Investment Criteria Form)) Form D;~~

- Form F.

- Continued reporting until completion as specified in Section 24.6.

**Z4.5.1 Phased implementation for investment criteria through conditional compliance.** The *building owner* may include phased implementation of *EEMs* such that the *building owner* is not required to replace a system or equipment before the end of the system or equipment's *useful life*. System or equipment fitting this description shall be included in the energy audit and Normative Annex X - Investment Criteria submission with a schedule for replacement. Phased implementation shall be documented in the energy management plan (*EMP*) and *capital management plan* required in Section 5.

**Z4.6 Continued reporting until completion.** Continued reporting is required as specified in Sections 24.6.1 and 24.6.2 until completion when: a) measurement and verification extends one year or more beyond the compliance date, or b) implementation is extended phased implementation.

**Z4.6.1 Annual reporting.** The following up to date reports shall be submitted to the *AHJ* annually, (date specific).

- Form A;

- Form B;

- Form C, except *buildings* unable to meet Section 5.2, Building energy.

**Z4.6.2 Completion Reporting.** The following up to date reports shall be submitted to the *AHJ* when all conditions of compliance have been verified and documented:

- Form A;

- Form B;

- Form C, except *buildings* unable to meet Section 5.2, Building energy monitoring. *Buildings* unable to meet Section 5.2 shall include the verification specified in Section 9.2.2 in the *building* energy management plan.

**Z5 Violations, assessment of administrative penalties, mitigation and review of penalty decisions.**

**Z5.1 Authorization.** The *AHJ* is authorized to impose administrative penalties upon *building owners* for failing to submit documentation demonstrating compliance with the requirements of this standard.

Failure to submit documentation demonstrating compliance by the scheduled reporting date will result in progressive penalties by legal notice.

**Z5.2 Notice of violation and opportunity to correct (NOVC) (first notice).**

**Z5.2.1 Notifying owner of failure to demonstrate compliance.** The ((department)) *AHJ* may issue a NOVC when a *building owner* has failed to submit documentation that demonstrates compliance with this standard by the scheduled reporting date.

**Z5.2.2 Issuing NOVC.** A NOVC may be issued for any of the following reasons:

1. Failure to submit a compliance report in the form and manner prescribed by the *AHJ*;
2. Failure to meet an *energy use intensity target* or failure to receive *conditional compliance approval*;
3. Failure to provide accurate reporting consistent with the requirements of the standard; and
4. Failure to provide a valid exemption certificate.

**Z5.2.3 Identifying failure to demonstrate compliance.** The *AHJ* will identify in the NOVC which section(s) of law, code, or the standard for which the *building owner* has failed to demonstrate compliance.

((Z5.2.3)) **Z5.2.4 Specifying time frame to remedy.** The NOVC will specify the time by which the *building owner* must cure the violation by submitting documentation that demonstrates compliance with the identified section(s) of law, code, or the standard. The *AHJ* will give the *building owner* at least seven calendar days to submit such documentation.

((Z5.2.4)) **Z5.2.5 Missing NOVC response deadline.** If sufficient documentation is not submitted by the date specified in the NOVC, the *AHJ* will issue a notice of violation and intent to assess administrative penalties (NOVI) and the *building owner* will be subject to administrative penalties.

**Z5.3 Notice of violation and intent to assess administrative penalties (NOVI) (second notice).**

**Z5.3.1 Issuing NOVI.** If a *building owner* fails to respond to a NOVC by submitting documentation demonstrating compliance by the date specified in the NOVC, the *AHJ* will issue a NOVI.

**Z5.3.2 Identifying failure to demonstrate compliance and assessing penalties.** The *AHJ* will identify in the NOVI which section(s) of law, code, or the standard for which the *building owner* has failed to demonstrate compliance. The NOVI will also include a description of how the penalties the *AHJ* intends to assess will be calculated.

**Z5.3.3 Responding to NOVI.** *Building owners* must respond to a NOVI within 30 days by either:

1. Submitting an application for exemption in accordance with Section Z4.1 if applicable;
2. Submitting a noncompliance mitigation plan in accordance with Z5.7;

3. Submitting its intent to pay the penalties by using the form provided by the AHJ; or

4. Submitting a request for an administrative proceeding to challenge or mitigate the penalty.

**((Z5.3.3)) Z5.3.4 Missing NOVI response deadline.** If the *building owner* does not timely request a hearing or submit an application for exemption, the *building owner* waives its right to a hearing and the *director* or their designee may issue a final order assessing the penalties described in the NOVI. If the *building owner* has submitted a mitigation plan, the final order will only assess penalties from the scheduled compliance date until the date of an approval of compliance or *conditional compliance*.

**((Z5.3.4)) Z5.3.5 Requesting hearing for denied exemption.** *Building owners* who submit an application for exemption that is denied may request a hearing by submitting a request for a hearing within 30 days of issuance of the decision denying its application for exemption. If the *building owner* does not request a hearing within 30 days, the *building owner* waives its right to a hearing and the *director* or their designee may issue a final order assessing the penalties described in the NOVI.

#### **Z5.4 Assessment of administrative penalties.**

**Z5.4.1 Penalties for building owners.** Failure to submit documentation demonstrating compliance with the standard by the date specified in a NOVC will result in the issuance of a NOVI and the assessment of administrative penalties at an amount not to exceed \$5,000 plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to one dollar per square foot of *gross floor area* per year.

a. Penalties are assessed for each compliance period.

b. The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.

**Z5.4.1.1 ((Penalties for building owners that)) Submit a noncompliance mitigation plan.** For *building owners* subject to a NOVI who respond within 30 days by submitting a noncompliance mitigation plan (Z5.7), fines shall be assessed on an annual basis or when the *building owner* achieves compliance or *conditional compliance*.

a. With completion documentation. For applicants that submit a noncompliance mitigation plan and who submit documentation demonstrating completion, daily penalties will be assessed from the scheduled compliance date to the date of approval of compliance or *conditional compliance*. The penalty will be assessed at an amount not to exceed 30 percent of \$5,000 plus a daily amount equal to 20 cents per square foot of *gross floor area* per year.

b. Without completion documentation. For applicants that submit a noncompliance mitigation plan but have not submitted documentation demonstrating completion, if the *building* does not comply with the standard by the next compliance date, the *building owner* will be assessed the maximum penalty of \$5,000 plus a daily amount equal to one dollar per square foot of *gross floor area* per year not to exceed a value greater than 18 months of accrued penalty.

~~((The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.))~~

**Z5.4.1.2 ((Penalties for building owners that)) Choose to pay the fine rather than pursuing compliance.** *Building owners* may choose to respond

to the NOVI by paying the maximum penalty. The *building owner* will be assessed the maximum penalty of \$5,000 plus a daily amount equal to one dollar per square foot of *gross floor area* per year not to exceed a value greater than 18 months of accrued penalty. (~~Penalties are assessed for each compliance period.~~)

~~The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.)~~

**Z5.4.2 Late fees.** When assessed penalties are not paid within 180 days of the date of a final order assessing penalties, the *AHJ* may assess further penalties. Total penalties assessed for Tier 1 covered buildings will not exceed \$5,000 plus a daily amount equal to one dollar per square foot of *gross floor area* per year.

**Z5.4.3 Interest.** Interest will accrue on civil penalties pursuant to RCW 43.17.240 if and when the debt becomes past due.

**Z5.5 Due date and collection of penalties.**

**Z5.5.1 Penalties due.** Penalties shall become due and payable on the later of:

1. Thirty days after receipt of the final order imposing the penalty; or

2. The date specified in the final order imposing the penalty.

**Z5.5.2 Debt collection.** If a penalty has not been paid by the due date, the *AHJ* may assign the debt to a collection agency as authorized by RCW 19.16.500 or take other action to pursue collection as authorized by law. If referred to a collection agency, the *AHJ* may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.

**Z5.5.3 Accumulated daily fine.** For *building owners* that are implementing a noncompliance mitigation plan but have not yet complied, the *AHJ* may assess the accumulated daily fine on June 1st of each year or shortly thereafter.

**Z5.6 Payment of administrative penalties.**

A check or money order payable in U.S. funds to the Washington state department of commerce can be mailed to:

Washington State Department of Commerce  
Re: Clean Buildings Initiative, Energy Division  
P.O. Box 42525  
Olympia, WA 98504-2525

**Z5.7 Noncompliance mitigation plan.** Owners of *covered* (~~commercial~~) *buildings* that are out of compliance by the scheduled compliance date and have not corrected the violation by the date noted in a NOVC may reduce possible penalties by demonstrating that they are taking action to achieve compliance with the standard. To begin the process of mitigating noncompliance, a *building owner* must submit to the *AHJ* the non-compliance mitigation plan form selecting one of the following actions within 30 days of the date of a NOVI to avoid immediate issuance of penalty in accordance with Z5.4.1.

1. Compliance with the standard in accordance with Z4.2.

2. *Conditional compliance* with the standard in accordance with Z4.4.

3. *Conditional compliance* with the standard in accordance with Z4.5.

**Z5.7.1 Mitigation completion.** To demonstrate completion, the *building owner* shall complete all of the requirements of this standard and submit documentation as required by Section Z4.2, Z4.4 or Z4.5. After the *building owner* has demonstrated completion, the *AHJ* shall issue a final order assessing the reduced penalty as specified by Z5.4.1.1(a).

## **Z5.8 Administrative hearings.**

**Z5.8.1 Requesting a hearing.** A *building owner* may request an administrative hearing after receiving an NOVI or after the denial of its application for an exemption by submitting a request within 30 days of the date of a NOVI or the denial of a timely application for exemption. All requests must be made in writing and filed at the address specified on the NOVI. For convenience, the *AHJ* will attach a form titled request for hearing to the NOVI that may be used to request an administrative hearing.

Requests for hearing must be accompanied by the following:

1. Washington State Building ID;
2. Submit Annex Z Forms A, B, and C.

**Z5.8.2 Hearing process.** The *AHJ* may refer matters to the office of administrative hearings (OAH). Administrative hearings will be conducted in accordance with chapter 34.05 WAC, Administrative Procedure Act, chapter 10-08 WAC, Model rules of procedure, and the procedural rules adopted in this chapter. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this section, the procedural rules adopted in this section take precedence.

**Z5.8.3 Initial orders to become final orders.** Initial orders issued by the presiding officer will become final without further agency action unless, within 20 days:

1. The *director* determines that the initial order should be reviewed; or
2. A party to the proceeding files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

**Z5.8.4. Judicial review.** A final order entered pursuant to this section is subject to judicial review pursuant to RCW 34.05.510 through 34.05.598.

**Z5.8.5 Collected penalties.** (~~(The *AHJ* will deposit all penalties collected and received by the department under this section)~~) Administrative penalties collected under this section must be deposited into the low-income weatherization and structural rehabilitation assistance account created in RCW ((70.164.030)) 70A.35.030.

**Z6 Compliance forms.** The following section replace Normative Annex C Forms in Standard 100 and provide additional forms specified by rule *Building owners* are required to submit the applicable forms and the required supporting information to demonstrate compliance with the standard. These forms replace all referenced forms in this standard. The *AHJ* will make these forms available in an electronic format for submission to the *AHJ*.

### **Z6.1 Compliance with Standard 100 (Form A)**

1. Building identification:
  - a. WA state building ID;
  - b. County;
  - c. County parcel number(s);



- d. Portfolio manager property ID number;
- e. Property name;
- f. Parent property name;
- g. Address 1 (street);
- h. Address 2;
- i. City;
- j. State; and
- k. Postal code.
- 2. Contact information:
  - a. *Building owner* name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/Province;
  - g. Country;
  - h. Postal code;
  - i. Telephone number;
  - j. Email address.
- 3. *Qualified person*:
  - a. *Qualified person* name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State;
  - f. Postal code;
  - g. Telephone number;
  - h. Email address((÷));
  - i. Licensed, certified (select all that apply)((÷  
~~ii. Licensure or~~));
  - i. Licensure; or
  - ii. Certifying authority.
- 4. *Energy manager* (if different than the *qualified person*):
  - a. *Energy manager* name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State/Province;
  - f. Postal code;
  - g. Country;
  - h. Telephone number;
  - i. Email address.
- 5. This compliance report is for:
  - a. *Building* that meets the  $EUI_t$ ;
  - b. *Building* that meets the *building* investment criteria prior to the compliance date;
  - c. *Building* that will meet the  $EUI_t$  through *conditional compliance*;
  - d. *Building* that will meet the *building* investment criteria through *conditional compliance*;
  - e. Annual reporting;
  - f. Completion reporting.
- 6. Summary data:
  - a. *Energy* (~~(*utilization index*)~~) use intensity target ( $EUI_t$ ) (~~((k<sub>Btu</sub>/ft<sup>2</sup>-yr))~~) (k<sub>Btu</sub>/ft<sup>2</sup>/yr) based on completed Z6.2 Form B;

**Note:** Baseline *WNEUI* for buildings that will meet investment criteria through *conditional compliance*.

b. Measured site *EUI* (kBtu/ft<sup>2</sup>) for the compliance year for this building based on Z6.3 Form C;

c. Building without an energy target;

**Note:** Predicted site *EUI* for buildings that will meet the *EUI*, or investment criteria through *conditional compliance*.

**Note:** Buildings unable to develop *EUI*, in accordance with Section 7.2.2 or 7.2.3 of this standard shall report national median site *EUI* as calculated by the Energy Star portfolio manager account and reported on Form C.

d. Measured weather normalized site *EUI* (kBtu/ft<sup>2</sup>) for the compliance year based on Z6.3 Form C;

~~(d.)~~ e. List the months/year of the collected data (mm/yyyy - mm/yyyy) for the compliance year for this building from Z6.3 Form C;

~~(e.)~~ f. Buildings applying for conditional compliance through meeting the *EUI*<sub>t</sub> shall submit the following based on Section Z6.4 Form D:

- Baseline *EUI*;
- Projected *EUI*;

g. Buildings applying for conditional compliance through meeting the investment criteria shall submit the following based on Section Z6.4 Form D:

- Baseline total kBtu;
- Projected total kBtu;
- Projected savings total kBtu;

h. Buildings unable to comply with Section 5.2, Building energy monitoring and complete Z6.3 Form C shall provide a reason statement.

7. Have the energy management requirements of Section 5 been met?

[ ] Yes [ ] No

- Upload energy management plan as specified by the AHJ.

8. Have the operation and maintenance requirements of Section 6 been met? [ ] Yes [ ] No

• Upload operation and maintenance implementation documentation as specified by the AHJ.

9. Date the audit and economic evaluation was completed (N/A if none required).

- Upload audit reports as specified by Z6.4 Form D.

10. Have all *EEMs* required by Section 8 been implemented? [ ] Yes [ ] No

11. Have the requirements of Section 9 been completed? [ ] Yes [ ] No

12. We state that this building complies with ANSI/ASHRAE/IES Standard 100 as amended by the AHJ to conform with RCW 19.27A.210:

a. Signature of building owner:

• Date:

b. Signature of qualified person:

• Date:

c. Signature of energy manager:

• Date:

d. Signature of authority having jurisdiction:

• Conditional or final compliance:

• Date:

**Z6.2 Building activity and energy use intensity target (*EUI*<sub>t</sub>) (Form B). - Complete form provided by the AHJ with the following information:**

1. Building identification:

a. Washington state building ID;

b. County;

c. County parcel number(s);

- d. Portfolio manager property ID number;
- e. Property name;
- f. Parent property name;
- g. Address 1 (street);
- h. Address 2;
- i. City;
- j. State; and
- k. Postal code.

2. List the *building* location climate zone, 4C or 5B. Determine the climate zone using ASHRAE climate zone as found on the map in Informative Annex G.

a. Buildings located in Climate Zone 5C shall use Climate Zone 4C.

b. Buildings located in Climate Zone 6B shall use Climate Zone 5B.

3. The *gross floor area* in square feet shall be reported as defined in Section 3.

4. If entire *building* is single activity/type not listed in Table 7-1, it should be listed as "building without target" on Z6.1 Form A. List "energy target" as "N/A" on Z6.2 Form B and Z6.2 Form B is considered complete.

5. Fill in fraction of *gross floor area* ( $A$ )<sub>*i*</sub> for each activity. For single-activity *buildings* this is 1.0.

6. Fill in the operating shifts normalization factor ( $S$ )<sub>*i*</sub> from Table 7-3 for each activity (~~that has an area entered from Step 6~~).

7. Fill in the activity energy target ( $EUI_{t1}$ )<sub>*i*</sub> from Table 7-2 (or table from AHJ) for each activity (~~that has an area entered from Step 6~~).

8. Calculate weighted space *EUI* target ( $A \times S \times EUI_{t1}$ )<sub>*i*</sub> for each activity (~~that has an area entered from Step 6~~).

9. Add up fraction of floor area and enter sum in "Total fraction of floor area with target," and add up all weighted space *EUI* targets and enter sum as the "energy target" on Z6.2 and Z6.1 Forms B and A.

10. If more than 50((%)) percent of *gross floor area* has no target, it should be listed as "building without target" on Z6.1 Form A. List "energy target" as "N/A" on Z6.2 Form B.

For single-activity *buildings* this is 1.0.

**Z6.3 ((Energy-Use)) Energy Use Intensity Calculations (Form C).** *Energy Use Intensity* Calculations shall be reported via the U.S. EPA's ENERGY STAR Portfolio Manager ([www.energystar.gov/benchmark](http://www.energystar.gov/benchmark)). The *energy manager* is responsible for creating Energy Star portfolio manager record for each *building*.

**Exception to Z6.3:** *Buildings* unable to comply with Section 5.2, Building energy monitoring shall comply at the connected buildings level or demonstrate compliance through Z4.3 or Z4.5.

The Energy Star portfolio manager *building* record shall be identical to the *building* activity/type, fraction floor area, operating shifts (hours of operation) and *gross floor area* of the *building* as reported on Form B. All inputs shall be up to date prior to reporting as required in Section Z4 and annually as required in Section 5.1.2.3, Annual updates of the *net energy* use and *EUI*.

Prior to submitting reports run the Energy Star portfolio manager data quality checker and make all corrections required to complete the report.

The *energy manager* shall use the EPA's Energy Star portfolio manager share properties feature and share the property data with the *AHJ* by enabling the read only access and exchange data feature.

For each report submitted under Section 24, the *energy manager* shall create and submit a report documenting the required data fields listed (below) and other fields deemed necessary by the *AHJ* for the reporting period. This shall be submitted using the Washington state report specified in Energy Star portfolio manager.

Report fields shall include:

- Portfolio manager property ID;
- Portfolio manager parent property ID;
- Property name;
- Parent property name;
- Address 1;
- Address 2;
- City;
- County;
- State/Province;
- Postal Code;
- Primary property type - Self-selected;
- Primary property type - EPA calculated;
- List of all property use types at property;
- Property GFA - Self-reported (ft<sup>2</sup>);
- Property GFA - EPA calculated (*buildings* and parking) (ft<sup>2</sup>);
- Property GFA - EPA calculated (*buildings*) (ft<sup>2</sup>);
- Property GFA - EPA calculated (parking) (ft<sup>2</sup>);
- Largest property use type;
- Largest property use type - *Gross floor area* (ft<sup>2</sup>);
- 2nd Largest property use type;
- 2nd Largest property use - *Gross floor area* (ft<sup>2</sup>);
- 3rd Largest property use type;
- 3rd Largest property use type - *Gross floor area* (ft<sup>2</sup>);
- Year built;
- Occupancy;
- Property notes;
- Property data administrator;
- Property data administrator - Email;
- Last modified date - Property;
- Last modified date - Electric meters;
- Last modified date - Gas meters;
- Last modified date - Nonelectric nongas energy meters;
- Local standard ID(s) Washington state building standard;
- Data center - Energy estimates applied;
- Electricity use - Grid purchase and generated from on-site renewable systems (kWh);
- Electricity use - Grid purchase (kWh);
- Electricity use - Generated from on-site renewable systems and used on-site (kWh);
- Natural gas use (therms);
- Fuel oil #1 use (kBtu);
- Fuel oil #2 use (kBtu);
- Fuel oil #4 use (kBtu);
- Fuel oil #5 and 6 use (kBtu);
- Diesel #2 use (kBtu);
- Kerosene use (kBtu);

- Propane use (kBtu);
- District steam use (kBtu);
- District hot water use (kBtu);
- District chilled water use (kBtu);
- Coal - Anthracite use (kBtu);
- Coal - Bituminous use (kBtu);
- Coke use (kBtu);
- Wood use (kBtu);
- Other use (kBtu);
- Default values;
- Temporary values;
- Estimated data flag - Electricity (grid purchase);
- Estimated data flag - Natural gas;
- Alert - Data center does not have an IT meter;
- Alert - *Gross floor area* is 0 ft<sup>2</sup>;
- Alert - Property has no uses;
- Data quality checker - Date run;
- Data quality checker run - ?
- Alert - Energy meter has less than 12 full calendar months of data;
- Alert - Energy meter has gaps;
- Alert - Energy meter has overlaps;
- Alert - Energy - No meters selected for metrics;
- Alert - Energy meter has single entry more than 65 days;
- Estimated values - Energy;
- Energy Star score;
- National median *site energy* use (kBtu);
- National median site *EUI* (kBtu/ft<sup>2</sup>);
- *Site energy* use (kBtu);
- *Site EUI* (kBtu/ft<sup>2</sup>);
- *Weather normalized site energy* use (kBtu);
- *Weather normalized site EUI* (kBtu/ft<sup>2</sup>);
- *Weather normalized site electricity* (kWh);
- *Weather normalized site electricity intensity* (kWh/ft<sup>2</sup>);
- *Weather normalized site natural gas use* (therms);
- *Weather normalized site natural gas intensity* (therms/ft<sup>2</sup>) energy current date;
- Electricity use - Generated from on-site renewable systems (kWh);
- Electricity use - Generated from on-site renewable systems and exported (kWh);
- Electricity Use - Grid purchase and generated from on-site renewable systems (kBtu);
- Electricity use - Grid purchase (kBtu);
- Electricity use - Generated from on-site renewable systems and used on site (kBtu);
- Natural gas use (kBtu);
- Percent of total electricity generated from on-site renewable systems;
- Cooling degree days (CDD) (°F);
- Heating degree days (HDD) (°F);
- Weather station name;
- Weather station ID.

**Z6.4 End-use analysis requirements.** *Building owners* shall demonstrate compliance with Form D by providing the documentation required by section Z6.4.1.

**Z6.4.1 Energy Audit Forms (Form D).** The energy audit form shall be provided electronically by completing the energy audit form included in the U.S. Department of Energy, Energy Asset Score Tool, or an equivalent tool provided by the AHJ. This form shall be completed (~~in compliance with~~) to document the ((level-2)) energy audit, as published in ASHRAE Standard 211, Standard for commercial building energy audits, including EEMs considered but determined to have a simple payback that is greater than the EEMs useful life.

**Form E** - Not adopted.

**Z6.5 Annex X, Investment Criteria Tool (Form F).**

**Z6.5.1** To demonstrate compliance with the investment criteria of Normative Annex X, *building owners* shall complete and submit Form F.

**Z6.5.2 Form F shall be developed by the AHJ.** Form F shall be a life cycle cost evaluation tool compliant with NIST Standard 135 and capable of supporting the evaluation criteria required by Normative Annex X.

**Z6.5.3 Form F shall evaluate all EEMs considered** that have a simple payback that is less than the EEMs useful life.

**Z6.6 Documentation of a building of historic significance (Form G).**

**Z6.6.1 Energy efficiency measure exemptions for historic buildings.** No individual *energy efficiency measure* identified by energy efficiency audits need to be implemented if it would compromise the historical integrity of a *building* or part of a *building*. *Building owners* seeking this exception shall provide the following documentation. Certified historic *buildings* are not exempt from the other requirements of this standard.

**Z6.6.2 Plan for compliance.** The owner of a qualifying historic *building* shall have the plan for compliance evaluated by a qualified historic preservationist, as defined in 36 C.F.R., Part 61, identifying any energy efficiency requirement that may compromise the historic integrity of the *building* or part of the *building*. Any element of the plan identified to compromise the historic integrity of the *building* or part of the *building* shall be omitted from the compliance plan. Evidence of this evaluation must be submitted to the AHJ for approval.

**Z6.6.3 Documentation of a historic building.** *Building owners* must provide documentation to the AHJ that proves its historic identification or eligibility. Valid documentation from any existing programs listed below is acceptable.

1. Examples of existing programs that verify historic property include:
  - a. The National Register of Historic Places;
  - b. The Washington heritage register;
  - c. Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and
  - d. Properties which are listed in a local register of historic places; or
2. Other documentation approved by the AHJ.

**Z6.7 Application for Exemption Certificate (Form H).**

Apply for an exemption certificate by submitting the following documentation (~~to the building owner~~) in the form specified by the AHJ. The application must include:

1. Building identification:
  - a. Washington state building ID;
  - b. County;
  - c. County parcel number(s);
  - d. Portfolio manager property ID number;
  - e. Property name;
  - f. Parent property name;
  - g. Address 1 (street);
  - h. Address 2;
  - i. City;
  - j. State; and
  - k. Postal code.
2. Contact information:
  - a. *Building owner* name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/Province;
  - g. Country;
  - h. Postal code;
  - i. Telephone number; and
  - j. Email address.
3. Building information:
  - a. Primary *building* activity from Table 7-1, or a description of the nonlisted building type;
  - b. *Building gross floor area*;
  - c. *Building gross conditioned floor area*.
4. Reason for exemption: Based on exemptions listed in Section 24.1(2).

A list all of documents enclosed and any facts in support of this application. Provide at least two of the acceptable documents listed below:

- a. Municipal or county records;
- b. Documents from a *qualified person*;
- c. Construction permit;
- d. Certificate of occupancy or application for certificate of occupancy;
- e. Demolition permit;
- f. Financial statements such as statement of assets; liabilities, capital, and surplus, statement of revenue and expenses; or statement of ~~((ease))~~ cash flow;
- g. A letter from the *building owner* stating facts and explaining financial hardships;
- h. Other documentation approved by the AHJ.
5. Signature and statement of *building owner* stating that the authorized representative of the *building*, affirm and attest to the accuracy, truthfulness and completeness of the statements of material fact provided in this form.

**Z7 Section 7—Tables as modified by Washington state.****Table 7-1 (~~(Commercial)~~) Building Activity Types/Activities**

No.	Building Activity Type <sup>1,2</sup>			Notes
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	
1	Banking/financial services	Bank Branch		
2	Banking/financial services	Financial Office		
3	Education	Adult Education		
4	Education	College/University		
5	Education	K-12 School	Elementary/middle school	
6	Education	K-12 School	High school	
7	Education	Preschool/Daycare		
8	Education	Vocational School		
9	Education	Other - Education		
10	Entertainment/public assembly	Aquarium		
11	Entertainment/public assembly	Bar/Nightclub		
12	Entertainment/public assembly	Bowling Alley		
13	Entertainment/public assembly	Casino		
14	Entertainment/public assembly	Convention Center		
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		
16	Entertainment/public assembly	Ice/Curling Rink		
17	Entertainment/public assembly	Indoor Arena		
18	Entertainment/public assembly	Movie Theater		
19	Entertainment/public assembly	Museum		
20	Entertainment/public assembly	Performing Arts		
21	Entertainment/public assembly	Race Track		
22	Entertainment/public assembly	Roller Rink		
23	Entertainment/public assembly	Social/Meeting Hall		
24	Entertainment/public assembly	Stadium (Closed)		
25	Entertainment/public assembly	Stadium (Open)		
26	Entertainment/public assembly	Swimming Pool		
27	Entertainment/public assembly	Zoo		
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture	
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library	
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly	
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation	
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting	
33	Entertainment/public assembly	Other - Recreation		
34	Entertainment/public assembly	Other - Stadium		
35	Food sales and service	Bar/Nightclub		
36	Food sales and service	Convenience Store with Gas Station		
37	Food sales and service	Convenience Store without Gas Station		
38	Food sales and service	Fast Food Restaurant		
39	Food sales and service	Food Sales	Grocery/food market	



No.	Building Activity Type <sup>1,2</sup>			Notes
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	
40	Food sales and service	Food Sales	Convenience store with gas	
41	Food sales and service	Food Sales	Convenience store	
42	Food sales and service	Food Sales	Other food sales	
43	Food sales and service	Food Service	Fast food	
44	Food sales and service	Food Service	Restaurant/cafeteria	
45	Food sales and service	Food Service	Other food service	
46	Food sales and service	Restaurant		
47	Food sales and service	Supermarket/Grocery Store		
48	Food sales and service	Wholesale Club/Supercenter		
49	Food sales and service	Other - Restaurant/Bar		
50	Healthcare	Ambulatory Surgical Center		
51	Healthcare	Hospital (General Medical & Surgical)*		
52	Healthcare	Medical Office		3
53	Healthcare	Outpatient Rehabilitation/ Physical Therapy		
54	Healthcare	Residential Care Facility		
55	Healthcare	Senior Care Community		
56	Healthcare	Urgent Care/Clinic/Other Outpatient		
57	Healthcare	Other - Specialty Hospital		
58	Lodging/residential	Barracks		
59	Lodging/residential	Hotel	Hotel	
60	Lodging/residential	Hotel	Motel or inn	
61	Lodging/residential	Multifamily Housing		
62	Lodging/residential	Prison/Incarceration		
63	Lodging/residential	Residence Hall/Dormitory		
64	Lodging/residential	Residential Care Facility		
65	Lodging/residential	Senior Care Community		
66	Lodging/residential	Other - Lodging/Residential		
67	Mixed use	Mixed Use Property		4
68	Office	Medical Office		3
69	Office	Office	Admin/professional office	
70	Office	Office	Bank/other financial	
71	Office	Office	Government office	
72	Office	Office	Medical office (diagnostic)	3
73	Office	Office	Other office	
74	Office	Veterinary Office		
75	Office	Other - Office		
76	Public services	Courthouse		
77	Public services	Fire Station		
78	Public services	Library		
79	Public services	Mailing Center/Post Office		
80	Public services	Police Station		
81	Public services	Prison/Incarceration		

Building Activity Type <sup>1,2</sup>				
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
82	Public services	Social/Meeting Hall		
83	Public services	Transportation Terminal/Station		
84	Public services	Other - Public Service		
85	Religious worship	Worship Facility		
86	Retail	Automobile Dealership		
87	Retail	Convenience Store with Gas Station		
88	Retail	Convenience Store without Gas Station		
89	Retail	Enclosed Mall		5
90	Retail	Lifestyle Center	Enclosed mall	5
91	Retail	Lifestyle Center	Other retail	
92	Retail	Lifestyle Center	Retail store	
93	Retail	Lifestyle Center		4
94	Retail	Retail Store		
95	Retail	Strip Mall		4
96	Retail	Supermarket/Grocery Store		
97	Retail	Wholesale Club/Supercenter		
98	Retail	Other - Retail/Mall	Enclosed mall	5
99	Retail	Other - Retail/Mall		4
100	Technology/science	Data Center		6
101	Technology/science	Laboratory		
102	Technology/science	Other - Technology/Science	Other service	
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	
107	Services	Other - Services		
108	Utility	Energy/Power Station		7
109	Utility	Other - Utility		7
110	Warehouse/storage	Self-Storage Facility		
111	Warehouse/storage	Distribution Center		
112	Warehouse/storage	Nonrefrigerated Warehouse		
113	Warehouse/storage	Refrigerated Warehouse		

- Notes:
1. Select the most specific building activity type that applies.
  2. ((For building type definitions see Energy Star portfolio manager definitions except as follows:)) Building Activity Types are defined by AHJ in Table 7-4 and also include the following:
    - Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. *Gross floor area* shall only include space within the *building* including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. *Gross floor area* shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.
    - Urgent care center/clinic/other outpatient office means the *buildings* used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.
  3. All medical offices considered to be diagnostic type.
  4. Must use of Section 7.2.3 method for mixed use *buildings*.
  5. Suggest considering use of Section 7.2.3 method for mixed use *buildings*.
  6. This is a *building* or activity without an energy target. Included to provide definition only.

7. This is a *building* or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.

**Table 7-2a Building Activity Site Energy Targets (EUI<sub>t</sub>) (I-P Units)**

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
1	Banking/financial services	Bank Branch			69	71
2	Banking/financial services	Financial Office			69	71
3	Education	Adult Education			49	51
4	Education	College/University		<u>8, 9</u>	102	102
5	Education	K-12 School	Elementary/middle school	<u>9</u>	49	50
6	Education	K-12 School	High school	<u>9</u>	48	49
7	Education	Preschool/Daycare			59	59
8	Education	Vocational School			49	51
9	Education	Other - Education			49	51
10	Entertainment/public assembly	Aquarium			55	59
11	Entertainment/public assembly	Bar/Nightclub			55	59
12	Entertainment/public assembly	Bowling Alley			73	78
13	Entertainment/public assembly	Casino			55	59
14	Entertainment/public assembly	Convention Center			50	52
15	Entertainment/public assembly	Fitness Center/Health Club/Gym			73	78
16	Entertainment/public assembly	Ice/Curling Rink			73	78
17	Entertainment/public assembly	Indoor Arena			67	70
18	Entertainment/public assembly	Movie Theater			67	70
19	Entertainment/public assembly	Museum			67	70
20	Entertainment/public assembly	Performing Arts			55	59
21	Entertainment/public assembly	Race Track			67	70
22	Entertainment/public assembly	Roller Rink			73	78
23	Entertainment/public assembly	Social/Meeting Hall			50	52
24	Entertainment/public assembly	Stadium (Closed)			67	70
25	Entertainment/public assembly	Stadium (Open)			67	70
26	Entertainment/public assembly	Swimming Pool			73	78

	Building Activity Type <sup>1,2</sup>				Climate Zone 4C	Climate Zone 5B
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	EUI <sub>t</sub>	EUI <sub>t</sub>
27	Entertainment/public assembly	Zoo			55	59
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture		67	70
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library		56	59
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly		55	59
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation		73	78
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting		50	52
33	Entertainment/public assembly	Other - Recreation			73	78
34	Entertainment/public assembly	Other - Stadium			67	70
35	Food sales and service	Bar/Nightclub			361	378
36	Food sales and service	Convenience Store with Gas Station			<del>((244))</del> 260	<del>((253))</del> 269
37	Food sales and service	Convenience Store without Gas Station			<del>((260))</del> 244	<del>((269))</del> 253
38	Food sales and service	Fast Food Restaurant			427	454
39	Food sales and service	Food Sales	Grocery/food market		191	198
40	Food sales and service	Food Sales	Convenience store with gas		260	269
41	Food sales and service	Food Sales	Convenience store		244	253
42	Food sales and service	Food Sales	Other food sales		184	189
43	Food sales and service	Food Service	Fast food		427	454
44	Food sales and service	Food Service	Restaurant/cafeteria		361	378
45	Food sales and service	Food Service	Other food service		293	308
46	Food sales and service	Restaurant			361	378
47	Food sales and service	Supermarket/Grocery Store			191	198
48	Food sales and service	Wholesale Club/Supercenter			68	75
49	Food sales and service	Other - Restaurant/Bar			361	378
50	Healthcare	Ambulatory Surgical Center			90	96
51	Healthcare	Hospital (General Medical & Surgical)*		9	215	215
52	Healthcare	Medical Office		3		
53	Healthcare	Outpatient Rehabilitation/Physical Therapy			90	96
54	Healthcare	Residential Care Facility			78	82
55	Healthcare	Senior Care Community			78	82
56	Healthcare	Urgent Care/Clinic/Other Outpatient			90	96

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
57	Healthcare	Other - Specialty Hospital			196	196
58	Lodging/residential	Barracks			88	90
59	Lodging/residential	Hotel	Hotel		68	72
60	Lodging/residential	Hotel	Motel or inn		74	77
61	Lodging/residential	Multifamily Housing			32	33
62	Lodging/residential	Prison/Incarceration		9	101	106
63	Lodging/residential	Residence Hall/ Dormitory			88	90
64	Lodging/residential	Residential Care Facility			78	82
65	Lodging/residential	Senior Care Community			78	82
66	Lodging/residential	Other - Lodging/ Residential			71	74
67	Mixed use	Mixed Use Property		4		
68	Office	Medical Office		3	60	65
69	Office	Office	Admin/professional office		63	66
70	Office	Office	Bank/other financial		69	71
71	Office	Office	Government office		66	69
72	Office	Office	Medical office (diagnostic)	3	60	65
73	Office	Office	Other office		66	68
74	Office	Veterinary Office			90	96
75	Office	Other - Office			66	68
76	Public services	Courthouse			101	106
77	Public services	Fire Station			65	68
78	Public services	Library			56	59
79	Public services	Mailing Center/Post Office			51	54
80	Public services	Police Station			65	68
81	Public services	Prison/Incarceration		9	101	106
82	Public services	Social/Meeting Hall			50	52
83	Public services	Transportation Terminal/ Station			55	59
84	Public services	Other - Public Service			66	69
85	Religious worship	Worship Facility			39	42
86	Retail	Automobile Dealership			59	66
87	Retail	Convenience Store with Gas Station			260	269
88	Retail	Convenience Store without Gas Station			244	253
89	Retail	Enclosed Mall		5	58	64
90	Retail	Lifestyle Center	Enclosed mall	5	58	64
91	Retail	Lifestyle Center	Other retail		55	62
92	Retail	Lifestyle Center	Retail store		68	75

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
93	Retail	Lifestyle Center		4		
94	Retail	Retail Store			68	75
95	Retail	Strip Mall		4		
96	Retail	Supermarket/Grocery Store			191	198
97	Retail	Wholesale Club/ Supercenter			68	75
98	Retail	Other - Retail/Mall	Enclosed mall	5	58	64
99	Retail	Other - Retail/Mall		4		
100	Technology/science	Data Center		6		
101	Technology/science	Laboratory			237	249
102	Technology/science	Other - Technology/ Science	Other service		66	69
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)			66	69
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop		36	39
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop		60	64
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/ maintenance		41	44
107	Services	Other - Services			66	69
108	Utility	Energy/Power Station		7		
109	Utility	Other - Utility		7		
110	Warehouse/storage	Self-Storage Facility			36	44
111	Warehouse/storage	Distribution Center			36	44
112	Warehouse/storage	Nonrefrigerated Warehouse			36	44
113	Warehouse/storage	Refrigerated Warehouse			121	126

- Notes:
1. Select the most specific building activity type that applies.
  2. ((For building type definitions see Energy Star portfolio manager definitions except as follows:)) Building Activity Types are defined by AHJ in Table 7-4 and also include the following:
    - Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. *Gross floor area* shall only include space within the *building* including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. *Gross floor area* shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.
    - Urgent care center/clinic/other outpatient office means the *buildings* used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.
  3. All medical offices considered to be diagnostic type.
  4. Must use of Section 7.2.3 method for mixed use *buildings*.
  5. Suggest considering use of Section 7.2.3 method for mixed use *buildings*.
  6. This is a *building* or activity without an energy target. Included to provide definition only.
  7. This is a *building* or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.
  8. Laboratories as defined by the college/university building activity type where the primary activity is for teaching practical science shall use the college/university building activity type target. College/university buildings with research laboratory building activities where the primary activities are of scientific research, measurement, and experiments are performed, can utilize building activity type 101 Laboratory for an area weighted EUI<sub>t</sub>.
  9. Building activity type target developed at the campus-level. As an alternative to complying at the building-level, these covered buildings may comply at a campus-level with the EUI<sub>t</sub>. "Campus-level" is an alternative reporting pathway for a collection of all buildings on adjoining property with a single shared primary function that act as a single property.

**Table 7-3 Building Operating Shifts Normalization Factor**

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
1	Banking/financial services	Bank Branch		3	0.8	1.0	1.5
2	Banking/financial services	Financial Office		3	0.8	1.0	1.5
3	Education	Adult Education		4	0.9	1.1	1.9
4	Education	College/University		4	0.9	1.1	1.9
5	Education	K-12 School	Elementary/middle school	4	0.9	1.1	1.9
6	Education	K-12 School	High school	4	0.9	1.1	1.9
7	Education	Preschool/Daycare		4	0.9	1.1	1.9
8	Education	Vocational School		4	0.9	1.1	1.9
9	Education	Other - Education		4	0.9	1.1	1.9
10	Entertainment/public assembly	Aquarium		4	0.6	1.1	1.6
11	Entertainment/public assembly	Bar/Nightclub		4	0.6	1.1	1.6
12	Entertainment/public assembly	Bowling Alley		4	0.6	1.1	1.6
13	Entertainment/public assembly	Casino		4	0.6	1.1	1.6
14	Entertainment/public assembly	Convention Center		4	0.6	1.1	1.6
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		4	0.6	1.1	1.6
16	Entertainment/public assembly	Ice/Curling Rink		4	0.6	1.1	1.6
17	Entertainment/public assembly	Indoor Arena		4	0.6	1.1	1.6
18	Entertainment/public assembly	Movie Theater		4	0.6	1.1	1.6
19	Entertainment/public assembly	Museum		4	0.6	1.1	1.6
20	Entertainment/public assembly	Performing Arts		4	0.6	1.1	1.6
21	Entertainment/public assembly	Race Track		4	0.6	1.1	1.6
22	Entertainment/public assembly	Roller Rink		4	0.6	1.1	1.6
23	Entertainment/public assembly	Social/Meeting Hall		4	0.6	1.1	1.6
24	Entertainment/public assembly	Stadium (Closed)		4	0.6	1.1	1.6
25	Entertainment/public assembly	Stadium (Open)		4	0.6	1.1	1.6
26	Entertainment/public assembly	Swimming Pool		4	0.6	1.1	1.6
27	Entertainment/public assembly	Zoo		4	0.6	1.1	1.6

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture	4	0.6	1.1	1.6
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library	4	0.6	1.1	1.6
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly	4	0.6	1.1	1.6
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation	4	0.6	1.1	1.6
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting	4	0.6	1.1	1.6
33	Entertainment/public assembly	Other - Recreation		4	0.6	1.1	1.6
34	Entertainment/public assembly	Other - Stadium		4	0.6	1.1	1.6
35	Food sales and service	Bar/Nightclub		4	0.6	1.1	1.5
36	Food sales and service	Convenience Store with Gas Station		4	0.5	0.9	1.3
37	Food sales and service	Convenience Store without Gas Station		4	0.5	0.9	1.3
38	Food sales and service	Fast Food Restaurant		4	0.6	1.1	1.5
39	Food sales and service	Food Sales	Grocery/food market	4	0.5	0.9	1.3
40	Food sales and service	Food Sales	Convenience store with gas	4	0.5	0.9	1.3
41	Food sales and service	Food Sales	Convenience store	4	0.5	0.9	1.3
42	Food sales and service	Food Sales	Other food sales	4	0.5	0.9	1.3
43	Food sales and service	Food Service	Fast food	4	0.6	1.1	1.5
44	Food sales and service	Food Service	Restaurant/cafeteria	4	0.6	1.1	1.5
45	Food sales and service	Food Service	Other food service	4	0.6	1.1	1.5
46	Food sales and service	Restaurant		4	0.6	1.1	1.5
47	Food sales and service	Supermarket/Grocery Store		4	0.5	0.9	1.3
48	Food sales and service	Wholesale Club/Supercenter		4	0.6	1.0	1.5
49	Food sales and service	Other - Restaurant/Bar		4	0.6	1.1	1.5
50	Healthcare	Ambulatory Surgical Center		4,7	0.8	1.1	1.3
51	Healthcare	Hospital (General Medical & Surgical)*			1.0	1.0	1.0
52	Healthcare	Medical Office		4,7	<del>((0.8</del>	<del>1.0</del>	<del>1.5))</del>
53	Healthcare	Outpatient Rehabilitation/Physical Therapy		4,7	0.8	1.1	1.3
54	Healthcare	Residential Care Facility			1.0	1.0	1.0
55	Healthcare	Senior Care Community			1.0	1.0	1.0
56	Healthcare	Urgent Care/Clinic/Other Outpatient		4,7	0.8	1.1	1.3
57	Healthcare	Other - Specialty Hospital			1.0	1.0	1.0



No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
58	Lodging/residential	Barracks			1.0	1.0	1.0
59	Lodging/residential	Hotel	Hotel		1.0	1.0	1.0
60	Lodging/residential	Hotel	Motel or inn		1.0	1.0	1.0
61	Lodging/residential	Multifamily Housing			1.0	1.0	1.0
62	Lodging/residential	Prison/Incarceration			1.0	1.0	1.0
63	Lodging/residential	Residence Hall/ Dormitory			1.0	1.0	1.0
64	Lodging/residential	Residential Care Facility			1.0	1.0	1.0
65	Lodging/residential	Senior Care Community			1.0	1.0	1.0
66	Lodging/residential	Other - Lodging/ Residential			1.0	1.0	1.0
67	Mixed use	Mixed Use Property		6			
68	Office	Medical Office		4,7	0.8	1.1	1.3
69	Office	Office	Admin/professional office	3	0.8	1.0	1.5
70	Office	Office	Bank/other financial	3	0.8	1.0	1.5
71	Office	Office	Government office	3	0.8	1.0	1.5
72	Office	Office	Medical office (diagnostic)	4	0.8	1.1	1.3
73	Office	Office	Other office	3	0.8	1.0	1.5
74	Office	Veterinary Office		3	0.8	1.1	1.3
75	Office	Other - Office		3	0.8	1.0	1.5
76	Public services	Courthouse		4	0.8	0.8	1.1
77	Public services	Fire Station		3	0.8	0.8	1.1
78	Public services	Library		4	0.6	1.1	1.6
79	Public services	Mailing Center/Post Office		3	0.8	1.2	1.3
80	Public services	Police Station		3	0.8	0.8	1.1
81	Public services	Prison/Incarceration			1.0	1.0	1.0
82	Public services	Social/Meeting Hall		4	0.6	1.1	1.6
83	Public services	Transportation Terminal/Station		4	0.6	1.1	1.6
84	Public services	Other - Public Service		4	0.8	1.2	1.3
85	Religious worship	Worship Facility		5	0.9	1.7	1.7
86	Retail	Automobile Dealership		4	0.6	1.0	1.5
87	Retail	Convenience Store with Gas Station		4	0.5	0.9	1.3
88	Retail	Convenience Store without Gas Station		4	0.5	0.9	1.3
89	Retail	Enclosed Mall		4	0.6	1.0	1.5
90	Retail	Lifestyle Center	Enclosed mall	4	0.6	1.0	1.5
91	Retail	Lifestyle Center	Other retail	4	0.6	1.0	1.5
92	Retail	Lifestyle Center	Retail store	4	0.6	1.0	1.5
93	Retail	Lifestyle Center					
94	Retail	Retail Store		4	0.6	1.0	1.5

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
95	Retail	Strip Mall					
96	Retail	Supermarket/Grocery Store		4	0.5	0.9	1.3
97	Retail	Wholesale Club/ Supercenter		4	0.6	1.0	1.5
98	Retail	Other - Retail/Mall	Enclosed mall	4	0.6	1.0	1.5
99	Retail	Other - Retail/Mall					
100	Technology/science	Data Center					
101	Technology/science	Laboratory		3	1.0	1.0	1.0
102	Technology/science	Other - Technology/ Science	Other service	3	0.8	1.2	1.3
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		4	0.8	1.2	1.3
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	4	0.8	1.2	1.3
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	4	0.8	1.2	1.3
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	4	0.8	1.2	1.3
107	Services	Other - Services		4	0.8	1.2	1.3
108	Utility	Energy/Power Station					
109	Utility	Other - Utility					
110	Warehouse/storage	Self-Storage Facility		4	0.8	1.0	1.4
111	Warehouse/storage	Distribution Center		3	0.8	1.0	1.4
112	Warehouse/storage	Nonrefrigerated Warehouse		3	0.8	1.0	1.4
113	Warehouse/storage	Refrigerated Warehouse		3,8	1.0	1.0	1.4

- Notes:
1. Do not count the hours when the property is occupied only by maintenance, security, the cleaning crew, or other support personnel. Do not count the hours when the property is occupied only by maintenance staff.
  2. Working hours are based on the average use over the 12-month period selected to document energy use in form C.
  3. The weekly hours are the total number of hours per week where the majority of workers are present. If there are two or more shifts of workers, add the hours. When developing targets using Section 7.2.3 for mixed use *buildings*, use the hours each separate activity, the hours per week the majority of workers are present.
  4. The weekly hours are the hours that be majority of the *building* is open to serve the public. When developing targets using Section 7.2.3 for mixed use *buildings*, the hours each separate activity is open to the public.
  5. The weekly hours the facility is open for operation, which may include worship services, choir practice, administrative use, committee meetings, classes, or other activities.
  6. Must use of Section 7.2.3 method for mixed use *buildings*.
  7. Health care *buildings* may use other weekly hours if they are required to operate *building* systems additional hours to protect patient and staff safety. Provide documentation of the requirement in the energy management plan.
  8. Refrigerated warehouse greater than 167 hours assumes the workers on shift are loading and/or unloading vehicles.

**Table 7-4 Building Activity Type Definitions Table**

	Building Activity Type <sup>1,2</sup>	Notes	Clean Buildings Performance Standard Definitions
	<p>Definitions are provided to define building activity types and the spaces within to include as <i>gross floor area</i>. Unless otherwise defined, <i>gross floor area</i> shall include all space within the <i>building</i> and not space outside the <i>building</i>, such as exterior/outside loading bays or docks, open air stairwells and breezeways and vehicle parking and parking garages. Definitions are not necessarily exclusive. For <i>Tier 1 covered buildings</i>, the <i>qualified person</i>, or for <i>Tier 2 covered buildings</i>, the <i>qualified energy manager</i> shall determine the <i>gross floor area</i> associated with each identified building activity type using industry standards guidance documents provided by the <i>AHJ</i>.</p>		

<b>Building Activity Type<sup>1,2</sup></b>				<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
<b>No.</b>	<b>Portfolio Manager Types</b>	<b>Portfolio Manager Sub-Types</b>	<b>Sub-Types: Detailed</b>		
1	<u>Banking/financial services</u>	<u>Bank Branch</u>			<p><u>Bank branch</u> refers to a commercial banking outlet that offers banking services to walk-in customers.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including banking areas, vaults, lobbies, atriums, kitchens used by staff, restrooms, conference rooms, storage areas, stairways, and elevator shafts.</p>
2	<u>Banking/financial services</u>	<u>Financial Office</u>			<p>Financial office refers to <i>buildings</i> used for financial services such as bank headquarters and securities and brokerage firms.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including offices, trading floors, conference rooms and auditoriums, vaults, restrooms, kitchens used by staff, lobbies, atriums, fitness areas for staff, storage areas, stairways, and elevator shafts.</p>
3	<u>Education</u>	<u>Adult Education</u>			<p>Adult education refers to <i>buildings</i> used primarily for providing adult students with continuing education, workforce development, or professional development outside of the college or university setting.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including classrooms, administrative space, conference rooms, kitchens used by staff, lobbies, cafeterias, auditoriums, restrooms, stairways, atriums, elevator shafts, and storage areas.</p>
4	<u>Education</u>	<u>College/University</u>		8, 9	<p>College/university refers to <i>buildings</i> used for the purpose of higher education. This includes public and private colleges and universities.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including classrooms, libraries, laboratory classrooms, offices, cafeterias, maintenance facilities, arts facilities, athletic facilities, residential areas, storage rooms, restrooms, elevator shafts, and stairways.</p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
5	<u>Education</u>	<u>K-12 School</u>	<u>Elementary/ middle school</u>	9	<p><u>K-12 school refers to <i>buildings</i> or campuses used as a school for kindergarten through 12th grade students. This does not include college or university classroom facilities/laboratories, vocational, technical, trade, adult, or continuing education schools, preschools, or day care facilities. If the school serves any of the above student populations (e.g., an elementary school that includes prekindergarten), at least 75 percent of the students must be in grades kindergarten through 12.</u></p> <p><u><i>Gross floor area</i> should include all space within the <i>building</i>, including classrooms, libraries, administrative space, conference rooms, restrooms, kitchens used by staff, lobbies, cafeterias, gymnasiums, auditoriums, laboratory classrooms, portable classrooms, greenhouses, stairways, atriums, elevator shafts, small landscaping sheds, and storage areas.</u></p>
6	<u>Education</u>	<u>K-12 School</u>	<u>High School</u>	9	
7	<u>Education</u>	<u>Preschool/ Daycare</u>			<p><u>Preschool/daycare applies to <i>buildings</i> used for educational programs or daytime supervision/recreation for young children before they attend kindergarten.</u></p> <p><u><i>Gross floor area</i> should include all space within the <i>building</i>, including classrooms, libraries, administrative space, conference rooms, restrooms, kitchens used by staff, lobbies, cafeterias, gymnasiums, auditoriums, stairways, elevator shafts, and storage areas.</u></p>
8	<u>Education</u>	<u>Vocational School</u>			<p><u>Vocational school refers to <i>buildings</i> primarily designed to teach skilled trades to students, including trade and technical schools. Typically, vocational schools are commonly post-secondary education, consisting of 1-2 years of technical/trade training.</u></p> <p><u><i>Gross floor area</i> should include all space within the <i>building</i>, including classrooms, libraries, administrative space, conference rooms, restrooms, kitchens used by staff, lobbies, cafeterias, gymnasiums, auditoriums, laboratory classrooms, stairways, elevator shafts, and storage areas.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
9	<u>Education</u>	<u>Other - Education</u>		<p>Other – Education refers to <i>buildings</i> used for religious, community, or other educational purposes that do not meet the definition of any other building activity type defined in Table 7-4 (i.e., educational purposes other than adult education, college/university, K-12 school, preschool/daycare and vocational schools).</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including classrooms, libraries, administrative space, conference rooms, restrooms, kitchens used by staff, lobbies, cafeterias, auditoriums, laboratory classrooms, stairways, elevator shafts, and storage areas.</p>
10	<u>Entertainment/public assembly</u>	<u>Aquarium</u>		<p>Aquarium refers to <i>buildings</i> used to provide aquatic habitat primarily to live animals and which may include public or private viewing areas and educational programs.</p> <p><i>Gross floor area</i> should include public and restricted areas such as visitor walkways, tank space, retail areas, restaurants, restrooms, laboratories, classrooms, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>
11	<u>Entertainment/public assembly</u>	<u>Bar/Nightclub</u>		<p>Bar/nightclub refers to <i>buildings</i> used primarily for social/entertainment purposes and is characterized by most of the revenue being generated from the sale of beverages instead of food.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including standing/seating areas, stage/dressing room areas, food/drink preparation or kitchen areas, retail areas, restrooms, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</p> <p>Properties whose primary business revenue is generated from the sale of food should be entered using one of the restaurant building activity types, even if there is a bar.</p>
12	<u>Entertainment/public assembly</u>	<u>Bowling Alley</u>		<p>Bowling alley refers to <i>buildings</i> used for public or private, recreational or professional bowling.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including bowling lanes, concession areas, restrooms, party rooms, retail areas, administrative/office space, employee break rooms, storage areas, and mechanical rooms.</p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
13	<u>Entertainment/public assembly</u>	<u>Casino</u>		<p>Casino refers to <i>buildings</i> primarily used to conduct gambling activities including both electronic and live table games.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including the main casino floor/gaming area, restaurants/bars, retail areas, administrative/office space, restrooms, mechanical rooms, storage areas, elevator shafts, and stairwells. If your casino is in the same <i>building</i> as a hotel, enter a separate hotel building activity type.</p>
14	<u>Entertainment/public assembly</u>	<u>Convention Center</u>		<p>Convention center refers to <i>buildings</i> used primarily for large conferences, exhibitions, and similar events. Convention centers may include a diverse variety of spaces, including large exhibition halls, meeting rooms, and concession stands.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including exhibit halls, preparation and staging areas, meeting rooms, concession stands, offices, restrooms, break rooms, security areas, elevator shafts, and stairwells.</p> <p>Conference facilities located within a hotel should be included along with your hotel building activity type details, rather than added as a separate convention center building activity type. Conference facilities primarily serving smaller meetings should be entered as social/meeting hall.</p>
15	<u>Entertainment/public assembly</u>	<u>Fitness Center/Health Club/Gym</u>		<p>Fitness center/health club/gym refers to <i>buildings</i> used for recreational or professional athletic training and related activities.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including weight and cardio equipment areas, personal training areas, courts, locker rooms, restrooms, sauna and spa areas, retail areas, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>
16	<u>Entertainment/public assembly</u>	<u>Ice/Curling Rink</u>		<p>Ice/curling rink refers to <i>buildings</i> that include one or more ice sheets used for public or private, recreational or professional skating, hockey, or ringette.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including ice area, spectator areas, concession stands, retail areas, locker rooms, restrooms, administrative/office areas, employee break rooms, mechanical rooms, and storage areas. Larger facilities primarily serving professional or collegiate functions and with significant spectator seating (above 5,000 seats) should be entered as indoor arena.</p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
17	<u>Entertainment/public assembly</u>	<u>Indoor Arena</u>		<p>Indoor arena refers to enclosed structures used for professional or collegiate sports and entertainment events. Examples of events held in indoor arenas include basketball and hockey games, circus performances, and concerts. Indoor arenas usually have capacities of 5,000 seats or more and are often characterized by multiple concourses and concession areas.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including court/rink space, all concourse space on which workers or guests can walk, concession areas, retail stores, restaurants, administrative/office areas, restrooms, employee break rooms, kitchens, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>
18	<u>Entertainment/public assembly</u>	<u>Movie Theater</u>		<p>Movie theater refers to <i>buildings</i> used for public or private film screenings.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including seating areas, lobbies, concession stands, restrooms, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>
19	<u>Entertainment/public assembly</u>	<u>Museum</u>		<p>Museum refers to <i>buildings</i> that display collections to outside visitors for public viewing and enjoyment and for informational/educational purposes.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including public collection display areas, meeting rooms, classrooms, gift shops, food service areas, restrooms, administrative/office space, mechanical rooms, storage areas for collections, elevator shafts, and stairwells.</p>
20	<u>Entertainment/public assembly</u>	<u>Performing Arts</u>		<p>Performing arts refers to <i>buildings</i> used for public or private artistic or musical performances.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including seating, stage and backstage areas, food service areas, restrooms, retail areas, rehearsal studios, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>
21	<u>Entertainment/public assembly</u>	<u>Race Track</u>		<p>Race track refers to <i>buildings</i> used primarily to hold racing events such as vehicle races, track/field races, horse races, and/or dog-races.</p> <p><i>Gross floor area</i> should include all spectator viewing areas, concourse space on which workers or guests can walk, concession areas, retail stores, restaurants, restrooms, administrative/office areas, employee break rooms, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
22	<u>Entertainment/public assembly</u>	<u>Roller Rink</u>		<p>Roller rink refers to <i>buildings</i> used primarily for roller-skating, inline skating/rollerblading, or skateboarding.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including the rink space, concession areas, restrooms, locker rooms, retail areas, administrative/office areas, employee break rooms, mechanical rooms, and storage areas.</p>
23	<u>Entertainment/public assembly</u>	<u>Social/Meeting Hall</u>		<p>Social/meeting hall refers to <i>buildings</i> primarily used for public or private gatherings. This may include community group meetings, seminars, workshops, or performances. Please note that there is another building activity type available, convention center, for large exhibition and conference facilities.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including meeting rooms, auditoriums, food service areas, restrooms, lobbies, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>
24	<u>Entertainment/public assembly</u>	<u>Stadium (Closed)</u>		<p>Stadium (closed) refers to structures with a permanent or retractable roof which are used primarily for professional or collegiate sports and entertainment events. Examples of events held in closed stadiums include baseball and football games, and concerts. Closed stadiums usually have capacities of 25,000 seats or more and are often characterized by multiple concourses and concession areas.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including concourse space on which workers or guests can walk, concession areas, retail stores, restaurants, administrative/office areas, restrooms, employee break rooms, kitchens, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>
25	<u>Entertainment/public assembly</u>	<u>Stadium (Open)</u>		<p>Stadium (open) refers to structures used primarily for professional or collegiate sports and entertainment events in which the playing field is not covered and is exposed to the outside. Examples of events held in open stadiums include baseball, football, and soccer games, and concerts. Open stadiums usually have capacities of 5,000 seats or more and are often characterized by multiple concourses and concession areas.</p> <p><i>Gross floor area</i> should include all space including concourse space on which workers or guests can walk, concession areas, retail stores, restaurants, administrative/office areas, restrooms, employee break rooms, kitchens, mechanical rooms, storage areas, elevator shafts, and stairwells.</p>



	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
26	<u>Entertainment/public assembly</u>	<u>Swimming Pool</u>			<u>Swimming pool</u> refers to any heated swimming pools located inside a <i>building</i> .
27	<u>Entertainment/public assembly</u>	<u>Zoo</u>			<u>Zoo</u> refers to <i>buildings</i> used primarily to provide habitat to live animals and which may include public or private viewing and educational programs.  <u>Gross floor area</u> should include all space within all fully enclosed <i>buildings</i> , including habitats, visitor viewing areas, theaters, classrooms, food service areas, restrooms, retail stores, veterinary offices, exhibit space, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.
28	<u>Entertainment/public assembly</u>	<u>Other - Entertainment/Public Assembly</u>	<u>Entertainment/culture</u>		<u>Entertainment/culture</u> refers to <i>buildings</i> providing entertainment and/or cultural services that do not meet the definition of any other building activity type defined in Table 7-4.
29	<u>Entertainment/public assembly</u>	<u>Other - Entertainment/Public Assembly</u>	<u>Library</u>		<u>Library</u> refers to <i>buildings</i> used to store and manage collections of literary and artistic materials such as books, periodicals, newspapers, films, etc. that can be used for reference or lending.  <u>Gross floor area</u> should include all space within the <i>building</i> , including circulation rooms, storage areas, reading/study rooms, administrative space, kitchens used by staff, lobbies, conference rooms and auditoriums, fitness areas for staff, restrooms, storage areas, stairways, and elevator shafts.
30	<u>Entertainment/public assembly</u>	<u>Other - Entertainment/Public Assembly</u>	<u>Other public assembly</u>		<u>Other public assembly</u> refers to <i>buildings</i> primarily used for entertainment or public gatherings that do not meet the definition of any other building activity type defined in Table 7-4.  <u>Gross floor area</u> should include all space within the <i>building</i> , including entertainment areas, administrative areas, and supporting areas such as storage rooms, hallways, restrooms, stairways, and maintenance areas.
31	<u>Entertainment/public assembly</u>	<u>Other - Entertainment/Public Assembly</u>	<u>Recreation</u>		<u>Recreation</u> refers to <i>buildings</i> primarily used for recreation that do not meet the definition of any other building activity type defined in Table 7-4.  <u>Gross floor area</u> should include all space within the <i>building</i> , including recreational areas, restrooms, and supporting activities such as mechanical rooms, storage areas, elevator shafts, and stairwells.

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
32	<u>Entertainment/public assembly</u>	<u>Other - Entertainment/Public Assembly</u>	<u>Social/meeting</u>		<p><u>Social/meeting hall refers to buildings primarily used for public or private gatherings. This may include community group meetings, seminars, workshops, or performances. Please note that there is another building activity type available, convention center, for large exhibition and conference facilities.</u></p> <p><u>Gross floor area should include all space within the building, including meeting rooms, auditoriums, food service areas, restrooms, lobbies, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</u></p>
33	<u>Entertainment/public assembly</u>	<u>Other - Recreation</u>			<p><u>Other - Recreation refers to buildings primarily used for recreation that do not meet the definition of any other building activity type defined in Table 7-4.</u></p> <p><u>Gross floor area should include all space within the building, including recreational areas, restrooms, and supporting activities such as mechanical rooms, storage areas, elevator shafts, and stairwells.</u></p>
34	<u>Entertainment/public assembly</u>	<u>Other - Stadium</u>			<p><u>Other - Stadium refers to buildings primarily used for sporting events that do not meet the definition of any other building activity type defined in Table 7-4.</u></p> <p><u>Gross floor area should include all space within the building, including areas for athletic activity and spectator seating, restrooms, and supporting activities such as mechanical rooms, storage areas, elevator shafts, and stairwells.</u></p>
35	<u>Food sales and service</u>	<u>Bar/Nightclub</u>			<p><u>Bar/nightclub refers to buildings used primarily for preparation and sale of ready-to-eat food and beverages, but with secondary purposes characterized by revenue generated from social/entertainment services and associated sale of beverages instead of food. Examples include restaurants with lounges and nightclubs featuring entertainment together or separate from dining.</u></p> <p><u>Gross floor area should include all space within the building, including kitchens, sales areas, dining areas, offices, restrooms, staff break rooms, and storage areas.</u></p>
36	<u>Food sales and service</u>	<u>Convenience Store with Gas Station</u>			<p><u>Convenience store with gas station refers to buildings that are colocated with gas stations and are used for the sale of a limited range of items such as groceries, toiletries, newspapers, soft drinks, tobacco products, and other everyday items. Convenience store with gas station may include space for vehicle servicing and repair.</u></p> <p><u>Gross floor area should include all space within the building, including sales floors, offices, restrooms, staff break rooms, storage areas, and vehicle repair areas.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
37	<u>Food sales and service</u>	<u>Convenience Store without Gas Station</u>			<p><u>Convenience store without gas station refers to buildings used for the sale of a limited range of items such as groceries, toiletries, newspapers, soft drinks, tobacco products, and other everyday items, which are not colocated with a gas station.</u></p> <p><u>Gross floor area should include all space within the building, including sales floors, offices, restrooms, staff break rooms, and storage areas.</u></p>
38	<u>Food sales and service</u>	<u>Fast Food Restaurant</u>			<p><u>Fast food restaurant, also known as quick service restaurant, refers to buildings used for the preparation and sale of ready-to-eat food. Fast food restaurants are characterized by a limited menu of food prepared quickly (often within a few minutes), and sometimes cooked in bulk in advance and kept hot.</u></p> <p><u>Gross floor area should include all space within the building, including kitchens, sales areas, dining areas, offices, restrooms, staff break rooms, and storage areas.</u></p>
39	<u>Food sales and service</u>	<u>Food Sales</u>	<u>Supermarket/ Grocery Store/ Food Market</u>		<p><u>Supermarket/grocery store/food market refers to buildings used for the retail sale of primarily food and beverage products, and which may include small amounts of preparation and sale of ready-to-eat food. Buildings where the primary business is the on-site preparation and sale of ready-to-eat food should use one of the restaurant building activity types.</u></p> <p><u>Gross floor area should include all space within the building, including the sales floor, offices, storage areas, kitchens, restrooms, staff break rooms, and stairwells.</u></p>
40	<u>Food sales and service</u>	<u>Food Sales</u>	<u>Convenience store with gas</u>		<p><u>Convenience store with gas station refers to buildings that are colocated with gas stations and are used for the sale of a limited range of items such as groceries, toiletries, newspapers, soft drinks, tobacco products, and other everyday items. Convenience store with gas station may include space for vehicle servicing and repair.</u></p> <p><u>Gross floor area should include all space within the building, including sales floors, offices, restrooms, staff break rooms, storage areas, and vehicle repair areas.</u></p>
41	<u>Food sales and service</u>	<u>Food Sales</u>	<u>Convenience store</u>		<p><u>Convenience store without gas station refers to buildings used for the sale of a limited range of items such as groceries, toiletries, newspapers, soft drinks, tobacco products, and other everyday items, which are not colocated with a gas station.</u></p> <p><u>Gross floor area should include all space within the building, including sales floors, offices, restrooms, staff break rooms, and storage areas.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
42	<u>Food sales and service</u>	<u>Food Sales</u>	<u>Other food sales</u>		<p><u>Other food sales refers to buildings used for the sales of food on either a retail or wholesale basis, but which do not meet the definition of supermarket/grocery store/food market, convenience store, or convenience store with gas stations. For example, specialty food sales like a cheese shop or butcher.</u></p> <p><u>Gross floor area should include all space within the building, including sales areas, storage areas, offices, kitchens, restrooms, and staff break rooms.</u></p>
43	<u>Food sales and service</u>	<u>Food Sales</u>	<u>Fast Food</u>		<p><u>Fast food restaurant, also known as quick service restaurant, refers to buildings used for the preparation and sale of ready-to-eat food. Fast food restaurants are characterized by a limited menu of food prepared quickly (often within a few minutes), and sometimes cooked in bulk in advance and kept hot.</u></p> <p><u>Gross floor area should include all space within the building, including kitchens, sales areas, dining areas, offices, restrooms, staff break rooms, and storage areas.</u></p>
44	<u>Food sales and service</u>	<u>Food Sales</u>	<u>Restaurant/cafeteria</u>		<p><u>Restaurant/cafeteria refers to buildings used for preparation and sale of ready-to-eat food and beverages, but which do not fit in the fast food building activity type. Examples include fast casual, casual, and fine dining restaurants.</u></p> <p><u>Gross floor area should include all space within the building, including kitchens, sales areas, dining areas, offices, restrooms, staff break rooms, and storage areas.</u></p>
45	<u>Food sales and service</u>	<u>Food Sales</u>	<u>Other food service</u>		<p><u>Other food service refers to buildings used for preparation and sale of food and beverages, but which do not meet the definition of restaurant or bar/nightclub. For example, a bakery or coffee shop.</u></p> <p><u>Gross floor area should include all space within the building, including kitchens, sales areas, dining areas, offices, restrooms, staff break rooms, and storage areas.</u></p>
46	<u>Food sales and service</u>	<u>Restaurant</u>			<p><u>Restaurant refers to buildings used for preparation and sale of ready-to-eat food and beverages, but which do not fit in the fast food building activity type. Examples include fast casual, casual, and fine dining restaurants.</u></p> <p><u>Gross floor area should include all space within the building, including kitchens, sales areas, dining areas, offices, restrooms, staff break rooms, and storage areas.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
47	<u>Food sales and service</u>	<u>Supermarket/ Grocery Store</u>		<p>Supermarket/grocery store refers to <u>buildings</u> used for the retail sale of primarily food and beverage products, and which may include small amounts of preparation and sale of ready-to-eat food. <u>Buildings</u> where the primary business is the on-site preparation and sale of ready-to-eat food should use one of the restaurant building activity types.</p> <p><u>Gross floor area</u> should include all space within the <u>building</u>, including the sales floor, offices, storage areas, kitchens, restrooms, staff break rooms, and stairwells.</p>
48	<u>Food sales and service</u>	<u>Wholesale Club/ Supercenter</u>		<p>Wholesale club/supercenter refers to <u>buildings</u> used to conduct the retail sale of a wide variety of merchandise, typically in bulk quantities. Merchandise may include food, clothing, office supplies, furniture, electronics, books, sporting goods, toys, and hardware.</p> <p><u>Gross floor area</u> should include all space within the <u>building</u>, including the sales floor, offices, storage areas, kitchens, restrooms, staff break rooms, elevators, and stairwells.</p>
49	<u>Food sales and service</u>	<u>Other - Restaurant/Bar</u>		<p>Other - Restaurant/bar refers to <u>buildings</u> used for preparation and sale of ready-to-eat food and beverages, but which does not fit into the fast food restaurant, restaurant, or bar/nightclub building activity types.</p> <p><u>Gross floor area</u> should include all space within the <u>building</u>, including kitchens, sales areas, dining areas, restrooms, staff break rooms, and storage areas.</p>
50	<u>Health care</u>	<u>Ambulatory Surgical Center</u>		<p>Ambulatory surgical centers refers to health care facilities that provide same-day surgical care, including diagnostic and preventive procedures.</p> <p><u>Gross floor area</u> should include all space within the <u>building</u>, including offices, operating and recovery rooms, waiting rooms, restrooms, employee break rooms and kitchens, elevator shafts, stairways, mechanical rooms, and storage areas.</p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
51	<u>Health care</u>	<u>Hospital (General Medical &amp; Surgical)</u>	9	<p><u>Hospital refers to a general medical and surgical hospital (including critical access hospitals and children's hospitals). These facilities provide acute care services intended to treat patients for short periods of time, including emergency medical care, physician's office services, diagnostic care, ambulatory care, surgical care, and limited specialty services such as rehabilitation and cancer care. The definition of hospital accounts for all space types owned by the hospital that are located within the hospital building/complex, including nonclinical spaces such as administrative offices, food service, retail, hotels, and power plant.</u></p> <p><u>Gross floor area should include all space within the building on the campus including operating rooms, bedrooms, emergency treatment areas, and medical offices, exam rooms, laboratories, lobbies, atriums, cafeterias, restrooms, stairways, corridors connecting buildings, storage areas, and elevator shafts.</u></p>
52	<u>Health care</u>	<u>Medical Office</u>	3	<p><u>All medical offices considered to be diagnostic type.</u></p>
53	<u>Health care</u>	<u>Outpatient Rehabilitation/Physical Therapy</u>		<p><u>Outpatient rehabilitation/physical therapy offices refers to buildings used to provide diagnosis and treatment for rehabilitation and physical therapy.</u></p> <p><u>Gross floor area should include all space within the building, including offices, exam rooms, waiting rooms, indoor pool areas, atriums, employee break rooms and kitchens, restrooms, elevator shafts, stairways, mechanical rooms, and storage areas.</u></p>
54	<u>Health care</u>	<u>Residential Care Facility</u>		<p><u>Residential care facilities refers to buildings that provide rehabilitative and restorative care to patients on a long-term or permanent basis. Residential care facilities treat mental health issues, substance abuse, and rehabilitation for injury, illness, and disabilities. This building activity type is intended for facilities that offer long-term residential care to residents of all ages who may need assistance with activities of daily living. If a facility is designed to provide nursing and assistance to seniors only, then the senior care community building activity type should be used.</u></p> <p><u>Gross floor area should include all space within the building, including individual rooms or units, wellness centers, exam rooms, community rooms, small shops or service areas for residents and visitors (e.g., hair salons, convenience stores), staff offices, lobbies, atriums, cafeterias, kitchens, restrooms, storage areas, hallways, basements, stairways, corridors between buildings, and elevator shafts.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
55	<u>Health care</u>	<u>Senior Care Community</u>		<p>Senior care community refers to <i>buildings</i> that house and provide care and assistance for elderly residents.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including individual rooms or units, wellness centers, exam rooms, community rooms, small shops or service areas for residents and visitors (e.g., hair salons, convenience stores), staff offices, lobbies, atriums, cafeterias, kitchens, restrooms, storage areas, hallways, basements, stairways, corridors between <i>buildings</i>, and elevator shafts.</p>
56	<u>Health care</u>	<u>Urgent Care/Clinic/Other Outpatient</u>		<p>Urgent care center/clinic/other outpatient office refers to <i>buildings</i> used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, exam rooms, waiting rooms, atriums, employee break rooms and kitchens, restrooms, elevator shafts, stairways, mechanical rooms, and storage areas.</p>
57	<u>Health care</u>	<u>Other - Specialty Hospital</u>		<p>Other/specialty hospitals refers to long-term acute care hospitals, inpatient rehabilitation facilities, including cancer centers and psychiatric and substance abuse hospitals/facilities.</p> <p><i>Gross floor area</i> should include all space within the <i>building/complex</i>, including medical offices, patient rooms, laboratories, lobbies, atriums, cafeterias, restrooms, stairways, corridors connecting <i>buildings</i>, storage areas, and elevator shafts.</p>
58	<u>Lodging/residential</u>	<u>Barracks</u>		<p>Barracks refers to <i>residential buildings</i> associated with military facilities or educational institutions, which offer multiple accommodations for long-term residents.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including bedrooms, common areas, food service facilities, restrooms, laundry facilities, meeting spaces, exercise rooms, health club/spas, lobbies, elevator shafts, storage areas, and stairways.</p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
59	<u>Lodging/residential</u>	<u>Hotel</u>	<u>Hotel</u>		<p><u>Hotel refers to <i>buildings</i> renting overnight accommodations on a room/suite and nightly basis, and typically include a bath/shower and other facilities in guest rooms. Hotel properties typically have daily services available to guests including housekeeping/laundry and a front desk/concierge. Hotel does not apply to properties where more than 50 percent of the floor area is occupied by fractional ownership units such as condominiums or vacation timeshares, or to private residences that are rented out on a daily or weekly basis. Hotel properties should be majority-owned by a single entity and have rooms available on a nightly basis. Condominiums or time shares should select the multifamily housing building activity type.</u></p> <p><u>Gross floor area should include all interior space within the <i>building</i>, including guestrooms, halls, lobbies, atriums, food preparation and restaurant space, conference and banquet space, fitness centers/spas, laundry facilities, elevator shafts, stairways, mechanical rooms, storage areas, restrooms, employee break rooms, and back-of-house offices.</u></p>
60	<u>Lodging/residential</u>	<u>Hotel</u>	<u>Motel or inn</u>		<p><u>Motel is a hotel like lodging where most rooms are entered from the exterior.</u></p> <p><u>Gross floor area should include all interior space within the <i>building</i>, including guestrooms, halls, lobbies, atriums, food preparation and restaurant space, conference and banquet space, fitness centers/spas, laundry facilities, elevator shafts, stairways, mechanical rooms, storage areas, restrooms, employee break rooms, and back-of-house offices.</u></p>
61	<u>Lodging/residential</u>	<u>Multifamily Housing</u>			<p><u>Multifamily housing refers to a covered <i>multifamily building</i> containing sleeping units or more than five dwelling units where occupants are primarily permanent in nature.</u></p> <p><u>Gross floor area should include management offices or other spaces that may not contain living units.</u></p> <p><u>Gross floor area should include all interior space within the <i>building</i>, including living space in each unit (including occupied and unoccupied units), interior common areas (e.g., lobbies, offices, community rooms, common kitchens, fitness rooms), hallways, stairwells, elevator shafts, connecting corridors between <i>buildings</i>, storage areas, restrooms, and mechanical space such as a boiler room.</u></p>



	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
62	<u>Lodging/residential</u>	<u>Prison/Incarceration</u>	9	<p><u>Prison/incarceration refers to federal, state, local, or private-sector buildings used for the detention of persons awaiting trial or convicted of crimes.</u></p> <p><u>Gross floor area should include all space within the building, including holding cells, cafeterias, administrative spaces, kitchens, lobbies, atriums, conference rooms and auditoriums, fitness areas, storage areas, restrooms, stairways, and elevator shafts.</u></p>
63	<u>Lodging/residential</u>	<u>Residence Hall/Dormitory</u>		<p><u>Residence hall/dormitory refers to buildings associated with educational institutions or military facilities, which offer multiple accommodations for long-term residents.</u></p> <p><u>Gross floor area should include all space within the building, including bedrooms, common areas, food service facilities, restrooms, laundry facilities, meeting spaces, exercise rooms, health club/spas, lobbies, elevator shafts, storage areas, and stairways.</u></p>
64	<u>Lodging/residential</u>	<u>Residential Care Facility</u>		<p><u>Residential care facilities refers to buildings that provide rehabilitative and restorative care to patients on a long-term or permanent basis. Residential care facilities treat mental health issues, substance abuse, and rehabilitation for injury, illness, and disabilities. This building activity type is intended for facilities that offer long-term residential care to residents of all ages who may need assistance with activities of daily living. If a facility is designed to provide nursing and assistance to seniors only, then the senior care community building activity type should be used.</u></p> <p><u>Gross floor area should include all space within the building, including individual rooms or units, wellness centers, exam rooms, community rooms, small shops or service areas for residents and visitors (e.g., hair salons, convenience stores), staff offices, lobbies, atriums, cafeterias, kitchens, restrooms, storage areas, hallways, basements, stairways, corridors between buildings, and elevator shafts.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
65	<u>Lodging/residential</u>	<u>Senior Care Community</u>			<p>Senior care community refers to <i>buildings</i> that house and provide care and assistance for elderly residents.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including individual rooms or units, wellness centers, exam rooms, community rooms, small shops or service areas for residents and visitors (e.g., hair salons, convenience stores), staff offices, lobbies, atriums, cafeterias, kitchens, restrooms, storage areas, hallways, basements, stairways, corridors between <i>buildings</i>, and elevator shafts.</p> <p>A community with only independent living should benchmark under the multifamily building activity type.</p>
66	<u>Lodging/residential</u>	<u>Other - Lodging/Residential</u>			<p>Other - Lodging/residential refers to <i>buildings</i> used for residential purposes other than those described in the available building activity types in this table (i.e., residential other than multifamily residential, single family home, senior care community, residence hall/dormitory, barracks, prison/incarceration, or hotel).</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including living areas, common areas, and administrative space, kitchens used by staff, lobbies, waiting areas, cafeterias, restrooms, stairways, atriums, elevator shafts, and storage areas.</p>
67	<u>Mixed use</u>	<u>Mixed Use Property</u>		4	<p>Must use of Section 7.2.3 method for mixed use <i>buildings</i>, area weighted <i>EUI</i>, based on building activity types.</p>
68	<u>Office</u>	<u>Medical Office</u>		3	<p>Medical office refers to <i>buildings</i> used to provide diagnosis and treatment for medical, dental, or psychiatric outpatient care.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, exam rooms, laboratories, lobbies, atriums, conference rooms and auditoriums, employee break rooms and kitchens, restrooms, elevator shafts, stairways, mechanical rooms, and storage areas.</p> <p>If you have restaurants, retail (pharmacy), or services (dry cleaners) within the medical office, you should most likely include this square footage and energy in the medical office building activity type.</p>
69	<u>Office</u>	<u>Office</u>	<u>Admin/professional office</u>		<p>Administrative/professional office refers to <i>buildings</i> used for the conduct of commercial business activities.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, conference rooms and auditoriums, kitchens used by staff, lobbies, fitness areas for staff, restrooms, storage areas, stairways, and elevator shafts.</p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
70	<u>Office</u>	<u>Office</u>	<u>Bank/other financial</u>		<p>Financial office refers to <i>buildings</i> used for financial services such as bank headquarters and securities and brokerage firms.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, trading floors, conference rooms and auditoriums, vaults, kitchens used by staff, lobbies, atriums, fitness areas for staff, restrooms, storage areas, stairways, and elevator shafts.</p>
71	<u>Office</u>	<u>Office</u>	<u>Government office</u>		<p>Government office is an office used by employees of federal, state, county, or city governments.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, conference rooms and auditoriums, kitchens used by staff, lobbies, fitness areas for staff, restrooms, storage areas, stairways, and elevator shafts.</p>
72	<u>Office</u>	<u>Office</u>	<u>Medical office (diagnostic)</u>	3	<p>Medical office refers to <i>buildings</i> used to provide diagnosis and treatment for medical, dental, or psychiatric outpatient care.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, exam rooms, laboratories, lobbies, atriums, conference rooms and auditoriums, employee break rooms and kitchens, restrooms, elevator shafts, stairways, mechanical rooms, and storage areas.</p>
73	<u>Office</u>	<u>Office</u>	<u>Other office</u>		<p>Other office is an office that does not meet the definition of any of the other office building activity type defined in Table 7-4.</p>
74	<u>Office</u>	<u>Veterinary Office</u>			<p>Veterinary office refers to <i>buildings</i> used for the medical care and treatment of animals.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, exam rooms, waiting rooms, atriums, employee break rooms and kitchens, restrooms, elevator shafts, stairways, mechanical rooms, and storage areas.</p>
75	<u>Office</u>	<u>Other - Office</u>			<p>Other office is an office that does not meet the definition of any of the other office building activity type defined in Table 7-4.</p>
76	<u>Public services</u>	<u>Courthouse</u>			<p>Courthouse refers to <i>buildings</i> used for federal, state, or local courts, and associated administrative office space.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including temporary holding cells, chambers, kitchens used by staff, lobbies, atriums, conference rooms and auditoriums, fitness areas for staff, restrooms, storage areas, stairways, and elevator shafts.</p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
77	<u>Public services</u>	<u>Fire Station</u>		<p>Fire station refers to <i>buildings</i> used to <u>provide emergency response services associated with fires</u>. Fire stations may be staffed by either volunteer or full-time paid firefighters.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including office areas, vehicle storage areas, residential areas (if applicable), storage areas, break rooms, restrooms, kitchens, elevator shafts, and stairwells.</p>
78	<u>Public services</u>	<u>Library</u>		<p>Library refers to <i>buildings</i> used to store and manage collections of literary and artistic materials such as books, periodicals, newspapers, films, etc. that can be used for reference or lending.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including circulation rooms, storage areas, reading/study rooms, administrative space, kitchens used by staff, lobbies, conference rooms and auditoriums, fitness areas for staff, restrooms, storage areas, stairways, and elevator shafts.</p>
79	<u>Public services</u>	<u>Mailing Center/ Post Office</u>		<p>Mailing center/post office refers to <i>buildings</i> used as retail establishments dedicated to mail and mailing supplies. This includes U.S. Post Offices, in addition to private retailers that offer priority mail services and mailing supplies.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including retail counters, administrative space, kitchens used by staff, restrooms, lobbies, conference rooms, storage areas, stairways, and mechanical rooms.</p>
80	<u>Public services</u>	<u>Police Station</u>		<p>Police station applies to <i>buildings</i> used for federal, state, or local police forces and their associated office space.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including offices, temporary holding cells, kitchens used by staff, restrooms, lobbies, atriums, conference rooms and auditoriums, fitness areas for staff, storage areas, stairways, and elevator shafts.</p>
81	<u>Public services</u>	<u>Prison/ Incarceration</u>	9	<p>Prison/incarceration refers to federal, state, local, or private-sector <i>buildings</i> used for the detention of persons awaiting trial or convicted of crimes.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including holding cells, cafeterias, administrative spaces, kitchens, restrooms, lobbies, atriums, conference rooms and auditoriums, fitness areas, storage areas, stairways, and elevator shafts.</p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
82	<u>Public services</u>	<u>Social/Meeting Hall</u>		<p><u>Social/meeting hall refers to buildings primarily used for public or private gatherings. This may include community group meetings, seminars, workshops, or performances. Please note that there is another building activity type available, convention center, for large exhibition and conference facilities.</u></p> <p><u>Gross floor area should include all space within the building, including meeting rooms, auditoriums, food service areas, restrooms, lobbies, administrative/office space, mechanical rooms, storage areas, elevator shafts, and stairwells.</u></p>
83	<u>Public services</u>	<u>Transportation Terminal/Station</u>		<p><u>Transportation terminal/station applies to buildings used primarily for accessing public or private transportation. This includes train stations, bus stations, airports, and seaports. These terminals include areas for ticket purchases, and embarkation/disembarkation, and may also include public waiting areas with restaurants and other concessions.</u></p> <p><u>Gross floor area should include all space within the building, including boarding areas, waiting areas, administrative space, kitchens used by staff, restrooms, lobbies, restaurants, cafeterias, stairways, atriums, elevator shafts, and storage areas.</u></p>
84	<u>Public services</u>	<u>Other - Public Service</u>		<p><u>Other - Public service refers to buildings used by public-sector organizations to provide public services other than those described in the available building activity types in this table (i.e., services other than offices, courthouses, drinking water treatment and distribution plants, fire stations, libraries, mailing centers or post offices, police stations, prisons or incarceration facilities, social or meeting halls, transportation terminals or stations, or wastewater treatment plants).</u></p> <p><u>Gross floor area should include all space within the building, including administrative space, kitchens used by staff, restrooms, lobbies, waiting areas, cafeterias, stairways, atriums, elevator shafts, landscaping sheds, and storage areas.</u></p>
85	<u>Religious worship</u>	<u>Worship Facility</u>		<p><u>Worship facility refers to buildings that are used as places of worship. This includes churches, temples, mosques, synagogues, meetinghouses, or any other buildings that primarily function as a place of religious worship.</u></p> <p><u>Gross floor area should include all areas inside the building that includes the primary worship area, including food preparation, community rooms, classrooms, and supporting areas such as restrooms, storage areas, hallways, and elevator shafts.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
86	<u>Retail</u>	<u>Automobile Dealership</u>			<p><u>Automobile dealership</u> refers to <i>buildings</i> used for the sale of new or used cars and light trucks.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including sales floors, offices, conference rooms, vehicle service centers, parts storage areas, waiting rooms, staff break rooms, restrooms, hallways, and stairwells.</p>
87	<u>Retail</u>	<u>Convenience Store with Gas Station</u>			<p><u>Convenience store with gas station</u> refers to <i>buildings</i> that are colocated with gas stations and are used for the sale of a limited range of items such as groceries, toiletries, newspapers, soft drinks, tobacco products, and other everyday items. <u>Convenience store with gas station</u> may include space for vehicle servicing and repair.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including sales floors, offices, restrooms, staff break rooms, storage areas, and vehicle repair areas.</p>
88	<u>Retail</u>	<u>Convenience Store without Gas Station</u>			<p><u>Convenience store without gas station</u> refers to <i>buildings</i> used for the sale of a limited range of items such as groceries, toiletries, newspapers, soft drinks, tobacco products, and other everyday items, which are not colocated with a gas station.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including sales floors, offices, restrooms, staff break rooms, and storage areas.</p>
89	<u>Retail</u>	<u>Enclosed Mall</u>		5	<p><u>Enclosed mall</u> refers to <i>buildings</i> that house multiple stores, often "anchored" by one or more department stores, and with interior walkways. Most stores will not have entrances accessible from outside, with the exception of the "anchor" stores.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including retail stores, offices, food courts, restaurants, storage areas, restrooms, staff break rooms, atriums, walkways, stairwells, and mechanical rooms.</p>
90	<u>Retail</u>	<u>Lifestyle Center</u>	<u>Enclosed mall</u>	5	<p><u>Enclosed mall</u> refers to <i>buildings</i> that house multiple stores, often "anchored" by one or more department stores, and with interior walkways. Most stores will not have entrances accessible from outside, with the exception of the "anchor" stores.</p> <p><u>Gross floor area</u> should include all space within the <i>building</i>, including retail stores, offices, food courts, restaurants, storage areas, restrooms, staff break rooms, atriums, walkways, stairwells, and mechanical rooms.</p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
91	<u>Retail</u>	<u>Lifestyle Center</u>	<u>Other retail</u>		<p>Other - Retail refers to a mixed-use commercial development that includes retail stores and leisure amenities that do not meet the definition of lifestyle center - retail store.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including retail stores, offices, food courts, restaurants, residential areas, storage areas, restrooms, staff break rooms, walkways, stairwells, and mechanical areas.</p>
92	<u>Retail</u>	<u>Lifestyle Center</u>	<u>Retail store</u>		<p>Lifestyle center refers to a mixed-use commercial development that includes retail stores and leisure amenities, where individual retail stores typically contain an entrance accessible from the outside and are not connected by internal walkways. Lifestyle centers have an open-air design, unlike traditional enclosed malls, and often include landscaped pedestrian areas, as well as streets and vehicle parking.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including retail stores, offices, food courts, restaurants, residential areas, storage areas, restrooms, staff break rooms, walkways, stairwells, and mechanical areas.</p>
93	<u>Retail</u>	<u>Lifestyle Center</u>		4	<p>Must use of Section 7.2.3 method for mixed use <i>buildings</i>.</p>
94	<u>Retail</u>	<u>Retail Store</u>			<p>Retail store refers to individual stores used to conduct the retail sale of nonfood consumer goods such as clothing, books, toys, sporting goods, office supplies, hardware, and electronics. <i>Buildings</i> containing multiple stores should be classified as enclosed mall, lifestyle center, or strip mall.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including sales areas, storage areas, offices, restrooms, staff break rooms, elevators, and stairwells.</p>
95	<u>Retail</u>	<u>Strip Mall</u>		4	<p>Strip mall refers to <i>buildings</i> comprising more than one retail store, restaurant, or other business, in an open-air configuration where each establishment has an exterior entrance to the public and there are no internal walkways.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including retail stores, offices, restaurants, storage areas, restrooms, staff break rooms, and stairwells.</p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
<u>96</u>	<u>Retail</u>	<u>Supermarket/ Grocery Store</u>			<p>Supermarket/grocery store refers to <i>buildings</i> used for the retail sale of primarily food and beverage products, and which may include small amounts of preparation and sale of ready-to-eat food. <i>Buildings</i> where the primary business is the on-site preparation and sale of ready-to-eat food should use one of the restaurant building activity types.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including the sales floor, offices, storage areas, kitchens, restrooms, staff break rooms, and stairwells.</p>
<u>97</u>	<u>Retail</u>	<u>Wholesale Club/ Supercenter</u>			<p>Wholesale club/supercenter refers to <i>buildings</i> used to conduct the retail sale of a wide variety of merchandise, typically in bulk quantities. Merchandise may include food, clothing, office supplies, furniture, electronics, books, sporting goods, toys, and hardware.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including the sales floor, offices, storage areas, kitchens, restrooms, staff break rooms, elevators, and stairwells.</p>
<u>98</u>	<u>Retail</u>	<u>Other - Retail/ Mall</u>	<u>Enclosed mall</u>	<u>5</u>	<p>Enclosed mall refers to <i>buildings</i> that house multiple stores, often "anchored" by one or more department stores, and with interior walkways. Most stores will not have entrances accessible from outside, with the exception of the "anchor" stores.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including retail stores, offices, food courts, restaurants, storage areas, restrooms, staff break rooms, atriums, walkways, stairwells, and mechanical rooms.</p>
<u>99</u>	<u>Retail</u>	<u>Other - Retail/ Mall</u>		<u>4</u>	<p>Must use of Section 7.2.3 method for mixed use <i>buildings</i>.</p>



	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
<u>100</u>	<u>Technology/science</u>	<u>Data Center</u>		<u>6</u>	<p>Data center refers to an activity space or <i>buildings</i> specifically designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more.</p> <p><i>Gross floor area</i> shall only include space within the <i>building</i>, including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment.</p> <p><i>Gross floor area</i> shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.</p> <p>This is a <i>building</i> or activity without an energy target. Included to provide definition only.</p>
<u>101</u>	<u>Technology/science</u>	<u>Laboratory</u>			<p>Laboratory refers to <i>buildings</i> that provide controlled conditions in which scientific research, measurement, and experiments are performed or practical science is taught.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including workstations/hoods, offices, conference rooms, restrooms, storage areas, decontamination rooms, mechanical rooms, elevator shafts, and stairwells.</p>
<u>102</u>	<u>Technology/science</u>	<u>Other - Technology/Science</u>	<u>Other service</u>		<p>Other - Technology/science refers to <i>buildings</i> used for science and technology related services other than laboratories and data centers.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including areas with the main business activity, production areas, administrative offices, restrooms, employee break areas, stairways, atriums, elevator shafts, and storage areas.</p>
<u>103</u>	<u>Services</u>	<u>Personal Services (Health/Beauty, Dry Cleaning, etc.)</u>			<p>Personal services refers to <i>buildings</i> used to sell services rather than physical goods. Examples include dry cleaners, salons, spas, etc.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including sales floors, offices, storage areas, restrooms, staff break rooms, walkways, and stairwells.</p>

	<b>Building Activity Type<sup>1,2</sup></b>			<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
<u>104</u>	<u>Services</u>	<u>Repair Services (Vehicle, Shoe, Locksmith, etc.)</u>	<u>Repair shop</u>		<p>Repair services refers to <i>buildings</i> in which repair service is provided other than vehicle repair or maintenance. Examples include vehicle service or repair shops, shoe repair, jewelry repair, locksmiths, etc.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including sales floors, repair areas, workshops, offices, parts storage areas, waiting rooms, restrooms, staff break rooms, hallways, and stairwells.</p>
<u>105</u>	<u>Services</u>	<u>Repair Services (Vehicle, Shoe, Locksmith, etc.)</u>	<u>Vehicle service/repair shop</u>		<p>Vehicle service/repair shop refers to <i>buildings</i> in which vehicle repair service is provided. Examples include vehicle mechanical repair, body and paint shops, muffler, brake and tire shops.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including sales floors, repair areas, workshops, offices, parts storage areas, waiting rooms, restrooms, staff break rooms, hallways, and stairwells.</p>
<u>106</u>	<u>Services</u>	<u>Repair Services (Vehicle, Shoe, Locksmith, etc.)</u>	<u>Vehicle storage/maintenance</u>		<p>Repair services - Vehicle storage/maintenance refers to <i>buildings</i> in which vehicle storage or maintenance service is provided. Examples include warehousing of vehicles and maintenance services such as vehicle washing/detailing.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including sales floors, maintenance areas, repair areas, workshops, offices, storage areas, waiting rooms, restrooms, staff break rooms, hallways, and stairwells.</p>
<u>107</u>	<u>Services</u>	<u>Other - Services</u>			<p>Other - Services refers to <i>buildings</i> in which primarily services are offered, but which does not fit into the personal services or repair services building activity type. Examples include kennels, photo processing shops, etc.</p> <p><i>Gross floor area</i> should include all space within the <i>building</i>, including sales floors, offices, storage areas, restrooms, staff break rooms, walkways, and stairwells.</p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
<u>108</u>	<u>Utility</u>	<u>Energy/Power Station</u>	<u>7</u>	<p><u>Energy/power station applies to buildings containing machinery and/or associated equipment for generating electricity or district heat (steam, hot water, or chilled water) from a raw fuel, including fossil fuel power plants, traditional district heat power plants, combined heat and power plants, nuclear reactors, hydroelectric dams, or facilities associated with a solar or wind farm.</u></p> <p><u>Gross floor area should include all space within the building, including power generation areas (boilers, turbines, etc.), administrative space, cooling towers, kitchens used by staff, restrooms, lobbies, meeting rooms, cafeterias, stairways, elevator shafts, and storage areas (which may include fossil fuel storage tanks or bins).</u></p> <p><u>This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.</u></p>
<u>109</u>	<u>Utility</u>	<u>Other - Utility</u>	<u>7</u>	<p><u>Other - Utility applies to buildings used by a utility for some purpose other than general office or energy/power generation. This may include utility transfer stations or maintenance facilities. Note that an administrative office occupied by a utility should be entered as office, and a power or energy generation plant should be entered as energy/power station.</u></p> <p><u>Gross floor area should include all space within the building, including administrative space, maintenance and equipment areas, generator rooms, kitchens used by staff, restrooms, lobbies, meeting rooms, stairways, elevator shafts, and storage areas.</u></p> <p><u>This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.</u></p>
<u>110</u>	<u>Warehouse/storage</u>	<u>Self-Storage Facility</u>		<p><u>Self-storage facility refers to buildings that are used for private storage. Typically, a single self-storage facility will contain a variety of individual units that are rented out for the purpose of storing personal belongings.</u></p> <p><u>Gross floor area should include all space within the building, including individual storage units, administrative offices, security and maintenance areas, mechanical rooms, hallways, stairways, and elevator shafts.</u></p>

	<b>Building Activity Type<sup>1,2</sup></b>		<b>Notes</b>	<b>Clean Buildings Performance Standard Definitions</b>
<u>111</u>	<u>Warehouse/ storage</u>	<u>Distribution Center</u>		<p>Distribution center refers to <u>unrefrigerated buildings that are used for the temporary storage and redistribution of goods, manufactured products, merchandise or raw materials. Buildings that are used primarily for assembling, modifying, manufacturing, or growing goods, products, merchandise or raw material should be classified as manufacturing facility.</u></p> <p><u>Gross floor area should include all space within the building, including space designed to store nonperishable goods and merchandise, offices, lobbies, stairways, restrooms, equipment storage areas, and elevator shafts.</u></p>
<u>112</u>	<u>Warehouse/ storage</u>	<u>Nonrefrigerated Warehouse</u>		<p>Nonrefrigerated warehouse refers to <u>unrefrigerated buildings that are used to store goods, manufactured products, merchandise or raw materials. Buildings that are used primarily for assembling, modifying, manufacturing, or growing goods, products, merchandise or raw material should be classified as manufacturing facility.</u></p> <p><u>Gross floor area should include all space within the building, including the main storage rooms, administrative offices, lobbies, stairways, restrooms, equipment storage areas, and elevator shafts.</u></p>
<u>113</u>	<u>Warehouse/ storage</u>	<u>Refrigerated Warehouse</u>		<p>Refrigerated warehouse refers to <u>refrigerated buildings that are used to store or redistribute perishable goods or merchandise under refrigeration at temperatures below 50 degrees Fahrenheit (10 degrees Celsius). Buildings that are used primarily for assembling, modifying, manufacturing, or growing goods, products, merchandise or raw material should be classified as manufacturing facility.</u></p> <p><u>Gross floor area should include all space within the building, which includes temperature controlled areas, administrative offices, lobbies, stairways, restrooms, equipment storage areas, and elevator shafts.</u></p>

**Notes:**

1. Select the most specific building activity type that applies.
2. Building activity types are defined by AHJ in Table 7-4.
3. All medical offices considered to be diagnostic type.
4. Must use of Section 7.2.3 method for mixed use buildings.
5. Suggest considering use of Section 7.2.3 method for mixed use buildings.
6. This is a building or activity without an energy target. Included to provide definition only.
7. This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.
8. Laboratories as defined by the college/university building activity type where the primary activity is for teaching practical science shall use the college/university building activity type target. College/university buildings with research laboratory building activities where the primary activities are of scientific research, measurement, and experiments are performed, can utilize building activity type 101 laboratory for an area weighted EUI.
9. Building activity type target developed at the campus-level. As an alternative to complying at the building-level, these covered buildings may comply at a campus-level with the EUI. "Campus-level" is an alternative reporting pathway for a collection of all buildings on adjoining property with a single shared primary function that act as a single property.

**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.

NEW SECTION

**WAC 194-50-160 Normative Annex Y—Washington state Tier 2 covered buildings reporting requirements—This is a normative annex and is part of the Tier 2 covered building requirements of this standard.**

**Y1 Building owner notifications by the AHJ.****Y1.1 Notification to building owners of covered buildings by the AHJ.**

Based on records obtained from each county assessor and other available information sources, the *AHJ* must create a database of *covered buildings* and *building owners* required to comply with the standard established in accordance with this section. The database may include *buildings* and *building complexes* presumed to meet the definition of *covered building* and *multifamily residential buildings* greater than 20,000 square feet in floor area.

**Y1.1.1** The database will contain information about *buildings* that may be subject to compliance and their owners. The database will also contain information to assist tracking and reporting on *building owner* compliance, and incentive application and distribution. Commerce will create a method for tracking *building owner* notification responses. Each *building* or *building complex* will be assigned a unique *building* identifier.

**Y1.2** By July 1, 2025, the *AHJ* must provide the owners of *covered buildings* with notification of compliance requirements.

**Y1.3** Failure by the *AHJ* to provide the notification in Section Y1.2 does not release the *building owner* of the legal obligation to comply with this law. When a *covered building* undergoes a change of ownership, it is the buyer's responsibility to contact the *AHJ* and update the *covered building's* profile.

**Y2 Building owner response to notifications.**

**Y2.1 Correction of errors.** *Building owners* are responsible for reviewing the property and *building* information provided by the *AHJ* through notification including, but not limited to, *building* or *building complex* ownership details, *gross floor area*, and other information as identified by the *building owner*.

**Y2.1.1 Correction of errors documentation.** *Building owners* who are notified in error may submit a correction to the *AHJ*. The correction will be used to document *gross floor area* (conditioned and unconditioned) and/or *building* type.

**Y3 Washington state reporting requirements for building owners.**

**Y3.1 General compliance.** The *building owner* of a *Tier 2 covered building* must report compliance with the standard to the *AHJ* in accordance with the compliance schedule established under Section Y3.2 and every five years thereafter. For each reporting date, the *building owner* must submit documentation to demonstrate that

1. The *weather normalized energy use intensity* of the *Tier 2 covered building* measured in a period not to exceed two years prior to the compliance deadline specified in Normative Annex Y, Section Y3.1 compared to the *energy use intensity target*; and has developed and is maintaining an energy management plan (*EMP*) in accordance with Section 5, including an operations and maintenance program (*O&M*) in accordance with Section 6; or

2. The covered building has received Tier 2 covered building conditional compliance from the AHJ; or

3. The covered building is exempt from the standard by demonstrating that the building meets one of the criteria for an exemption.

**Y3.2 Compliance schedule.** The building owner of a Tier 2 covered building must report the building owner's compliance with the standard to the AHJ in accordance with the appropriate initial compliance date as follows and every five years thereafter.

1. For a building with more than 20,000 gross square feet but less than 50,001 gross square feet and all multifamily residential buildings more than 20,000 gross square feet: July 1, 2027.

2. Covered buildings complying at a campus-level or connected building level shall use the compliance schedule representing the largest covered building. Where the largest building is more than 50,000 gross square feet but less than 90,001 gross square feet: June 1, 2028. Notify the AHJ to update the covered building profile(s) and your compliance deadline.

**Y3.2.1 Early compliance option.** Building owners may submit for compliance to the AHJ beginning July 1, 2025. Energy use data for developing the net energy consumption of the covered building shall be measured in a period not to exceed two years prior to the submission of compliance documentation. This section expires June 1, 2027.

**Y3.2.2 Application for Tier 2 covered building conditional compliance.** Applications for Tier 2 covered building conditional compliance must be submitted to the AHJ prior to the compliance date to receive Tier 2 covered building conditional compliance approval.

1. Tier 2 covered building conditional compliance is valid for the EMP and O&M requirements of the standard.

2. Benchmarking is required and shall be reported in application for Tier 2 covered building conditional compliance. Approved applications will receive a revised compliance date of 180 days. Application for Tier 2 covered building conditional compliance is limited to one application per compliance cycle.

**Y3.2.3 Application for exemption.** Building owners submitting an application for exemption as specified in Section Y4.1 must submit to the AHJ no sooner than two years prior and no later than 180 days prior to the compliance date to receive exemption approval prior to the compliance date.

**Y4 Documentation of compliance with the standard.** Documentation of compliance shall be submitted to the AHJ demonstrating the building owner has complied with the standard through submission of documentation in accordance with Section Y4.1, Y4.2 or Y4.3.

**Y4.1 Documentation of compliance through exemption.** Building owners seeking approval of exemption shall submit to the AHJ Section Y6.7 Form H, "Application for Exemption Certificate," documenting the following:

1. **Exemption conditions.** The building qualifies for one of the exemptions listed in Y4.1(2), and:

a. **Exemption verification.** Compliance with the exemption must be verified by the owner based on the building as it is to be occupied and operating on the compliance date.

b. **Exemption application time frame.** Applications for exemptions may be submitted no sooner than two years prior to the compliance date

and submitted to the *AHJ* no later than 180 days prior to the compliance date.

c. **Exemption certificate validity.** Exemption certificates are only valid for the current compliance review cycle.

2. **Exemptions.** *Covered buildings* are not eligible for exemption from the standards unless they meet at least one of the following criteria:

a. **Certificate of occupancy.** The *building* did not have a certificate of occupancy or temporary certificate of occupancy for a consecutive 12-month period within two years prior to the compliance date.

b. **Physical occupancy.** The *building* did not have *physical occupancy* by owner or tenant for at least 50 percent of the conditioned floor area throughout the consecutive 12-month period prior to the *building* compliance date.

c. **Floor area.** The sum of the *building's gross floor area* minus unconditioned and *semi-heated spaces*, as defined in the Washington State Energy Code, is less than 20,000 square feet.

d. **Manufacturing or industrial.** More than 50 percent of the *gross floor area* of the *building* is used for manufacturing or other industrial purposes, as defined under the following use designations of the Washington state edition of the International Building Code:

i. Factory group F; or

ii. High hazard group H.

e. **Agricultural.** The *building* is an agricultural structure.

f. **Demolition.** The *building* is pending demolition.

g. **Financial hardship.** The *building* meets at least one of the following conditions of financial hardship:

i. The *building* had arrears of property taxes or water or wastewater charges that resulted in the *building's* inclusion, within the prior two years, on a city or county's annual tax lien sale list.

ii. The *building* has a court-appointed receiver in control of the asset due to financial distress.

iii. The *building* is owned by a financial institution through default by a borrower.

iv. The *building* has been acquired by a deed in lieu of foreclosure within the previous 24 months.

v. The *building* has a senior mortgage subject to a notice of default.

vi. The *building owner* has an immediate and heavy financial need that cannot be satisfied from other reasonable available resources and that is caused by events that are beyond their control.

3. **Notification of exemption approved or denied.** After documents have been submitted and reviewed, the *AHJ* will send notification of approval or denial.

a. If the exemption is approved, the *AHJ* shall notify the applicant stating the application has been approved and update the *AHJ* records for the *building*.

b. If the exemption is denied, the *AHJ* shall notify the applicant stating the application has been denied and update the *AHJ* records for the *building*.

i. **Requesting hearing for denied exemption.** See Section Y5.7 Administrative hearings.

4. **Compliance required when exemption denied.** When an application for exemption is denied, the *building owner* must proceed with the process to demonstrate compliance with one of the compliance options in Washington state reporting requirements for *building owners* in Sections Y4.2 through Y4.5.

**Y4.2 Benchmarking.** *Building owners* must provide the following documentation to verify that the *building weather normalized EUI* is compared to the *building EUI<sub>t</sub>* and that the energy management plan (*EMP*), including the operations and maintenance program (*O&M*) is complete and being implemented.

1. Form A;
2. Form B; except *buildings* unable to meet Section 7.2, Determining Energy Target (*EUI<sub>t</sub>*);
3. Form C.

**Y4.3 Buildings approved for Tier 2 covered building conditional compliance.** *Building owners* seeking approval of *Tier 2 covered building conditional compliance* for the energy management plan (*EMP*), including the operations and maintenance (*O&M*) program shall submit to the *AHJ Tier 2 covered building conditional compliance* application along with the following documentation:

1. Form A;
2. Form B;
3. Form C.

Once *Tier 2 covered building conditional compliance* is approved:

4. Documentation to verify that the *EMP* and *O&M* is complete and being implemented must be submitted to the *AHJ* by the revised compliance date.

**Y5. Violations, assessment of administrative penalties and review of penalty decisions.**

**Y5.1 Authorization.** The *AHJ* is authorized to impose administrative penalties on *building owners* for failing to submit documentation demonstrating compliance with the requirements of this standard. Failure to submit documentation demonstrating compliance by the scheduled reporting date will result in penalties by legal notice.

**Y5.2 Notice of violation, opportunity to correct, and intent to assess penalties (NOVCI).**

**Y5.2.1 Notifying owner of failure to demonstrate compliance.** The *AHJ* may issue a NOVCI when a *building owner* has failed to submit documentation that demonstrates compliance with this standard by the scheduled reporting date.

**Y5.2.2 Issuing NOVCI.** A NOVCI may be issued for any of the following reasons:

1. Failure to submit a compliance report in the form and manner prescribed by the *AHJ*.
2. Failure to submit compliance report by the revised compliance date after receiving *Tier 2 covered building conditional compliance* approval.
3. Failure to provide accurate reporting consistent with the requirements of the standard.
4. Failure to provide a valid exemption certificate.

**Y5.2.3 Identifying failure to demonstrate compliance.** The *AHJ* will identify in the NOVCI the section(s) of law, code, or the standard for which the *building owner* has failed to demonstrate compliance.

**Y5.2.4 Specifying time frame to remedy.** The NOVCI will specify the time by which the *building owner* must cure the violation by submitting documentation that demonstrates compliance with the identified sec-



tion(s) of law, code, or the standard. The *AHJ* will give the *building owner* at least 30 calendar days to submit such documentation.

### **Y5.3 Response to NOVCI.**

**Y5.3.1 Responding to NOVCI.** *Building owners* must respond to a NOVCI within 30 days by meeting one of the following:

1. **Compliance:** Submitting a compliance report in the form and manner prescribed by the *AHJ*.
2. **Exemption:** Submitting an application for exemption in accordance with Section Y4.1 Documentation of compliance through exemption, if applicable;
3. **Tier 2 Covered building conditional compliance:** Submitting a *Tier 2 covered building conditional compliance* application in accordance with Section Y4.3 Buildings approved for Tier 2 covered building conditional compliance;
4. **Pay penalties:** Submitting their intent to pay the penalties by using the form provided by the *AHJ*; or
5. **Request hearing:** Submitting a request for an administrative hearing to challenge or mitigate the penalty in accordance with Section Y5.7 Administrative hearings.

**Y5.3.2 Missing NOVCI response deadline.** If the *building owner* does not respond within 30 days in accordance with Section Y5.3.1 Responding to the NOVCI, the *building owner* waives their right to a hearing, and the *director* or their designee may issue a final order assessing the penalties described in the NOVCI.

### **Y5.4 Assessment of administrative penalties.**

**Y5.4.1 Penalties for building owners.** Failure to submit documentation demonstrating compliance with the standard by the date specified in a NOVCI will result in the assessment of administrative penalties at an amount not to exceed \$0.30 per square foot of *gross floor area*.

**Y5.4.1.1 Penalties for building owners pursuing relief.** For *building owners* subject to a NOVCI who respond within 30 days:

1. **With documentation demonstrating compliance or successful challenges.** For *building owners* that submit documentation demonstrating compliance or are successful in their challenges:
  - a. Fines shall be waived.
  - b. *Building owners* may be eligible to apply for early adopter incentive program.
2. **Without compliance documentation or unsuccessful challenges.** For *building owners* that have not submitted documentation demonstrating compliance by deadline or *Tier 2 covered building conditional compliance* deadline, or have an unsuccessful challenge:
  - a. The Tier 2 *building owner* will be assessed the maximum penalty of amount equal to \$0.30 per square foot of *gross floor area*.
  - b. *Building owners* may not be eligible to apply for early adopter incentive program.
  - c. The *AHJ* may by rule increase the penalty rates to adjust for the effects of inflation.

**Y5.4.1.2 Building owners that choose to pay the fine rather than pursuing compliance.** *Building owners* may choose to respond to the NOVCI by paying the maximum penalty.

1. The Tier 2 *building owner* will be assessed the maximum penalty of \$0.30 per square foot of *gross floor area*.

2. *Building owners* may not be eligible to apply for early adopter incentive program.

3. Penalties are assessed for each compliance period.

**Y5.4.2 Interest.** Interest will accrue on civil penalties pursuant to RCW 43.17.240 if and when the debt becomes past due.

**Y5.5 Due date and collection of penalties.**

**Y5.5.1 Penalties due.** Penalties shall become due and payable on the later of:

1. Thirty days after receipt of the final order imposing the penalty; or

2. The date specified in the final order imposing the penalty.

**Y5.5.2 Debt collection.** If a penalty has not been paid by the due date, the *AHJ* may assign the debt to a collection agency as authorized by RCW 19.16.500 or take other action to pursue collection as authorized by law. If referred to a collection agency, the *AHJ* may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.

**Y5.6 Payment of administrative penalties.** Penalties will be payable in U.S. funds to the Washington state department of commerce, as specified by the *AHJ*.

**Y5.7 Administrative hearings.**

**Y5.7.1 Requesting a hearing.** A *building owner* may request an administrative hearing after receiving a NOVCI or after the denial of their application for an exemption by submitting a request within 30 days of the date of a NOVCI or the denial of a timely application for exemption. All requests must be made in writing and filed at the address specified on the NOVCI. For convenience, the *AHJ* will attach a form titled "Request for Hearing" to the NOVCI that may be used to request an administrative hearing. Requests for hearing must be accompanied by the following:

1. Washington state building ID;

2. Submitted Annex Y Forms A, B, and C.

**Y5.7.2 Hearing process.** The *AHJ* may refer matters to the office of administrative hearings (OAH). Administrative hearings will be conducted in accordance with chapter 34.05 WAC, Administrative Procedure Act, chapter 10-08 WAC, Model rules of procedure, and the procedural rules adopted in this chapter. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this section, the procedural rules adopted in this section take precedence.

**Y5.7.3 Initial orders to become final orders.** Initial orders issued by the presiding officer will become final without further agency action unless, within 20 days,

1. The *director* determines that the initial order should be reviewed; or

2. A party to the proceeding files a petition for administrative review of the initial order.

Upon occurrence of either event, notice shall be given to all parties to the proceeding.

**Y5.7.4 Judicial review.** A final order entered pursuant to this section is subject to judicial review pursuant to RCW 34.05.510 through 34.05.598.

**Y5.7.5 Collected penalties.** Administrative penalties collected under this section must be deposited into the low-income weatherization and structural rehabilitation assistance account created in RCW 70A.35.030 and reinvested into the clean buildings program, where feasible, to support compliance with the standard.

**Y6 Compliance forms.** The following sections replace Standard 100, Normative Annex C, "Reporting Forms," and provide additional forms specified by rule. *Building owners* are required to submit the applicable forms and the required supporting information to demonstrate compliance with the standard. These forms replace all referenced forms in this standard. The *AHJ* will make these forms available in an electronic format for submission to the *AHJ*.

**Y6.1 Compliance with Standard 100 (Form A).**

1. Building identification:
  - a. WA state building ID;
  - b. County;
  - c. County parcel number(s);
  - d. Portfolio manager property ID number;
  - e. Property name;
  - f. Parent property name;
  - g. Address 1 (street);
  - h. Address 2;
  - i. City;
  - j. State;
  - k. Postal code.
2. Contact information:
  - a. *Building owner* name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/province;
  - g. Country;
  - h. Postal code;
  - i. Telephone number;
  - j. Email address.
3. *Qualified person* (if applicable):
  - a. *Qualified person* name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State;
  - f. Postal code;
  - g. Telephone number;
  - h. Email address;
  - i. Licensed, certified (select all that apply):
    - i. Licensure; or
    - ii. Certifying authority.
4. *Qualified energy manager* (if not the *qualified person*):
  - a. *Qualified energy manager* name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State/province;
  - f. Postal code;

- g. Country;
  - h. Telephone number;
  - i. Email address;
  - j. *Qualified energy manager* certification number.
  - 5. *Energy manager* (if different than the *qualified person* or *qualified energy manager*):
    - a. *Energy manager* name;
    - b. Address 1 (street);
    - c. Address 2;
    - d. City;
    - e. State/province;
    - f. Postal code;
    - g. Country;
    - h. Telephone number;
    - i. Email address.
  - 6. Summary data:
    - a. *Energy use intensity target* ( $EUI_t$ ) (kBtu/ft<sup>2</sup>/yr) based on completed Section Y6.2 Form B;
- Note:** *Buildings* unable to develop  $EUI_t$  in accordance with Section 7.2.2 or 7.2.3 of this standard shall report national median site  $EUI$  target as calculated by the Energy Star portfolio manager account and reported on Form C.
- b. Measured site  $EUI$  (kBtu/ft<sup>2</sup>) for the compliance year for this *building* based on Section Y6.3 Form C;
  - c. Measured *weather normalized* site  $EUI$  (kBtu/ft<sup>2</sup>) for the compliance year based on Section Y6.3 Form C;
  - d. List the months/year of the collected data (mm/yyyy - mm/yyyy) for the compliance year for this *building* from Section Y6.3 Form C;
  - e. *Buildings* unable to comply with Section 5.2, building energy monitoring, and complete Section Y6.3 Form C, shall provide a reason statement.
7. Have the energy management requirements of Section 5 been met?  
 Yes  No
  - Upload energy management plan as specified by the AHJ.
8. Have the operation and maintenance requirements of Section 6 been met?  Yes  No
  - Upload operation and maintenance implementation documentation as specified by the AHJ.
9. Date the audit and economic evaluation was completed (N/A if none required)
  - Upload audit reports as specified by Section Y6.4 Form D.
10. We state that this *building* complies with ANSI/ASHRAE/IES Standard 100 as amended by the AHJ to conform with RCW 19.27A.210:
- a. Signature of *building owner*:
    - Date:
  - b. Signature of *qualified person*:
    - Date:
  - c. Signature of *energy manager*:
    - Date:
  - d. Signature of *authority having jurisdiction*:
    - Conditional or final compliance:
    - Date:

**Y6.2 Building activity and energy use intensity target ( $EUI_t$ ) (Form**

**B).** Complete form provided by the AHJ with the following information:

- 1. Building identification:
  - a. Washington state building ID;
  - b. County;

- c. County parcel number(s);
- d. Portfolio manager property ID number;
- e. Property name;
- f. Parent property name;
- g. Address 1 (street);
- h. Address 2;
- i. City;
- j. State;
- k. Postal code.

2. List the *building* location climate zone, 4C or 5B. Determine the climate zone using the ASHRAE climate zone map located in Informative Annex G.

a. *Buildings* located in Climate Zone 5C shall use Climate Zone 4C.

b. *Buildings* located in Climate Zone 6B shall use Climate Zone 5B.

3. The *gross floor area* in square feet shall be reported as defined in Section 3.

4. If entire *building* is single activity/type not listed in Table 7-1, it should be listed as "building without target" on Section Y6.1 Form A. List "energy target" as "N/A" on Section Y6.2 Form B, and Section Y6.2 Form B is considered complete.

5. Fill in fraction of *gross floor area* ( $A$ )<sub>*i*</sub> for each activity. For single-activity *buildings* this is 1.0.

6. Fill in the operating shifts normalization factor ( $S$ )<sub>*i*</sub> from Table 7-3 for each activity.

7. Fill in the activity energy target ( $EUI_{t1}$ )<sub>*i*</sub> from Table 7-2 (or table from AHJ) for each activity.

8. Calculate weighted space *EUI* target ( $A \times S \times EUI_{t1}$ )<sub>*i*</sub> for each activity.

9. Add up fraction of floor area and enter sum in "Total fraction of floor area with target," and add up all weighted space *EUI* targets and enter sum as the "energy target" on Sections Y6.2 and Y6.1 Forms B and A.

10. If more than 50 percent of *gross floor area* has no target, it should be listed as "building without target" on Section Y6.1 Form A. List "energy target" as "N/A" on Section Y6.2 Form B. For single-activity *buildings* this is 1.0.

**Y6.3 Energy use intensity calculations (Form C).** *Energy use intensity* calculations shall be reported via the U.S. EPA's ENERGY STAR portfolio manager ([www.energystar.gov/benchmark](http://www.energystar.gov/benchmark)). The *energy manager* is responsible for creating Energy Star portfolio manager record for each *building*.

**Exception to Y6.3:** *Buildings* unable to comply with Section 5.2, building energy monitoring shall demonstrate compliance at the *connected buildings* level.

The Energy Star portfolio manager *building* record shall be identical to the *building* activity/type, fraction floor area, operating shifts (hours of operation), and *gross floor area* of the *building* as reported on Form B. All inputs shall be up to date prior to reporting as required in Section Y4, and annually as required in Section 5.1.2.3.

Prior to submitting reports, run the Energy Star portfolio manager data quality checker and make all corrections required to complete the report.

The *energy manager* shall use the EPA's Energy Star portfolio manager share properties feature and share the property data with the *AHJ* by enabling the read-only access and exchange data feature.

For each report submitted under Section Y4, the *energy manager* shall create and submit a report documenting the required data fields listed (below) and other fields deemed necessary by the *AHJ* for the reporting period. This shall be submitted using the Washington state report specified in Energy Star portfolio manager.

Report fields shall include the following:

- Portfolio manager property ID;
- Portfolio manager parent property ID;
- Property name;
- Parent property name;
- Address 1;
- Address 2;
- City;
- County;
- State/Province;
- Postal Code;
- Primary property type - Self-selected;
- Primary property type - EPA calculated;
- List of all property use types at property;
- Property GFA - Self-reported (ft<sup>2</sup>);
- Property GFA - EPA calculated (*buildings* and parking) (ft<sup>2</sup>);
- Property GFA - EPA calculated (*buildings*) (ft<sup>2</sup>);
- Property GFA - EPA calculated (parking) (ft<sup>2</sup>);
- Largest property use type;
- Largest property use type - *Gross floor area* (ft<sup>2</sup>);
- 2nd Largest property use type;
- 2nd Largest property use - *Gross floor area* (ft<sup>2</sup>);
- 3rd Largest property use type;
- 3rd Largest property use type - *Gross floor area* (ft<sup>2</sup>);
- Year built;
- Occupancy;
- Property notes;
- Property data administrator;
- Property data administrator - Email;
- Last modified date - Property;
- Last modified date - Electric meters;
- Last modified date - Gas meters;
- Last modified date - Nonelectric nongas energy meters;
- Local standard ID(s) Washington state building standard;
- Data center - Energy estimates applied;
- Electricity use - Grid purchase and generated from on-site renewable systems (kWh);
- Electricity use - Grid purchase (kWh);
- Electricity use - Generated from on-site renewable systems and used on-site (kWh);
- Natural gas use (therms);
- Fuel oil #1 use (kBtu);
- Fuel oil #2 use (kBtu);
- Fuel oil #4 use (kBtu);
- Fuel oil #5 and #6 use (kBtu);
- Diesel #2 use (kBtu);
- Kerosene use (kBtu);

- Propane use (kBtu);
- District steam use (kBtu);
- District hot water use (kBtu);
- District chilled water use (kBtu);
- Coal - Anthracite use (kBtu);
- Coal - Bituminous use (kBtu);
- Coke use (kBtu);
- Wood use (kBtu);
- Other use (kBtu);
- Default values;
- Temporary values;
- Estimated data flag - Electricity (grid purchase);
- Estimated data flag - Natural gas;
- Alert - Data center does not have an IT meter;
- Alert - *Gross floor area* is 0 ft<sup>2</sup>;
- Alert - Property has no uses;
- Data quality checker - Date run;
- Data quality checker run - ?;
- Alert - Energy meter has less than 12 full calendar months of data;
- Alert - Energy meter has gaps;
- Alert - Energy meter has overlaps;
- Alert - Energy - No meters selected for metrics;
- Alert - Energy meter has single entry more than 65 days;
- Estimated values - Energy;
- Energy Star score;
- National median *site energy* use (kBtu);
- *Site energy* use (kBtu);
- *Site EUI* (kBtu/ft<sup>2</sup>);
- *Weather normalized site energy* use (kBtu);
- *Weather normalized site EUI* (kBtu/ft<sup>2</sup>);
- *Weather normalized site electricity* (kWh);
- *Weather normalized site electricity intensity* (kWh/ft<sup>2</sup>);
- *Weather normalized site natural gas use* (therms);
- *Weather normalized site natural gas intensity* (therms/ft<sup>2</sup>) energy current date;
- Electricity use - Generated from on-site renewable systems (kWh);
- Electricity use - Generated from on-site renewable systems and exported (kWh);
- Electricity Use - Grid purchase and generated from on-site renewable systems (kBtu);
- Electricity use - Grid purchase (kBtu);
- Electricity use - Generated from on-site renewable systems and used on site (kBtu);
- Natural gas use (kBtu);
- Percent of total electricity generated from on-site renewable systems;
- Cooling degree days (CDD) (°F);
- Heating degree days (HDD) (°F);
- Weather station name;
- Weather station ID.

**Y6.4 Energy Audit Forms (Form D).** Not applicable for *Tier 2 covered buildings*.

**Form E.** Not adopted.

**Y6.5 Annex X, Investment Criteria Tool (Form F).** Not applicable for *Tier 2 covered buildings*.

**Y6.6 Documentation of a building of historic significance (Form G).** Not applicable for *Tier 2 covered buildings*.

**Y6.7 Application for exemption certificate (Form H).** Apply for an exemption certificate by submitting the following documentation in the form specified by the *AHJ*. The application must include the following:

1. Building identification:
  - a. Washington state building ID;
  - b. County;
  - c. County parcel number(s);
  - d. Portfolio manager property ID number;
  - e. Property name;
  - f. Parent property name;
  - g. Address 1 (street);
  - h. Address 2;
  - i. City;
  - j. State;
  - k. Postal code.
2. Contact information:
  - a. *Building owner* name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/Province;
  - g. Country;
  - h. Postal code;
  - i. Telephone number;
  - j. Email address.
3. *Building* information:
  - a. Primary *building* activity from Table 7-1, or a description of the nonlisted *building* type;
  - b. *Building gross floor area*;
  - c. *Building gross conditioned floor area*.
4. Reason for exemption: Based on exemptions listed in Section Y4.1(b). A list all of documents enclosed and any facts in support of this application. Provide at least two of the acceptable documents listed below:
  - a. Municipal or county records;
  - b. Documents from a *qualified person*;
  - c. Construction permit;
  - d. Certificate of occupancy or application for certificate of occupancy;
  - e. Demolition permit;
  - f. Financial statements such as statement of assets; liabilities, capital, and surplus, statement of revenue and expenses; or statement of cash flow;
  - g. A letter from the *building owner* stating facts and explaining financial hardships;
  - h. Other documentation approved by the *AHJ*.
5. Signature and statement of *building owner* stating that the authorized representative of the *building* affirm and attest to the accuracy, truthfulness, and completeness of the statements of material fact provided in this form.



**Y3. Section 7—Tables as modified by Washington state.**

See Normative Annex Z - Washington State Reporting Requirements for:

- **Table 7-1 Building Activity Types/Activities**
- **Table 7-2a Building Activity Site Energy Targets (EUI<sub>t</sub>1) (I-P**

**Units)**

- **Table 7-3 Building Operating Shifts Normalization Factor**
- **Table 7-4 Building Activity Type Definitions Table**

## WSR 24-03-043

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed January 9, 2024, 10:55 a.m., effective February 9, 2024]

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

Purpose: Aligning state rule with recognized natural industry guidance for real estate appraiser qualifications, allowing an alternative pathway to appraiser licensure.

Citation of Rules Affected by this Order: Amending WAC 308-125-030 Examination prerequisite general classification, 308-125-040 Examination prerequisite state-certified residential classification, 308-125-045 Examination prerequisite state-licensed classification, and 308-125-070 Experience requirements.

Statutory Authority for Adoption: RCW 18.140.030 Powers and duties of director, and 46.01.110 Rule-making authority.

Adopted under notice filed as WSR 23-23-177 on November 22, 2023.

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 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 9, 2024.

Ellis Starrett  
Rules and Policy Manager

## OTS-5047.1

AMENDATORY SECTION (Amending WSR 16-02-008, filed 12/28/15, effective 1/28/16)

### **WAC 308-125-030 Examination prerequisite general classification.**

The general real estate appraiser classification applies to the appraisal of all types of real property.

(1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than (~~three hundred~~) 300 hours in the following core modules:

(a) Basic appraisal principles, (~~thirty~~) 30 hours.

(b) Basic appraisal procedures, (~~thirty~~) 30 hours.

(c) The National USPAP course or equivalent, (~~fifteen~~) 15 hours.

(d) General appraiser market analysis and highest and best use, (~~thirty~~) 30 hours.

(e) Statistics, modeling and finance, (~~(fifteen)~~) 15 hours.

(f) General appraiser sales comparison approach, (~~(thirty)~~) 30 hours.

(g) General appraiser site valuation and cost approach, (~~(thirty)~~) 30 hours.

(h) General appraiser income approach, (~~(sixty)~~) 60 hours.

(i) General appraiser report writing and case studies, (~~(thirty)~~) 30 hours.

(j) Appraisal subject matter electives, (~~(thirty)~~) 30 hours.

(2) Credit towards qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the appraiser qualifications board.

(3) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess (~~(three thousand)~~) 3,000 hours of appraisal experience obtained continuously over a period of not less than (~~(thirty)~~) 18 months in Washington or in another state having comparable certification requirements.

(4) To fulfill the experience requirement, an applicant must have at least (~~(one thousand five hundred)~~) 1,500 hours of nonresidential appraisal experience.

(5) Applicants for the certified general license must possess a bachelor's degree or higher in any field of study.

AMENDATORY SECTION (Amending WSR 18-24-113, filed 12/4/18, effective 1/4/19)

**WAC 308-125-040 Examination prerequisite state-certified residential classification.** The state-certified residential real estate appraiser classification applies to appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value less than (~~(two hundred fifty thousand dollars)~~) \$250,000.

(1) As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than (~~(two hundred)~~) 200 hours in the following core modules:

(a) Basic appraisal principles, (~~(thirty)~~) 30 hours.

(b) Basic appraisal procedures, (~~(thirty)~~) 30 hours.

(c) The National USPAP course or equivalent, (~~(fifteen)~~) 15 hours.

(d) Residential market analysis and highest and best use, (~~(fifteen)~~) 15 hours.

(e) Residential appraiser site valuation and cost approach, (~~(fifteen)~~) 15 hours.

(f) Residential sales comparison and income approaches, (~~(thirty)~~) 30 hours.

(g) Residential appraiser report writing and case studies, (~~(fifteen)~~) 15 hours.

(h) Statistics, modeling and finance, (~~(fifteen)~~) 15 hours.

(i) Advanced residential applications and case studies, (~~(fifteen)~~) 15 hours.

(j) Appraisal subject matter electives, (~~(twenty)~~) 20 hours.

(2) Credit towards qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the appraiser qualifications board.

(3) An original certification as a state-certified residential real estate appraiser shall not be issued to any person who does not possess (~~(two thousand five hundred)~~) 1,500 hours of appraisal experience obtained continuously over a period of not less than (~~(twenty-four)~~) 12 months in Washington or in another state having comparable certification requirements.

(4) Applicants for the certified residential appraiser license must satisfy one of the following college education requirement options:

- (a) Possess a bachelor's degree or higher in any field of study; or
- (b) Possess an associate's degree in a field of study related to business administration, accounting, finance, economics, or real estate; or
- (c) Successful completion of (~~(thirty)~~) 30 semester hours of college level courses in all of the following subject matter areas:
  - (i) English composition, three hours; and
  - (ii) Microeconomics, three hours; and
  - (iii) Macroeconomics, three hours; and
  - (iv) Finance, three hours; and
  - (v) Algebra, geometry, or higher mathematics, three hours; and
  - (vi) Statistics, three hours; and
  - (vii) Business or real estate law, three hours; and
  - (viii) Computer science, three hours; and
  - (ix) Two elective courses in: Accounting, geography, agricultural economics, business management, or real estate, three hours each.
- (d) Successful completion of at least (~~(thirty)~~) 30 semester hours of college level examination program (CLEP) examinations in all of the following subject matter areas:
  - (i) College algebra, three hours; and
  - (ii) College composition, six hours; and
  - (iii) College composition modular, three hours; and
  - (iv) College mathematics, six hours; and
  - (v) Principles of macroeconomics, three hours; and
  - (vi) Principles of microeconomics, three hours; and
  - (vii) Introductory business law, three hours; and
  - (viii) Information systems, three hours.
- (e) Any (~~(thirty)~~) 30 semester credit hour combination of (c) and (d) of this subsection that includes at least one course or CLEP exam in each of the following subject matter areas:
  - (i) Composition; and
  - (ii) Microeconomics; and
  - (iii) Macroeconomics; and
  - (iv) Business law; and
  - (v) Algebra, geometry or higher mathematics.
- (f) No college level education is required to apply for state-certified residential real estate appraiser license for an appraiser that has held a state-licensed real estate appraiser license for a minimum of five years, and satisfies all of the following requirements:

(i) No record of any adverse, final and nonappealable disciplinary action affecting the state-licensed real estate appraiser's legal eligibility to engage in appraisal practice within five years immediately preceding the date of application for a state-certified residential real estate appraiser license; and

(ii) Successful completion of the following core qualifying education modules:

(A) Statistics, modeling, and finance, (~~(fifteen)~~) 15 hours; and

(B) Advanced residential applications and case studies, (~~(fifteen)~~) 15 hours; and

(C) Appraisal subject matter electives, (~~(twenty)~~) 20 hours; and

(iii) Successful completion of the required experience as specified in subsection (3) of this section; and

(iv) Successful completion of the certified residential real property appraiser examination as specified in these rules.

AMENDATORY SECTION (Amending WSR 18-24-113, filed 12/4/18, effective 1/4/19)

**WAC 308-125-045 Examination prerequisite state-licensed classification.** The state-licensed real estate appraiser classification applies to appraisal of noncomplex one to four residential units having a transaction value less than (~~(one million dollars)~~) \$1,000,000 and complex one to four residential units having a transaction value less than (~~(two hundred fifty thousand dollars)~~) \$400,000 and nonresidential property having a transaction value less than (~~(two hundred fifty thousand dollars)~~) \$250,000.

(1) As a prerequisite to taking the examination for certification as a state-licensed real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than (~~(one hundred fifty)~~) 150 hours in the following core modules:

(a) Basic appraisal principles, (~~(thirty)~~) 30 hours.

(b) Basic appraisal procedures, (~~(thirty)~~) 30 hours.

(c) The National USPAP course or equivalent, (~~(fifteen)~~) 15 hours.

(d) Residential market analysis and highest and best use, (~~(fifteen)~~) 15 hours.

(e) Residential appraiser site valuation and cost approach, (~~(fifteen)~~) 15 hours.

(f) Residential sales comparison and income approaches, (~~(thirty)~~) 30 hours.

(g) Residential appraiser report writing and case studies, (~~(fifteen)~~) 15 hours.

(2) Credit toward qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the appraiser qualifications board.

(3) An original certification as a state-licensed real estate appraiser shall not be issued to any person who does not possess (~~(two thousand)~~) 1,000 hours of appraisal experience obtained continuously over a period of not less than (~~(twelve)~~) six months in Washington or in another state having comparable certification requirements.

AMENDATORY SECTION (Amending WSR 18-24-113, filed 12/4/18, effective 1/4/19)

**WAC 308-125-070 Experience requirements.** (1) State licensed applicants must accumulate (~~(two thousand)~~) 1,000 hours within a minimum of (~~(one year (twelve))~~) six months (~~(+)~~) and a maximum of seven years. Certified residential applicants must accumulate (~~(two thousand five hundred)~~) 1,500 hours within a minimum of (~~(two)~~) one year (~~(s (twenty-four))~~) (12 months) and a maximum of seven years. Certified general applicants must accumulate (~~(three thousand)~~) 3,000 hours within a minimum of (~~(thirty)~~) 18 months and a maximum of seven years.

(2) Any work product claimed for experience credit dated January 1, 1990, and later shall conform to the Uniform Standards of Professional Appraisal Practice in effect at the time the appraisal is completed.

(a) Reports shall be in writing.

(b) An appraisal work file must be available to the director to substantiate work performed.

(c) Appraisal experience must have been performed as a licensed or certified appraiser or a registered trainee to qualify. Appraisal experience accrued through a Practical Applications of Real Estate Appraisal program is exempt from the requirements of this subsection (2)(c) of this section.

(3) A registered trainee may gain experience under the supervision of no more than six supervisory appraisers during his/her trainee period.

(4) The department may request appraiser work files to verify, confirm, or compare entries made on the experience log. Failure to provide work files to the department upon its request may disqualify the reports as qualifying experience.

(5) An applicant for certification or license shall certify, under penalty of perjury, the completion of the required experience.

(6) Appraisal work qualifying for appraisal experience includes, but is not limited to, the following: Fee and staff appraisal, ad valorem tax appraisal, appraisal review, appraisal analysis, appraisal consulting, highest and best use analysis, feasibility analysis/study.

(7) The department may require a supervisory appraiser to certify, under penalty of perjury, the applicant's work experience.

(8) The department may request written reports or work files to verify an applicant's experience.

(9) As an alternative means to satisfy the experience requirements of this section, applicants may complete a Practical Applications of Real Estate Appraisal (PAREA) program. PAREA programs must be approved by the Appraiser Qualification Board prior to the program's administration.

(a) Participants may not receive partial credit for a Practical Applications of Real Estate Appraisal program.

(b) Participants may not receive a certificate of completion until all required components of the Practical Applications of Real Estate Appraisal program have been successfully completed and approved by a program mentor.

(c) Experience hours gained from Practical Applications of Real Estate Appraisal programs are exempt from state locality requirements outlined in WAC 308-125-020(2), 308-125-040(3), and 308-125-045(3).

(d) Participants who complete a Licensed Residential Practical Applications of Real Estate Appraisal program may apply their certificate of completion in the following ways:

(i) A Licensed Residential PAREA certificate of completion may satisfy up to 100 percent of the required experience hours for the Licensed Residential classification.

(ii) A Licensed Residential PAREA certificate of completion may satisfy up to 67 percent of the required experience hours for the Certified Residential classification.

(iii) A Licensed Residential PAREA certificate of completion may satisfy up to 33 percent of the required experience hours for the Certified General classification, none of which is eligible towards the required nonresidential hours.

(e) Participants who complete a Certified Residential Practical Applications of Real Estate Appraisal program may apply their certificate of completion in the following ways:

(i) A Certified Residential PAREA certificate of completion may satisfy up to 100 percent of the required experience hours for the Licensed Residential classification.

(ii) A Certified Residential PAREA certificate of completion may satisfy up to 100 percent of the required experience hours for the Certified Residential classification.

(iii) A Certified Residential PAREA certificate of completion may satisfy up to 50 percent of the required experience hours for the Certified General classification, none of which is eligible towards the required nonresidential hours.

## WSR 24-03-049

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed January 10, 2024, 10:13 a.m., effective February 10, 2024]

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

Purpose: The agency is revising these rules to include coverage for adult cochlear implants for apple health (medicaid) clients, update cochlear implant device coverage criteria, and revise the expedited prior authorization explanation. This permanent rule adoption supersedes the emergency rules filed under WSR 24-02-047 on December 28, 2023.

Citation of Rules Affected by this Order: Amending WAC 182-531-0200 and 182-531-0375.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-24-002 on November 27, 2023.

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: January 10, 2024.

Wendy Barcus  
Rules Coordinator

## OTS-4917.2

AMENDATORY SECTION (Amending WSR 15-16-084, filed 7/31/15, effective 8/31/15)

**WAC 182-531-0200 Physician-related and health care professional services requiring prior authorization.** (1) The medicaid agency requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE)**. See WAC 182-501-0165.

(2) ~~((The))~~ EPA ~~((process))~~ is designed to eliminate the need for ~~((telephone prior))~~ written authorization ((for selected admissions and procedures)). The agency establishes authorization criteria and identifies the criteria with specific codes, enabling providers to use that EPA number if a client meets the EPA criteria.

(a) The provider must create an authorization number using the process explained in the medicaid agency's physician-related billing instructions.



(b) Upon request, the provider must provide supporting clinical documentation to the medicaid agency showing how the authorization number was created.

(c) Selected nonemergency admissions to contract hospitals require EPA. These are identified in the medicaid agency billing instructions.

(d) Procedures allowing expedited prior authorization include, but are not limited to, the following:

- (i) Reduction mammoplasties/mastectomy for gynecomastia;
- (ii) Strabismus surgery for clients (~~(eighteen)~~) 18 years of age and older;
- (iii) Meningococcal vaccine;
- (iv) Placement of drug eluting stent and device;
- (v) Cochlear implant(~~(s for clients twenty years of age and younger)~~) devices;
- (vi) Hyperbaric oxygen therapy;
- (vii) Visual exam/refraction for clients (~~(twenty-one)~~) 21 years of age and older;
- (viii) Blepharoplasties; and
- (ix) Neuropsychological testing for clients (~~(sixteen)~~) 16 years of age and older.

(3) The medicaid agency evaluates new technologies under the procedures in WAC 182-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

- (a) Abdominoplasty;
- (b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R)**;
- (c) (~~(Unilateral)~~) Cochlear implant(~~(s for clients twenty years of age and younger)~~) devices (refer to WAC 182-531-0375);
- (d) Diagnosis and treatment of eating disorders for clients (~~(twenty-one)~~) 21 years of age and older;
- (e) Osteopathic manipulative therapy in excess of the medicaid agency's published limits;
- (f) Panniculectomy;
- (g) Bariatric surgery (see WAC 182-531-1600);
- (h) Vagus nerve stimulator insertion, which also:
- (i) For coverage, must be performed in an inpatient or outpatient hospital facility; and
- (ii) For reimbursement, must have the invoice attached to the claim.
- (i) Osseointegrated/bone anchored hearing aids (BAHA) for clients (~~(twenty)~~) 20 years of age and younger;
- (j) Removal or repair of previously implanted BAHA or cochlear implant devices for clients (~~(twenty-one)~~) 21 years of age and older when medically necessary; and
- (k) Gender reassignment surgery (see WAC 182-531-1675).

(5) All hysterectomies performed for medical reasons may require prior authorization, as explained in subsection (2) of this section.

(a) Hysterectomies may be performed without prior authorization in either of the following circumstances:

(i) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or

(ii) A hysterectomy is needed due to trauma.

(b) The agency reimburses all attending providers for a hysterectomy procedure only when the provider submits an accurately completed agency-approved consent form with the claim for reimbursement.

(6) The medicaid agency may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(7) Children six years of age and younger do not require authorization for hospitalization.

AMENDATORY SECTION (Amending WSR 15-03-042, filed 1/12/15, effective 2/12/15)

**WAC 182-531-0375 Audiology services.** (1) The agency covers ~~((r))~~ medically necessary cochlear implant devices with prior authorization ~~((, cochlear devices for clients twenty years of age and younger with the following limitations:~~

~~(a) The client meets one of the following:~~

~~(i) Has a diagnosis of profound to severe bilateral, sensorineural hearing loss;~~

~~(ii) Has stimulable auditory nerves but has limited benefit from appropriately fitted hearing aids (e.g., fail to meet age-appropriate auditory milestones in the best-aided condition for young children, or score of less than ten or equal to forty percent correct in the best-aided condition on recorded open-set sentence recognition tests);~~

~~(iii) Has the cognitive ability to use auditory clues;~~

~~(iv) Is willing to undergo an extensive rehabilitation program;~~

~~(v) Has an accessible cochlear lumen that is structurally suitable for cochlear implantation;~~

~~(vi) Does not have lesions in the auditory nerve and/or acoustic areas of the central nervous system; or~~

~~(vii) Has no other contraindications to surgery; and~~

~~(b) The procedure is performed in an inpatient hospital setting or outpatient hospital setting)) for eligible clients.~~

(2) The agency covers BAHAs for clients ~~((twenty))~~ 20 years of age and younger with prior authorization.

(3) The agency covers replacement parts and batteries for BAHAs and cochlear implant devices ~~((for clients twenty years of age and younger only))~~. See WAC 182-547-0800 and 182-547-0850.

(4) The agency considers requests for removal or repair of previously implanted BAHAs and cochlear implant devices ~~((for clients twenty one years of age and older only))~~ when medically necessary. Prior authorization from the agency is required.

~~((5) For audiology, the agency limits:~~

~~(a) Caloric vestibular testing to four units for each ear; and~~

~~(b) Sinusoidal vertical axis rotational testing to three units for each direction.))~~

## WSR 24-03-050

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed January 10, 2024, 10:18 a.m., effective February 10, 2024]

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

Purpose: The health care authority (agency) is amending WAC 182-509-0220 to specify that medicare savings programs do not have a resource limit, which is consistent with section 211(40), chapter 475, Laws of 2023, and WAC 182-517-0100 as amended under WSR 22-21-043. The agency is amending WAC 182-519-0050 to correct a website address for the Washington apple health income and resource standards chart and update the medically needy income level and federal benefit rate.

Citation of Rules Affected by this Order: Amending WAC 182-509-0220 and 182-519-0050.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-24-003 on November 27, 2023.

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: January 10, 2024.

Wendy Barcus  
Rules Coordinator

## OTS-5025.3

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-509-0220 Washington apple health—How resources are considered.** (1) A resource is any cash, other personal property, or real property that a person:

- (a) Owns;
- (b) Has the right, authority, or power to convert to cash (if not already cash); and
- (c) Has the legal right to use for his or her support and maintenance.

(2) There is no resource limit for an applicant or recipient of the following Washington apple health (~~((WAH))~~) (medicaid) programs:

- (a) ~~((WAH))~~ Apple health for workers with disabilities (HWD) program, as described in chapter 182-511 WAC;
- (b) ~~((WAH))~~ Apple health foster care program (see WAC 182-505-0211);

(c) Medicare savings programs (see WAC 182-517-0100);

(d) All programs that are based on modified adjusted gross income (MAGI) methodologies, as described in WAC 182-503-0510. This includes the following:

(i) ((WAH)) Apple health for parents and caretaker relatives (see WAC 182-505-0240);

(ii) ((WAH for pregnant women)) Apple health pregnancy coverage (see WAC 182-505-0115);

(iii) ((WAH)) Apple health for kids (see WAC 182-505-0210);

(iv) Premium-based ((WAH)) apple health for kids (see WAC 182-505-0215);

(v) ((WAH)) Apple health long-term care for children and adults (see WAC 182-514-0230);

(vi) ((WAH)) Apple health for MAGI-based adult coverage (see WAC 182-505-0250); and

(vii) ((WAH)) Apple health MAGI-based adult alien emergency medical (see WAC 182-507-0110).

(3) For all other ((WAH)) apple health programs, the resource limits and exclusions can be found in the following chapters:

(a) ((WAH)) Apple health SSI-related medical (see chapter 182-512 WAC) with the exception of programs listed in subsection (2) of this section;

(b) ((WAH)) Apple health long-term care (see chapters 182-513 and 182-515 WAC);

(c) SSI-related ((WAH)) apple health alien medical program (see chapter 182-507 WAC);

(d) ((Medicare savings program (see WAC 182-517-0310)));

~~(e) WAH))~~ Apple health for refugees (see WAC 182-507-0130); and

~~((f))~~ (e) Medical care services (see WAC ~~((182-509-0200))~~ 182-508-0005).

(4) The agency or its designee determines how trusts, annuities and life estates affect eligibility for ((WAH)) apple health coverage for the programs listed in subsection((s)) (3)(a) through ~~((f))~~ (e) of this section by following the rules described in chapter 182-516 WAC.

(5) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations when a resource determination is required by the specific ((WAH)) apple health program. If no resource determination is required by the specific ((WAH)) apple health program, eligibility is not affected.

## OTS-5026.2

AMENDATORY SECTION (Amending WSR 23-11-009, filed 5/4/23, effective 6/4/23)

**WAC 182-519-0050 Monthly income and countable resource standards for medically needy (MN).**

(1) Changes to the medically needy income level (MNIL) occur on January 1st of each calendar year when the Social Security Administration (SSA) issues a cost-of-living adjustment.

(2) Medically needy (MN) standards for people who meet institutional status requirements are in WAC 182-513-1395. The standard for a client who lives in an alternate living facility is in WAC 182-513-1205.

(3) The resource standards for institutional programs are in WAC 182-513-1350. The institutional standard chart is found at: (<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>) <http://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.

(4) Countable resource standards for the noninstitutional MN program are:

- (a) One person \$2,000
- (b) A legally married couple \$3,000
- (c) For each additional family member add \$50

(5) People who do not meet institutional status requirements use the "effective" MNIL income standard to determine eligibility for the MN program. The "effective" MNIL is the one-person federal benefit rate (FBR) established by SSA each year, or the MNIL listed in the chart below, whichever amount is higher. The FBR is the supplemental security income (SSI) payment standard. For example, in ((2012)) 2023, the FBR is ((~~\$698~~)) \$914.

1	2	3	4	5	6	7	8	9	10
<del>((467))</del> 914	<del>((592))</del> 914	<del>((667))</del> 914	<del>((742))</del> 914	<del>((858))</del> 914	975	1125	1242	1358	1483

**WSR 24-03-053**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed January 10, 2024, 3:33 p.m., effective February 10, 2024]

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

Purpose: These proposed rules are meant to update election administration processes in accordance with legislative amendments and ensure consistency in operations in all county elections offices.

Citation of Rules Affected by this Order: Amending WAC 434-208-060, 434-215-040, 434-215-065, 434-230-025, 434-230-040, 434-261-005, 434-324-090, and 434-381-120.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 23-24-082 on December 5, 2023.

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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 8, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 10, 2024.

Amanda Doyle  
Chief of Staff

## OTS-4856.2

AMENDATORY SECTION (Amending WSR 19-05-041, filed 2/14/19, effective 3/17/19)

**WAC 434-208-060 Electronic filings.** (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(b) Any minor party or independent candidate filing material for president and vice president, except nominating petitions;

(c) Lists of presidential electors selected by political parties or independent candidates;

(d) Voted ballots and signed ballot declarations from service and overseas voters received no later than 8:00 p.m. on election day;

(e) Resolutions from cities, towns, and other districts calling for a special election;

(f) Voter registration and cancellation forms, unless the form is illegible or the signature image is poor quality, requiring the county auditor to reject the form;

(g) Signed ballot declarations, and any accompanying materials, submitted pursuant to RCW 29A.60.165 and WAC 434-261-050; and

(h) Requests to withdraw.

(2) If payment of a fee is required, the electronic filing is not complete until the fee is received.

(3) No initiative, referendum, recall, or other signature petitions may be filed electronically.

(4) County auditors must use best practices provided by the secretary of state for securely handling documents received by fax and email.

#### OTS-4855.4

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

**WAC 434-215-040 ((Filing notification.)) Online filing—Contin-gency plan.** ((Declarations of candidacy for legislative, court of appeals, and superior court districts located within one county must be filed with the county auditor.)) In the event of an internet outage or disruption to the office of the secretary of state's online candidate filing system, declarations of candidacy and filing fees for offices that file with the secretary of state may be received in person by any county auditor during the last two hours of the filing period. All information listed on the declaration of candidacy for these offices must be ((sent electronically)) transmitted to the secretary of state ((the same day)) as soon as practicable after the filing was accepted.

#### OTS-4849.1

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

**WAC 434-215-065 Withdrawal of candidacy.** Consistent with RCW 29A.24.131, a candidate may withdraw ((his or her)) their declaration of candidacy at any time before ((the close of business)) 5:00 p.m. on the Monday following the last day for candidates to file. The candidate must file a signed request that ((his or her)) their name not be printed on the ballot. This request to withdraw must be filed with the officer who accepted the declaration of candidacy. A request to withdraw may be filed electronically. Once filed, the withdrawal cannot be revoked. There shall be no withdrawal period for declarations of candidacy filed during special filing periods.

#### OTS-4850.1

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

**WAC 434-230-025 Order of offices.** Measures and offices must be listed in the following order, to the extent that they appear on a primary or election ballot:

- (1) Initiatives to the people;
- (2) Referendum measures;
- (3) Referendum bills;
- (4) Initiatives to the legislature and any alternate proposals;
- (5) ~~((Advisory votes;~~
- ~~(6))~~ Proposed constitutional amendments (senate joint resolutions, then house joint resolutions);
- ~~((7))~~ (6) Countywide ballot measures;
- ~~((8))~~ (7) President and vice president of the United States;
- ~~((9))~~ (8) United States senator;
- ~~((10))~~ (9) United States representative;
- ~~((11))~~ (10) Governor;
- ~~((12))~~ (11) Lieutenant governor;
- ~~((13))~~ (12) Secretary of state;
- ~~((14))~~ (13) State treasurer;
- ~~((15))~~ (14) State auditor;
- ~~((16))~~ (15) Attorney general;
- ~~((17))~~ (16) Commissioner of public lands;
- ~~((18))~~ (17) Superintendent of public instruction;
- ~~((19))~~ (18) Insurance commissioner;
- ~~((20))~~ (19) State senator;
- ~~((21))~~ (20) State representative;
- ~~((22))~~ (21) County officers;
- ~~((23))~~ (22) Justices of the supreme court;
- ~~((24))~~ (23) Judges of the court of appeals;
- ~~((25))~~ (24) Judges of the superior court; and
- ~~((26))~~ (25) Judges of the district court.

For all other jurisdictions, the offices in each jurisdiction shall be grouped together and listed by position number according to county auditor procedures.

### OTS-4851.3

AMENDATORY SECTION (Amending WSR 22-10-041, filed 4/27/22, effective 5/28/22)

**WAC 434-232-040 Information pertaining to primary-only voters, when disclosable.** (1) Pursuant to RCW 29A.08.720, personally identifiable information from the voter registration record is exempt from public inspection and copying until the voter is 18 years of age, ~~((except for the purpose of processing and delivering ballots))~~ or until the person is eligible to participate in the next presidential primary, primary, or election.

(2) Pursuant to RCW 29A.40.130, ballot issuance and return information for a primary-only voter, excluding the date of birth, gender, and address, is subject to public disclosure at the time of ballot is-



suance by the county auditor for a presidential primary or primary that the voter is eligible to participate in.

(3) Pursuant to RCW 29A.08.170, a person who signs up to register to vote must remain as a "future voter" as defined by RCW 29A.04.070 until such time as they will be eligible to vote in the next election. The voter registration information is exempt from public inspection and copying until they are 18 years of age or until the person is eligible to participate in the next presidential primary, primary, or election. (~~(The ballot issuance and return information is exempt until they are eligible to participate in an election. When a person is eligible to participate in an election, the date of birth, gender, and address of the person is exempt from disclosure when providing ballot issuance and return information in accordance with RCW 29A.40.130 until they are 18 years of age.)~~)

### OTS-4847.1

AMENDATORY SECTION (Amending WSR 21-21-001, filed 10/6/21, effective 11/6/21)

**WAC 434-261-005 Definitions.** (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed as part of the initial processing;

(2) "Ballot duplication" is the process of making a true copy of valid votes from a physically damaged ballot or a ballot that is unreadable or uncountable by the tabulation system onto a paper or electronic blank ballot to ensure the ballot may be correctly tabulated by the tabulation system. The original ballot may not be altered. Teams of two or more people working together must duplicate ballots according to voter intent as per WAC 434-261-086. A log of duplicated ballots must be signed by the two or more people who duplicated the ballots;

(3) "Ballot resolution" is the process of making changes on a voted electronic ballot image to ensure the ballot is tabulated according to the voter's intent. The changes must reflect the voter intent as per WAC 434-261-086 and the original ballot may not be altered. Changes must be made by teams of two or more people working together. A log of resolved ballots must be signed by the two or more people resolving the ballots;

(4) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(5) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(6) "Valid signature" on a ballot declaration for a registered voter eligible to vote in the election is:

(a) A signature verified against the voter's signature in the voter registration file attesting to the voter registration oath;  
(~~or~~)

(b) A mark witnessed by two people; or

(c) A signature verified against the voter's signature in the voter registration file attesting to the ballot declaration.

(7) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one";

(8) "Undervote" is no selections made for a race or measure;

(9) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures;

(10) "Seal log" is a log documenting each time a numbered seal is attached or removed from a ballot container. The log must include the seal number, date, and identifying information of persons attaching or removing the seal. Following certification of the election, the seal log must include documentation as to why the seal was removed from a ballot container.

#### OTS-4857.1

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

**WAC 434-324-090 Cancellation due to death—Process.** (1) An auditor must cancel the voter registration records of a deceased voter as authorized by RCW 29A.08.510.

(2) In addition to comparing a list of deceased persons prepared by the registrar of vital statistics with voter registration records pursuant to RCW 29A.08.510, the secretary may also compare voter registration records with deceased persons' information from the Social Security Administration. Comparisons must be conducted on a monthly basis. For any potential matches identified through the registrar of vital statistics or Social Security Administration, the secretary must confirm that the dates of birth are identical. The secretary must generate a county list of matching names, identified as potentially deceased voters, and provide the names to each auditor electronically. The auditor must review the list and approve or reject the proposed cancellations. The secretary may assist the auditor with this review.

(3) The county auditor must remove a participant from the future voter program established under RCW 29A.08.170 upon receipt of documentation from Vital Statistics, Social Security Administration, official death certificate, or written confirmation from another registered voter that the participant is deceased.

#### OTS-4854.2

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-381-120 Deadlines.** (1) Candidate statements and photographs shall be submitted to the secretary of state no later than ~~((the Friday))~~ 11 days following the last day of the filing period.

(a) A declared primary election write-in candidate may submit a statement and photograph to the secretary of state no later than the Tuesday following the primary election.

(b) An unopposed candidate on the primary ballot may submit a revised statement only when a write-in candidate for the same position files a declaration of candidacy. The revised statement must be received no later than the Tuesday following the primary election.

(2) For ballot measures, including initiatives, referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: No later than seven business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, no later than seven business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot;

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, no later than the date the committee submits its initial argument to the secretary of state;

(c) For arguments for or against a ballot measure:

(i) For an initiative to the people or referendum measure: No later than ~~((ten))~~ 10 business days following appointment of the initial committee members;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, no later than ~~((fourteen))~~ 14 business days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, no later than five business days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters' pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so. Once statements or arguments are submitted to the secretary, changes by the candidate or committee will not be accepted unless requested by the secretary.

## WSR 24-03-055

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Board of Nursing)

[Filed January 11, 2024, 8:30 a.m., effective February 11, 2024]

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

Purpose: Temporary practice permit effective dates for licensed practical nurses and registered nurses. The Washington state board of nursing (board) is adopting amendments to WAC 246-840-095, reducing the length of time a temporary practice permit is effective and updating criteria to issue a temporary practice permit in order to align the internal board process with rule language and implement 2SHB 1009 (chapter 165, Laws of 2023).

The board is adopting amendments to reduce the length of time a temporary practice permit is active from 180 days after the temporary practice permit is issued to 60 days to align WAC 246-840-095 with the current practice of the board and promote completion of the licensure process. The amendments also reduce the extension of the temporary practice permit from 180 days to 30 days.

The amendments exclude military spouses in accordance with 2SHB 1009, which requires the board to issue a temporary practice permit, which is active for no less than 180 days, to a person who meets the criteria of RCW 18.340.020, within 30 days of receiving a completed application.

Citation of Rules Affected by this Order: Amending WAC 246-840-095.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, 18.79.160, 18.79.200, 18.340.020, 18.130.064, and 18.130.075.

Adopted under notice filed as WSR 23-21-071 on October 12, 2023.

Changes Other than Editing from Proposed to Adopted Version: Non-substantive technical changes were made to the proposed rule language that clarify the applicant must initiate the national fingerprint background check, either with physical fingerprint cards or digitally through LiveScan, within 30 days of applying to the board. The national fingerprint background check can be completed through either of these methods. Other technical changes were also made to remain consistent with how the board refers to the fingerprint-based national background check throughout the rule.

A final cost-benefit analysis is available by contacting Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email WABONRules@doh.wa.gov, website [www.nursing.wa.gov](http://www.nursing.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 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: November 29, 2023.

Alison Bradywood DNP, MN/MPH, RN, NEA-BC  
Executive Director  
Washington State Board of Nursing

**OTS-4709.4**

AMENDATORY SECTION (Amending WSR 10-07-015, filed 3/5/10, effective 4/5/10)

**WAC 246-840-095 Temporary practice permits.** The ~~((nursing care quality assurance commission (NCQAC)))~~ Washington state board of nursing (board) conducts background checks on applicants to assure safe patient care. Completion of a fingerprint-based national background check may cause a delay in licensing.

(1) The ~~((NCQAC))~~ board may issue a temporary practice permit to an applicant who holds an unrestricted, active license in another state which has substantially equivalent licensing standards to those in Washington. The applicant must not be subject to denial of a license or issuance of a conditional or restricted license.

(2) A temporary practice permit serves as a license to practice nursing during the time period specified on the permit.

(3) A temporary practice permit expires when:

(a) A license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) ~~((One hundred eighty))~~ Sixty days after the temporary practice permit is issued, or 180 days for military spouse applicants.

If, at the expiration of the original temporary practice permit, the department of health (department) has not received information from the fingerprint-based national background check, the ~~((NCQAC))~~ board may renew the temporary practice permit for an additional ~~((one hundred eighty))~~ 30 days.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit to the board an application and the necessary application fee(s) ((and documentation)) for the license.

(b) ~~((Submit a completed national background check fingerprint card, if required.~~

~~((e)))~~ Meet all other requirements and qualifications for the license, except for the results from a fingerprint-based national background check, if required.

~~((d)))~~ (c) Provide to the board verification of holding an unrestricted nursing license from another state that has substantially equivalent licensing standards to those in Washington.

~~((e) Submit a separate application for a temporary practice permit.))~~ (5) The applicant shall initiate the fingerprint-based national background check process with the department within 30 days of applying to the board, or the permanent license application may be closed as incomplete. The temporary practice permit shall not be extended in accordance with subsection (3)(c) of this section unless the applicant's fingerprints have been received by the department and a fingerprint-based national background check is in process.

WSR 24-03-064

PERMANENT RULES

GAMBLING COMMISSION

[Filed January 12, 2024, 12:18 p.m., effective February 12, 2024]

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

Purpose: The gambling commission (commission) will repeal WAC 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations, because the commission has not received an application for large bingo operations in 20 years, and other rules exist imposing additional reporting requirements on charitable and nonprofit organizations with gross gambling receipts of \$3 million or more, making this rule redundant.

Citation of Rules Affected by this Order: Repealing WAC 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 23-23-140 on November 20, 2023.

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 1.

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: January 12, 2024.

Lisa C. McLean  
Legislative and Policy Manager

## WSR 24-03-081

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 16, 2024, 4:16 p.m., effective February 16, 2024]

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

Purpose: The department is amending WAC 458-20-168 and 458-20-244 due to changes from recent legislation, SB [SHB] 1431 (2023).

Citation of Rules Affected by this Order: Amending WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities and 458-20-244 Food and food ingredients.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 23-22-012 on October 19, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at 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: January 16, 2024.

Atif Aziz  
Rules Coordinator

## OTS-5030.3

AMENDATORY SECTION (Amending WSR 22-14-014, filed 6/23/22, effective 7/24/22)

**WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities.** (1) **Introduction. This rule explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating:**

- Hospitals as defined in RCW 70.41.020;
- Nursing homes as defined in RCW 18.51.010;
- Assisted living facilities as defined in RCW 18.20.020;
- Adult family homes as defined in RCW 70.128.010;
- Senior living communities as defined in RCW 82.04.040; and
- Similar health care facilities.

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

(b) **Other rules that may apply.** Readers may want to refer to the rules in the following list for additional information:

- (i) WAC 458-20-102 Reseller permits.

- (ii) WAC 458-20-111 Advances and reimbursements.
- (iii) WAC 458-20-150 Optometrists, ophthalmologists, and opticians.
- (iv) WAC 458-20-151 Dentists, audiologists, and other health care providers—Dental laboratories and dental technicians.
- (v) WAC 458-20-169 Nonprofit organizations.
- (vi) WAC 458-20-178 Use tax and the use of tangible personal property.
- (vii) WAC 458-20-18801 Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.
- (viii) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals.** For purposes of this rule, the following definitions apply:

- **"Hospital"** - The term hospital is as defined in RCW 70.41.020. It includes hospitals that come within the scope of chapter 71.12 RCW, but only if they are also licensed under chapter 70.41 RCW.
- **"Public hospital" or "nonprofit hospital"** - Public or nonprofit hospitals are hospitals operated by the state or any of its political subdivisions or operated as nonprofit corporations.

(a) **Hospital services to patients.** Gross income earned by hospitals for providing personal or professional services to patients is subject to B&O tax as shown in the table below. RCW 82.04.260.

Report Income From Providing Personal or Professional Services	Reporting Classification
For profit hospitals	For profit hospitals B&O tax classification
Public and nonprofit hospitals	Public or nonprofit hospitals B&O tax classification

Gross income earned for providing nonmedical services, interest received on patient accounts receivable, and amounts earned for providing transcribing services to physicians are subject to service and other activities B&O tax.

(b) **Clinics and departments operated by hospitals.** Gross income earned by medical clinics and departments providing services to patients and operated by a hospital is subject to B&O tax as shown in subsection (2)(a) of this rule, where the operation of a medical clinic or department is covered by the hospital's license. If the clinic or department is not covered by the hospital's license, the gross income earned by a medical clinic or department providing services to patients is subject to B&O tax under the service and other activities B&O tax classification.

(i) **Example 1.** Acme Hospital is a nonprofit hospital that has a medical clinic that is physically located within the hospital. The clinic is open only during the hours of 8:00 a.m. to 5:00 p.m., and provides no domiciliary care or overnight facilities to its patients. The medical clinic is covered under Acme Hospital's hospital license. Gross income earned by the medical clinic for providing patient care is subject to the Public and Nonprofit Hospital B&O Tax Classification because the clinic is covered under the hospital license.

(ii) **Example 2.** Mountain Hospital is a for profit hospital with a cancer treatment facility that is located one mile from the hospital



campus. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients but only during regular business hours. The cancer treatment facility is covered under the hospital's license. Gross income earned by the cancer treatment facility is subject to the For Profit Hospitals B&O tax classification because the facility is covered under the hospital's license.

(c) **Educational programs and services.** Amounts earned by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if the educational programs and services are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services. Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts received from educational programs and services are subject to the service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(3) **Personal and professional services from other medical clinics, nursing homes, and similar health care facilities.** Gross income earned by medical clinics, nursing homes, and similar health care facilities for providing personal and professional services is subject to service and other activities B&O tax. Physicians performing these services are also subject to service and other activities B&O tax on gross income earned. Services provided are ones not integral, interrelated, and an essential part of a hospital operation.

(4) **Assisted living facilities and domiciliary care.** For the purpose of this rule, "assisted living facilities" and "domiciliary care" have the same meaning as found in RCW 18.20.020. A preferential B&O tax rate is provided by RCW 82.04.2908 to persons operating assisted living facilities licensed under chapter 18.20 RCW. Persons operating licensed assisted living facilities should report their gross income derived from providing room and domiciliary care to residents under the licensed assisted living facilities B&O tax classification. Refer to subsection (9)(h) of this rule for B&O tax deductions and exemptions available to persons operating assisted living facilities.

(5) **Hospitals or other health care facilities operated by the state of Washington.** Gross income earned by the state of Washington for operating a hospital or other health care facilities, whether or not owned by the state, is not subject to B&O tax.

(6) **Nonprofit corporations and associations performing research and development.** A separate B&O tax rate applies to nonprofit corporations and nonprofit associations for gross income earned in performing research and development within this state, including medical research. See RCW 82.04.260.

(7) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. The seller must collect retail sales tax

from the buyer and remit the tax to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services.

For example, when a hospital charges a patient for drugs physically administered by the hospital staff, the charges to the patient are subject to B&O tax under the appropriate tax classification as shown in subsection (2)(a) of this rule based on the hospital making the charge. However, charges for drugs sold to persons or their caregivers, either for self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of food, drinks, and meals.** Although the sale of food, drinks, or meals is generally considered to be a retail sale(~~(r)~~):

(i) Hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus, such amounts are not subject to retail sales tax. However, amounts earned by hospitals, nursing homes, assisted living facilities, and similar health care facilities for furnishing meals to patients or residents are subject to B&O tax as part of the services provided to those patients or residents(~~(. Such amounts are not subject to retail sales tax.)~~);

(ii) Senior living communities that furnish food, drinks, or meals to tenants as a part of a rental or residency agreement for which no separate charge is made, regardless of whether the tenant is a resident for purposes of chapter 18.20 or 18.390 RCW, are not considered to be making retail sales of food, drinks, or meals. Thus, such sales are not subject to retail sales tax. However, amounts earned by senior living communities for furnishing food, drinks, or meals to tenants, as described in this subsection (7)(b)(ii), are subject to B&O tax as part of the services provided to those tenants. RCW 82.04.040;

(iii) RCW 82.08.0293 and 82.12.0293 provide, respectively, retail sales tax and use tax exemptions for prepared meals sold to senior citizens, disabled persons, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW. The exemptions apply to sales of prepared meals to nonprofit organizations organized under chapter 24.03A or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render(~~(-)~~); and

(iv) Hospitals, nursing homes, assisted living facilities, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold to doctors, employees, and visitors. These sales of meals are subject to retailing B&O and retail sales taxes. For additional information regarding the sale of

meals, including meals furnished to employees, refer to WAC 458-20-124.

(8) **Industry reporting.** This subsection discusses common reporting issues affecting persons operating medical or other health care facilities.

(a) **Adjustments to revenues.** Many hospitals provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations, the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(b) **Tax consequences if a hospital contracts with an independent contractor to provide medical services at the hospital.** When a hospital contracts with an independent contractor (service provider) to provide medical services, such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income the amount it receives and pays to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount earned from the hospital for providing these services for the hospital. If the service provider subcontracts with a third party, such as a physician or nurse, to help provide medical services as an independent contractor, the service provider may not deduct from its gross income amounts paid to the subcontractor where the service provider is personally liable, either primarily or secondarily, for paying the subcontractor. If, however, the hospital is alone liable for paying the subcontractor, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income the amount it receives from the hospital and pays to the subcontractor. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111.

(c) **Nursing homes and assisted living facilities may not claim a B&O tax exemption for the rental of real estate.** The purpose of nursing homes is to provide medical care to their residents. The purpose of assisted living facilities is to assume general responsibility for the safety and well-being of their residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Assisted living facilities may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the purpose of nursing homes

and assisted living facilities is to provide services and not to lease or rent real property, no part of the gross income of nursing homes or assisted living facilities is exempted from B&O tax as the rental of real estate.

(9) **B&O tax deductions, credits, and exemptions.** This subsection provides information about B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

Deductible amounts should be included in the gross income reported on the combined excise tax return and then identified on the appropriate deduction detail line of the return to determine the amount of taxable income.

(a) **Organ procurement organizations.** RCW 82.04.326 provides a B&O tax exemption for amounts earned by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax.

(b) **Contributions, donations, and endowment funds.** RCW 82.04.4282 provides a B&O tax deduction for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, a B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital may not take a B&O tax deduction on amounts earned from a state university for work-study programs or training seminars, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

(c) **Adult family homes.** RCW 82.04.327 provides a B&O tax exemption for gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS. This exemption does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and nonprofit nursing homes and homes for unwed mothers.** RCW 82.04.4289 provides a B&O tax exemption for amounts earned as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, nonprofit nursing homes and homes for unwed mothers operated as religious or charitable organizations. This exemption applies only if no part of the net earnings earned by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nonprofit nursing homes include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations, as defined in RCW 82.04.431, for amounts earned directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services.

RCW 82.04.4275 provides a B&O tax deduction for amounts health or social welfare organizations receive as compensation for providing child welfare services under a government-funded program.

A deduction is not allowed, however, for amounts that are received under an employee benefit plan. For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts earned under a health service program subsidized by federal or state government.** RCW 82.04.4311 provides a B&O tax deduction to:

- A public hospital that is owned by a municipal corporation or political subdivision; or
- A nonprofit hospital; or
- A nonprofit community health center; or
- A network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, for amounts earned as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, it does not apply to amounts received from patient copayments or patient deductibles. For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

**Example 3.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the medicare plus plan pays \$380. Acme may deduct only the \$600 received from medicare.

(g) **Blood and tissue banks.** Except as otherwise provided, RCW 82.04.324 provides a B&O tax exemption for amounts earned by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent such amounts are exempt from federal income tax.

For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, that is registered under 21 C.F.R., Part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood.

"Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" means a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Parts 607 and 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

"Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Assisted living facilities.** RCW 82.04.4337 provides a B&O tax deduction to licensed assisted living facility operators for amounts earned as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients. For the purpose of this rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

In addition, RCW 82.04.4264 provides a B&O tax exemption for amounts earned by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. For purposes of this rule, "nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03A RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** RCW 82.04.4265 provides a B&O tax exemption for amounts earned by a comprehensive cancer center to the extent such amounts are exempt from federal income tax. For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) **Prescription drugs administered by the medical service provider.** RCW 82.04.620 allows a deduction from the measure of tax for reporting under the service and other activities classification of the B&O tax (RCW 82.04.290) for amounts earned by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For the purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B, drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total amount earned for a specific drug charge. If the total amount earned by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount earned qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (8)(a) of this rule. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount, including any copayment received from the patient that does not exceed the federal rate.

(10) **Sales, use, and other specified taxes deductions and exemptions.** Unless otherwise exempt by law, hospitals, nursing homes, adult family homes, assisted living facilities, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies. The deductions and exemptions listed in this subsection are available to qualified persons.

(a) For the purpose of this subsection, the following definitions apply:

(i) "**Chemical**" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(ii) "**Materials**" for the purposes of RCW 82.08.02807 means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants, used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iii) **"Medical supplies"** means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **"Research"** means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(b) **Temporary medical housing provided by a health or social welfare organization.** RCW 82.08.997 provides an exemption from state and local retail sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under chapter 36.100

RCW;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(c) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a copy of their reseller permit to the seller to document the wholesale nature of the sale.

(d) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** RCW 82.08.808 and 82.12.808 provide, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to a comprehensive cancer center. These exemptions do not apply to sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(e) **Sales of medical supplies, chemicals, or materials to organ procurement organizations.** RCW 82.08.02807 and 82.12.02749 provide, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to organ procurement organizations exempt under RCW 82.04.326. These exemptions do not apply to



the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(11) **Buyer's responsibility to remit deferred sales or use tax.**

If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax, commonly referred to as "deferred sales tax", or use tax directly to the department unless the purchases are specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178.

(a) **Reporting deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their combined excise tax return. As the combined excise tax return does not have a separate line for reporting deferred sales tax, the buyer should report the tax liability on the use tax line. If a deferred sales tax or use tax liability is incurred by a person who is not required to be registered with the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(b) **Consumer Use Tax Return.** The Consumer Use Tax Return may be obtained from the department's website at dor.wa.gov, or by calling the department's telephone information center at 1-360-705-6705.

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

**WAC 458-20-244 Food and food ingredients. (1) Introduction.**

This rule provides guidelines for determining if food or food ingredients qualify for the retail sales tax and use tax exemptions under RCW 82.08.0293 and 82.12.0293 (collectively referred to in this rule as the "exemptions").

There is no corresponding business and occupation (B&O) tax exemption. Even if a sale of food or food ingredients is exempt from retail sales tax or use tax under the exemptions, gross proceeds from sales of food or food ingredients remain subject to the retailing B&O tax.

(2) **Other rules that may apply.** Rules in the following list may contain additional relevant information:

(a) WAC 458-20-119 Sales by caterers and food service contractors;

(b) WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses;

(c) WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses;

(d) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools;

(e) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This rule also provides information on an exclusion from retail sales tax for certain food, drinks, or meals furnished by senior living communities;

(f) WAC 458-20-169 Nonprofit organizations;

(g) WAC 458-20-229 Refunds; and

(h) WAC 458-20-243 Litter tax.

(3) **Items qualifying for the exemptions.**

(a) **In general.** The exemptions apply to food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(b) **Items not used solely for ingestion or chewing.** Items that are commonly ingested or chewed by humans for their taste or nutritional value but which may also be used for other purposes are generally treated as food or food ingredients. For example, pumpkins are presumed to be a food or food ingredient unless the pumpkin is sold painted or is otherwise clearly for decorative purposes rather than consumption. This is true even though the purchaser may use an undecorated pumpkin for carving and display rather than for eating.

(4) **Items not qualifying for the exemptions.** The exemptions do not apply to the following items, which are not considered "food or food ingredients" or which are otherwise specifically excluded from the exemptions:

(a) **Items sold for medical or hygiene purposes.** Items commonly used for medical or hygiene purposes, such as cough drops, breath sprays, toothpaste, etc., are not ingested for taste or nutrition and are not considered a food or food ingredient. In contrast, breath mints are commonly ingested for taste and are considered a food or food ingredient.

(b) **Bulk sales of ice.** Ice sold in bags, containers, or units of greater than 10 pounds and blocks of ice of any weight are not considered a food or food ingredient. Ice sold in cubed, shaved, or crushed form in packages or quantities of 10 pounds or less is considered a food or food ingredient. Refer to WAC 458-20-120, Sales of ice, for additional guidance on the sale of ice.

(c) **Alcoholic beverages.** Alcoholic beverages are excluded from the definition of food and food ingredients. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(d) **Tobacco.** Tobacco is excluded from the definition of food and food ingredients. "Tobacco" includes cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(e) **Cannabis.** Cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products, as defined in RCW 69.50.101, are excluded from the definition of food and food ingredients. "Cannabis" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis.

(f) **Bottled water.** Bottled water is excluded from the exemptions for food and food ingredients. "Bottled water" means water that is placed in a safety sealed container or package for human consumption.

(i) Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain:

- (A) Antimicrobial agents;
- (B) Fluoride;
- (C) Carbonation;
- (D) Vitamins, minerals, and electrolytes;
- (E) Oxygen;
- (F) Preservatives; and
- (G) Only those flavors, extracts, or essences derived from a

spice or fruit.

(ii) **Exemptions for tax on bottled water.** There are limited retail sales tax exemptions on bottled water. Sellers must collect the retail sales tax on all sales of bottled water, unless the bottled wa-

ter is delivered to the buyer as described in (f)(ii)(C) of this subsection. Any buyer that has paid at least \$25.00 in state and local taxes on purchases of bottled water subject to the exemptions described in (f)(ii)(A) and (B) of this subsection may apply for a refund of the taxes directly from the department.

(A) **Prescription issued bottled water.** Bottled water prescribed to patients for use in the cure, mitigation, treatment, or prevention of disease or other medical condition is exempt. RCW 82.08.9994. The bottled water must be prescribed, through an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission, by a licensed practitioner authorized by Washington law to prescribe.

(B) **Primary water source unsafe.** Bottled water for human use by persons whose primary source of drinking water is unsafe is exempt. RCW 82.08.9994. A person's primary source of drinking water is unsafe if:

(I) The public water system providing the drinking water has issued a public notification that the drinking water may pose a health risk, and the notification is still in effect on the date that the bottled water was purchased;

(II) Test results on the person's drinking water, which are no more than 12 months old, from a laboratory certified to perform drinking water testing show that the person's drinking water does not meet safe drinking water standards applicable to public water systems; or

(III) The person otherwise establishes, to the department's satisfaction, that the person's drinking water does not meet safe drinking water standards applicable to public water systems.

(C) **Bottled water delivered to the buyer in a reusable container not sold with the water.** Buyers claiming an exemption listed in (f)(ii)(A) or (B) of this subsection that have the qualifying water delivered in a reusable container that is not sold with the water must complete a retail sales exemption certificate and provide it to the seller. The seller must retain a copy of the certificate.

(iii) For information regarding exemption certificates and refund requests, visit [dor.wa.gov](http://dor.wa.gov).

(g) **Soft drinks.** Soft drinks are excluded from the exemptions for food and food ingredients. "Soft drinks" means any nonalcoholic beverage that contains natural or artificial sweeteners, except beverages that contain:

(i) Milk or milk products;

(ii) Soy, rice, or similar milk substitutes; or

(iii) More than 50 percent by volume of vegetable or fruit juice.

For example, sweetened sports beverages are considered "soft drinks," but a sweetened soy beverage is a food or food ingredient.

Beverage mixes that are not sold in liquid form are not soft drinks even though they are intended to be made into a beverage by the customer. Examples include powdered fruit drinks, powdered tea or coffee drinks, and frozen concentrates. These items are food or food ingredients and are not subject to retail sales tax.

(h) **Dietary supplements.** Dietary supplements are excluded from the exemptions for food and food ingredients. "Dietary supplement" means any product intended to supplement the diet, other than tobacco, which meets all of the following requirements:

(i) Contains a vitamin; mineral; herb or other botanical; an amino acid; a substance for use by humans to increase total dietary intake; or a concentrate, metabolite, constituent, extract; or a combination of any of these ingredients;

(ii) Is intended for ingestion in tablet, capsule, powder, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled with a Food and Drug Administration "supplement facts" box. If a product is otherwise considered a food or food ingredient and labeled with both a "supplement facts" box and "nutrition facts" box, the product is treated as a food or food ingredient.

Nutrition products formulated to provide balanced nutrition as a sole source of a meal or of the diet are considered a food or food ingredient and not a dietary supplement. Refer to RCW 82.08.925 for information on the retail sales tax exemption applicable to dietary supplements dispensed under a prescription.

(i) **Prepared food.** Prepared food is excluded from the exemptions for food and food ingredients. Prepared food generally means heated foods, combined foods, or foods sold with utensils provided by the seller, as described in more detail in subsection (5) of this rule.

(5) **Items designated as prepared foods.** Food or food ingredients are "prepared foods" if any one of the following is true:

(a) **Heated foods.** Food or food ingredients are "prepared foods" if sold in a heated state or are heated by the seller, except bakery items. "Bakery items" include bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. Food is sold in a heated state or is heated by the seller when the seller provides the food to the customer at a temperature that is higher than the air temperature of the seller's establishment. Food is not sold in a heated state or heated by the seller if the customer, rather than the seller, heats the food in a microwave provided by the seller.

(b) **Combined foods.** Food or food ingredients are "prepared foods" if the item sold consists of two or more foods or food ingredients mixed or combined by the seller for sale as a single item, unless the food or food ingredients are any of the following:

(i) Bakery items (defined in (a) of this subsection);

(ii) Items that the seller only cuts, repackages, or pasteurizes;

(iii) Items that contain eggs, fish, meat, or poultry, in a raw or undercooked state requiring cooking as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of *The Food Code*, published by the Food and Drug Administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness; or

(iv) Items sold in an unheated state as a single item at a price that varies based on weight or volume.

(c) **Food sold with utensils provided by the seller.** Food or food ingredients are "prepared foods" if sold with utensils provided by the seller. Utensils include plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.

(i) **Utensils are customarily provided by the seller.** A food or food ingredient is "sold with utensils provided by the seller" if the seller's customary practice for that item is to physically deliver or hand a utensil to the customer with the food or food ingredient as part of the sales transaction. If the food or food ingredient is pre-packaged with a utensil, the seller is considered to have physically delivered a utensil to the customer unless the food and utensil are prepackaged together by a food manufacturer classified under sector 311 of the NAICS. Examples of utensils provided by such manufacturers

include juice boxes that are packaged with drinking straws, and yogurt or ice cream cups that are packaged with wooden or plastic spoons.

(ii) **Utensils are necessary to receive the food.** Individual food or food ingredient items are "sold with utensils provided by the seller" if a plate, glass, cup, or bowl is necessary to receive the food or food ingredient and the seller makes those utensils available to its customers. For example, items obtained from a self-serve salad bar are sold with utensils provided by the seller, because the customer must use a bowl or plate provided by the seller in order to receive the items.

(iii) **More than 75 percent prepared food sales with utensils available.** All food and food ingredients sold at an establishment, including foods prepackaged with a utensil by a manufacturer classified under sector 311 of the NAICS, are "sold with utensils provided by the seller" if the seller makes utensils available to its customers and the seller's gross retail sales of prepared food under (a), (b), and (c)(ii) of this subsection equal more than 75 percent of the seller's gross retail sales of all food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements.

(A) **Exception for four or more servings.** Even if a seller has more than 75 percent prepared food sales, four servings or more of food or food ingredients packaged for sale as a single item and sold for a single price are not "sold with utensils provided by the seller" unless the seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the number of servings included in a package of food or food ingredients is to be determined based on the manufacturer's product label. If no label is available, the seller must reasonably determine the number of servings.

(B) **Determining total sales of prepared foods.** The seller must determine a single prepared food sales percentage annually for all the seller's establishments in the state based on the prior year of sales. The seller may elect to determine its prepared food sales percentage based either on the prior calendar year or on the prior fiscal year. A seller may not change its elected method for determining its prepared food percentage without the written consent of the department of revenue. The seller must determine its annual prepared food sales percentage as soon as possible after accounting records are available, but in no event later than 90 days after the beginning of the seller's calendar or fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the seller's records for the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first 90 days of operation materially depart from the seller's estimate.

(d) **Examples.** The following examples identify a number of 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 after a review of all of the facts and circumstances.

(i) **Example 1.** Fast Cafe sells hot and cold coffee and mixed coffee and mixed milk beverages, cold soft drinks, milk and juice in single-serving containers, sandwiches, whole fruits, cold pasta salad, cookies and other pastries. Fast Cafe prepares the pasta salad on-site. It orders the pastries from a local bakery, including specialty cakes which it sells both as whole cakes and by the slice. It purchases its sandwiches from a local caterer. The sandwiches are delivered

by the caterer prewrapped in plastic with condiments and a plastic knife. Fast Cafe makes straws, napkins and cup lids available for all customers by placing them on a self-service stand. In its first full year of operation, Fast Cafe's annual gross retail sales of all food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements is \$100,000. Of this gross retail sales total, \$80,000 is from the sale of hot coffee and hot and cold mixed coffee and milk beverages, all sold in disposable paper or plastic cups with the Fast Cafe logo.

Because more than 75 percent of Fast Cafe's total retail sales of food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements are sales of food or food ingredients that are heated or combined by the seller or sold with a utensil (cups) necessary to receive the food, Fast Cafe has more than 75 percent prepared food sales. Because Fast Cafe makes utensils available for its customers, all food and food ingredients sold by Fast Cafe are considered "prepared food," including the cold milk beverages, cookies and pastries, pasta salad, sandwiches and whole fruits. The only exception is the sale of whole specialty cakes. Because a whole cake contains four or more servings, it is not subject to retail sales tax unless Fast Cafe customarily hands a utensil to the customer as part of the sale transaction.

(ii) **Example 2.** Assume the same facts as in Example 1, but that only \$60,000 of Fast Cafe's Year 1 gross retail sales were sales of hot coffee and hot and cold mixed coffee and milk beverages. The remainder of its retail sales were sales of sandwiches, whole fruits, cookies and other pastries. Under these facts, Fast Cafe does not have more than 75 percent prepared food sales. Thus, the items sold by Fast Cafe are taxed as follows:

(A) Hot coffee and milk beverages are heated by the seller and are also sold by Fast Cafe with a utensil (a paper cup) necessary to receive the food. The hot coffee and milk beverages are "prepared food" for either reason and are subject to retail sales tax.

(B) Cold mixed milk beverages are a combination of two or more foods or food ingredients and are also sold by Fast Cafe with a utensil (a paper or plastic cup) necessary to receive the food. The cold milk beverages are "prepared food" for either reason and are subject to retail sales tax.

(C) Cold soft drinks are not exempt and are subject to retail sales tax.

(D) Sandwiches prepared by the caterer are subject to retail sales tax. Even though the caterer, rather than the seller, combines the ingredients and includes a utensil, Fast Cafe is considered to have provided the utensil because the caterer is not a food manufacturer classified under sector 311 of the NAICS.

(E) Pasta salad is combined by the seller and is subject to retail sales tax. Note that if the pasta salad was sold by the pound, rather than by servings, it would not be subject to retail sales tax.

(F) Milk and juice in single serving containers, whole fruit, cookies, pastries, slices of cake, and whole cakes are not subject to retail sales tax unless the seller's customary practice is to hand a utensil to the customer as part of the sales transaction. None of these items are heated by the seller, combined by the seller, or require a plate, glass, cup, or bowl in order to receive the item. Even if Fast Cafe heats the pastries for its customers, the pastries are not subject to retail sales tax.

(iii) **Example 3.** A pizza restaurant sells whole hot pizzas, hot pizza by the slice, and unheated ready-to-bake pizzas. The whole hot pizzas and hot pizza sold by the slice, including delivered pizzas, are "prepared food" because these items are sold in a heated state. If the unheated ready-to-bake pizzas are prepared by the seller, they are "prepared food" because the seller has mixed or combined two or more food ingredients. This is true even though some ingredients in the unheated pizzas are raw or uncooked, because those ingredients do not require cooking to prevent foodborne illness. If the unheated ready-to-bake pizzas are prepared by a manufacturer other than the seller, they will be taxable as "prepared food" only if sold with utensils provided by the seller.

(6) **Combined sales of taxable and exempt items.** Where two or more distinct and identifiable items of tangible personal property, at least one of which is a food or food ingredient, are sold for one nonitemized price that does not vary based on the selection by the purchaser of items included in the transaction:

(a) The entire transaction is taxable if the seller's purchase price or sales price of the taxable items is greater than 50 percent of the combined purchase price or sales price; and

(b) The entire transaction is exempt from retail sales tax if the seller's purchase price or sales price of the taxable items is 50 percent or less of the combined purchase price or sales price.

The seller may make the determination based on either purchase price or sales price, but may not use a combination of the purchase price and sales price.

**Example.** A combination wine and cheese picnic basket contains four items packaged together: A bottle of wine, a wine opener, single-serving cheeses, and the picnic basket holding these items. The seller's purchase price for the wine, wine-opener, and picnic basket totals \$10.00. The seller's purchase price for the cheeses is two dollars. The seller must collect retail sales taxes on the entire package, because the seller's purchase price for the taxable items (\$10.00) is greater than 50 percent of the combined purchase price (\$12.00).

(c) **Incidental packaging.** "Distinct and identifiable items" does not include packaging which is immaterial or incidental to the sale of another item or items. For example, a decorative bag sold filled with candy is not the sale of "distinct and identifiable" items where the bag is merely ornamental packaging immaterial in the sale of the candy.

(d) **Free items.** "Distinct and identifiable items" does not include items provided free of charge. An item is only provided free of charge if the seller's sales price does not vary depending on whether the item is included in the sale.

(7) **Seller's accounting requirements.** All sales of food and food ingredients at an establishment will be treated as taxable unless the seller separately accounts for sales of exempt and nonexempt food and food ingredients. It is sufficient separation for accounting purposes if cash registers or the like are programmed to identify items that are not tax exempt and to calculate and assess the proper sales tax accordingly.

(8) **Other retail sales tax exemptions that may apply.**

(a) **Meals served to certain persons.** The exemptions apply to food and food ingredients furnished, prepared, or served as meals:

(i) Under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(ii) Provided to senior citizens, individuals with disabilities, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW; or

(iii) Provided to residents, 62 years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (a)(iii) if at least one of the spouses or domestic partners is at least 62 years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(A) That meets the definition of a qualified low-income housing project under Title 26 U.S.C. Sec. 42 of the federal Internal Revenue Code, as existing on August 1, 2009;

(B) That has been partially funded under Title 42 U.S.C. Sec. 1485 of the federal Internal Revenue Code; and

(C) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under Title 26 U.S.C. Sec. 42 of the federal Internal Revenue Code.

(b) **Foods exempt under the Supplemental Nutrition Assistance Program (SNAP).** Under RCW 82.08.0297, eligible foods purchased with food benefits under the SNAP or a successor program are exempt from the retail sales tax. This is a separate and broader exemption than the retail sales tax exemption for food and food ingredients under RCW 82.08.0293. For example, bottled water, soft drinks, garden seeds, and plants which produce food for the household to eat are "eligible foods" but are not "food or food ingredients." If such items are purchased with food benefits under SNAP or a successor program, they are exempt from the retail sales tax under RCW 82.08.0297, even though the items do not qualify for the exemption under RCW 82.08.0293.

(i) **Use of food benefits combined with other means of payment.** When both food benefits and other means of payment are used in the same sales transaction, for purposes of collecting retail sales taxes, the other means of payment must be applied first to items which are food and food ingredients exempt under RCW 82.08.0293. The intent is to apply the benefits and other means of payment in such a way as to provide the greatest possible exemption from retail sales tax.

(ii) **Example.** A customer purchases the following at a grocery store: Meat for three dollars, cereal for three dollars, canned soft drinks for five dollars, and soap for two dollars for a total of \$13.00. The customer pays with seven dollars in benefits and six dollars in cash. The cash is applied first to the soap because the soap is neither exempt under RCW 82.08.0293 nor an eligible food under SNAP. The remaining cash (four dollars) is applied first to the meat and the cereal. The food benefits are applied to the balance of the meat and cereal (two dollars) and to the soft drinks (five dollars). Retail sales tax is due only on the soap.

(9) **Vending machine sales.** The exemptions do not apply to sales of food and food ingredients dispensed from vending machines. There are special requirements for reporting retail sales tax collected on vending machine sales, discussed in (a) of this subsection. "Honor box" sales (sales of snacks or other items from open display trays) are not considered vending machine sales.



(a) **Calculating and reporting retail sales tax collected on vending machine sales.** Vending machine owners do not need to state the retail sales tax amount separately from the selling price. See RCW 82.08.050 and 82.08.0293. Instead, vending machine owners must determine the amount of retail sales tax collected on the sale of food or food ingredients by using one of the following methods:

(i) **Food or food ingredients dispensed in a heated state, soft drinks, and bottled water.** For food or food ingredients dispensed from vending machines in a heated state (e.g., hot coffee, soups, tea, and hot chocolate) and vending machine sales of soft drinks and bottled water, a vending machine owner must calculate the amount of retail sales tax that has been collected ("tax in gross") based on the gross vending machine proceeds. The "tax in gross" is a deduction against the gross amount of both retailing B&O and retail sales. The formula is:

$$\text{gross machine proceeds} - [(\text{gross machine proceeds}) / (1 + \text{sales tax rate})] = \text{tax in gross}$$

(ii) **All other food or food ingredients.** For all other food and food ingredients dispensed from vending machines, a vending machine owner must calculate the amount of retail sales tax that has been collected ("tax in gross") based on 57 percent of the gross vending machine proceeds. The "tax in gross" is a deduction against the gross amount of both retailing B&O and retail sales. The formula is:

$$(\text{gross machine proceeds} \times .57) \times \text{sales tax rate} = \text{tax in gross}$$

The remaining 43 percent of the gross vending machine proceeds, less the "tax in gross" amount, is reported as an exempt food sales deduction against retail sales proceeds only calculated as follows:

$$(\text{gross machine proceeds} \times .43) - \text{tax in gross} = \text{exempt food deduction}$$

(b) **Example.** Jane owns a vending machine business with machines in Spokane and Seattle. In each location, she has a vending machine selling candy and a second vending machine selling hot cocoa and coffee drinks. Her annual sales for the vending machines and the combined retail sales tax rates for Seattle and Spokane are as follows:

	Coffee Machine (cocoa & coffee)	Candy Machine	Combined Retail Sales Tax Rate
Seattle	\$2,500	\$10,000	.101
Spokane	\$3,000	\$6,000	.089

To determine the amount of retail sales tax she collected on the sale of cocoa and coffee (food dispensed in a heated state, subject to retail sales tax), Jane calculates the "tax in gross" deduction amount as follows:

$$\text{gross machine proceeds} - [(\text{gross machine proceeds}) / (1 + \text{sales tax rate})] = \text{tax in gross}$$

$$\begin{aligned} \$2,500 - (\$2,500 / 1.101) &= \$229.34 && \text{(Seattle coffee machine)} \\ \$3,000 - (\$3,000 / 1.089) &= \$245.18 && \text{(Spokane coffee machine)} \\ \hline &&& \$474.52 \end{aligned}$$

Thus, for both retailing B&O and retail sales, Jane must report her total gross coffee machine proceeds of \$5,500 with a "tax in gross" deduction of \$474.52.

To determine the amount of retail sales tax she collected on the sale of candy, Jane calculates the "tax in gross" deduction amount as follows:

(gross machine proceeds x .57) x sales tax rate = tax in gross

$$\begin{array}{rcl} \$10,000 \times .57 \times .101 & = & \$575.70 \quad (\text{Seattle candy machine}) \\ \$6,000 \times .57 \times .089 & = & \$304.38 \quad (\text{Spokane candy machine}) \\ \hline & & \$880.08 \end{array}$$

Thus, for both retailing B&O and retail sales, Jane must report her total gross candy machine proceeds of \$16,000 with a "tax in gross" deduction of \$880.08.

Jane must also report an exempt food sales deduction representing the remaining 43 percent of the gross candy machine proceeds.

(43% x gross machine proceeds) - tax in gross = exempt food deduction

$$(.43 \times \$16,000) - \$880.08 = \$5999.92$$

Jane reports the exempt food sales deduction only against the gross amount of her retail sales. The deduction does not apply to retailing B&O.

**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.

## WSR 24-03-084

## PERMANENT RULES

## BUILDING CODE COUNCIL

[Filed January 16, 2024, 5:20 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To modify sections in the commercial and residential energy codes to address legal uncertainty stemming from the decision in *California Restaurant Association v. City of Berkeley* recently issued by the Ninth Circuit Court of Appeals. While the requirements in the 2021 Washington State Energy Code are not exactly analogous to the Berkeley prohibition on gas infrastructure, the council moved forward to address the ruling expanding the scope of the Energy Policy and Conservation Act of 1975 (EPCA) preemption provisions. The council sought public input on areas where the code may be impacted by a preemption issue and developed a proposed rule addressing those areas while retaining the efficiency gains made towards the goal of RCW 19.27A.160. The rule also makes some editorial corrections to the previously filed 2021 residential energy code, chapter 51-11R WAC.

Citation of Rules Affected by this Order: Amending 28 sections in chapter 51-11R WAC.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.045, 19.27A.160.

Other Authority: Chapter 19.27A RCW.

Adopted under notice filed as WSR 23-21-105 on October 18, 2023.

Changes Other than Editing from Proposed to Adopted Version: **WAC 51-11R-40211**: The proposed change to Table R402.1.2, **Insulation and Fenestration Requirements by Component**, for the above-grade wall U-factor was not made and is no longer included in the rule filing.

**WAC 51-11R-40551**: Table R405.4.2(1) **Specifications for the Standard Reference and Proposed Designs**, under Service water heating, the standard reference design was changed to "... a heat pump water heater meeting the efficiency standards of Table C404.2." to provide a reference to an EPCA covered product.

**WAC 51-11R-40621**: Table R406.3, **Energy Credits**, was modified to: Reorder the high efficiency HVAC equipment options and update the user notes for those options, as well as provide HSPF2 efficiency values in addition to the HSPF values.

The missing credit values in Option 5.8 were added.

Footnotes c and f were adjusted to match the reordering of the HVAC options.

**WAC 51-11R-50300**: The section references within Section R503.1.1 were corrected.

A final cost-benefit analysis is available by contacting Stoyan Bumbalov, P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9255, email sbcc@des.wa.gov, website <https://sbcc.wa.gov/2021-code-adoption-cycle>.

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 28, 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 28, Repealed 0.  
Date Adopted: November 28, 2023.

Tony Doan  
Chair

OTS-5010.2

Chapter 51-11R WAC

STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2018)) 2021 EDITION OF THE INTERNATIONAL ENERGY CONSERVATION CODE, RESIDENTIAL

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-10100 Section R101—Scope and general requirements.**

**R101.1 Title.** This code shall be known as the *Washington State Energy Code-Residential*, and shall be cited as such. It is referred to herein as "this code."

The 2021 edition of the *Washington State Energy Code* is hereby adopted. The *Washington State Energy Code* adopted under chapter 51-11R WAC shall become effective in all counties and cities of this state on ((July 1, 2023)) March 15, 2024.

**R101.2 Scope.** This code applies to *residential buildings* and the buildings sites and associated systems and equipment. This code shall be the maximum and minimum energy code for residential construction in each town, city and county. Residential *sleeping units*, Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC shall utilize the commercial building sections of the energy code regardless of the number of stories of height above grade plane.

**R101.3 Intent.** This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.

**R101.4 Applicability.** Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern.

**R101.4.1 Mixed residential and commercial buildings.** Where a building includes both *residential* building and *commercial* building portions, each portion shall be separately considered and meet the applicable provisions of the WSEC - Commercial or WSEC - Residential Provisions.

**R101.5 Compliance.** *Residential buildings* shall meet the provisions of WSEC - Residential Provisions. *Commercial buildings* shall meet the provisions of WSEC - Commercial Provisions.

**R101.5.1 Compliance materials.** The *code official* shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-10400 Section R104—Fees.**

**R104.1 Fees.** A permit shall not be issued until the fees prescribed in Section ((R107.2)) R104.2 have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

**R104.2 Schedule of permit fees.** A fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

**R104.3 Work commencing before permit issuance.** Any person who commences any work before obtaining the necessary permits shall be subject to an additional fee established by the *code official*, which shall be in addition to the required permit fees.

**R104.4 Related fees.** The payment of the fee for the construction, alteration, removal, or demolition of work done in connection to or concurrently with the work or activity authorized by a permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

**R104.5 Refunds.** The *code official* is authorized to establish a refund policy.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-10500 Section R105—Inspections.**

**R105.1 General.** Construction or work for which a permit is required shall be subject to inspection by the *code official* or his or her designated agent, and such construction or work shall remain visible and able to be accessed for inspection purposes until *approved*. It shall be the duty of the permit applicant to cause the work to remain visible and able to be accessed for inspection purposes. Neither the *code official* nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material, product, system or building component required to allow inspection to validate compliance with this code.

**R105.2 Required inspections.** The *code official* or his or her designated agent, upon notification, shall make the inspections set forth in Sections (~~(R104.2.1 through R104.2.5)~~) R105.2.1 through R105.2.5.

**R105.2.1 Footing and foundation inspection.** Inspections associated with footings and foundations shall verify compliance with the code as to *R*-value, location, thickness, depth of burial and protection of insulation as required by the code and approved plans and specifications.

**R105.2.2 Framing and rough-in inspection.** Inspections at framing and rough-in shall be made before application of interior finish and shall verify compliance with the code as to types of insulation and corresponding *R*-values and their correct location and proper installation; fenestration properties (*U*-factor and SHGC) and proper installation; and air leakage controls as required by the code and approved plans and specifications.

**R105.2.2.1 Wall insulation inspection.** The *code official*, upon notification, shall make a wall insulation inspection in addition to those inspections required in Section R109 of the International Residential Code. This inspection shall be made after all wall and cavity insulation is in place and prior to cover.

**R105.2.3 Plumbing rough-in inspection.** Inspections at plumbing rough-in shall verify compliance as required by the code and approved plans and specifications as to types of insulation and corresponding *R*-values and protection, and required controls.

**R105.2.4 Mechanical rough-in inspection.** Inspections at mechanical rough-in shall verify compliance as required by the code and approved plans and specifications as to installed HVAC equipment type and size, required controls, system insulation and corresponding *R*-value, system air leakage control, programmable thermostats, dampers, whole-house ventilation and minimum fan efficiency.

EXCEPTION: Systems serving multiple dwelling units shall be inspected in accordance with Section C104.2.4.

**R105.2.5 Final inspection.** The building shall have a final inspection and not be occupied until *approved*.

**R105.3 Reinspection.** A building shall be reinspected when determined necessary by the *code official*.

**R105.4 Approved inspection agencies.** The *code official* is authorized to accept reports of third-party inspection agencies not affiliated with the building design or construction, provided such agencies are *approved* as to qualifications and reliability relevant to the building components and systems they are inspecting.

**R105.5 Inspection requests.** It shall be the duty of the holder of the permit or their duly authorized agent to notify the *code official* when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

**R105.6 Reinspection and testing.** Where any work or installation does not pass an initial test or inspection, the necessary corrections shall be made so as to achieve compliance with this code. The work or installation shall then be resubmitted to the *code official* for inspection and testing.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-10800 Section R108—Referenced standards.**

**R108.1 Referenced codes and standards.** The codes and standards referenced in this code shall be those listed in Chapter ((5)) 6, and such codes and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections ((R106.1.1 and R106.1.2)) R108.1.1 and R108.1.2.

**R108.1.1 Conflicts.** Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

**R108.1.2 Provisions in referenced codes and standards.** Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.

**R108.2 Application of references.** References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section, or provision of this code.

**R108.3 Other laws.** The provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law. In addition to the requirements of this code, all occupancies shall conform to the provisions included in the state building code (chapter 19.27 RCW). In case of conflicts among codes enumerated in RCW 19.27.031 (1) through (4) and this code, an earlier named code shall govern over those following. In the case of conflict between the duct sealing and insulation requirements of this code and the duct insulation requirements of Sections 603 and 604 of the *International Mechanical Code*, the duct insulation requirements of this code shall govern.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-20201 Section R202.1—A.**

**ABOVE-GRADE WALL.** A wall enclosing *conditioned space* that is not a below-grade wall. This includes between-floor spandrels, peripheral edges of floors, roof and basement knee walls, dormer walls, gable end walls, walls enclosing a mansard roof and skylight shafts.

**ACCESS (TO).** That which enables a device, appliance, or equipment to be reached by *ready access* or by a means that first requires the removal or movement of a panel or similar obstruction.

**ADDITION.** An extension or increase in the *conditioned space* floor area, number of stories or height of a building or structure.

**ADVANCED FRAMED WALLS.** Studs framed on 24-inch centers with double top plate and single bottom plate. Corners use two studs or other means of fully insulating corners, and one stud is used to support each header. Headers consist of double 2x material with R-10 insulation between the header and exterior sheathing. Interior partition wall/interior wall

intersections are fully insulated in the exterior wall. (See **Standard Framing** and Appendix A(~~(7-of-this-code)~~) of chapter 51-11C WAC.)

**AIR BARRIER.** One or more materials joined together in a continuous manner to restrict or prevent the passage of air through the building thermal envelope and its assemblies.

**ALTERATION.** Any construction, retrofit or renovation to an existing structure other than repair or addition. Also, a change in a building, electrical, gas, mechanical or plumbing system that involves an extension, addition or change to the arrangement, type or purpose of the original installation.

**APPROVED.** Acceptable to the *code official*.

**APPROVED AGENCY.** An established and recognized agency that is regularly engaged in conducting tests or furnishing inspection services, or furnishing product certification, where such agency has been approved by the *code official*.

**AUTOMATIC.** Self-acting, operating by its own mechanism when actuated by some impersonal influence, as, for example, a change in current strength, pressure, temperature or mechanical configuration (see "Manual").

AMENDATORY SECTION (Amending WSR 13-04-055, filed 2/1/13, effective 7/1/13)

**WAC 51-11R-30200 Section R302—Design conditions.**

**R302.1 Interior design conditions.** The interior design temperatures used for heating and cooling load calculations shall be a maximum of 72°F (22°C) for heating and minimum of 75°F (24°C) for cooling.

**R302.2 Exterior design conditions.** The heating or cooling outdoor design temperatures shall be selected from Appendix RC.

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

**WAC 51-11R-30312 Table R303.1.3(2)—Default opaque door U-factors.**

TABLE R303.1.3(2)  
DEFAULT OPAQUE DOOR U-FACTORS

Door Type	No Glazed Fenestration	Single Glazing	Double Glazing with 1/4 in. Airspace	Double Glazing with 1/2 in. Airspace	Double Glazing with e = 0.10, 1/2 in. Argon
<b>SWINGING DOORS (Rough opening - 38 in. x 82 in.)</b>					
<b>Slab Doors</b>					
Wood slab in wood frame <sup>a</sup>	0.46				
6% glazed fenestration (22 in. x 8 in. lite)	-	0.48	0.47	0.46	0.44
25% glazed fenestration (22 in. x 36 in. lite)	-	0.58	0.48	0.46	0.42



Door Type	No Glazed Fenestration	Single Glazing	Double Glazing with 1/4 in. Airspace	Double Glazing with 1/2 in. Airspace	Double Glazing with e = 0.10, 1/2 in. Argon
45% glazed fenestration (22 in. x 64 in. lite)	-	0.69	0.49	0.46	0.39
More than 50% glazed fenestration	Use Table R303.1.3(1)				
Insulated steel slab with wood edge in wood frame <sup>a</sup>	0.16				
6% glazed fenestration (22 in. x 8 in. lite)	-	0.21	0.20	0.19	0.18
25% glazed fenestration (22 in. x 36 in. lite)	-	0.39	0.28	0.26	0.23
45% glazed fenestration (22 in. x 64 in. lite)	-	0.58	0.38	0.35	0.26
More than 50% glazed fenestration	Use Table R303.1.3(1)				
Foam insulated steel slab with metal edge in steel frame <sup>b</sup>	0.37				
6% glazed fenestration (22 in. x 8 in. lite)	-	0.44	0.42	0.41	0.39
25% glazed fenestration (22 in. x 36 in. lite)	-	0.55	0.50	0.48	0.44
45% glazed fenestration (22 in. x 64 in. lite)	-	0.71	0.59	0.56	0.48
More than 50% glazed fenestration	Use Table R303.1.3(1)				
Cardboard honeycomb slab with metal edge in steel frame <sup>b</sup>	0.61				
<b>Style and Rail Doors</b>					
Sliding glass doors/French doors	Use Table R303.1.3(1)				
<b>Site-Assembled Style and Rail Doors</b>					
Aluminum in aluminum frame	-	1.32	0.99	0.93	0.79
Aluminum in aluminum frame with thermal break	-	1.13	0.80	0.74	0.63

Note: Appendix A Tables A107.1(2) through A107.1(4) of chapter 51-11C WAC may also be used if applicable.

<sup>a</sup> Thermally broken sill (add 0.03 for nonthermally broken sill).

<sup>b</sup> Nonthermally broken sill.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40210 Section R402.1—General.**

**R402.1 General.** The *building thermal envelope* shall meet the requirements of Sections R402.1.1 through R402.1.6.

EXCEPTION: The following buildings, or portions thereof, separated from the remainder of the building by *building thermal envelope* assemblies complying with this code shall be exempt from the *building thermal envelope* provisions of this code.

1. Those with a peak design rate of energy usage less than 3.4 Btu/h ft<sup>2</sup> (10.7 W/m<sup>2</sup>) or 1.0 watt/ft<sup>2</sup> of floor area for space conditioning purposes.
2. Those that do not contain *conditioned space*.
3. Greenhouses isolated from any conditioned space and not intended for occupancy.

**R402.1.1 Vapor retarder.** Wall assemblies in the *building thermal envelope* shall comply with the vapor retarder requirements of Section R702.7 of the *International Residential Code* or Section ((1405.3)) 1404.3 of the *International Building Code*, as applicable.

**R402.1.2 Insulation and fenestration criteria.** The *building thermal envelope* shall meet the requirements of Table R402.1.2 based on the climate zone specified in Chapter 3. Assemblies shall have a U-factor equal to or less than that specified in Table R402.1.2. Fenestration shall have a U-factor equal to or less than specified in Table R402.1.2.

**R402.1.3 R-value alternative.** Assemblies with *R*-value of insulation materials equal to or greater than that specified in Table R402.1.3 shall be an alternative to the *U*-factor in Table R402.1.2.

**R402.1.4 R-value computation.** *Cavity insulation* alone shall be used to determine compliance with the *cavity insulation R*-value requirement in Table R402.1.3. Where *cavity insulation* is installed in multiple layers, the *R*-values of the *cavity insulation* layers shall be summed to determine compliance with the *cavity insulation R*-value requirements. The manufacturer's settled *R*-value shall be used for blown insulation. *Continuous insulation* (ci) alone shall be used to determine compliance with the continuous insulation *R*-value requirements in Table R402.1.3. Where *continuous insulation* is installed in multiple layers, the *R*-values of the *continuous insulation* layers shall be summed to determine compliance with the *continuous insulation R*-value requirements. Computed *R*-values shall not include an *R*-value for other building materials or air films. Where insulated siding is used for the purpose of complying with the continuous insulation requirements of Table R402.1.3, the manufacturer's labeled *R*-value for insulated siding shall be reduced by R-0.6.

**R402.1.5 Total UA alternative.** If the proposed *building thermal envelope UA* is less than or equal to the target UA, the building shall be considered in compliance with Table R402.1.2. The proposed UA shall be calculated in accordance with Equation 2. The target UA shall be calculated in accordance with Equation 1. *U*-factors shall be determined as specified in Section R402.1.6. In addition to UA compliance, the maximum fenestration *U*-factors of Section R402.5 shall be met.

**R402.1.6 U-factor reference and calculations.** The *U*-factors for typical construction assemblies are included in Appendix A in chapter 51-11C WAC. These values shall be used for all calculations. Where proposed construction assemblies are not represented in Appendix A, values shall be calculated in accordance with the ASHRAE *Handbook of Fundamentals* using the framing factors listed in Appendix A where applicable and shall include the thermal bridging effects of framing materials. The SHGC requirements shall be met in addition to UA compliance.

Fenestration *U*-factors shall comply with Section R303.1.3, Fenestration product rating.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40213 Table R402.1.3—Insulation minimum *R*-values and fenestration requirements by components.**

TABLE R402.1.3  
INSULATION MINIMUM *R*-VALUES AND FENESTRATION REQUIREMENTS BY COMPONENTS<sup>a</sup>

Climate Zone 5 and Marine 4	
Fenestration <sup>b,j</sup> <i>U</i> -Factor	0.30
Skylight <sup>b</sup> <i>U</i> -Factor	0.50
Ceiling <sup>e</sup> <i>R</i> -Value	60
Wood Frame Wall <sup>g,i</sup> <i>R</i> -Value	20+5 or 13+10
Floor <i>R</i> -Value	30
Below-Grade Wall <sup>c,h</sup> <i>R</i> -Value	10/15/21 int + 5TB
Slab <sup>d,f</sup> <i>R</i> -Value and Depth	10, 4 ft.

For SI: 1 foot = 304.8 mm, ci = continuous insulation, int = intermediate framing.

<sup>a</sup> *R*-values are minimums. *U*-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the compressed *R*-value of the insulation from Appendix A Table A101.4 of chapter 51-11C WAC shall not be less than the *R*-value specified in the table.

<sup>b</sup> The fenestration *U*-factor column excludes skylights.

<sup>c</sup> "10/15/21+5TB" means R-10 continuous insulation on the exterior of the wall, or R-15 on the continuous insulation on the interior of the wall, or R-21 cavity insulation plus a thermal break between the slab and the basement wall at the interior of the basement wall. "10/15/21+5TB" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the wall. "TB" means R-5 thermal break between floor slab and basement wall.

<sup>d</sup> R-10 continuous insulation is required under heated slab on grade floors. See Section R402.2.9.1.

<sup>e</sup> For single rafter- or joist-vaulted ceilings, the insulation may be reduced to R-38 if the full insulation depth extends over the top plate of the exterior wall.

<sup>f</sup> R-7.5 continuous insulation installed over an existing slab is deemed to be equivalent to the required perimeter slab insulation when applied to existing slabs complying with Section R503.1.1. If foam plastic is used, it shall meet the requirements for thermal barriers protecting foam plastics.

<sup>g</sup> For log structures developed in compliance with Standard ICC 400, log walls shall meet the requirements for *climate zone* 5 of ICC 400.

<sup>h</sup> Int. (intermediate framing) denotes framing and insulation as described in Section A103.2.2 including standard framing 16 inches on center, 78 percent of the wall cavity insulated and headers insulated with a minimum of R-10 insulation.

<sup>i</sup> The first value is cavity insulation, the second value is continuous insulation. Therefore, as an example "13+10" means R-13 cavity insulation plus R-10 continuous insulation.

<sup>j</sup> A maximum *U*-factor of 0.32 shall apply to vertical fenestration products installed in buildings located above 4000 feet in elevation above sea level, or in windborne debris regions where protection of openings is required under Section R301.2.1.2 of the *International Residential Code*.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40230 Section R402.3—Fenestration.**

**R402.3 Fenestration.** In addition to the requirements of Section R402, fenestration shall comply with Sections R402.3.1 through ((R402.3.5)) R402.3.6.

**R402.3.1 *U*-factor.** An area-weighted average of fenestration products shall be permitted to satisfy the *U*-factor requirements.

**R402.3.2 Glazed fenestration SHGC.** An area-weighted average of fenestration products more than 50 percent glazed shall be permitted to satisfy the SHGC requirements.

**R402.3.3 Glazed fenestration exemption.** Up to 15 square feet (1.4 m<sup>2</sup>) of glazed fenestration per dwelling unit shall be permitted to be exempt from *U*-factor and SHGC requirements in Section R402.1.2. This exemption shall not apply to the total UA alternative in Section R402.1.5.

**R402.3.4 Opaque door exemption.** One side-hinged opaque door assembly up to 24 square feet (2.22 m<sup>2</sup>) in area is exempted from the *U*-factor requirement in Section R402.1.2. This exemption shall not apply to the total UA alternative in Section R402.1.5.

**R402.3.5 Combustion air openings.** (~~(In Climate Zones 3 through 8,)~~) Where open combustion air ducts provide combustion air to open combustion, space conditioning fuel burning appliances, the appliances and combustion air openings shall be located outside of the *building thermal envelope*, or enclosed in a room isolated from inside the thermal envelope. Such rooms shall be sealed and insulated in accordance with the envelope requirements of Table R402.1.3, where the walls, floors, and ceilings shall meet the minimum of the below-grade wall *R*-value requirements. The door into the room shall be fully gasketed and any water lines and ducts in the room insulated in accordance with Section R403. The combustion air duct shall be insulated where it passes through conditioned space to a minimum of *R*-8.

EXCEPTIONS:      1. Direct vent appliances with both intake and exhaust pipes installed continuous to the outside.  
                     2. Fireplaces and stoves complying with Section(s) R402.3.6 of this code and Section R1006 of the *International Residential Code*.

**R402.3.6 Fireplaces.** New wood-burning fireplaces shall have tight-fitting flue dampers or doors, and outdoor combustion air. When using tight-fitting doors on factory-built fireplaces listed and labeled in accordance with UL 127, the doors shall be tested and listed for the fireplace. Where using tight-fitting doors on masonry fireplaces, the doors shall be listed and labeled in accordance with UL 907. Gas fireplaces shall comply with the efficiency requirements in Section R403.7.2.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40240 Section R402.4—Air leakage.**

**R402.4 Air leakage.** The *building thermal envelope* shall be constructed to limit air leakage in accordance with the requirements of Sections R402.4.1 through ((R402.4.5)) R402.4.4.

**R402.4.1 Building thermal envelope air leakage.** The *building thermal envelope* shall comply with Sections R402.4.1.1 through R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction.

**R402.4.1.1 Installation.** The components of the *building thermal envelope* as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. Where required by the *code official*, an *approved* third party shall inspect all components and verify compliance.

**R402.4.1.2 Testing.** The building or dwelling unit shall be tested for air leakage. Testing shall be conducted in accordance with RESNET/ICC 380, ASTM E779 or ASTM E1827. Test pressure and leakage rate shall comply with Section R402.1.3. A written report of the test results, including verified location and time stamp of the date of the test, shall be signed by the testing agency and provided to the building owner and *code official*. Testing shall be performed at any time after

creation of all penetrations of the *building thermal envelope*. Once visual inspection has confirmed air sealing has been conducted in accordance with Table R402.4.1.1, operable windows and doors manufactured by *small business* are permitted to be sealed off at the frame prior to the test.

Testing of single-family dwellings and townhouses shall be conducted in accordance with RESNET/ICC 380. Test pressure and leakage rate shall comply with Section R402.1.3.1.

For Group R-2 occupancies, testing shall be conducted in accordance with ASTM E779, ASTM E1827, or ASTM E3158. Test pressure and leakage rate shall comply with Section R402.1.3.2. The individual performing the air leakage test shall be trained and certified by a certification body that is, at the time of permit application, ~~((and))~~ an ISO 17024 accredited certification body including, but not limited to, the Air Barrier Association of America.

During testing:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed, beyond the intended weatherstripping or other infiltration control measures;
2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of the test, shall be open, access hatches to conditioned crawl spaces and conditioned attics shall be open;
4. Exterior or interior terminations for continuous ventilation systems and heat recovery ventilators shall be sealed;
5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and
6. Supply and return registers, if installed at the time of the test, shall be fully open.

EXCEPTION: Additions less than 500 square feet of conditioned floor area.

**R402.4.1.3 Leakage rate.** Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) shall comply with Section R402.4.1.3.1. Group R-2 multifamily buildings shall comply with Section R402.4.1.3.2.

**R402.4.1.3.1 Dwelling unit leakage rate.** The maximum air leakage rate for any dwelling unit under any compliance path shall not exceed 4.0 air changes per hour. Testing shall be conducted with a blower door test at a test pressure of 0.2 inches w.g. (50 Pa).

EXCEPTION: *Additions* tested with the existing home having a combined maximum air leakage rate of 7 air changes per hour. To qualify for this exception, the date of construction of the existing dwelling must be prior to the 2009 Washington State Energy Code.

**R402.4.1.3.2 Group R-2 multifamily building leakage rate.** For Group R-2 multifamily buildings, the maximum leakage rate for any *dwelling unit* shall not exceed 0.25 cfm per square foot of the *dwelling unit* enclosure area. Testing shall be conducted with a blower door at a test pressure of 0.2 inches w.g. (50 Pa). Doors and windows of adjacent *dwelling units* (including top and bottom units) shall be open to the outside during the test.

**~~((R402.4.3))~~ R402.4.2 Air leakage of fenestration.** Windows, skylights and sliding glass doors shall have an air infiltration rate of no more than 0.3 cfm per square foot (1.5 L/s/m<sup>2</sup>), and swinging doors no more than 0.5 cfm per square foot (2.6 L/s/m<sup>2</sup>), when tested according to

NFRC 400 or AAMA/WDMA/CSA 101/I.S.2/A440 by an accredited, independent laboratory and *listed* and *labeled* by the manufacturer.

- EXCEPTIONS:
1. Field-fabricated fenestration products (windows, skylights and doors).
  2. Custom exterior fenestration products manufactured by a small business provided they meet the applicable provisions of Chapter 24 of the *International Building Code*. Once visual inspection has confirmed the presence of a gasket, operable windows and doors manufactured by *small business* shall be permitted to be sealed off at the frame prior to the test.

**((R402.4.5)) R402.4.3 Recessed lighting.** Recessed luminaires installed in the *building thermal envelope* shall be Type IC-rated and certified under ASTM E283 as having an air leakage rate not more than 2.0 cfm (0.944 L/s) when tested at a 1.57 psf (75 Pa) pressure differential and shall have a label attached showing compliance with this test method. All recessed luminaires shall be sealed with a gasket or caulk between the housing and the interior wall or ceiling covering.

**((R402.4.6)) R402.4.4 Electrical and communication outlet boxes (air-sealed boxes).** Electrical and communication outlet boxes installed in the building thermal envelope shall be sealed to limit air leakage between conditioned and unconditioned spaces. Electrical and communication outlet boxes shall be tested in accordance with NEMA OS 4, *Requirements for Air-Sealed Boxes for Electrical and Communication Applications*, and shall have an air leakage rate of not greater than 2.0 cubic feet per minute (0.944 L/s) at a pressure differential of 1.57 psf (75 Pa). Electrical and communication outlet boxes shall be marked "NEMA OS 4" or "OS 4" in accordance with NEMA OS 4. Electrical and communication outlet boxes shall be installed per the manufacturer's instructions and with any supplied components required to achieve compliance with NEMA OS 4.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40241 Table R402.4.1.1—Air barrier and insulation installation.**

TABLE R402.4.1.1  
AIR BARRIER, AIR SEALING AND INSULATION INSTALLATION<sup>a</sup>

COMPONENT	AIR BARRIER CRITERIA	INSULATION CRITERIA
General requirements	A continuous air barrier shall be installed in the building envelope. Breaks or joints in the air barrier shall be sealed.	Air-permeable insulation shall not be used as a sealing material.

COMPONENT	AIR BARRIER CRITERIA	INSULATION CRITERIA
Cavity insulation installation		<p>All cavities in the thermal envelope shall be filled with insulation. The density of the insulation shall be at the manufacturers' product recommendation and said density shall be maintained for all volume of each cavity. Batt type insulation will show no voids or gaps and maintain an even density for the entire cavity. Batt insulation shall be installed in the recommended cavity depth. Where an obstruction in the cavity due to services, blocking, bracing or other obstruction exists, the batt product will be cut to fit the remaining depth of the cavity. Where the batt is cut around obstructions, loose fill insulation shall be placed to fill any surface or concealed voids, and at the manufacturers' specified density. Where faced batt is used, the installation tabs must be stapled to the face of the stud. There shall be no compression to the batt at the edges of the cavity due to inset stapling installation tabs.</p> <p>Insulation that upon installation readily conforms to available space shall be installed filling the entire cavity and within the manufacturers' density recommendation.</p>
Ceiling/attic	<p>The air barrier in any dropped ceiling/soffit shall be aligned with the insulation and any gaps in the air barrier sealed.</p> <p>Access openings, drop down stair or knee wall doors to unconditioned attic spaces shall be sealed.</p>	<p>The insulation in any dropped ceiling/soffit shall be aligned with the air barrier.</p> <p>Batt insulation installed in attic roof assemblies may be compressed at exterior wall lines to allow for required attic ventilation.</p>
Walls	<p>The junction of the foundation and sill plate shall be sealed. The junction of the top plate and top of exterior walls shall be sealed. Knee walls shall be sealed.</p>	<p>Cavities within corners and headers of frame walls shall be insulated by completely filling the cavity with a material having a thermal resistance of R-3 per inch minimum. Exterior thermal envelope insulation for framed walls shall be installed in substantial contact and continuous alignment with the air barrier.</p>
Windows, skylights and doors	<p>The space between window/door jambs and framing and skylights and framing shall be sealed.</p>	
Rim joists	<p>Rim joists shall include an exterior air barrier<sup>b</sup>.</p> <p>The junctions of the rim board to the sill plate and the rim board and the subfloor shall be air sealed.</p>	<p>Rim joists shall be insulated so that the insulation maintains permanent contact with the exterior rim board<sup>b</sup>.</p>
Floors (including above garage and cantilevered floors)	<p>The air barrier shall be installed at any exposed edge of insulation.</p>	<p>Floor framing cavity insulation shall be installed to maintain permanent contact with the underside of subfloor decking or floor framing cavity insulation shall be permitted to be in contact with the topside of sheathing or continuous insulation installed on the underside of floor framing and extend from the bottom to the top of all perimeter floor framing members.</p>
Basement, crawl space, and slab foundations	<p>Exposed earth in unvented crawl spaces shall be covered with a Class I, black vapor retarder with overlapping joints taped.</p>	<p>Crawl space insulation, where provided instead of floor insulation, shall be installed in accordance with Section R402.2.10.</p>

COMPONENT	AIR BARRIER CRITERIA	INSULATION CRITERIA
	<p>Penetrations through concrete foundation walls and slabs shall be air sealed.</p> <p>Class I vapor retarders shall not be used as an air barrier on below-grade walls and shall be installed in accordance with Section R702.7 of the <i>International Residential Code</i>.</p>	<p>Conditioned basement foundation wall insulation shall be installed in accordance with Section ((R402.2.8-1)) R402.2.8.</p> <p>Slab on grade floor insulation shall be installed in accordance with Section R402.2.10.</p>
Shafts, penetrations	<p>Duct and flue shafts to exterior or unconditioned space shall be air sealed.</p> <p>Utility penetrations of the air barrier shall be caulked, gasketed, or otherwise sealed and shall allow for expansion and contraction of materials and mechanical vibration.</p>	<p>Insulation shall be fitted tightly around utilities passing through shafts and penetrations in the building thermal envelope to maintain required R-value.</p>
Narrow cavities	<p>Narrow cavities, of an inch or less, not able to be insulated, shall be air sealed.</p>	<p>Batts in narrow cavities shall be cut to fit and installed to the correct density without any voids or gaps or compression, or narrow cavities shall be filled by insulation that on installation readily conforms to the available cavity space.</p>
Garage separation	<p>Air sealing shall be provided between the garage and conditioned spaces.</p>	<p>Insulated portions of the garage separation assembly shall be installed in accordance with Sections R303 and R402.2.8.</p>
Recessed lighting	<p>Recessed light fixtures installed in the building thermal envelope shall be air sealed in accordance with Section ((R402.4.5)) R402.4.3.</p>	<p>Recessed light fixtures installed in the building thermal envelope shall be air tight and IC rated and shall be buried or surrounded with insulation.</p>
Plumbing, wiring, or other obstructions	<p>All holes created by wiring, plumbing, or other obstructions in the air barrier assembly shall be air sealed.</p>	<p>Batt insulation shall be cut neatly to fit around wiring and plumbing in exterior walls. There shall be no voids or gaps or compression where cut to fit. Insulation that on installation readily conforms to available space shall extend behind piping and wiring. Insulation shall be installed to fill the available space and surround wiring, plumbing, or other obstructions, unless the required R-value can be met by installing insulation and air barrier systems completely to the exterior side of the obstructions.</p>
Shower/tub on exterior wall	<p>The air barrier installed at exterior walls adjacent to showers and tubs shall separate the wall from the showers and tubs.</p>	<p>Exterior walls adjacent to showers and tubs shall be insulated.</p>
Electrical/phone box on exterior wall	<p>The air barrier shall be installed behind electrical or communication boxes or air sealed boxes shall be installed.</p>	
HVAC register boots	<p>HVAC supply and return register boots shall be sealed to the subfloor, wall covering or ceiling penetrated by the boot.</p>	
Concealed sprinklers	<p>When required to be sealed, concealed fire sprinklers shall only be sealed in a manner that is recommended by the manufacturer. Caulking or other adhesive sealants shall not be used to fill voids between fire sprinkler cover plates and walls or ceilings.</p>	

IC = insulation contact.

<sup>a</sup> In addition, inspection of log walls shall be in accordance with the provisions of ICC-400.

<sup>b</sup> Insulation installed in unconditioned/ventilated attic spaces is not required to be enclosed within an air barrier assembly.



AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40320 Section R403.3—Ducts.**

**R403.3 Ducts.** Ducts and air handlers shall be installed in accordance with Sections R403.3.1 through R403.3.7.

**R403.3.1 Ducts located outside conditioned space.** Supply and return ducts located outside *conditioned space* shall be insulated to ((and)) an R-value of not less than R-8 for ducts 3 inches (76 mm) in diameter and larger and not less than R-6 for ducts smaller than 3 inches (76 mm) in diameter. Ducts buried beneath a building shall be insulated as required per this section or have an equivalent thermal distribution efficiency. Ducts within a concrete slab or in the ground shall be insulated to R-10 with insulation designed to be used below grade. Underground ducts utilizing the *thermal distribution efficiency* method shall be listed and labeled to indicate the R-value equivalency.

**R403.3.2 Ducts located in conditioned space.** For ducts to be considered as being located inside a conditioned space, such ducts shall comply with the following:

1. All duct systems shall be located completely within the *continuous air barrier* and within the *building thermal envelope*.
2. All heating, cooling, and ventilation system components shall be installed inside the conditioned space including, but not limited to, forced air ducts, hydronic piping, hydronic floor heating loops, convectors and radiators. Combustion equipment shall be direct vent or sealed combustion.
3. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts is permitted to be located outside the conditioned space, provided they are insulated to a minimum of R-8.
  - 3.1. Metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic.
  - 3.2. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool.
4. Ductwork in floor cavities located over unconditioned space shall comply with all of the following:
  - 4.1. A *continuous air barrier* installed between unconditioned space and the duct.
  - 4.2. Insulation installed in accordance with Section R402.2.7.
  - 4.3. A minimum R-19 insulation installed in the cavity width separating the duct from unconditioned space.
5. Ductwork located within *exterior walls* of the *building thermal envelope* shall comply with the following:
  - 5.1. A continuous air barrier installed between unconditioned space and the duct.
  - 5.2. A minimum R-10 insulation installed in the cavity width separating the duct from unconditioned space.
  - 5.3. The remainder of the cavity insulation shall be fully insulated to the drywall side.

**R403.3.3 Ducts buried within ceiling insulation.** Where supply and return air ducts are partially or completely buried in ceiling insulation, such ducts shall comply with all of the following:

1. The supply and return ducts shall have an insulation *R*-value not less than *R*-8.

2. At all points along each duct, the sum of the ceiling insulation *R*-value against and above the top of the duct, and against and below the bottom of the duct, shall be not less than *R*-19, excluding the *R*-value of the duct insulation.

EXCEPTION: Sections of the supply duct that are less than 3 feet (914 mm) from the supply outlet shall not be required to comply with these requirements.

**R403.3.3.1 Effective *R*-value of deeply buried ducts.** Where using ((~~a simulated energy performance analysis~~)) the total building performance compliance option in Section R405, sections of ducts that are: Installed in accordance with Section R403.3.3; located directly on, or within 5.5 inches (140 mm) of the ceiling; surrounded with blown-in attic insulation having an *R*-value of *R*-30 or greater and located such that the top of the duct is not less than 3.5 inches (89 mm) below the top of the insulation, shall be considered as having an effective duct insulation *R*-value of *R*-25.

**R403.3.4 Sealing.** Ducts, air handlers, and filter boxes shall be sealed. Joints and seams shall comply with either the *International Mechanical Code* or *International Residential Code*, as applicable.

EXCEPTIONS: 1. Air-impermeable spray foam products shall be permitted to be applied without additional joint seals.  
2. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams, and locking-type joints and seams of other than the snap-lock and button-lock types.

**R403.3.4.1 Sealed air handler.** Air handlers shall have a manufacturer's designation for an air leakage of no more than 2 percent of the design air flow rate when tested in accordance with ASHRAE 193.

**R403.3.5 Duct testing.** Ducts shall be leak tested in accordance with WSU RS-33, using the maximum duct leakage rates specified.

EXCEPTION: A duct air leakage test shall not be required for ducts serving ventilation systems that are not integrated with the ducts serving heating or cooling systems.

A written report of the results shall be signed by the party conducting the test and provided to the *code official*.

**R403.3.6 Duct leakage.** The total leakage of the ducts, where measured in accordance with Section R403.3.3, shall be as follows:

1. Rough-in test: Total leakage shall be less than or equal to 4.0 cfm (113.3 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure. All registers shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 3.0 cfm (85 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area.

2. Postconstruction test: Leakage to outdoors shall be less than or equal to 4.0 cfm (113.3 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area or total leakage shall be less than or equal to 4.0 cfm (113.3 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test.

3. Test for ducts within thermal envelope: Where all ducts and air handlers are located entirely within the *building thermal envelope*, total leakage shall be less than or equal to 8.0 cubic feet per

minute (226.6 L/min) per 100 square feet (9.29 m<sup>2</sup>) of conditioned floor area. For forced air ducts, a maximum of 10 linear feet of return ducts and 5 linear feet of supply ducts may be located outside the conditioned space. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices. Flex duct connections must be made with nylon straps and installed using a plastic strapping tensioning tool. Ducts located in crawl spaces do not qualify for this exception.

**R403.3.7 Building cavities.** Building framing cavities shall not be used as ducts or plenums. Installation of ducts in exterior walls, floors or ceilings shall not displace required envelope insulation.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40340 Section R403.5—Service hot water systems.**

**R403.5 Service hot water systems.** Energy conservation measures for service hot water systems shall be in accordance with this section. Service water-heating equipment shall meet the requirements of DOE 10 C.F.R. Part 430 Uniform Energy Factor or the equipment shall meet the requirements of Section C404.2.

**R403.5.1 Heated water circulation and temperature maintenance systems.**

Heated water circulation systems shall be in accordance with Section R403.5.1.1. Heat trace temperature maintenance systems shall be in accordance with Section R403.5.1.2. Automatic controls, temperature sensors and pumps shall be in a location with access. Manual controls shall be in a location with *ready access*.

**R403.5.1.1 Circulation systems.** Heated water circulation systems shall be provided with a circulation pump. The system return pipe shall be a dedicated return pipe. Gravity and thermo-syphon circulation systems are prohibited. Controls automatically turn off the circulation pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water.

**R403.5.1.1.1 Demand recirculation water systems serving an individual dwelling unit.** *Demand recirculation water systems* shall have controls that start the pump upon receiving a signal from the action of a user of a fixture or appliance, sensing the presence of a user of a fixture or sensing the flow of hot or tempered water to a fixture fitting or appliance.

**R403.5.1.2 Heat trace systems.** Electric heat trace systems shall comply with IEEE 515.1 or UL 515. Controls for such systems shall automatically adjust the energy input to the heat tracing to maintain the desired water temperature in the piping in accordance with the times when heated water is used in the occupancy.

**R403.5.2 Water volume determination.** The volume shall be the sum of the internal volumes of pipe, fittings, valves, meters, and manifolds between the nearest source of heated water and the termination of the fixture supply pipe. Water heaters, circulating water systems, and heat trace temperature maintenance systems shall be considered to be sources of heated water. The volume in the piping shall be determined

from Table C404.3.1 in the Washington State Energy Code, Commercial Provisions or Table L502.7 of the *Uniform Plumbing Code*. The volume contained within fixture shutoff valves, within flexible water supply connectors to a fixture fitting and within a fixture fitting shall not be included in the water volume determination. Where heated water is supplied by a recirculating system or heat-traced piping, the volume shall include the portion of the fitting on the branch pipe that supplies water to the fixture.

**R403.5.3 Hot water pipe insulation.** Insulation for service hot water pipe, both within and outside the conditioned space, shall have a minimum thermal resistance (*R*-value) of R-3.

EXCEPTION: Pipe insulation is permitted to be discontinuous where it passes through studs, joists or other structural members and where the insulated pipes pass other piping, conduit or vents, provided the insulation is installed tight to each obstruction.

**R403.5.4 Drain water heat recovery units.** Drain water heat recovery units shall comply with CSA 55.2 or IAPMO PS 92. Drain water heat recovery units shall be in accordance with CSA 55.1 or IAPMO IGC 346-2017.

**R403.5.5 Water heater installation location.** Service hot water systems shall be installed within the *building thermal envelope*.

EXCEPTIONS: 

1. Where the hot water system efficiency is greater than or equal to 2.0 UEF.
2. Tankless water heaters.
3. Gas heat pump water heaters intended for exterior installation.
4. Atmospheric vented gas water heaters.

**R403.5.6 ((Electric)) Water heater insulation.** All ((electric)) tank-type water heaters in unconditioned spaces, or on concrete floors in conditioned spaces, shall be placed on an insulated surface with a minimum thermal resistance of R-10, and a minimum compressive strength of 40 psi or engineered to support the appliance.

~~**R403.5.7 ((Heat pump water heating.** Service hot water in one- and two-family dwellings and multiple single-family dwellings (townhouses) shall be provided by a heat pump system. The heat pump water heating system shall be sized to provide 100 percent of peak hot water demand. Where the heat pump is located in unconditioned space, the heat pump water heating system shall be sized to provide 100 percent of peak hot water demand at an entering source dry bulb (or wet bulb if rated for wet bulb temperatures) air temperature of 40°F (4°C).~~

EXCEPTIONS: 

1. Resistance heating elements integrated into heat pump equipment.
2. Electric water heaters with a rated water storage volume of no greater than 20 gallons.
3. *Dwelling units* with no more than 1,000 square feet of *conditioned floor area*.
4. Supplementary water heating systems in accordance with Section R403.5.7.1, provided the system capacity does not exceed the capacity of the heat pump water heating system.
5. Solar water heating systems.
6. Waste heat and energy recovery systems.
7. Heat trace freeze protection systems.
8. Snow and ice melt systems.

~~**R403.5.7.1)) Supplementary heat for heat pump water heating systems.**~~

Heat pumps used for water heating and having supplementary water heating equipment shall have controls that limit supplementary water heating equipment operation to only those times when one of the following applies:

1. The heat pump water heater cannot meet hot water demand.
2. For heat pumps located in unconditioned space, the outside air temperature is below 40°F (4°C).
3. The heat pump is operating in defrost mode.
4. The vapor compression cycle malfunctions or loses power.

EXCEPTION: Heat trace temperature maintenance systems, provided the system capacity does not exceed the capacity of the heat pump water heating system.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40392 ((Section R403.13 Heat pump space heating.))**

**Reserved.**

~~((R403.13 Heat pump space heating. Space heating shall be provided by a heat pump system.~~

- EXCEPTIONS:
1. Detached one- and two-family dwellings and multiple single family dwellings (townhouses up to three stories in height above grade having an installed HVAC heating capacity no greater than 1.5 watts of electric resistance heating per square foot of *dwelling unit conditioned floor area*, or up to 500 watts, whichever is greater.
  2. Group R-2 *dwelling or sleeping units* having an installed HVAC heating capacity no greater than 750 watts in Climate Zone 4, and 1,000 watts in Climate Zone 5, in any separate habitable room with exterior fenestration are permitted to be heated using electric resistance appliances. For buildings in location with exterior design conditions below 4°F (-15.6°C), an additional 250 watts above that allowed for Climate Zone 5 is permitted.
  - 2.1. A room within a dwelling or sleeping unit that has two primary walls facing different cardinal directions, each with exterior fenestration, is permitted to have an installed HVAC heating capacity no greater than 1,000 watts in Climate Zone 4, and 1,300 watts in Climate Zone 5. Bay windows and other minor offsets are not considered primary walls. For buildings in location with exterior design conditions below 4°F (-15.6°C), an additional 250 watts above that allowed for Climate Zone 5 is permitted.
  3. Resistance heating elements integrated into heat pump equipment.
  4. Solar thermal systems.
  5. Waste heat, radiant heat exchanger, and energy recovery systems.
  6. Supplementary heat in accordance with Section R403.1.2.
  7. Where there is no electric utility service available at the building site.
  8. Heating systems that rely primarily on biomass are allowed in Climate Zone 5.)

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40520 Section R405.2—Performance based compliance.**

**R405.2 Performance based compliance.** Compliance based on total building performance requires that a proposed design meet all of the following:

1. The requirements of the sections indicated within Table R405.2(~~(1)~~).
  2. For structures less than 1,500 square feet of conditioned floor area, the annual ~~((carbon emissions))~~ site energy consumption shall be less than or equal to 64 percent of the annual ~~((carbon emissions))~~ site energy consumption of the *standard reference design*.
  3. For structures 1,500 to 5,000 square feet of conditioned floor area, the annual ~~((carbon emissions))~~ site energy consumption shall be no more than 47 percent of the *standard reference design*.
  4. For structures over 5,000 square feet of conditioned floor area, the annual ~~((carbon emissions))~~ site energy consumption shall be no more than 41 percent of the *standard reference design*.
  5. For structures serving Group R-2 occupancies, the annual ~~((carbon emissions))~~ site energy consumption shall be less than or equal to 61 percent of the annual site energy consumption of the *standard reference design*. See Section R401.1 and *residential building* in Section R202 for Group R-2 scope.
- ~~((Carbon emissions for both the *standard reference design* and the *proposed design* shall be calculated using Table R405.2(2).))~~ Energy use derived from simulation analysis shall be expressed in ~~((pounds of carbon))~~ Btu per square foot of conditioned floor area per year.

TABLE R405.2(~~(1)~~)  
MANDATORY COMPLIANCE MEASURES FOR TOTAL BUILDING PERFORMANCE

Section <sup>a</sup>	Title	Comments
	General	

Section <sup>a</sup>	Title	Comments
R401.3	Certificate	
<b>Envelope</b>		
R402.1.1	Vapor retarder	
R402.2.3	Eave baffle	
R402.2.4.1	Access hatches and doors	
((R402.2.10.1 ‡ Crawlspace wall insulation installations))		
R402.4	Air leakage	
R402.5	Maximum fenestration U-factor	
<b>Systems</b>		
R403.1	Controls	
R403.3	Ducts	Except for R403.3.2 and R403.3.3
R403.4	Mechanical system piping insulation	
R403.5.1	Heated water circulation and temperature maintenance system	
R403.5.3	Drain water heat recovery units	
((R403.5.7 Heat pump water heating))		
R403.6	Mechanical ventilation	
R403.7	Equipment sizing and efficiency rating	
R403.8	Systems serving multiple dwelling units	
R403.9	Snow melt system controls	
R403.10	Energy consumption of pools and spas	
R403.11	Portable spas	
R403.12	Residential pools and permanent residential spas	
((R403.13 Heat pump space heating))		
<b>Electrical Power and Lighting</b>		
R404.1	Lighting equipment	
R404.2	Interior lighting controls	

<sup>a</sup> Reference to a code section includes all the relative subsections except as indicated in the table.

( ( ~~TABLE R405.2(2)~~

~~CARBON EMISSIONS FACTORS~~

Type	CO <sub>2</sub> e (lb/unit)	Unit
Electricity	0.44	kWh
Natural gas	11.7	Therm

Type	CO <sub>2</sub> e (lb/unit)	Unit
Oil	19.2	Gallon
Propane	10.5	Gallon
Other <sup>a</sup>	195.00	mmBtu
On-site renewable energy	0.00	

<sup>a</sup> District energy systems may use alternative emission factors supported by calculations approved by the code official.)

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40530 Section R405.3—Documentation.**

**R405.3 Documentation.** Documentation of the software used for the performance design and the parameters for the building shall be in accordance with Sections R405.3.1 through ((R405.3.3)) R405.3.2.2.

**R405.3.1 Compliance software tools.** Documentation verifying that the methods and accuracy of the compliance software tools conform to the provisions of this section shall be provided to the *code official*.

**R405.3.2 Compliance report.** Compliance software tools shall generate a report that documents that the *proposed design* complies with Section R405.2.

A compliance report on the *proposed design* shall be submitted with the application for the building permit. Upon completion of the building, a confirmed compliance report based upon the confirmed condition of the building shall be submitted to the *code official* before a certificate of occupancy is issued.

Compliance reports shall include information in accordance with Sections R405.3.2.1 and R405.3.2.2.

**R405.3.2.1 Compliance report for permit application.** A compliance report submitted with the application for building permit shall include all of the following:

1. Building street address, or other building site identification.
2. The name, organization, and contact information of the individual performing the analysis and generating the compliance report.
3. The name and version of the compliance software tool.
4. Documentation of all inputs entered into the software used to produce the results for the reference design and/or the rated home.
5. A certificate indicating that the *proposed design* complied with Section R405.2. The certificate shall document the building components' energy specifications that are included in the calculation including: Component-level insulation R-values or U-factors; duct system and building envelope air leakage testing assumptions; and the type and rated efficiencies of proposed heating, cooling, mechanical ventilation, and service water-heating equipment to be installed. If on-site renewable energy systems will be installed, the certificate shall report the type and production size of the proposed system. Additional documentation reporting estimated annual energy production shall be provided.

6. When a site-specific report is not generated, the *proposed design* shall be based on the worst-case orientation and configuration of the rated home.

**R405.3.2.2 Compliance report for certificate of occupancy.** A compliance report submitted for obtaining the certificate of occupancy shall include all of the following:

1. Building street address, or other building site identification.
2. Declaration of the total building performance path on the title page of the energy report and the title page of the building plans.
3. A statement bearing the name of the individual performing the analysis and generating the report, along with their organization and contact information, indicating that the as-build building complies with Section R405.2.
4. The name and version of the compliance software tool.
5. A site-specific energy analysis report that is in compliance with Section R405.2.
6. A final confirmed certificate indicating compliance based on inspection, and a statement indicating that the confirmed rated design of the built home complies with Section R405.2. The certificate shall report the energy features that were confirmed to be in the home, including component level insulation *R*-values or *U*-factors; results from any required duct system and building envelope air leakage testing; and the type and rated efficiencies of the heating, cooling, mechanical ventilation, and service water-heating equipment installed.
7. Where on-site renewable energy systems have been installed, the certificate shall report the type and production size of the installed system. Additional documentation reporting estimated annual energy production shall be provided.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40551 Table R405.4.2(1)—Specifications for the standard reference and proposed designs.**

TABLE ((R402-4.2(1))) R405.4.2(1)  
SPECIFICATIONS FOR THE STANDARD REFERENCE AND PROPOSED DESIGNS

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
Above-grade walls	Type: Mass wall if proposed wall is mass; otherwise wood frame. Gross area: Same as proposed <i>U</i> -factor: From Table R402.1.2 Solar absorptance = 0.75 Emittance = 0.90	As proposed As proposed As proposed As proposed As proposed
Below-grade walls	Type: Same as proposed Gross area: Same as proposed <i>U</i> -factor: From Table R402.1.2, with insulation layer on interior side of walls.	As proposed As proposed As proposed
Above-grade floors	Type: Wood frame Gross area: Same as proposed <i>U</i> -factor: From Table R402.1.2	As proposed As proposed As proposed



BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN
Ceilings	Type: Wood frame Gross area: Same as proposed U-factor: From Table R402.1.2	As proposed As proposed As proposed
Roofs	Type: Composition shingle on wood sheathing Gross area: Same as proposed Solar absorptance = 0.75 Emittance = 0.90	As proposed As proposed As proposed As proposed
Attics	Type: Vented with aperture = 1 ft <sup>2</sup> per 300 ft <sup>2</sup> ceiling area	As proposed
Foundations	Type: Same as proposed foundation wall area above and below-grade Soil characteristics: Same as proposed.	As proposed As proposed
Opaque doors	Area: 40 ft <sup>2</sup> Orientation: North U-factor: Same as fenestration from Table R402.1.2.	As proposed As proposed As proposed
Vertical fenestration other than opaque doors <sup>a</sup>	Total area <sup>h</sup> = (a) The proposed glazing area; where proposed glazing area is less than 15% of the conditioned floor area. (b) 15% of the conditioned floor area; where the proposed glazing area is 15% or more of the conditioned floor area.	As proposed
	Orientation: Equally distributed to four cardinal compass orientations (N, E, S & W).	As proposed
	U-factor: From Table R402.1.2	As proposed
	SHGC: From Table R402.1.1 except that for climates with no requirement (NR) SHGC = 0.40 shall be used.	As proposed
	Interior shade fraction: 0.92 - (0.21 × SHGC for the standard reference design) External shading: None	0.92 - (0.21 × SHGC as proposed) As proposed
Skylights	None	As proposed
Air exchange rate	Air leakage rate of 4 air changes per hour at a pressure of 0.2 inches w.g. (50 Pa). The mechanical ventilation rate shall be in addition to the air leakage rate and the same as in the proposed design, but no greater than $0.01 \times CFA + 7.5 \times (N_{br} + 1)$ where: CFA = conditioned floor area N <sub>br</sub> = number of bedrooms - The mechanical ventilation system type shall be the same as in the proposed design. Energy recovery shall not be assumed for mechanical ventilation.	As proposed <sup>a</sup> . The mechanical ventilation rate <sup>b</sup> shall be in addition to the air leakage rate and shall be as proposed.
Mechanical ventilation	None, except where mechanical ventilation is specified by the proposed design, in which case: Annual vent fan energy use: $kWh/yr = (1e_f) \times (0.0876 \times CFA + 65.7 \times (N_{br} + 1))$ where: e <sub>f</sub> = the minimum fan efficacy from Table R403.6.1 corresponding to the system type at a flow rate of $0.01 \times CFA + 7.5 \times (N_{br} + 1)$ CFA = conditioned floor area N <sub>br</sub> = number of bedrooms	As proposed
Internal gains	IGain = 17,900 + 23.8 × CFA + 4104 × N <sub>br</sub> (Btu/day per dwelling unit)	Same as standard reference design

BUILDING COMPONENT	STANDARD REFERENCE DESIGN	PROPOSED DESIGN																	
Internal mass	An internal mass for furniture and contents of 8 pounds per square foot of floor area.	Same as standard reference design, plus any additional mass specifically designed as a thermal storage element <sup>c</sup> but not integral to the building envelope or structure.																	
Structural mass	For masonry floor slabs, 80% of floor area covered by R-2 carpet and pad, and 20% of floor directly exposed to room air.	As proposed																	
	For masonry basement walls, as proposed, but with insulation required by Table R402.1.2 located on the interior side of the walls.	As proposed																	
	For other walls, for ceilings, floors, and interior walls, wood frame construction.	As proposed																	
Heating systems <sup>d, e</sup>	The standard reference design shall be an air source heat pump meeting the requirements of Section C403 of the WSEC—Commercial Provisions. Capacity: Sized in accordance with Section ((R403.6)) <u>R403.7</u>	As proposed																	
Cooling systems <sup>d, f</sup>	Same system type as proposed. Same system efficiency as required by prevailing minimum federal standard. Capacity: Sized in accordance with Section ((R403.6.)) <u>R403.7</u>	As proposed																	
Service water heating <sup>d, e, f, g</sup>	The standard reference design shall be a heat pump water ((heating)) heater meeting the efficiency standards ((for Tier 1 of NEEA's Advanced Water Heating Specifications)) of <u>Table C404.2</u> . Use, in units of gal/day = 25.5 + (8.5 x N <sub>br</sub> ) Where N <sub>br</sub> = number of bedrooms	As proposed Use, in units of gal/day = 25.5 + (8.5 x N <sub>br</sub> ) x (1 - HWDS) Where: N <sub>br</sub> = number of bedrooms HWDS = factor for the compactness of the hot water distribution system <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2">Compactness ratio<sup>1</sup> factor</th> <th rowspan="2">HWDS</th> </tr> <tr> <th>1 story</th> <th>2 or more stories</th> </tr> </thead> <tbody> <tr> <td>&gt;60%</td> <td>&gt;30%</td> <td>0</td> </tr> <tr> <td>&gt;30% to ≤60%</td> <td>&gt;15% to ≤30%</td> <td>0.05</td> </tr> <tr> <td>&gt;15% to ≤30%</td> <td>&gt;7.5% to ≤15%</td> <td>0.10</td> </tr> <tr> <td>≤15%</td> <td>≤7.5%</td> <td>0.15</td> </tr> </tbody> </table>	Compactness ratio <sup>1</sup> factor		HWDS	1 story	2 or more stories	>60%	>30%	0	>30% to ≤60%	>15% to ≤30%	0.05	>15% to ≤30%	>7.5% to ≤15%	0.10	≤15%	≤7.5%	0.15
Compactness ratio <sup>1</sup> factor		HWDS																	
1 story	2 or more stories																		
>60%	>30%	0																	
>30% to ≤60%	>15% to ≤30%	0.05																	
>15% to ≤30%	>7.5% to ≤15%	0.10																	
≤15%	≤7.5%	0.15																	
Thermal distribution systems	Duct insulation: From Section R403.3.3. Duct location: Same as proposed design. A thermal distribution system efficiency (DSE) of 0.93 shall be applied to both the heating and cooling system efficiencies for all systems.  <b>Exception:</b> For nonducted heating and cooling systems that do not have a fan, the standard reference design distribution system efficiency (DSE) shall be 1.	Duct insulation: As proposed. Duct location: As proposed. As specified in Table R405.5.2(2).																	
Thermostat	Type: Manual, cooling temperature setpoint = 75°F; Heating temperature setpoint = 72°F	Same as standard reference																	

For SI: 1 square foot = 0.93 m<sup>2</sup>, 1 British thermal unit = 1055 J, 1 pound per square foot = 4.88 kg/m<sup>2</sup>, 1 gallon (U.S.) = 3.785 L, °C = (°F-3)/1.8, 1 degree = 0.79 rad

<sup>a</sup> Where required by the code official, testing shall be conducted by an approved party. Hourly calculations as specified in the ASHRAE Handbook of Fundamentals, or the equivalent, shall be used to determine the energy loads resulting from infiltration.

- b The combined air exchange rate for infiltration and mechanical ventilation shall be determined in accordance with Equation 43 of 2001 ASHRAE *Handbook of Fundamentals*, page 26.24 and the "Whole-house Ventilation" provisions of 2001 ASHRAE *Handbook of Fundamentals*, page 26.19 for intermittent mechanical ventilation.
- c Thermal storage element shall mean a component not part of the floors, walls or ceilings that is part of a passive solar system, and that provides thermal storage such as enclosed water columns, rock beds, or phase-change containers. A thermal storage element must be in the same room as fenestration that faces within 15 degrees (0.26 rad) of true south, or must be connected to such a room with pipes or ducts that allow the element to be actively charged.
- d For a proposed design with multiple heating, cooling or water heating systems using different fuel types, the applicable standard reference design system capacities and fuel types shall be weighted in accordance with their respective loads as calculated by accepted engineering practice for each equipment and fuel type present.
- e For a proposed design without a proposed heating system, a heating system with the prevailing federal minimum efficiency shall be assumed for both the standard reference design and proposed design.
- f For a proposed design home without a proposed cooling system, an electric air conditioner with the prevailing federal minimum efficiency shall be assumed for both the standard reference design and the proposed design.
- g For a proposed design with a nonstorage-type water heater, a 40-gallon storage-type water heater with the prevailing federal minimum energy factor for the same fuel as the predominant heating fuel type shall be assumed. For the case of a proposed design without a proposed water heater, a 40-gallon storage-type water heater with the prevailing federal minimum efficiency for the same fuel as the predominant heating fuel type shall be assumed for both the proposed design and standard reference design.
- h For residences with conditioned basements, R-2 and R-4 residences and townhouses, the following formula shall be used to determine fenestration area:

$$AF = A_s \times FA \times F$$

Where:

- AF = Total fenestration area.
- A<sub>s</sub> = Standard reference design total fenestration area.
- FA = (Above-grade thermal boundary gross wall area)/(above-grade boundary wall area + 0.5 x below-grade boundary wall area).
- F = (Above-grade thermal boundary wall area)/(above-grade thermal boundary wall area + common wall area) or 0.56, whichever is greater.

and where:

Thermal boundary wall is any wall that separates conditioned space from unconditioned space or ambient conditions.

Above-grade thermal boundary wall is any thermal boundary wall component not in contact with soil.

Below-grade boundary wall is any thermal boundary wall in soil contact.

Common wall area is the area of walls shared with an adjoining dwelling unit.

L and CFA are in the same units.

- i The factor for the compactness of the hot water distribution system is the ratio of the area of the rectangle that bounds the source of hot water and the fixtures that it serves (the "hot water rectangle") divided by the floor area of the dwelling.
  1. Sources of hot water include water heaters, or in multifamily buildings with central water heating systems, circulation loops, or electric heat traced pipes.
  2. The hot water rectangle shall include the source of hot water and the points of termination of all hot water fixture supply piping.
  3. The hot water rectangle shall be shown on the floor plans and the area shall be computed to the nearest square foot.
  4. Where there is more than one water heater and each water heater serves different plumbing fixtures and appliances, it is permissible to establish a separate hot water rectangle for each hot water distribution system and add the area of these rectangles together to determine the compactness ratio.
  5. The basement or attic shall be counted as a story when it contains the water heater.
  6. Compliance shall be demonstrated by providing a drawing on the plans that shows the hot water distribution system rectangle(s), comparing the area of the rectangle(s) to the area of the dwelling and identifying the appropriate compactness ratio and HWDS factor.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40552 Table R405.4.2(2)—Default distribution system efficiencies for proposed designs.**

**TABLE ((R402-4.2(2))) R405.4.2(2)  
DEFAULT DISTRIBUTION SYSTEM EFFICIENCIES FOR PROPOSED  
DESIGNS<sup>a</sup>**

DISTRIBUTION SYSTEM CONFIGURATION AND CONDITION	DISTRIBUTION SYSTEM EFFICIENCY
Distribution system components located in unconditioned space	0.88
Distribution systems entirely located in conditioned space <sup>b</sup>	0.93
Zonal systems <sup>c</sup>	1.00

For SI: 1 cubic foot per minute = 0.47 L/s, 1 square foot = 0.093m<sup>2</sup>, 1 pound per square inch = 6895 Pa, 1 inch water gauge = 1250 Pa.

<sup>a</sup> Values given by this table are for distribution systems, which must still meet all prescriptive requirements for duct and pipe system insulation and leakage.

<sup>b</sup> Entire system in conditioned space shall mean that no component of the distribution system, including the air-handler unit, is located outside of the conditioned space. All components must be located on the interior side of the thermal envelope (inside the insulation) and also inside of the air barrier. Refrigerant compressors and piping are allowed to be located outside.

<sup>c</sup> Zonal systems are systems where the heat source is located within each room. Systems shall be allowed to have forced airflow across a coil but shall not have any ducted airflow external to the manufacturer's air-handler enclosure. Hydronic systems do not qualify.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40560 Section R405.5—Calculation software tools.**

**R405.5 Calculation software tools.** Calculation software, where used, shall be in accordance with Sections R405.5.1 through R405.5.3.

**R405.5.1 Minimum capabilities.** Calculation procedures used to comply with this section shall be software tools capable of calculating the annual energy consumption of all building elements that differ between the *standard reference design* and the *proposed design* and shall include the following capabilities:

1. Calculation of whole-building (as a single zone) sizing for the heating and cooling equipment in the *standard reference design* residence in accordance with Section R403.6.

2. Calculations that account for the effects of indoor and outdoor temperatures and part-load ratios on the performance of heating, ventilating and air-conditioning equipment based on climate and equipment sizing.

3. Printed *code official* inspection checklist listing each of the *proposed design* component characteristics from Table ((R405.5.2(1))) R405.4.2(1) determined by the analysis to provide compliance, along with their respective performance ratings (e.g., R-value, U-factor, SHGC, HSPF, AFUE, SEER, EF, etc.).

**R405.5.2 Specific approval.** Performance analysis tools meeting the applicable sections of Section R405 shall be permitted to be *approved*. Tools are permitted to be *approved* based on meeting a specified threshold for a jurisdiction. The *code official* shall be permitted to approve tools for a specified application or limited scope.

**R405.5.3 Input values.** When calculations require input values not specified by Sections R402, R403, R404 and R405, those input values shall be taken from an approved source.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40610 Section R406.1—Scope.**

**R406.1 Scope.** This section establishes additional energy efficiency requirements for all new construction covered by this code, including additions subject to Section R502 and change of occupancy or use subject to Section R505 unless specifically exempted in Section R406. Credits from both Sections R406.2 and R406.3 are required.

**R406.2 Carbon emission equalization.** This section establishes a base equalization between fuels used to define the equivalent carbon emissions of the options specified. The permit shall define the base fuel selection to be used and the points specified in Table R406.2 shall be used to modify the requirements in Section R406.3.

**TABLE R406.2**  
**(~~(FUEL NORMALIZATION)~~) ENERGY EQUALIZATION CREDITS**

System Type	Description of Heating Sources	Credits	
		All Other	Group R-2 <sup>a</sup>
1	For combustion heating system using equipment meeting minimum federal efficiency standards for the equipment listed in Table C403.3.2(5) or C403.3.2(6)	<del>((-3.0))</del> 0	0
2	For an initial heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(2) and supplemental heating provided by electric resistance or a combustion furnace meeting minimum standards listed in Table C403.3.2(5) <sup>b</sup>	<del>((0))</del> 1.5	0
3	For heating system based on electric resistance only (either forced air or zonal)	<del>((-1.0))</del> 0.5	-0.5
4 <sup>c</sup>	For a heating system using a heat pump that meets federal standards for the equipment listed in Table C403.3.2(2) or C403.3.2(9)  or  Air to water heat pump units that are configured to provide both heating and cooling and are rated in accordance with AHRI 550/590	<del>((1.5))</del> 3.0	2.0
5	For heating system based on electric resistance with: 1. Inverter-driven ductless mini-split heat pump system installed in the largest zone in the dwelling  or  2. With 2 kW or less total installed heating capacity per dwelling	<del>((0.5))</del> 2.0	0

<sup>a</sup> See Section R401.1 and *residential building* in Section R202 for Group R-2 scope.

<sup>b</sup> The gas back-up furnace will operate as fan-only when the heat pump is operating. The heat pump shall operate at all temperatures above 38°F (3.3°C) (or lower). Below that "changeover" temperature, the heat pump would not operate to provide space heating. The gas furnace provides heating below 38°F (3.3°C) (or lower).

<sup>c</sup> Additional points for this HVAC system are included in Table R406.3.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40620 Section R406.3—Additional energy efficiency requirements.**

**R406.3 Additional energy efficiency requirements.** Each *dwelling unit* in a *residential building* shall comply with sufficient options from Table R406.2 and R406.3 so as to achieve the following minimum number of credits:

1. Small *Dwelling Unit*: ~~((2.5))~~ 5.0  
credits

*Dwelling units* less than 1500 square feet in conditioned floor area with less than 300 square feet of fenestration area. *Additions* to existing building that are greater than 500 square feet of heated floor area but less than 1500 square feet.

- 2. Medium Dwelling Unit: ((5.0)) 8.0  
credits  
*All dwelling units that are not included in #1, #3, or #4.*
- 3. Large Dwelling Unit: ((6.0)) 9.0  
credits  
*Dwelling units exceeding 5000 square feet of conditioned floor area.*
- 4. Dwelling units serving Group R-2 occupancies. See Section R401.1 and residential building in Section R202 for Group R-2 scope. ((4.5)) 6.5  
credits
- 5. Additions 150 square feet to 500 square feet: 2.0 credits

The drawings included with the building permit application shall identify which options have been selected and the point value of each option, regardless of whether separate mechanical, plumbing, electrical, or other permits are utilized for the project.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-40621 Table R406.3—Energy credits.**

TABLE 406.3  
ENERGY CREDITS

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
<b>1. EFFICIENT BUILDING ENVELOPE OPTIONS</b>			
Only one option from Items 1.1 through 1.4 may be selected in this category. Compliance with the conductive UA targets is demonstrated using Section R402.1.5, Total UA alternative, where [1-(Proposed UA/Target UA)] >; the required %UA reduction			
1.1	Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.22.	0.5	0.5
1.2	Prescriptive compliance is based on Table R402.1.3 with the following modifications: Vertical fenestration U = 0.25 Floor R-38 Basement wall R-21 int plus R-5 ci Ceiling and single-rafter or joist-vaulted R-60 advanced Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab  <b>or</b> Compliance based on Section R402.1.5: Reduce the Total conductive UA by 15%.	((0.5)) 1.0	1.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
1.3	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications:</p> <ul style="list-style-type: none"> <li>Vertical fenestration U = 0.18</li> <li>Ceiling and single-rafter or joist-vaulted R-60 advanced</li> <li>Floor R-38</li> <li>Basement wall R-21 int plus R-12 ci</li> <li>Slab on grade R-10 perimeter and under entire slab</li> <li>Below grade slab R-10 perimeter and under entire slab</li> </ul> <p><b>or</b></p> <p>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 22.5%.</p>	((+0)) <u>1.5</u>	1.5
1.4	<p>Prescriptive compliance is based on Table R402.1.3 with the following modifications:</p> <ul style="list-style-type: none"> <li>Vertical fenestration U = 0.18</li> <li>Ceiling and single-rafter or joist-vaulted R-60 advanced</li> <li>Wood frame wall R-21 int plus R-16 ci</li> <li>Floor R-48</li> <li>Basement wall R-21 int plus R-16 ci</li> <li>Slab on grade R-20 perimeter and under entire slab</li> <li>Below grade slab R-20 perimeter and under entire slab</li> </ul> <p><b>or</b></p> <p>Compliance based on Section R402.1.5: Reduce the Total conductive UA by 30%.</p>	((+5)) <u>2.5</u>	2.0
<p><b>2. AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION OPTIONS</b> Only one option from Items 2.1 through 2.3 may be selected in this category.</p>			
2.1	<p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 2.0 air changes per hour maximum at 50 Pascals</p> <p><b>or</b></p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.25 cfm/ft<sup>2</sup> maximum at 50 Pascals</p> <p><b>and</b></p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.65.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p>	((0-5)) <u>1.0</u>	1.0
2.2	<p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 1.5 air changes per hour maximum at 50 Pascals</p> <p><b>or</b></p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.20 cfm/ft<sup>2</sup> maximum at 50 Pascals</p> <p><b>and</b></p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.75.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p>	((+0)) <u>1.5</u>	1.5

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
2.3	<p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.6 air changes per hour maximum at 50 Pascals</p> <p><b>or</b></p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.15 cfm/ft<sup>2</sup> maximum at 50 Pascals</p> <p><b>and</b></p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.80. Duct installation shall comply with Section <del>((R403.3.7))</del> <u>R403.3.2</u>.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p>	<del>((1.5))</del> <u>2.0</u>	2.0
<p><b>3. HIGH EFFICIENCY HVAC EQUIPMENT OPTIONS</b> Only one option from Items 3.1 through <del>((3.8))</del> <u>3.10</u> may be selected in this category. Item <del>((3.9))</del> <u>3.11</u> may be taken with Items 3.1 or 3.3<sup>c</sup> only.</p>			
3.1 <sup>a</sup>	<p>For a System Type 1 in Table R406.2: Energy Star rated (U.S. North) gas or propane furnace with minimum AFUE of 95%.</p> <p><b>or</b></p> <p>Energy Star rated (U.S. North) gas or propane boiler with minimum AFUE of 90%</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0	1.0
3.2 <sup>a</sup>	<p>For secondary heating system serving System Type 2 in Table R406.2: Energy Star rated (U.S. North) Gas or propane furnace with minimum AFUE of 95%</p> <p><b>or</b></p> <p>Energy Star rated (U.S. North) Gas or propane boiler with minimum AFUE of 90%.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	0.5	0.5
3.3 <sup>a,c,d</sup>	<p>Air-source centrally ducted heat pump with minimum <u>HSPF2 of 8.1</u> (HSPF of 9.5).</p> <p>In areas where the winter design temperature as specified in Appendix RC is 23°F or below, a cold climate heat pump found on the NEEP cc ASHP qualified product list shall be used.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	0.5	N/A
3.4 <sup>a,d</sup>	<p>Closed-loop ground source heat pump; with a minimum COP of 3.3</p> <p><b>or</b></p> <p>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	1.0



OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
3.5 <sup>d</sup>	<p>Ductless mini-split heat pump system, zonal control: In homes where the primary space heating system is zonal electric heating, a ductless mini-split heat pump system with a minimum <u>HSPF2 of 9</u> (HSPF of 10.0) shall be installed and provide heating to the largest zone of the housing unit.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	2.0
3.6 <sup>a,d</sup>	<p>Air-source, centrally ducted heat pump with minimum <u>HSPF2 of 9.4</u> (HSPF of 11.0).</p> <p>A centrally ducted air source cold climate variable capacity heat pump (cc V<sub>CHP</sub>) found on the NEEP cc V<sub>CHP</sub> qualified product list with a minimum of <u>9 HSPF2</u> (10 HSPF) may be used to satisfy this requirement.</p> <p>In areas where the winter design temperature as specified in Appendix RC is 23°F or below, an air source centrally ducted heat pump shall be a cold climate variable capacity heat pump as listed on the NEEP qualified product list.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0	N/A
3.7 <sup>a,d,e</sup>	<p>Ductless split system heat pumps with no electric resistance heating in the primary living areas. A ductless heat pump system with a minimum <u>HSPF2 of 9</u> (HSPF of 10) shall be sized and installed to provide heat to entire dwelling unit at the design outdoor air temperature.</p> <p><b>Exception:</b> In homes with total heating loads of 24,000 or less using multi-zone mini-split systems with nominal ratings of 24,000 or less, the minimum <u>HSPF2</u> to claim this credit shall be <u>8.1</u> (9 HSPF).</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</p>	2.0	3.0
3.8 <sup>a,d</sup>	<p>Air-to-water heat pump with minimum COP of 3.2 at 47°F, rated in accordance with AHRI 550/590 by an accredited or certified testing lab.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</p>	1.0	N/A
3.9 <sup>(*)</sup>	<p><u>Gas-fired heat pump(s) meeting ANSI Z21.40.2 and Z21.40.4 or CSA, with a minimum UEF of 1.15.</u></p> <p><u>For R-2 Occupancy, gas-fired heat pump(s) meeting ANSI Z21.40.2 and Z21.40.4 or CSA, with a minimum UEF of 1.15, shall serve all units.</u></p>	<u>1.5</u>	<u>1.5</u>
3.10 <sup>f</sup>	<p>Combination water heating and space heating system shall include one of the following:</p> <p><u>Gas-fired heat pump water heater(s) meeting Tier 2 of the NEEA Advanced Water Heating Specification for Gas-Fueled Residential Storage Water Heaters Version 1.0.</u></p> <p><b>or</b></p> <p><u>For R-2 Occupancy, gas-fired heat pump water heater(s) meeting Tier 2 of the NEEA Advanced Water Heating Specification for Gas-Fueled Residential Storage Water Heaters Version 1.0., shall serve all units.</u></p> <p><b>or</b></p> <p><u>For R-2 Occupancy, gas-fired heat pump(s) meeting ANSI Z21.40.2 and Z21.40.4 or CSA, with a minimum UEF of 1.15, shall serve all units.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</u></p>	<u>2.5</u>	<u>2.5</u>

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
3.11 <sup>c</sup>	<p>Connected thermostat meeting ENERGY STAR Certified Smart Thermostats/EPA ENERGY STAR specifications.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the thermostat model.</p>	0.5	0.5
<b>4. HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM OPTIONS</b>			
4.1	<p>HVAC equipment and associated duct system(s) installation shall comply with the requirements of Section R403.3.2.</p> <p>Electric resistance heat, hydronic heating and ductless heat pumps are not permitted under this option.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</p>	0.5	N/A
<b>5. EFFICIENT WATER HEATING OPTIONS</b>			
<p>Only one option from Items 5.3 through ((5.5)) 5.8 may be selected in this category. Items 5.1 and 5.2 may be combined with any option.</p>			
5.1	<p>A drain water heat recovery unit(s) shall be installed, which captures wastewater heat from at least two showers, including tub/shower combinations. It is acceptable, but not required, for sink water to be connected. Unit shall have a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 54% if installed for unequal flow. Such units shall be rated in accordance with CSA B55.1 or IAPMO IGC 346-2017 and be so labeled.</p> <p>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it. Labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</p>	0.5	0.5
5.2	<p>For Compact Hot Water Distribution system credit, the volume shall store not more than 16 ounces of water between the nearest source of heated water and the termination of the fixture supply pipe where calculated using Section R403.5.2. <i>Construction documents</i> shall indicate the ounces of water in piping between the hot water source and the termination of the fixture supply. When the hot water source is the nearest primed plumbing loop or trunk, this must be primed with an On Demand recirculation pump and must run a dedicated ambient return line from the furthest fixture or end of loop to the water heater.</p> <p>To qualify for this credit, the dwelling must have a minimum of 1.5 bathrooms.</p>	0.5	0.5
5.3	<p><u>Water heating system shall include the following:</u>  <u>Energy Star rated gas or propane water heater with a minimum UEF of 0.80.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</u></p>	<u>0.5</u>	<u>0.5</u>

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
<u>5.4</u>	<p><u>Water heating system shall include one of the following:</u>  <u>Energy Star rated gas or propane water heater with a minimum UEF of 0.91.</u></p> <p><b>or</b></p> <p>Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems</p> <p><b>or</b></p> <p>Water heater heated by ground source heat pump meeting the requirements of Option ((3-3)) 3.4.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</p>	1.0	1.0
((5.4)) <u>5.5</u>	<p><u>Water heating system shall include one of the following:</u>  <u>Gas-fired heat pump water heater(s) meeting Tier 2 of the NEEA Advanced Water Heating Specification for Gas-Fueled Residential Storage Water Heaters Version 1.0.</u></p> <p><b>or</b></p> <p><u>For R-2 Occupancy, gas-fired heat pump water heater(s) meeting Tier 2 of the NEEA Advanced Water Heating Specification for Gas-Fueled Residential Storage Water Heaters Version 1.0. shall supply domestic hot water to all units.</u></p> <p><b>or</b></p> <p><u>For R-2 Occupancy, gas-fired heat pump water heater(s) meeting ANSI Z21.40.2 and Z21.40.4 or CSA, with a minimum UEF of 1.15, shall supply domestic hot water to all units.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</u></p>	<u>1.5</u>	<u>1.5</u>
<u>5.6</u>	<p><u>Water heating system shall include one of the following:</u>  <u>Electric heat pump water heater meeting the standards for Tier III of NEEA's advanced water heating specification.</u></p> <p><b>or</b></p> <p>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	2.0	2.5

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
<del>(5-5)</del> 5.7	<p>Water heating system shall include one of the following:                      Electric heat pump water heater with a minimum UEF of 2.9 and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors. Equipment shall meet Section 4, requirements for all units, of the NEEA standard <i>Advanced Water Heating Specification</i> with the UEF noted above.</p> <p><b>or</b></p> <p>For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	2.5	3.0
5.8	<p><u>Combination water heating and space heating system shall include one of the following:</u>  <u>Gas-fired heat pump water heater(s) meeting Tier 2 of the NEEA Advanced Water Heating Specification for Gas-Fueled Residential Storage Water Heaters Version 1.0.</u></p> <p><b>or</b></p> <p><u>For R-2 Occupancy, gas-fired heat pump water heater(s) meeting Tier 2 of the NEEA Advanced Water Heating Specification for Gas-Fueled Residential Storage Water Heaters Version 1.0., shall supply all units.</u></p> <p><b>or</b></p> <p><u>For R-2 Occupancy, gas-fired heat pump(s) meeting ANSI Z21.40.2 and Z21.40.4 or CSA, with a minimum UEF of 1.15, shall supply all units.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</u></p>	2.5	2.5
<b>6. RENEWABLE ELECTRIC ENERGY OPTION</b>			
6.1	<p>For each 600 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 0.5 credit shall be allowed, up to 4.5 credits. Generation shall be calculated as follows:                      For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTs or approved (<del>alternate</del>) <i>alternative</i> by the code official.</p> <p>Documentation noting solar access shall be included on the plans.</p> <p>For wind generation projects designs shall document annual power generation based on the following factors:                      The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</p>	0.5 – 4.5	0.5 – 4.5
<b>7. APPLIANCE PACKAGE OPTION</b>			

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2 <sup>b</sup>
7.1	<p>All of the following appliances shall be new and installed in the dwelling unit and shall meet the following standards:</p> <ol style="list-style-type: none"> <li>1. Dishwasher, standard - Energy Star rated, Most Efficient 2021 <b>or</b> Dishwasher, compact – Energy Star rated (Version 6.0)</li> <li>2. Refrigerator (if provided) - Energy Star rated (Version 5.1)</li> <li>3. Washing machine (Residential) - Energy Star rated (Version 8.1)</li> <li>4. Dryer - Energy Star rated, Most Efficient 2022</li> </ol> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the appliance type and provide documentation of Energy Star compliance. At the time of inspection, all appliances shall be installed and connected to utilities. Dryer ducts and exterior dryer vent caps are not permitted to be installed in the <i>dwelling unit</i>.</p>	0.5	1.5

<sup>a</sup> An alternative heating source sized at a maximum of 0.5 Watts/ft<sup>2</sup> (equivalent) of heated floor area or 500 Watts, whichever is bigger, may be installed in the dwelling unit.  
<sup>b</sup> See Section R401.1 and *residential building* in Section R202 for Group R-2 scope.  
<sup>c</sup> Option ((3-9)) 3.11 can only be taken with Options 3.1 and 3.3. To qualify to claim option ((3-8)) 3.11 with 3.3, the system shall be a 1-2 speed heat pump system. Variable capacity heat pumps are ineligible from claiming this option.  
<sup>d</sup> This option may only be claimed if serving System Type 4 or 5 from Table R406.2.  
<sup>e</sup> Primary living areas include living, dining, kitchen, family rooms, and similar areas.  
<sup>f</sup> Option 3.10 may only be taken with Efficient Water Heating Options 5.1 or 5.2. Equipment sizing for space heating shall be calculated as provided in Section R403.7 with increased capacity to provide a minimum of 75 percent of peak hot water demand or shall be sized in accordance with approved manufacturer's specifications or guidance. Supplementary heat for water heating system shall be in accordance with Section R403.5.7.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-50100 Section R501—General.**

**R501.1 Scope.** The provisions of this chapter shall control the alteration, repair, addition and change of occupancy of existing buildings and structures.

**R501.1.1 General.** Except as specified in this chapter, this code shall not be used to require the removal, alteration, or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this code. Unaltered portions of the existing building or building supply system shall not be required to comply with this code.

**R501.1.2 Thermostats for accessory dwelling units.** Where a separate *dwelling unit*, that provides independent facilities for living, sleeping, cooking, bathing and sanitation, is established within or attached to an existing *dwelling unit*, the heating and cooling for the newly-created *dwelling unit* shall be controllable with a separate programmable thermostat in accordance with Section R403.1.1.

**R501.2 Compliance.** *Additions, alterations, repairs* or changes of occupancy to, or relocation of, an existing building, building system or portion thereof shall comply with Sections R502, R503, R504 or R505, respectively, in this code. Changes where unconditioned space is changed to *conditioned space* shall comply with Section R502.

**R501.3 Maintenance.** Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices and systems that are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's au-

thorized agent shall be responsible for the maintenance of buildings and structures. The requirements of this chapter shall not provide the basis for removal or abrogation of energy conservation, fire protection and safety systems and devices in existing structures.

**R501.4 Compliance.** *Alterations, repairs, additions* and changes of occupancy to, or relocation of, existing buildings and structures shall comply with the provisions for *alterations, repairs, additions* and changes of occupancy or relocation, respectively, in this code and the *International Residential Code, International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, Uniform Plumbing Code, International Property Maintenance Code*, and NFPA 70.

**R501.5 New and replacement materials.** Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for *repairs*, provided hazards to life, health or property are not created. Hazardous materials shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

**R501.6 Historic buildings.** The *code official* may modify the specific requirements of this code for *historic buildings* and require (~~alternate~~) alternative provisions which will result in a reasonable degree of energy efficiency. This modification may be allowed for those buildings or structures that are listed in the state or national register of historic places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a national register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the national or state register of historic places either individually or as a contributing building to a historic district by the state historic preservation officer or the keeper of the *National Register of Historic Places*.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-50200 Section R502—Additions.**

**R502.1 General.** *Additions* to an existing building, building system or portion thereof shall conform to the provisions of this code as those provisions relate to new construction without requiring the unaltered portion of the existing building or building system to comply with this code, except as specified in this chapter. *Additions* shall not create an unsafe or hazardous condition or overload existing building systems. An *addition* shall be deemed to comply with this code where the *addition* alone complies, where the existing building and *addition* comply with this code as a single building, or where the building with the *addition* uses no more energy than the existing building. *Additions* shall be in accordance with Section (~~R502.1.1 or R502.1.2~~) R502.3 or R502.4.

**R502.1.1 Small additions.** *Additions* not greater than 150 square feet (13.9 m<sup>2</sup>) shall not be required to comply with Section R406.

**R502.2 Change in space conditioning.** Any nonconditioned or low-energy space that is altered to become *conditioned space* shall be required to be brought into full compliance with this code.

EXCEPTION: Where the total building performance option in Section R405 is used to comply with this section, the annual energy use of the *proposed design* is permitted to be 110 percent of the annual energy use otherwise allowed by Section R405.3.

**R502.3 Prescriptive compliance.** Additions shall comply with Sections R502.3.1 through R502.3.4.

**R502.3.1 Building envelope.** New building envelope assemblies that are part of the *addition* shall comply with Sections R402.1, R402.2, R402.3.1 through R402.3.5, and R402.4.

EXCEPTION: Where nonconditioned space is changed to *conditioned space*, the building envelope of the *addition* shall comply where the UA, as determined in Section R402.1.5, of the existing building and the *addition*, and any *alterations* that are part of the project, is less than or equal to UA generated for the existing building.

**R502.3.1.1 Existing ceilings with attic spaces.** Where an *addition* greater than 150 square feet (~~((9.2))~~ 13.9 m<sup>2</sup>) adjoins existing ceilings with attic spaces, the existing attic spaces shall comply with Section R402.

**R502.3.2 Heating and cooling systems.** HVAC ducts newly installed as part of an *addition* shall comply with Section R403.

EXCEPTION: The following need not comply with the testing requirements of Section R403.3.3:

1. *Additions* of less than 150 square feet.
2. Duct systems that are documented to have been previously sealed as confirmed through field verification and diagnostic testing in accordance with procedures in WSU RS-33.
3. Existing duct systems constructed, insulated or sealed with asbestos.

**R502.3.3 Service hot water systems.** New service hot water systems that are part of the *addition* shall comply with Section R403.5.

**R502.3.4 Lighting.** New lighting systems that are part of the *addition* shall comply with Section 404.1.

**R502.4 Existing plus addition compliance (Total Building Performance).** Where nonconditioned space is changed to *conditioned space* the *addition* shall comply where the annual energy use of the *addition* and the existing building, and any *alterations* that are part of the project, is less than or equal to the annual energy use of the existing building when modeled in accordance with Section R405. The *addition* and any *alterations* that are part of the project shall comply with Section R405 in its entirety.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-50300 Section R503—Alterations.**

**R503.1 General.** *Alterations* to any building or structure shall comply with the requirements of the code for new construction, without requiring the unaltered portions of the existing building or building system to comply with this code. *Alterations* shall be such that the existing building or structure is no less conforming to the provisions of this code than the existing building or structure was prior to the *alteration*.

*Alterations* shall not create an unsafe or hazardous condition or overload existing building systems.

*Alterations* shall be such that the existing building or structure uses no more energy than the existing building or structure prior to the *alteration*. *Alterations* to existing buildings shall comply with Sections R503.1.1 through R503.2.

The *code official* may approve designs of *alterations* which do not fully conform to all of the requirements of this code where in the opinion of the *code official* full compliance is physically impossible and/or economically impractical and:

The *alteration* improves the energy efficiency of the building; or

The *alteration* is energy efficient and is necessary for the health, safety, and welfare of the general public.

**R503.1.1 Building envelope.** Building envelope assemblies that are part of the *alteration* shall comply with Section R402.1.3 or R402.1.5, Sections R402.2.1 through ((R402.2.11)) R402.2.10, R402.3.1, R402.3.2, ((R402.4.3, and R402.4.4)) R402.3.5, and R402.4.2.

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

1. Storm windows installed over existing *fenestration*.
2. Existing ceiling, wall or floor cavities exposed during construction provided that these cavities are filled with insulation. 2 x 4 framed walls shall be insulated to a minimum of R-15 and 2 x 6 framed walls shall be insulated to a minimum of R-21.
3. Construction where the existing roof, wall or floor cavity is not exposed.
4. *Roof recover*.
5. Roofs without insulation in the cavity and where the sheathing or insulation is exposed during reroofing shall be insulated either above or below the sheathing.
6. Surface-applied window film installed on existing single pane *fenestration* assemblies to reduce solar heat gain provided the code does not require the glazing *fenestration* to be replaced.

**R503.1.1.1 Replacement fenestration.** Where some or all of an existing *fenestration* unit is replaced with a new *fenestration* product, including sash and glazing, the replacement *fenestration* unit shall meet the applicable requirements for *U*-factor and SHGC in Table R402.1.3. Where more than one replacement *fenestration* unit is being installed, an area-weighted average of the *U*-factor and SHGC of all replacement *fenestration* shall be permitted to be used to demonstrate compliance.

**R503.1.2 Heating and cooling systems.** New heating, cooling and duct systems that are part of the *alteration* shall comply with Section R403.

EXCEPTIONS: 1. Where ducts from an existing heating and cooling system are extended, duct systems with less than 40 linear feet in unconditioned spaces shall not be required to be tested in accordance with Section R403.2.2.  
2. Existing duct systems constructed, insulated or sealed with asbestos.  
((3- Replacements of space heating equipment shall not be required to comply with Section R403.13 where the rated capacity of the new equipment does not exceed the rated capacity of the existing equipment.))

**R503.1.3 Service hot water systems.** New service hot water systems that are part of the *alteration* shall comply with Section R403.5.

EXCEPTION((S)): ((1-)) Replacement of water heating equipment shall not be required to comply with Section R403.5.5.  
((2- Replacement of water heating equipment shall not be required to comply with Section R403.5.7 where the rated capacity of the new equipment does not exceed the rated capacity of the existing equipment.))

**R503.1.4 Lighting.** New lighting systems that are part of the *alteration* shall comply with Section R404.1.

EXCEPTION: Alterations that replace less than 10 percent of the luminaires in a space, provided that such alterations do not increase the installed interior lighting power.

AMENDATORY SECTION (Amending WSR 23-02-060, 23-12-102, and 23-20-022, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11R-51000 Chapter 6—Referenced standards.** This chapter lists the standards that are referenced in various sections of this document. The standards are listed herein by the promulgating agency



of the standard, the standard identification, the effective date and title, and the section or sections of this document that reference the standard. The application of the referenced standards shall be as specified in Section R106.

<b>AAMA</b>	American Architectural Manufacturers Association 1827 Walden Office Square Suite 550 Schaumburg, IL 60173-4268	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA 101/I.S.2/A C440-17	North American Fenestration Standard/Specifications for Windows, Doors and Unit Skylights	((R402.4.3)) <u>R402.4.2</u>
<b>ACCA</b>	Air Conditioning Contractors of America 2800 Shirlington Road, Suite 300 Arlington, VA 22206	
Standard reference number	Title	Referenced in code section number
Manual J-16	Residential Load Calculation Eighth Edition	R403.7
Manual S-14	Residential Equipment	R403.7
<b>ANSI</b>	American National Standards Institute 25 West 43rd Street, 4th Floor New York, NY 10036	
Standard reference number	Title	Referenced in code section number
Z21.50-2016/CSA 2.22-2016	Vented Decorative Gas Appliances	((R402.4.2.1, R403.1.3)) <u>R403.7.1</u>
Z21.88-2017/CSA 2.33-2017	Vented Gas Fireplace Heaters	((R402.4.2.1)) <u>R403.7.1</u>
<u>Z21.40.2-1996</u>	<u>Gas-fired, Work Activated Air-Conditioning and Heat Pump Appliances (Internal Combustion)</u>	<u>Table R406.3</u>
<u>Z21.40.4-1996</u>	<u>Performance Testing and Rating of Gas-Fired, Air-Conditioning and Heat Pump Appliances</u>	<u>Table R406.3</u>
<b>APSP</b>	The Association of Pool and Spa Professionals 2111 Eisenhower Avenue, Suite 500 Alexandria, VA 22206	
Standard reference number	Title	Referenced in code section number
ANSI/APSP/ICC 14-2019	American National Standard for Portable Electric Spa Energy Efficiency	R403.11
ANSI/APSP/ICC 15a-2011	American National Standard for Residential Swimming Pool and Spa Energy Efficiency— Includes Addenda A approved January 9, 2013	R403.12
<b>ASHRAE</b>	American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. 1791 Tullie Circle, N.E. Atlanta, GA 30329-2305	
Standard reference number	Title	Referenced in code section number
ASHRAE-2021	ASHRAE Handbook of Fundamentals	R402.1.5, Table R405.5.2(1)
ASHRAE 193-2010 (RA 2014)	Method of Test for Determining the Airtightness of HVAC Equipment	((R403.3.2.1)) <u>R403.3.4.1</u>
<b>ASTM</b>	ASTM International 100 Barr Harbor Drive West Conshohocken, PA 19428-2859	
Standard reference number	Title	Referenced in code section number
C1363-11	Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus	R303.1.4.1
E283-2004 (2012)	Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls and Doors Under Specified Pressure Differences Across the Specimen	((R402.4.5)) <u>R402.4.3</u>
E779-2010 (2018)	Standard Test Method for Determining Air Leakage Rate by Fan Pressurization	R402.4.1.2

E1554/E1554M-E2013	Standard Test Method for Determining Air Leakage of Air Distribution Systems by Fan Pressurization .....	R403.3.5
E1827-2011 (2017)	Standard Test Methods for Determining Airtightness of Building Using an Orifice Blower Door .....	R402.4.1.2
E2178-2013	Standard Test Method for Air Permeance of Building Materials .....	R303.1.5
E3158-2018	Standard Test Method for Measuring the Air Leakage Rate of a Large or Multizone Building .....	R402.4.1.2
<b>CSA</b>	Canadian Standards Association 5060 Spectrum Way Mississauga, Ontario, Canada L4W 5N6	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA 101/I.S.2/A440-17	North American Fenestration Standard/Specification for Windows, Doors and Unit Skylights .....	((R402.4.3)) <u>R402.4.2</u>
CSA 55.1-2015	Test Method for Measuring Efficiency and Pressure Loss of Drain Water Heat Recovery Systems .....	R403.5.4, Table R406.2
CSA 55.2-2015	Drain Water Heat Recovery Units .....	R403.5.4
CSA P.4.1-15	Testing Method for Measuring Annual Fireplace Efficiency .....	((R402.4.2.1)) <u>R403.7.1</u>
<b>DASMA</b>	Door and Access Systems Manufacturers Association 1300 Sumner Avenue Cleveland, OH 44115-2851	
105-2017	Test Method for Thermal Transmittance and Air Infiltration of Garage Doors and Rolling Doors .....	R303.1.3
<b>HVI</b>	Home Ventilating Institute 1000 North Rand Road, Suite 214 Wauconda, IL 60084	
916-18	Airflow Test Procedure .....	R303.1.3
<b>ICC</b>	International Code Council, Inc. 500 New Jersey Avenue, N.W. 6th Floor Washington, DC 20001	
Standard reference number	Title	Referenced in code section number
ANSI/APSP/ICC 14-2019	American National Standard for Portable Electric Spa Energy Efficiency .....	R403.11
ANSI/APSP/ICC 15a-2011	American National Standard for Residential Swimming Pool and Spa Energy Efficiency—Includes Addenda A approved January 9, 2013 .....	R403.12
ANSI/RESNET/ICC 380-2019	Standard for Testing Airtightness of building, Dwelling Unit and Sleeping Unit Enclosures; Airtightness of Heating and Cooling Air Distribution Systems, and Airflow of Mechanical Ventilation Systems .....	R402.4.1.2
IBC-21	International Building Code .....	R201.3, R303.2, R402.11, R4501.4
ICC 400-17	Standard on the Design and Construction of Log Structures .....	Table R402.1.1
ICC 500-2020	ICC/NSSA Standard for the Design and Construction of Storm Shelters .....	R402.5
IFC-21	International Fire Code .....	R201.3, R501.4
IFGC-21	International Fuel Gas Code .....	R201.3, R501.4
IFGC-21	International Mechanical Code .....	R201.3, R403.3.2, R403.6, R501.4
IPMC-21	International Property Maintenance Code .....	R501.4
IRC-21	International Residential Code .....	R104.2.1, R201.3, R303.2, R401.2, R403.2.2, R403.5, R406.1, R406.2, Table R406.2
<b>IEEE</b>	The Institute of Electrical and Electronic Engineers, Inc. 3 Park Avenue New York, NY 10016-5997	
Standard reference number	Title	Referenced in code section number

515.1-2012	IEEE Standard for the Testing, Design, Installation and Maintenance of Electrical Resistance Trace Heating for Commercial Applications	R403.5.1.2
<b>ISO</b>	International Organization for Standardization 1, rue de Varembe, Case postale 56, CH-1211 Geneva, Switzerland	
Standard reference number	Title	Referenced in code section number
ISO/IEC ((17024-212)) 17024-2012	Conformity Assessment: General requirements for bodies operating certification of persons	R402.4.1.2
<b>NEEA</b>	Northwest Energy Efficiency Alliance 421 S.W. 6th Ave., Suite 600 Portland, OR 97204	
Standard reference number	Title	Referenced in code section number
NEEA-2011	Northern Climate Specification for Heat Pump Water Heaters, Vers. 4.0	Table ((R406.2)) R406.3
<u>NEEA-2019</u>	<u>Advanced Water Heating Specifications for Gas-Fueled Residential Storage Water Heaters, Version 1.0.</u>	<u>Table R406.3</u>
<b>NEEP</b>	Northeast Energy Efficiency Partnership, Inc. 24 School Street, 2nd Floor Boston, MA 02108-4314	
Standard reference number	Title	Referenced in code section number
ccASHP Version 3.1	Cold Climate Air Source Heat Pump (ccASHP) Product List and Specifications: <a href="https://neep.org/heating-electrification/ccashp-specification-product-list">https://neep.org/heating-electrification/ccashp-specification-product-list</a>	Table R406.3
<b>NEMA</b>	National Electrical Manufacturers Association 1300 17th Street N No. 900 Arlington, VA 22209	
Standard reference number	Title	Referenced in code section number
OS4-2016	Requirements for Air-Sealed Boxes for Electrical and Communications Applications	((R402.4.6)) R402.4.4
<b>NFPA</b>	National Fire Protection Association 1 Batterymarch Park Quincy, MA 02169-7417	
Standard reference number	Title	Referenced in code section number
70-20	National Electrical Code	R501.4
<b>NFRC</b>	National Fenestration Rating Council, Inc. 6305 Ivy Lane, Suite 140 Greenbelt, MD 20770	
Standard reference number	Title	Referenced in code section number
100-2020	Procedure for Determining Fenestration Products <i>U</i> -factors	R303.1.3
200-2020	Procedure for Determining Fenestration Product Solar Heat Gain Coefficients and Visible Transmittance at Normal Incidence	R303.1.3
400-2020	Procedure for Determining Fenestration Product Air Leakage	((R402.4.3)) R402.4.2
<b>UL</b>	Underwriters Laboratory 333 Pfingsten Road Northbrook, IL 60062	
Standard reference number	Title	Referenced in code section number
UL 127-11	Factory Built Fireplace	((R402.4.2)) R402.3.6
UL 515-11	Electric Resistance Heat Tracing for Commercial and Industrial Applications	R403.5.1.2
UL 907-94	Fireplace Accessories (with revisions through April 2010)	((R402.4.2)) R402.3.6
<b>US-FTC</b>	United States-Federal Trade Commission 600 Pennsylvania Avenue N.W. Washington, DC 20580	

Standard reference number	Title	Referenced in code section number
C.F.R. Title 16 (2015)	R-value Rule .....	Rule R303.1.4
<b>WDMA</b>	Window and Door Manufacturers Association 1400 East Touhy Avenue, Suite 470 Des Plaines, IL 60018	
Standard reference number	Title	Referenced in code section number
AAMA/WDMA/CSA 101/I.S.2/A440-17	North American Fenestration Standard/Specification for Windows, Doors and Unit Skylights .....	((R402.4.3)) <u>R402.4.2</u>
<b>WSU</b>	Washington State University Energy Extension Program 905 Plum Street S.E., Bldg 3 P.O. Box 43165 Olympia, WA 98506-3166	
Standard reference number	Title	Referenced in code section number
WSU RS 33	Duct Testing Standard for New and Existing Construction Publication No. WSUEEP15-016 .....	R403.3.3

## WSR 24-03-085

## PERMANENT RULES

## BUILDING CODE COUNCIL

[Filed January 16, 2024, 5:22 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To modify sections in the commercial energy code (chapter 51-11C WAC) to address legal uncertainty stemming from the decision in *California Restaurant Association v. City of Berkeley* recently issued by the Ninth Circuit Court of Appeals. While the requirements in the 2021 Washington State Energy Code are not exactly analogous to the Berkeley prohibition on gas infrastructure, the council moved forward to address the ruling expanding the scope of the Energy Policy and Conservation Act of 1975 (EPCA) preemption provisions. The council sought public input on areas where the code may be impacted by a preemption issue and developed a proposed rule addressing those areas while retaining the efficiency gains made towards the goal of RCW 19.27A.160.

Citation of Rules Affected by this Order: Amending chapter 51-11C RCW, 20 sections.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025, 19.27A.160.

Other Authority: Chapters 19.27A, 19.27 RCW.

Adopted under notice filed as WSR 23-21-106 on October 18, 2023.

Changes Other than Editing from Proposed to Adopted Version: **Option 1** was selected as the rule moving forward.

**WAC 51-11C-10100:** The effective date under **Section C101.1, Title**, was corrected to March 15, 2024.

**WAC 51-11C-40100:** Section C401 was amended as follows:

A section reference within **Section C401.2.2, Application to process equipment**, was corrected to C401.3.1 Item 2.

Item 2 of **Section C401.3.1, Modification of code requirements**, was modified to remove a redundant phrase at the end of the paragraph.

The equations under **Section C401.3.3.1, HVAC credit modification**, and **Section C401.3.3.2, Service water heating credit modification**, were modified to better clarify how credits are applied and are prorated based on the amount of heating appliances installed.

The section references in **Section C401.3.4, Renewable energy credit limit**, were corrected.

**Section C401.3.6, Electrification readiness**, was modified to specify that the conduits required would be supplied for each fossil fuel appliance installed, and at a location where a future replacement heat pump may be installed. References to "utility" equipment were removed since some buildings may be served from primary [primary] electrical services. The transformer vault sizing was also clarified.

**WAC 51-11C-40314:** In **Section C403.1.4, Use of electric resistance and fossil fuel-fired HVAC heating equipment**, Exceptions 4 and 7 were modified to restore the specification of electric resistance supplemental heating for air-to-air heat pumps and ground-source heat pumps.

**WAC 51-11C-40402:** **Section C404.2, Service water-heating equipment performance efficiency**, from Option 2 was included in the adopted language, with the following modifications:

In **Section C402.1**, the Option 2 language outlining the fossil fuel pathway changes were removed (items 1, 1.1, 1.2, 1.3, 1.4, and 2). These changes are duplicative of Section C401.3.1.

**Section C404.2.1.1, Primary heat pump system sizing**, and **Section C404.2.1.4, Supplemental water heating**, were modified to clarify siz-

ing requirements for both systems. This ensures that 50 percent of the primary load is met by heat pump water heaters.

**WAC 51-11C-40600:** Extraneous lines in **Table C406.1, Energy Measure Credit Requirements**, were removed. They were left over from the original adoption in April 2022, relating to options in the original proposed rule for the 2021 adoption.

**WAC 51-11C-40620:** In **Section C406.2, Additional energy efficiency credit measures**, the following modifications were made:

Reference to the second table for fossil fuel pathway was added, and a method for calculating credits for hybrid systems was added based on language from Option 2.

In **Tables C406.2(1)** and **C406.2(2)**, the "Prorating Flag" column from Option 2 was inserted to be used with the hybrid system credit calculation. The "Heat pump water heating" option 17 was recalculated based on output data using the revised C406.2.6.3 language. The "High efficiency service water heating, gas-fired" option 18 was also added from Option 2.

**WAC 51-11C-40625:** In **Section C406.2.6, Service water measures**, the following changes were made:

**Section C406.2.6.3, Heat pump water heating**, and **Section C406.2.6.3.1, Heat pump water heater**, were revised to better describe the intended outcome of the credit measure. The associated credits in the table were also recalculated.

**Section C406.2.6.4, High efficiency service water heating, gas-fired**, was added from Option 2 to describe the requirements to obtain this credit option.

**WAC 51-11C-50000:** In **Section C501.1.1, Existing buildings**, additional language from HB 1042 was added to specify that to be considered an existing building, it must have received a certificate of occupancy at least three years prior to a permit application.

**WAC 51-11C-50300:** In **Section C503, Alterations**, the following changes were made:

In **Section C503.4, Building mechanical systems**, and **Section C503.4.3, Alterations or replacement of existing cooling systems**, section references were updated and editorial changes made for clarity.

**Section C503.4.6, Addition or replacement of heating appliances**, was modified to specify that fossil fuel appliances are allowed to be added when following the fossil fuel pathway and editorial changes for clarity were made to Exception 7.

In **Table C503.4.6, Compliance Options for Mechanical Heating Equipment Alterations**, footnote b was modified to reflect the same change from 10 percent efficiency change to five percent as in items 3 and 4.

**Section C503.5, Service water heating equipment**, was modified to specify that fossil fuel appliances are allowed to be added when following the fossil fuel pathway.

A final cost-benefit analysis is available by contacting Stoyan Bumbalov, 1500 Jefferson [Street] S.E., P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9277, email Stoyan.bumbalov@des.wa.gov, website sbcc.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 20, 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: November 28, 2023.

Tony Doan  
Chair

## OTS-5008.6

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

### **WAC 51-11C-10100 Section C101—Scope and general requirements.**

**C101.1 Title.** This code shall be known as the *Washington State Energy Code*, and shall be cited as such. It is referred to herein as "this code."

The 2021 edition of the Washington State Energy Code is hereby adopted. The Washington State Energy Code adopted under chapter 51-11C WAC shall become effective in all counties and cities of this state on (~~July 1, 2023~~) March 15, 2024.

**C101.2 Scope.** This code applies to *commercial buildings* and the buildings sites and associated systems and equipment. References in this code to Group R shall include Group I-1, Condition 2 assisted living facilities licensed by Washington state under chapter 388-78A WAC and Group I-1, Condition 2 residential treatment facilities licensed by Washington state under chapter 246-337 WAC. Building areas that contain Group R sleeping units, regardless of the number of stories in height, are required to comply with the commercial sections of the energy code.

EXCEPTION: The provisions of this code do not apply to *temporary growing structures* used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. A temporary growing structure is not considered a building for the purposes of this code. However, the installation of other than listed, portable mechanical equipment or listed, portable lighting fixtures is not allowed.

**C101.3 Intent.** This code shall regulate the design and construction of buildings for the use and conservation of energy over the life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

### **WAC 51-11C-10800 Section C108—Referenced standards.**

**C108.1 Referenced codes and standards.** The codes and standards referenced in this code shall be those listed in Chapter ((5)) 6, and such codes and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections C108.1.1 and C108.1.2.

**C108.1.1 Conflicts.** Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

**C108.1.2 Provisions in referenced codes and standards.** Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.

**C108.2 Application of references.** References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section, or provision of this code.

**C108.3 Other laws.** The provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law. In addition to the requirements of this code, all occupancies shall conform to the provisions included in the State Building Code (chapter 19.27 RCW). In case of conflicts among the codes enumerated in RCW 19.27.031 (1) through (4) and this code, an earlier named code shall govern over those following. In the case of conflict between the duct sealing and insulation requirements of this code and the duct insulation requirements of Sections 603 and 604 of the *International Mechanical Code*, the duct insulation requirements of this code, or where applicable, a local jurisdiction's energy code shall govern.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-20204 Section C202.4—D.**

**DATA ACQUISITION SYSTEM.** An electronic system managed by the building owner to collect, tabulate and display metering information.

**DATA CENTER.** A room or series of rooms that share *data center systems* whose primary function is to house equipment for the processing and storage of electronic data, which has a design total *information technology equipment (ITE)* power density exceeding 20 watts per square foot (215 watts per m<sup>2</sup>) of conditioned area and a total design *ITE* equipment load greater than 10 kW.

**DATA CENTER SYSTEMS.** HVAC systems, electrical systems, equipment, or portions thereof used to condition *ITE* or electrical systems in a *data center*.

**DAYLIGHT RESPONSIVE CONTROL.** A device or system that provides automatic control of electric light levels based on the amount of daylight in a space.

**DAYLIGHT ZONE.** The portion of the building interior floor area that is illuminated by natural daylight through sidelit and toplit fenestration.

**DECORATIVE APPLIANCE, VENTED.** A vented appliance wherein the primary function lies in the aesthetic effect of the flames.



**DEDICATED OUTDOOR AIR SYSTEM (DOAS)**. A ventilation system that supplies 100 percent outdoor air primarily for the purpose of ventilation without requiring operation of a space-conditioning system fan for outdoor air delivery.

**DEMAND CONTROL KITCHEN VENTILATION (DCKV)**. A system that provides automatic, continuous control over exhaust hood, where required, and make-up air fan speed in response to one or more sensors that monitor cooking activity or through direct communication with cooking appliances.

**DEMAND CONTROL VENTILATION (DCV)**. A ventilation system capability that provides for the automatic reduction of outdoor air intake below design rates when the actual occupancy of spaces served by the system is less than design occupancy.

**DEMAND RECIRCULATION WATER SYSTEM**. A water distribution system having one or more recirculation pumps that pump water from a heated water supply pipe back to the heated water source through a cold water supply pipe.

**DEMAND RESPONSE SIGNAL**. A signal that indicates a price or a request to modify electricity consumption for a limited time period.

**DEMAND RESPONSIVE CONTROL**. A control capable of receiving and automatically responding to a *demand response signal*.

**DESICCANT DEHUMIDIFICATION SYSTEM**. A mechanical dehumidification technology that uses a solid or liquid material to remove moisture from the air.

**DIRECT DIGITAL CONTROL (DDC)**. A type of control where controlled and monitored analog or binary data such as temperature and contact closures are converted to digital format for manipulation and calculations by a digital computer or microprocessor, then converted back to analog or binary form to control physical devices.

**DIRECTLY OWNED OFF-SITE RENEWABLE ENERGY SYSTEM**. An off-site renewable energy system owned by the building project owner.

**DISTRICT ENERGY EFFICIENCY FACTOR**. Ratio of site energy input at the district plant required to produce a unit of heating or cooling at the project site on an annual basis, supported by calculations approved by the code official.

**DOOR, GARAGE**. Nonswinging doors rated by DASMA 105 with a single panel or horizontally hinged sectional panels.

**DOOR, NONSWINGING**. Roll-up, tilt-up, metal coiling and sliding doors, access hatches, and all other doors that are not swinging doors or garage doors with less than or equal to 14 percent glazing.

**DOOR, SWINGING**. Doors that are hinged on one side and revolving doors.

**DUCT**. A tube or conduit utilized for conveying air. The air passages of self-contained systems are not to be construed as air ducts.

**DUCT SYSTEM**. A continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans and accessory air-handling equipment and appliances.

**DWELLING UNIT**. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**DX-DEDICATED OUTDOOR AIR SYSTEM UNITS (DX-DOAS UNITS)**. A type of air-cooled, water-cooled or water source factory assembled product that dehumidifies 100 percent outdoor air to a low dew point and includes reheat that is capable of controlling the supply dry-bulb temperature of the dehumidified air to the designated supply air temperature. This conditioned outdoor air is then delivered directly or indirectly to the conditioned spaces. It may precondition outdoor air by containing an enthalpy wheel, sensible wheel, desiccant wheel, plate heat exchanger, heat pipes, or other heat or mass transfer apparatus.

**DYNAMIC GLAZING.** Any fenestration product that has the fully reversible ability to change its performance properties, including *U*-factor, SHGC, or VT.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40100 Section C401—General.**

**C401.1 Scope.** The provisions in this chapter are applicable to commercial buildings and their building sites.

**C401.2 Application.** Commercial buildings shall comply with the fossil fuel compliance path according to Section C401.3, or with one of the following:

1. Prescriptive compliance. The prescriptive compliance option requires compliance with Sections C402 through C406, and Sections C408, C409, C410, C411, and C412.
2. Total building performance. The total building performance option requires compliance with Section C407.
3. When adopted by the local jurisdiction, the requirements of Appendix F, Outcome-Based Energy Budget, Sections C408, C409, C410, C411, C412 and any specific sections in Table C407.2 as determined by the local jurisdiction. The Proposed Total UA of the proposed building shall be no more than 20 percent higher than the Allowed Total UA as defined in Section C402.1.5.

**C401.2.1 Application to existing buildings.** Additions, alterations, repairs, and changes of space conditioning, occupancy, or use to existing buildings shall comply with Chapter 5.

**C401.2.2 Application to process equipment.** Energy using equipment used by a manufacturing, industrial, or commercial process other than for conditioning spaces or maintaining comfort and amenities for the occupants shall comply with Section C401.3.1 Item 2, C403.3.2, Tables C403.3.2(1) through (16) inclusive, Sections C403.3.4.1 through C403.3.4.3, C403.7.7, C403.9.2.1, C403.10.3, C403.11.2, C403.11.3, ((C404.2.7)) Table C404.2, and Sections C405.8, C410, and C412.

**C401.3 Fossil fuel compliance path.** Buildings complying with the fossil fuel compliance path shall comply with the prescriptive compliance path of this code as defined in Item 1 of Section C401.2, and as modified by this Section C401.3.

**C401.3.1 Modification of code requirements.** For use of this compliance path only, the following changes shall be made to this code:

1. Section C403.1.4 - Space heating. Strike the phrase "... or fossil fuel combustion ..." from the first sentence of Section C403.1.4.

2. Section C404.2.1 - Service water heating. Revise the first sentence of Section C404.2.1 to read: "Service hot water shall be provided by fossil fuel water heating equipment, electric air-source heat pump water heating equipment, electric resistance water heating equipment, or a combination of these equipment types meeting the requirements of this section."

3. Section C406.2.5 - Renewable energy. When determining renewable energy credits in Equation 4-17 of Section C406.2.5, strike the

phrase "... limited to 50 percent of the required credits in Section C406.1" in the definition of the factor  $AEC_{RPa}$ .

4. **Table C406.2 - Efficiency measure credits.** Use Table C406.2(2) credit values in place of Table C406.2(1) credit values.

**C401.3.2 Fossil fuel equipment.** Fossil fuel combustion appliances are permitted for HVAC heating, and shall comply with the applicable efficiency standards referenced in Section C403.3.3.2. Fossil fuel combustion appliances are permitted for service water heating, and shall comply with applicable efficiency standards referenced in Table C404.2.

**C401.3.3 Additional efficiency credits.** The number of additional efficiency credits required by Table C406.1 shall be increased by the number required in Table C401.3.3, modified as permitted in this section, and is in addition to the energy efficiency credits and load management credits required by Section C406.

**EXCEPTION:**

- The required number of space heating additional efficiency credits are permitted to be reduced in the following instances:
1. Low energy spaces in accordance with Section C402.1.1.1 and equipment buildings in accordance with Section C402.1.2 that are served by space heating systems shall comply with sufficient measures from Table C406.2(1) or Table C406.2(2) to achieve a minimum of 50 percent of the efficiency credits required for new construction by Table C401.3.3, modified as permitted in this section.
  2. Building additions that have less than 1,000 square feet of conditioned floor area and that comply with sufficient measures from Table C406.2(1) or Table C406.2(2) to achieve a minimum of 50 percent of the additional efficiency credits required for additions by Table C401.3.3, modified as permitted in this section.
  3. Semi-heated spaces in accordance with Section C402.1.1.2 that comply with sufficient measures from Table C406.2(1) or Table C406.2(2) to achieve a minimum of 50 percent of the space heating additional efficiency credits required by Table C401.3.3, modified as permitted in this section.
  4. Unconditioned spaces, open parking garages and unheated enclosed parking garages are not required to achieve the additional efficiency credits for space heating required by Table C401.3.3.

**TABLE C401.3.3  
ADDITIONAL CREDITS REQUIRED**

Measure Title	Applicable Section	Occupancy Group					
		Group R-1	Group R-2	Group B	Group E	Group M	All Other
New building - Additional efficiency credits required for space heating systems using the fossil fuel pathway	C401.3.3.1	7	24	101	38	111	56
New building - Additional efficiency credits required for service water heating systems using the fossil fuel pathway	C401.3.3.2	198	212	27	17	79	107
Building additions - Additional efficiency credits required for space heating systems using the fossil fuel pathway	C401.3.3.1	4	12	51	19	56	28
Building additions - Additional efficiency credits required for service water heating systems using the fossil fuel pathway	C402.3.3.2	99	106	14	9	40	54

**C401.3.3.1 HVAC credit modification.** The number of HVAC heating energy efficiency credits required by Table C401.3.3 is permitted to be decreased according to the following equation:

$$CR = A \times (B - C) / D$$

Where:

- CR = Additional credits required, rounded to the nearest whole number.
- A = Baseline HVAC heating credits from Table C401.3.3.

- B = Installed fossil fuel space heating capacity in kBTU/h of appliances that comply with any of the exceptions to Section C403.1.4.
- C = Total installed fossil fuel space heating capacity in kBTU/h of all HVAC heating appliances.
- D = Total capacity in kBTU/h of all types of space heating appliances.

**C401.3.3.2 Service water heating credit modification.** The number of service water heating energy efficiency credits required by Table C401.3.3 is permitted to be decreased according to the following equation:

$$CR = A \times (B - C) / D$$

Where:

- CR = Additional credits required, rounded to the nearest whole number.
- A = Baseline credits from Table C401.3.3.
- B = Installed service water heating appliances capacity in kBTU/h of service water heating appliances that comply with any of the exceptions to Section C404.2.1.
- C = Total installed fossil fuel service water heating capacity in kBTU/h of all service water heating appliances.
- D = Total capacity in kBTU/h of all types of service water heating appliances.

**C401.3.4 Renewable energy credit limit.** No more than 80 percent of the efficiency credits required by Sections C401.3.3.1 and C401.3.3.2 are permitted to be renewable energy credits defined in Section C406.2.5.

**C401.3.5 Discrete area-weighting of additional required credits.** In addition to the area-weighted credit requirements in Section C406.1.2, where a building includes multiple occupancies, the additional required credits per Table C401.3.3 shall be determined separately for each occupancy group. Additional required credits shall be prorated on an area-weighted basis for each occupancy group in the same manner as required project credits per Section C406.1.

1. Where a single space heating or service water heating system serves multiple occupancies, the number of additional required credits shall be prorated on an area-weighted basis for each occupancy served.

2. Additional required credits for envelope systems shall be prorated on an area-weighted basis for all occupancies.

3. Occupancies are permitted to be subdivided into discrete areas, with required and achieved credits for each area prorated on an area-weighted basis as required for the occupancy group.

**C401.3.6 Electrification readiness.** Additionally, the following provisions shall be required for new construction for each fossil fuel space heating or service water heating appliance installed:

1. Provide a spare electrical branch circuit conduit to the location of a future replacement heat pump appliance to support an equivalent heating capacity.

2. Provide spare electrical service entrance conduits for the purpose of upgrading the main electrical service to support all heat pump appliances throughout the building.

3. The main electrical room has sufficient space to accommodate increasing the main electrical service's size to support all heat pump appliances throughout the building.

4. Additional accommodations for the equipment comprised of transformer(s) and other equipment necessary to support an electrical service upgrade. These accommodations shall include adequate space on the site. If the equipment is located in a transformer vault, that vault must include not only the space to support electrical service upgrade but also include accommodations for additional cooling for larger transformer(s).

**C401.4 Thermal envelope certificate.** A permanent thermal envelope certificate shall be completed by an *approved* party. Such certificate shall be posted on a wall in the space where the space conditioning equipment is located, a utility room or other *approved* location. If located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. A copy of the certificate shall also be included in the construction files for the project. The certificate shall include:

1. R-values of insulation installed in or on ceilings, roofs, walls, foundations and slabs, crawlspace walls and floors, and ducts outside *conditioned spaces*.

2. U-factors and *solar heat gain coefficients* (SHGC) of fenestration.

3. Results from any building envelope air leakage testing performed on the building.

Where there is more than one value for any component of the building envelope, the certificate shall indicate the area-weighted average value where available. If the area-weighted average is not available, the certificate shall list each value that applies to 10 percent or more of the total component area.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40314 Section C403.1.4—HVAC heating equipment.**

**C403.1.4 Use of electric resistance and fossil fuel-fired HVAC heating equipment.** HVAC heating energy shall not be provided by electric resistance or fossil fuel combustion appliances. For the purposes of this section, electric resistance HVAC heating appliances include, but are not limited to, electric baseboard, electric resistance fan coil and VAV electric resistance terminal reheat units and electric resistance boilers. For the purposes of this section, fossil fuel combustion HVAC heating appliances include, but are not limited to, appliances burning natural gas, heating oil, propane, or other fossil fuels.

**EXCEPTIONS:**

1. **Low heating capacity.** Buildings or areas of buildings, other than *dwelling units* or sleeping units, that meet the interior temperature requirements of Chapter 12 of the *International Building Code* with a total installed HVAC heating capacity no greater than 8.5 Btu/h (2.5 watts) per square foot of *conditioned space* are permitted to be heated using electric resistance appliances.

2. **Dwelling and sleeping units.** Dwelling or sleeping units are permitted to be heated using electric resistance appliances as long as the installed HVAC heating capacity in any separate space is not greater than:

2.1. Seven hundred fifty (750) watts in Climate Zone 4, and 1000 watts in Climate Zone 5 in each habitable space with fenestration.

2.2. One thousand (1,000) watts in Climate Zone 4, and 1300 watts in Climate Zone 5 for each habitable space that has two primary walls facing different cardinal directions, each with exterior fenestration. Bay windows and other minor offsets are not considered primary walls.

2.3. Two hundred fifty (250) watts in spaces adjoining the *building thermal envelope* but without fenestration.

For the purposes of this section, habitable space is as defined in the International Building Code. For buildings in locations with exterior design conditions below 4°F (-16°C), an additional 250 watts above that allowed for Climate Zone 5 is permitted in each space with fenestration.

3. **Small buildings.** Buildings with less than 2,500 square feet (232 m<sup>2</sup>) of *conditioned floor area* are permitted to be heated using electric resistance appliances.

4. **Defrost.** Heat pumps are permitted to utilize electric resistance heating when a heat pump defrost cycle is required and is in operation.

5. **Air-to-air heat pumps.** Buildings are permitted to utilize ~~((internal))~~ electric resistance ~~((heaters-to-supplement-heat-pump))~~ supplemental heating for air-to-air heat pumps that meet all of the following conditions:

5.1. Internal electric resistance heaters have controls that prevent supplemental heater operation when the heating load can be met by the heat pump alone during both steady-state operation and setback recovery.

5.2. The heat pump controls are configured to use the compressor as the first stage of heating down to an outdoor air temperature of 17°F (-8°C) or lower except when in defrost.

**EXCEPTIONS TO 5.2:**

1. Packaged terminal heat pumps (PTHPs) that comply with the minimum heating efficiency requirements in Table C403.3.2(4) are exempt from heating pump controls capable of operating the compressor as the first stage of heating down to an outdoor air temperature of 17°F (-8°C) or lower.

2. Heat pumps whose minimum efficiency is regulated by NAECA and whose ratings meet the requirements shown in Table C403.3.2(2) and include all usage of internal electric resistance heating are exempt from heat pump controls capable of operating the compressor as the first stage of heating down to an outdoor air temperature of 17°F (-8°C) or lower.

5.3. The heat pump complies with one of the following:

5.3.1. Controlled by a digital or electronic thermostat designed for heat pump use that energizes the supplemental heat only when the heat pump has insufficient capacity to maintain set point or to warm up the space at a sufficient rate.

5.3.2. Controlled by a multistage space thermostat and an outdoor air thermostat wired to energize supplemental heat only on the last stage of the space thermostat and when outdoor air temperature is less than 32°F (0°C) except when in defrost.

5.3.3. The minimum efficiency of the heat pump is regulated by NAECA, its rating meets the requirements shown in Table C403.3.2(2), and its rating includes all usage of internal electric resistance heating.

5.4. The heat pump rated heating capacity is sized to meet the heating load at an outdoor air temperature of 32°F (0°C) or lower and has a rated heating capacity at 47°F (8°C) no less than 2 times greater than supplemental ~~((internal-electric-resistance))~~ heating capacity in Climate Zone 4 and no less than the supplemental ~~((internal-electric-resistance))~~ heating capacity in Climate Zone 5, or utilizes the smallest available factory-available internal electric resistance heater.

6. **Air-to-water heat pumps.** Buildings are permitted to utilize electric resistance (for Climate Zone 4 or 5) or fossil fuel-fired (for Climate Zone 5) auxiliary heating to supplement heat pump heating for hydronic heating systems that meet all of the following conditions:

6.1. Controls for the auxiliary ~~((electric-resistance-or-fossil-fuel-fired))~~ heating sources are configured to lock out the supplemental heat when the outside air temperature is above 36°F (2°C), unless the hot water supply temperature setpoint to the building heat coils cannot be maintained for 20 minutes.

6.2. The heat pump controls are configured to use the compressor as the first stage of heating down to the lowest exterior design temperature for which the equipment is rated except during startup or defrost operation.

6.3. The heat pump rated heating capacity at 47°F (8°C) is no less than 75 percent of the design heating load at 29°F (-2°C).

7. **Ground source heat pumps.** Buildings are permitted to utilize electric resistance ~~((auxiliary-heating-to-supplement))~~ supplemental heating for heat pump heating for hydronic heating systems with ground source heat pump equipment that meets all of the following conditions:

7.1. Controls for the auxiliary ~~((resistance))~~ heating sources are configured to lock out the supplemental heat when the equipment source-side entering water temperature is above 42°F (6°C), unless the hot water supply temperature setpoint to the building heat coils cannot be maintained for 20 minutes.

7.2. The heat pump controls are configured to use the compressor as the first stage of heating.

7.3. The ground source heat exchanger shall be sized so that the heat pump annual heating output is no less than 70 percent of the total annual heating output in the final year of a 30-year simulation using IGSHPA listed simulation software.

8. **Small systems.** Buildings in which electric resistance or fossil fuel appliances, including decorative appliances, either provide less than 5 percent of the total building HVAC system heating capacity or serve less than 5 percent of the *conditioned floor area*.

9. **Specific conditions.** Portions of buildings that require fossil fuel or electric resistance space heating for specific conditions *approved* by the *code official* for research, health care, process or other specific needs that cannot practically be served by heat pump or other space heating systems. This does not constitute a blanket exception for any occupancy type.

10. **Kitchen make-up air.** Make-up air for commercial kitchen exhaust systems required to be tempered by Section 508.1.1 of the *International Mechanical Code* is permitted to be heated by using fossil fuel in Climate Zone 5 or electric resistance in Climate Zone 4 or 5.

11. **District energy.** Steam or hot water district energy systems that utilize fossil fuels as their primary source of heat energy, that serve multiple buildings, and that were already in existence prior to the effective date of this code, including more energy-efficient upgrades to such existing systems, are permitted to serve as the primary heating energy source.

12. **Heat tape.** Heat tape is permitted where it protects water-filled equipment and piping located outside of the *building thermal envelope*, provided that it is configured and controlled to be automatically turned off when the outside air temperature is above 40°F (4°C).

13. **Temporary systems.** Temporary electric resistance heating systems are permitted where serving future tenant spaces that are unfinished and unoccupied, provided that the heating equipment is sized and controlled to achieve interior space temperatures no higher than 40°F (4°C).

14. **Pasteurization.** Electric resistance heat controls are permitted to reset the supply water temperature of hydronic heating systems that serve service water heating heat exchangers during pasteurization cycles of the service hot water storage volume. The hydronic heating system supply water temperature shall be configured to be 145°F (63°C) or lower during the pasteurization cycle.

15. **Freeze protection.** Heating systems sized for spaces with indoor design conditions of 45°F (7°C) and intended for freeze protection are permitted to use electric resistance. The building envelope of any such space shall be insulated in compliance with Section C402.1.

16. **DOAS ERV auxiliary heat.** Dedicated outdoor air systems with energy recovery ventilation are permitted to utilize fossil fuel for Climate Zone 5 or electric resistance in Climate Zone 4 or 5 for auxiliary heating to preheat outdoor air for defrost or as auxiliary supplemental heat to temper supply air to 55°F (13°C) or lower for buildings or portions of buildings that do not have hydronic heating systems.

17. **Low-carbon district energy systems.** Low-carbon district energy systems that meet the definitions of *low-carbon district energy exchange system* or *low-carbon district heating and cooling or heating only systems*.

18. **Essential facilities.** Groups I-2 and I-3 occupancies that by regulation are required to have in place redundant emergency backup systems.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40341 Section C403.4.1—Thermostatic controls.**

**C403.4.1 Thermostatic controls.** The supply of heating and cooling energy to each zone shall be controlled by individual thermostatic controls capable of responding to temperature within the zone. Controls in the same zone or in neighboring zones connected by openings larger than 10 percent of the floor area of either zone shall not allow for simultaneous heating and cooling. At a minimum, each floor of a building shall be considered as a separate zone. Controls on systems required to have economizers and serving single zones shall have multiple cooling stage capability and activate the economizer when appropriate as the first stage of cooling. See Section C403.5 for further economizer requirements. Where humidification or dehumidification or both is provided, at least one humidity control device shall be provided for each humidity control system.

**EXCEPTIONS:**

1. Independent perimeter systems that are designed to offset only building envelope heat losses or gains or both serving one or more perimeter *zones* also served by an interior system provided:
  - 1.1. The perimeter system includes at least one thermostatic control *zone* for each building exposure having exterior walls facing only one orientation (within +/-45 degrees) (0.8 rad) for more than 50 contiguous feet (15,240 mm);
  - 1.2. The perimeter system heating and cooling supply is controlled by a thermostat located within the *zones* served by the system; and
  - 1.3. Controls are configured to prevent the perimeter system from operating in a different heating or cooling mode from the other equipment within the zones or from neighboring zones connected by openings larger than 10 percent of the floor area of either zone.
2. Where an interior zone and a perimeter zone are open to each other with permanent openings larger than 10 percent of the floor area of either zone, cooling in the interior zone is permitted to operate at times when the perimeter zone is in heating and the interior zone temperature is at least 5°F (2.8°C) higher than the perimeter zone temperature. For the purposes of this exception, a permanent opening is an opening without doors or other operable closures.
3. Dedicated outdoor air units that provide ventilation air, make-up air or replacement air for exhaust systems are permitted to be controlled based on supply air temperature. The supply air temperature shall be controlled to a maximum of 65°F (18.3°C) in heating and a minimum of 72°F (22°C) in cooling unless the supply air temperature is being reset based on the status of cooling or heating in the zones served or it being reset based on outdoor air temperature.

**C403.4.1.1 Heat pump supplementary heat control.** (~~Unitary air cooled heat pumps shall include microprocessor controls that minimize supplemental heat usage during start-up, set-up, and defrost conditions. These controls shall anticipate need for heat and use compression heating as the first stage of heat. Controls shall indicate when supplemental heating is being used through visual means (e.g., LED indicators). Heat pumps equipped with supplementary heaters shall be installed with controls that prevent supplemental heater operation above 40°F (4.4°C).~~) Heat pumps equipped with internal electric resistance heaters shall have controls that prevent supplemental heater operation when the heating load can be met by the heat pump alone during both steady-state operation and setback recovery. Supplemental heater operation is permitted during outdoor coil defrost cycles. Heat pumps equipped with supplemental heaters shall comply with all conditions of Section C403.1.4.

**EXCEPTIONS:**

1. Packaged terminal heat pumps (PTHPs) of less than 2 tons (24,000 Btu/hr) cooling capacity and whose ratings meet the requirements shown in Table C403.3.2(4) that have reverse-cycle demand defrost and are configured to operate in heat pump mode whenever the outdoor air temperatures are above 25°F (-3.9°C) and the unit is not in defrost.
2. Heat pumps whose minimum efficiency is regulated by NAECA and whose ratings meet the requirements shown in Table C403.3.2(2) and include all usage of internal electric resistance heating.

**C403.4.1.2 Deadband.** Where used to control both heating and cooling, zone thermostatic controls shall be configured to provide a temperature range or deadband of at least 5°F (2.8°C) within which the supply of heating and cooling energy to the zone is shut off or reduced to a minimum.

**EXCEPTIONS:**

1. Thermostats requiring manual changeover between heating and cooling modes.
2. Occupancies or applications requiring precision in indoor temperature control as *approved by the code official.*

**C403.4.1.3 Setpoint overlap restriction.** Where a zone has a separate heating and a separate cooling thermostatic control located within the

zone, a limit switch, mechanical stop or direct digital control system with software programming shall be configured to prevent the heating setpoint from exceeding the cooling setpoint and to maintain a dead-band in accordance with Section C403.4.1.2.

**C403.4.1.4 Heated or cooled vestibules and air curtains.** The heating system for heated vestibules and air curtains with integral heating shall be provided with controls configured to shut off the source of heating when the outdoor air temperature is greater than 45°F (7°C). Vestibule heating and cooling systems shall be controlled by a thermostat located in the vestibule configured to limit heating to a temperature not greater than 60°F (16°C) and cooling to a temperature not less than 85°F (29°C).

EXCEPTIONS: 1. Control of heating or cooling provided by transfer air that would otherwise be exhausted.  
2. Vestibule heating only systems are permitted to be controlled without an outdoor air temperature lockout when controlled by a thermostat located in the vestibule configured to limit heating to a temperature not greater than 45°F (7°C) where required for freeze protection of piping and sprinkler heads located in the vestibule.

**C403.4.1.5 Hot water boiler outdoor temperature setback control.** Hot water boilers that supply heat to the building through one- or two-pipe heating systems shall have an outdoor setback control that lowers the boiler water temperature based on the outdoor temperature.

**C403.4.1.6 Operable opening switches for HVAC system thermostatic control.** Operable openings meeting the minimum size criteria of Section C402.5.11 and that open to the outdoors from a conditioned space must have controls configured to do the following once doors have been open for 5 minutes:

1. Disable the mechanical heating to the zone or reset the space heating temperature setpoint to 55°F or less within 5 minutes of the door open enable signal.

2. Disable the mechanical cooling to the zone or reset the space cooling temperature setpoint to 85°F or more within 5 minutes of the door open enable signal.

EXCEPTION: Hydronic radiant heating and cooling systems.

**C403.4.1.7 Demand responsive controls.** Thermostatic controls for heating or cooling systems shall be provided with *demand responsive controls* capable of increasing the cooling setpoint and decreasing the heating setpoint by no less than 4°F (2.2°C). The thermostatic controls shall be capable of performing all other functions provided by the control when the *demand responsive controls* are not available. Systems with *direct digital control* of individual zones report to a central control panel shall be capable of remotely increasing the cooling setpoint and decreasing the heating setpoint for each zone by no less than 4°F (2.2°C).

EXCEPTION: Health care and assisted living facilities.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40402 Section C404.2—Service water-heating equipment performance efficiency.**

**C404.2 Service water-heating equipment performance efficiency.** Water-heating equipment and hot water storage tanks shall meet the requirements of Table C404.2. The efficiency shall be verified through cer-



tification and *listed* under an *approved* certification program, or if no certification program exists, the equipment efficiency ratings shall be supported by data furnished by the manufacturer. Water-heating equipment intended to be used to provide space heating shall meet the applicable provisions of Table C404.2.

**C404.2.1 Service water heating system type.** Service hot water shall be provided by an electric air-source heat pump water heating (HPWH) system meeting the requirements of this section. Supplemental service water heating equipment is permitted to use electric resistance or fossil fuel in compliance with Section C404.2.1.4.

EXCEPTIONS:

1. 24 kW plus 0.1 watts per square foot of building area of electric resistance service water heating capacity is allowed per building.
2. Solar thermal, wastewater heat recovery, other *approved* waste heat recovery, ground source heat pumps, water-source heat pump systems utilizing waste heat, and combinations thereof, are permitted to offset all or any portion of the required HPWH capacity where such systems comply with this code and the *Uniform Plumbing Code*.
3. Systems that comply with the Northwest Energy Efficiency Alliance (NEEA) Commercial Electric Advanced Water Heating Specification.
4. Service hot water systems served by a district energy system that serves multiple buildings and that was in service before the effective date of this code.
5. Commercial dishwashers, commercial food service equipment, and other *approved* process equipment are permitted to utilize electric booster heaters for supply water temperatures 120°F (49°C) or higher.
6. Systems connected to a *low-carbon district energy exchange system* or a *low-carbon district heating and cooling or heating only system*.
7. Essential facilities. Groups I-2 and I-3 occupancies that by regulation are required to have in place redundant emergency backup systems.

**C404.2.1.1 Primary heat pump system sizing.** (~~The system shall include a primary service output of 50 percent load at 40°F (4°C) dry bulb or wet bulb outdoor air temperature for air-source heat pumps, or 44°F (7°C) ground temperature for ground-source heat pumps that provides sufficient hot water as calculated using the equipment manufacturer's selection criteria or another approved methodology.~~) The primary heat pump service water heating system shall be sized to deliver no less than 50 percent of the calculated demand for service hot water production during the peak demand period. Demand shall be calculated using the equipment manufacturer's selection criteria or another approved methodology with entering dry bulb or wet bulb outdoor air temperature at 40°F (4°C) for air-source heat pumps, or 44°F (7°C) ground temperature for ground-source heat pumps. Electric air source heat pumps shall also be sized to deliver no less than 25 percent of the calculated demand for service hot water production during the peak demand period when entering dry bulb or wet bulb outdoor air temperature (~~±~~) is 24°F (-4°C). The remaining primary service output may be met by fossil fuel, electric resistance, or heat pump water heating systems.

EXCEPTION:

- Twenty-five percent sizing at entering dry bulb or wet bulb air temperature of 24°F (-4°C) is not required for air-source heat pumps located in a below-grade enclosed parking structure or other ventilated and unconditioned space that is not anticipated to fall below 40°F (4°C) at any time.

**C404.2.1.2 Primary hot water storage sizing.** The system shall provide sufficient hot water to satisfy peak demand period requirements.

**C404.2.1.3 System design.** The service water heating system shall be configured to conform to one of the following provisions:

1. For *single-pass heat pump water heaters*, *temperature maintenance* heating provided for reheating return water from the building's heated water circulation system shall be physically decoupled from the primary service water heating system storage tank(s) in a manner that prevents destratification of the primary system storage tanks. *Temperature maintenance* heating is permitted to be provided by electric resistance, fossil fuel, or a separate dedicated heat pump system.

2. For *multi-pass heat pump water heaters*, *recirculated temperature maintenance* water is permitted to be returned to the primary water storage tanks for reheating.

3. For unitary heat pump water heaters, located in conditioned space, are permitted, where they are sized to meet all calculated service water heating demand using the heat pump compressor, and not supplementary heat.

**C404.2.1.3.1 Mixing valve.** A thermostatic mixing valve capable of supplying hot water to the building at the user temperature setpoint shall be provided, in compliance with requirements of the *Uniform Plumbing Code* and the HPWH manufacturer's installation guidelines. The mixing valve shall be sized and rated to deliver tempered water in a range from the minimum flow of the *temperature maintenance* recirculation system up to the maximum demand for the fixtures served.

**C404.2.1.4 Supplemental water heating.** Total supplemental water heating equipment shall not have an output capacity greater than the total summed capacity of all primary water heating equipment. For the purposes of determining this supplemental water heating allowance, the capacity of primary water heating equipment shall be evaluated at 40°F (4°C) entering dry bulb or wet bulb outdoor air temperature for air-source heat pumps ((øø)), 44°F (7°C) ground temperature for ground-source heat pumps, and at the nameplate input rate for all other water heater system types. Supplemental heating is permitted for the following uses:

1. *Temperature maintenance* of heated-water circulation systems, physically separate from the primary service water heating system. (~~(Temperature maintenance heating capacity shall be no greater than the primary water heating capacity at 40°F (4°C) dry bulb or wet bulb outdoor air temperature for air source heat pumps or 44°F (7°C) ground temperature for ground source heat pumps.)~~)

2. Defrost of compressor coils.

3. Heat tracing of piping for freeze protection or for *temperature maintenance* in lieu of recirculation of hot water.

4. Backup or low ambient temperature conditions, where all of the following are true:

4.1. (~~The supplemental heating capacity is no greater than the primary service water heating capacity at 40°F (4°C) dry bulb or wet bulb outdoor air temperature for air source heat pumps or 44°F (7°C) ground temperature for ground source heat pumps.~~

4.2.) During normal operations, the supplemental heating is controlled to operate only when the entering air temperature at the air-source HPWH is below 40°F (4°C), and the primary HPWH compressor continues to operate together with the supplemental heating.

(~~(4.3.)~~) 4.2. The primary water heating equipment cannot satisfy the system load due to equipment failure or entering air temperature below 40°F (4°C).

**C404.2.1.5 System fault detection.** The control system shall be capable of and configured to send automatic error alarms to building or maintenance personnel upon detection of equipment faults, low leaving water temperature from primary storage tanks, or low hot water supply delivery temperature to building distribution system.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40600 Section C406—Efficiency and load management measures.**

**C406.1 Additional energy efficiency and load management measures credit requirements.** The project as defined in the building permit shall meet the following requirements as applicable:

1. New buildings, changes in *space conditioning category*, change of occupancy group, and building additions in accordance with Chapter 5 shall comply with sufficient measures from Section C406.2 so as to achieve the minimum number of required efficiency credits shown in Table C406.1.
2. New buildings greater than 5000 gross square feet of floor area shall comply with sufficient measures from Section C406.3 so as to achieve the minimum number of required load management credits shown in Table C406.1.
3. Tenant spaces shall comply in accordance with Section C406.1.1.
4. Projects using discrete area credit weighting shall comply in accordance with Section C406.1.2.

- EXCEPTIONS:
1. Low energy spaces in accordance with Section C402.1.1.1, equipment buildings in accordance with Section C402.1.2, unconditioned spaces, open parking garages, and enclosed parking garages that comply with sufficient measures from Table C406.2(1) to achieve a minimum of 50 percent of the efficiency credits required for new construction. Such projects shall be exempt from the load management requirements in Table C406.1.
  2. Building additions that have less than 1,000 square feet of *conditioned floor area* that comply with sufficient measures from Table C406.2(1) to achieve a minimum of 50 percent of the efficiency credits required for additions.
  3. Warehouses are exempt from the load management credit requirements in Table C406.1.

**Table C406.1  
Energy Measure Credit Requirements**

Required Credits for Projects	Section	Occupancy Group					
		Group R-1	Group R-2	Group B	Group E	Group M	All Other
New building energy efficiency credit requirement	C406.2	54	41	42	48	74	49
Building additions energy efficiency credit requirement	C406.2	27	20	21	23	36	21
<i>((If proposal 21-GP-136 is not included in the final adoption, then replace the two rows above with the following two rows:</i>							
New building energy efficiency credit requirement	C406.2	68	80	48	55	84	49
Building additions energy efficiency credit requirement	C406.2	33	40	24	27	41	24))
New building load management credit requirement	C406.3	12	15	27	15	13	26

**C406.1.1 Tenant spaces.** An initial tenant improvement shall comply with sufficient measures from Table C406.2(1) to achieve a minimum of efficiency credits required in Table C406.1 and are not required to achieve any load management credits. In projects with multiple tenant spaces, each tenant space is permitted to apply for different measures provided the weighted average of all areas in the project comply with the overall efficiency credit requirement in Table C406.1. Whole building or addition energy credits shall be allocated to tenant spaces in accordance with Sections C406.1.1.1 and C406.1.1.2.

- EXCEPTIONS:
1. An initial tenant improvement where the core and shell building complied via Section C407 in 2018 or later edition of the Washington State Energy Code.
  2. Previously occupied tenant spaces in existing buildings that comply with this code in accordance with Section C501.

**C406.1.1.1 Applicable envelope, renewable and elevator energy credits.**

Where an entire building or building addition complies with Section C406.2.4, C406.2.9, C406.2.10, or C406.2.14, under an initial tenant improvement permit, tenant spaces within the building qualify for the number of credits assigned to the occupancy group of the tenant space in accordance with Table C406.2(1). Where prior energy credits were achieved under the 2018 Washington State Energy Code, they shall be multiplied by 6 for applicability to this code.

**C406.1.1.2 Applicable HVAC and service water heating credits.** Where HVAC and service water heating systems and services are installed and comply with Section C406.2.4, C406.2.9, C406.2.10, or C406.2.14 under an initial tenant improvement permit, those systems and services shall be considered a part of the tenant space. Tenant spaces qualify for the credits assigned to the occupancy group of the tenant space in accordance with Table C406.2(1) if the tenant space includes the distribution system and equipment that the central HVAC systems or service water heating systems were designed to support.

**C406.1.2 Discrete area-weighted project compliance.** Discrete building areas (~~shall be~~) are permitted to select different packages of measures provided that the whole project complies with both the energy and load management credit requirements. Compliance shall be determined as follows:

1. (~~Project credit requirement shall be the individual occupancy group requirements from Table C406.1 for each discrete area weighted by discrete area conditioned floor area.~~) Required project credits shall be prorated on an area-weighted basis for each occupancy group by multiplying the occupancy group floor area by the number of credits required, and then dividing this value by the total area of all the occupancy groups combined. Where one occupancy group is less than 10 percent of the floor area of the project, use the primary occupancy group for (~~all~~) those credits.

2. (~~Determine the energy and load management credits achieved for each discrete area based on its occupancy group.~~) Occupancies are permitted to be subdivided into discrete areas, with required and achieved credits for each area prorated on an area-weighted basis as required for the occupancy group.

3. Where envelope or lighting power credits in Section C406.2.3.1, C406.2.3.2, or C406.2.3.12 are (~~used~~) applied, the lighting power or envelope UA percentage reduction shall be calculated for the project as a whole to determine achieved credits.

(~~3.~~) 4. Determine total project credits achieved by area-weighting ((individual discrete area credits by discrete area conditioned floor area)) the achieved credits by occupancy group in the same manner as for required project credits.

(~~4.~~) 5. A project complies when ((both)) the achieved number of area-weighted energy and load management credits are equal to or greater than the required area-weighted ((project requirement)) number of credits.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40620 Section C406.2—Additional energy efficiency credit measures.**

**C406.2 Additional energy efficiency credit measures.** Each energy efficiency credit measure used to meet credit requirements for the project shall include efficiency that is greater than the energy efficiency required for the building type and configuration requirements in Sections C402 through C405. Measures installed in the project that meet the requirements in Sections C406.2.1 through C406.2.14 shall achieve the credits listed for the measure and occupancy group in Table C406.2(1) or Table C406.2(2) or where calculations required by Sections C406.2.1 through C406.2.14 create or modify the table credits, the credits achieved shall be based upon the section calculations. Projects that chose to comply with the fossil fuel pathway in Section C401.3 shall use Table C406.2(2) to achieve credits.

For mixed fuel space heating systems, the number of space heating energy efficiency credits available for measures with a prorating flag "Heat" are calculated using the following equation:

$$C_{SH} = CHP_{SH} \times B/C + CFF_{SH} \times (1 - B/C)$$

Where:

- C<sub>SH</sub>       ≡ Blended credits for mixed fuel systems.
- CHP<sub>SH</sub>     ≡ Credits available in Table C406.2(1).
- CFF<sub>SH</sub>     ≡ Credits available in Table C406.2(2).
- B            ≡ Installed space heating capacity in kBTU/h of space heating appliances that comply with any of the exceptions to Section C403.1.4.
- C            ≡ Total installed space heating capacity in kBTU/h of all space heating appliances.

For mixed fuel service water heating systems, the number of service water heating energy efficiency credits available for measures with a prorating flag "SWH" are calculated using the following equation:

$$C_{WH} = CHP_{WH} \times B/C + CFF_{WH} \times (1 - B/C)$$

Where:

- C<sub>WH</sub>       ≡ Blended credits for mixed fuel systems.
- CHP<sub>WH</sub>     ≡ Credits available in Table C406.2(1).
- CFF<sub>WH</sub>     ≡ Credits available in Table C406.2(2).
- B            ≡ Installed service water heating capacity in kBTU/h of service water heating appliances that comply with any of the exceptions to Section C404.2.1.

C = Total installed service water heating capacity in kBtu/h of all service water heating appliances.

**Table C406.2(1)  
Efficiency Measure Credits**

Measure Title	Applicable Section	Prorating Flag	Occupancy Group					
			Group R-1	Group R-2	Group B	Group E	Group M	All Other
1. Dwelling unit HVAC control	<del>((C406.2.1))</del> C406.2.2	<u>Heat</u>	NA	7	NA	NA	NA	NA
2. Improved HVAC TSPR <sup>a</sup>	C406.2.2.1	<u>Heat</u>	NA	8	11	17	22	NA
3. Improve cooling and fan efficiency	C406.2.2.2	<u>Heat</u>	2	2	3	4	3	2
4. Improve heating efficiency	C406.2.2.3	<u>Heat</u>	2	3	3	10	16	7
5. Improved low-carbon district energy system (10% better)	C406.2.2.4		3	3	4	11	17	8
6. Improved low-carbon district energy system (20% better) <sup>b</sup>	C406.2.2.5		9	10	12	33	52	24
7. High performance DOAS	C406.2.2.6	<u>Heat</u>	31	31	21	39	40	21/ (A) 40 <sup>c</sup>
8. Fault detection & diagnostics (FDD)	C406.2.2.7	<u>Heat</u>	2	2	2	6	9	4
9. 10% reduced lighting power	C406.2.3.1	<u>Heat</u>	7	4	18	16	20	15
10. 20% reduced lighting power <sup>d</sup>	C406.2.3.2	<u>Heat</u>	13	8	36	32	40	29
11. Lamp efficacy improvement	C406.2.3.3	<u>Heat</u>	5	6	NA	NA	NA	NA
12. Residential lighting control	C406.2.4.1	<u>Heat</u>	NA	8	NA	NA	NA	NA
13. Enhanced lighting control	C406.2.4.2	<u>Heat</u>	1	1	6	6	11	6
14. Renewable energy	C406.2.5		7	12	13	13	10	11
15. Shower drain heat recovery	C406.2.6.1	<u>SWH</u>	9	30	NA	3	NA	NA
16. Service water heat recovery	C406.2.6.2	<u>SWH</u>	35	111	13	14	(Grocery) 41 <sup>e</sup>	NA
17. Heat pump water heating	C406.2.6.3	<u>SWH</u>	<del>((81))</del> 72	<del>((261))</del> 54	<del>((17))</del> 1	<del>((33))</del> 13	<del>((Grocery) 95<sup>e</sup>))</del> 5	<del>((A-2) 95<sup>f</sup>))</del> 29 <sup>f</sup>
18. <u>High efficiency service water heating, gas-fired</u>	C406.2.6.4	<u>SWH</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
19. Heat trace system	C406.2.7.1	<u>SWH</u>	6	13	4	1	NA	6
<del>((19:))</del> 20. Point of use water heater	C406.2.7.2	<u>SWH</u>	NA	NA	19	5	NA	NA
<del>((20:))</del> 21. Service hot water distribution right sizing	C406.2.8		13	42	NA	NA	NA	NA

Measure Title	Applicable Section	Prorating Flag	Occupancy Group					
			Group R-1	Group R-2	Group B	Group E	Group M	All Other
<del>((21-))</del> 22. High performance service hot water temperature maintenance system	C406.2.9		6	13	4	1	NA	6
<del>((22-))</del> 23. High efficiency service hot water circulation system	C406.2.10		3	6	2	1	NA	4
<del>((23-))</del> 24. Low flow residential showerheads	C406.2.11	SWH	3	3	NA	NA	NA	NA
<del>((24-))</del> 25. Enhanced envelope performance <sup>g</sup>	C406.2.12	Heat	24	20	13	5	19	14
<del>((25-))</del> 26. Base reduced air leakage <sup>g</sup>	C406.2.13.2		29	24	6	3	9	11
<del>((26-))</del> 27. Enhanced reduced air leakage <sup>g</sup>	C406.2.13.3	Heat	53	44	11	5	16	20
<del>((27-))</del> 28. Enhanced commercial kitchen equipment	C406.2.14	Heat	30 <sup>h</sup>	18 <sup>h</sup>	18 <sup>h</sup>	30 <sup>h</sup>	30 <sup>h</sup>	31 <sup>h</sup>
<del>((28-))</del> 29. Enhanced residential kitchen equipment	C406.2.15	Heat	12	19	NA	NA	NA	NA
<del>((29-))</del> 30. Enhanced residential laundry equipment	C406.2.16	Heat	NA	6	NA	NA	NA	NA
<del>((30-))</del> 31. Heat pump clothes dryers	C406.2.17	Heat	6	6	NA	NA	NA	NA
<del>((31-))</del> 32. Efficient elevator equipment	C406.2.18	Heat	3	5	5	5	4	4

- a Projects using Item 2 shall not use Items 3 through 5.
- b Projects using C406.2.2.5 shall not use C406.2.2.4.
- c For C406.2.2.6, occupancy Group A achieves 40 credits while other occupancy groups within the "all other" category achieve 21 credits.
- d Projects using C406.2.3.2 shall not use C406.2.3.1.
- e Service water heat recovery and heat pump water heating are available in Group M only for grocery stores larger than 10,000 ft<sup>2</sup>. Large mixed retail with full grocery and butcher sections shall achieve half the credits. This credit is not available where refrigeration recovery to heat service hot water is used to meet the requirements of Section C403.9.2.3.
- f Heat pump water heating efficiency credits are available in the "all other" category only for Group A-2.
- g Buildings or building areas that are exempt from the thermal envelope requirements in accordance with Sections C402.1.1 and C402.1.2, do not qualify for this package.
- h Additional energy efficiency credits, up to the maximum shown in Table C406.2(1), shall be calculated according to Section C406.2.11.

**Table C406.2(2)**  
**Efficiency Measure Credits for use with**  
**Fossil Fuel Compliance Path**

Measure Title	Applicable Section	Prorating Flag	Occupancy Group					
			Group R-1	Group R-2	Group B	Group E	Group M	All Other
<u>1. Dwelling unit HVAC control</u>	<u>C406.2.2</u>	<u>Heat</u>	<u>NA</u>	<u>8</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>2. Improved HVAC TSPR<sup>a</sup></u>	<u>C406.2.2.1</u>	<u>Heat</u>	<u>NA</u>	<u>9</u>	<u>12</u>	<u>19</u>	<u>24</u>	<u>NA</u>
<u>3. Improve cooling and fan efficiency</u>	<u>C406.2.2.2</u>	<u>Heat</u>	<u>12</u>	<u>8</u>	<u>14</u>	<u>8</u>	<u>10</u>	<u>10</u>
<u>4. Improve heating efficiency</u>	<u>C406.2.2.3</u>	<u>Heat</u>	<u>2</u>	<u>3</u>	<u>3</u>	<u>11</u>	<u>18</u>	<u>8</u>

Measure Title	Applicable Section	Prorating Flag	Occupancy Group					
			Group R-1	Group R-2	Group B	Group E	Group M	All Other
5. Improved low-carbon district energy system (10% better)	C406.2.2.4		3	3	4	12	19	9
6. Improved low-carbon district energy system (20% better) <sup>b</sup>	C406.2.2.5		10	11	13	36	57	26
7. High performance DOAS	C406.2.2.6	Heat	34	34	23	43	44	23/ (A) 40 <sup>c</sup>
8. Fault detection & diagnostics (FDD)	C406.2.2.7	Heat	2	2	2	6	9	4
9. 10% reduced lighting power	C406.2.3.1	Heat	7	4	18	16	20	15
10. 20% reduced lighting power <sup>d</sup>	C406.2.3.2	Heat	13	8	36	32	40	29
11. Lamp efficacy improvement	C406.2.3.3	Heat	5	6	NA	NA	NA	NA
12. Residential lighting control	C406.2.4.1	Heat	NA	8	NA	NA	NA	NA
13. Enhanced lighting control	C406.2.4.2	Heat	1	1	6	6	11	6
14. Renewable energy	C406.2.5		7	12	13	13	10	11
15. Shower drain heat recovery	C406.2.6.1	SWH	10	33	NA	3	NA	NA
16. Service water heat recovery	C406.2.6.2	SWH	35	111	13	14	(Grocery) 41 <sup>e</sup>	NA
17. Heat pump water heating	C406.2.6.3	SWH	135	163	17	33	(Grocery) 95 <sup>e</sup>	(A-2) 95 <sup>f</sup>
18. High efficiency service water heating, gas-fired	C406.2.6.4	SWH	59	65	6	11	18	32
19. Heat trace system	C406.2.7.1	SWH	6	13	4	1	NA	6
20. Point of use water heater	C406.2.7.2	SWH	NA	NA	19	5	NA	NA
21. Service hot water distribution right sizing	C406.2.8		13	42	NA	NA	NA	NA
22. High performance service hot water temperature maintenance system	C406.2.9		6	13	4	1	NA	6
23. High efficiency service hot water circulation system	C406.2.10		3	6	2	1	NA	4
24. Low flow residential showerheads	C406.2.11	SWH	3	3	NA	NA	NA	NA
25. Enhanced envelope performance <sup>g</sup>	C406.2.12	Heat	24	20	13	5	19	14
26. Base reduced air leakage <sup>g</sup>	C406.2.13.2		29	24	6	3	9	11
27. Enhanced reduced air leakage <sup>g</sup>	C406.2.13.3	Heat	53	44	11	5	16	20



Measure Title	Applicable Section	Prorating Flag	Occupancy Group					
			Group R-1	Group R-2	Group B	Group E	Group M	All Other
<u>28. Enhanced commercial kitchen equipment</u>	<u>C406.2.14</u>	<u>Heat</u>	<u>30<sup>h</sup></u>	<u>18<sup>h</sup></u>	<u>18<sup>h</sup></u>	<u>30<sup>h</sup></u>	<u>30<sup>h</sup></u>	<u>31<sup>h</sup></u>
<u>29. Enhanced residential kitchen equipment</u>	<u>C406.2.15</u>	<u>Heat</u>	<u>12</u>	<u>19</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>30. Enhanced residential laundry equipment</u>	<u>C406.2.16</u>	<u>Heat</u>	<u>NA</u>	<u>6</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>31. Heat pump clothes dryers</u>	<u>C406.2.17</u>	<u>Heat</u>	<u>6</u>	<u>6</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
<u>32. Efficient elevator equipment</u>	<u>C406.2.18</u>	<u>Heat</u>	<u>3</u>	<u>5</u>	<u>5</u>	<u>5</u>	<u>4</u>	<u>4</u>

- <sup>a</sup> Projects using Item 2 shall not use Items 3 through 5.
- <sup>b</sup> Projects using C406.2.2.5 shall not use C406.2.2.4.
- <sup>c</sup> For C406.2.2.6, occupancy Group A achieves 40 credits while other occupancy groups within the "all other" category achieve 21 credits.
- <sup>d</sup> Projects using C406.2.3.2 shall not use C406.2.3.1.
- <sup>e</sup> Service water heat recovery and heat pump water heating are available in Group M only for grocery stores larger than 10,000 ft<sup>2</sup>. Large mixed retail with full grocery and butcher sections shall achieve half the credits. This credit is not available where refrigeration recovery to heat service hot water is used to meet the requirements of Section C403.9.2.3.
- <sup>f</sup> Heat pump water heating efficiency credits are available in the "all other" category only for Group A-2.
- <sup>g</sup> Buildings or building areas that are exempt from the thermal envelope requirements in accordance with Sections C402.1.1 and C402.1.2, do not qualify for this package.
- <sup>h</sup> Additional energy efficiency credits, up to the maximum shown in Table C406.2(2), shall be calculated according to Section C406.2.14.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40622 Section C406.2.2—HVAC measures.**

**C406.2.2 More efficient HVAC system performance.** All heating and cooling systems shall meet the minimum requirements of Section C403 and efficiency improvements shall be referenced to the minimum efficiency requirements listed in the tables in Section C403.3.2. Where multiple efficiency requirements are listed, equipment shall meet the seasonal efficiencies including SEER, EER/IEER, IPLV or AFUE. Equipment that is larger than the maximum capacity range indicated in the tables in Section C403.3.2 shall utilize the values listed for the largest capacity equipment for the associated equipment type shown in the table. Where multiple individual heating or cooling systems serve the project, the improvement shall be the weighted average improvement based on individual system capacity.

For occupancies and systems required to comply with Section C403.1.1, credits are permitted to be achieved by meeting the requirements of Section C406.2.2.1. Other systems are permitted to achieve credits by meeting the requirements of either:

1. Section C406.2.2.2, More efficient HVAC equipment cooling and fan performance.
2. Section C406.2.2.3, More efficient HVAC equipment heating performance.
3. Section C406.2.2.4, High performance dedicated outdoor air system (DOAS).
4. Any combination of Sections C406.2.2.2, C406.2.2.3, and C406.2.2.4.

In addition, energy credits are permitted to be achieved for Section C406.2.2.7, Fault detection and diagnostics, where not otherwise required by Section C403.2.3 or C403.6.10(15).

**C406.2.2.1 Improved HVAC TSPR.** For systems required to comply with Section C403.1.1, the HVAC TSPR shall exceed the minimum requirement by five percent. If improvement is greater, the credits in Table C406.2(1) are permitted to be prorated up to a 20 percent improvement.

**C406.2.2.2 More efficient HVAC equipment cooling and fan performance.** No less than 90 percent of the total HVAC capacity serving the total conditioned floor area of the entire building, building addition or tenant space in accordance with Section C406.1.1 shall comply with Sections C406.2.2.2.1 through C406.2.2.2.3. Where individual equipment efficiencies vary, weigh them based on capacity.

**C406.2.2.2.1 HVAC system selection.** Equipment installed shall be types that are listed in the tables in Section C403.3.2.

**C406.2.2.2.2 Cooling equipment efficiency.** Equipment shall exceed the minimum cooling efficiency requirements listed in the tables in Section C403.3.2 by at least 5 percent. Where equipment exceeds the minimum annual cooling efficiency and heat rejection efficiency requirements by more than 5 percent, energy efficiency credits for cooling shall be determined using Equation 4-15, rounded to the nearest whole number.

**(Equation 4-15)**

$$EEC_{HEC} = EEC_5 \times \left[ 1 + \frac{CEI - 0.05}{0.05} \right]$$

Where:

- EEC<sub>HEC</sub> = Energy efficiency credits for cooling efficiency improvement.
- EEC<sub>5</sub> = Section C406.2.2.2 credits from Table C406.2(1).
- CEI = The lesser of the improvement above minimum cooling efficiency requirements, minimum heat rejection efficiency requirements, or 20 percent (0.20). Where cooling efficiency varies by system, use the capacity weighted average efficiency improvement for all cooling equipment combined. The CEI expressed as a fraction shall be determined one of the following ways:  
 For metrics that increase as efficiency increases, CEI shall be calculated as follows:

$$CEI = \frac{CM_{DES}}{CM_{MIN}} - 1$$

For metrics that decrease as efficiency increases, CEI shall be calculated as follows:

$$CEI = \frac{CM_{MIN}}{CM_{DES}} - 1$$

Where:

- CM<sub>DES</sub> = Design cooling efficiency metric, part-load or annualized where available.
- CM<sub>MIN</sub> = Minimum required cooling efficiency metric, part-load or annualized where available from Section C403.3.2.

For data centers using ASHRAE 90.4, CEI shall be calculated as follows:

$$CEI = \frac{AMLC_{MAX}}{AMLC_{DES}} - 1$$

Where:

- AMLC<sub>DES</sub> = As-designed annualized mechanical load component calculated in accordance with ASHRAE 90.4 Section 6.5.
- AMLC<sub>MAX</sub> = Maximum annualized mechanical load component from ASHRAE 90.4 Table 6.5.

**C406.2.2.2.3 Minimum fan efficiency.** Where fan energy is not included in packaged equipment rating or it is and the fan size has been increased from the as-rated equipment condition, fan power or horsepower shall be less than 95 percent of the allowed fan power in Section C403.8.1.

**C406.2.2.3 More efficient HVAC equipment heating performance.** No less than 90 percent of the total HVAC capacity serving the total conditioned floor area of the entire building, building addition or tenant space in accordance with Section C406.1.1 shall comply with Sections C406.2.2.3.1 through C406.2.2.3.2.

**C406.2.2.3.1 HVAC system selection.** Equipment installed shall be types that are listed in the tables in Section C403.3.2. Electric resistance heating shall be limited to 20 percent of system capacity, with the exception of heat pump supplemental heating.

**C406.2.2.3.2 Heating equipment efficiency.** Equipment shall exceed the minimum heating efficiency requirements of the tables in Section C403.3.2 by at least 5 percent. Where equipment exceeds the minimum annual heating efficiency requirements by more than 5 percent, energy efficiency credits for heating shall be determined using Equation 4-16, rounded to the nearest whole number.

(Equation 4-16)

$$EEC_{HEH} = EEC_5 \times \left[ 1 + \frac{HEI - 0.05}{0.05} \right]$$

Where:

- EEC<sub>HEH</sub> = Energy efficiency credits for heating efficiency improvement.

- EEC<sub>5</sub> = Section C406.2.2.2 credits from Table C406.2(1).
- HEI = The lesser of the improvement above minimum heating efficiency requirements or 20 percent (0.20). Where heating efficiency varies by system, use the capacity weighted average percentage for all heating equipment combined. For metrics that increase as efficiency increases, HEI shall be calculated as follows:

$$HEI = \frac{HM_{DES}}{HM_{MIN}} - 1$$

Where:

- HM<sub>DES</sub> = Design heating efficiency metric, part-load or annualized where available.
- HM<sub>MIN</sub> = Minimum required heating efficiency metric, part-load or annualized where available from Section C403.3.2.

EXCEPTION: In low energy spaces complying with Section C402.1.1 and *semi-heated spaces* complying with Section C402.1.1.2, no less than 90 percent of the installed heating capacity is provided by electric infrared or gas-fired radiant heating equipment for localized heating applications. Such spaces shall achieve credits for EEC<sub>5</sub>.

**C406.2.2.4 Improved low-carbon district energy systems (10 percent better).** Not less than 90 percent of the annual service hot water and space heating load, or not less than 90 percent of the annual service hot water, space heating, and space cooling load shall meet the criteria of Section C406.2.2.4.1 or C406.2.2.4.2.

Documentation for the low-carbon district system that is operational prior to the final inspection shall be provided to demonstrate that the definition as modified in Section C406.2.2.4.1 or C406.2.2.4.2 of *low-carbon district energy exchange system* is satisfied.

**C406.2.2.4.1 Improved low-carbon district energy exchange systems (10 percent better).** Low-carbon district energy exchange systems must demonstrate the following:

1. Forty-five percent of the annual district-system-net-load-met (sum of heating and cooling energy provided to attached buildings) comes from heat recovery between connected buildings, waste heat, or renewable energy resources; and
2. No more than 25 percent of the annual heat input to the system comes from fossil fuel or electric-resistance sources.

**C406.2.2.4.2 Improved low-carbon district energy heating and cooling or heating only systems (10 percent better).** Distribution losses must be accounted for and may not exceed 5 percent of the annual load delivered to buildings served by the system. *Low-carbon district energy heating and cooling or heating only systems* must demonstrate the following:

1. Forty-five percent of the annual district-system-net-load-met (sum of heating and cooling energy provided to attached buildings) comes from heat recovery between connected buildings, waste heat, or renewable energy resources and no more than 25 percent of the annual

heat input to the system comes from fossil fuel or electric-resistance sources; or

2. No more than 10 percent of the system annual heat input to the system comes from fossil fuels or electric-resistance sources. The remaining annual heat input must be provided using heat pump technology with a minimum annual operating COP of 3.0.

**C406.2.2.5 Improved low-carbon district energy systems (20 percent better).** Not less than 90 percent of the annual service hot water and space heating load, or not less than 90 percent of the annual service hot water, space heating, and space cooling load shall meet the criteria of Section C406.2.2.5.1 or C406.2.2.5.2.

Documentation for the low-carbon district system that is operational prior to the final inspection shall be provided to demonstrate that the definition as modified in Section C406.2.2.4.1 or C406.2.2.4.2 of *low-carbon district energy exchange system* is satisfied.

**C406.2.2.5.1 Improved low-carbon district energy exchange systems (20 percent better).** Low-carbon district energy exchange systems must demonstrate the following:

1. Fifty percent of the annual district-system-net-load-met (sum of heating and cooling energy provided to attached buildings) comes from heat recovery between connected buildings, waste heat, or renewable energy resources; and

2. No more than 10 percent of the annual heat input to the system comes from fossil fuel or electric-resistance sources.

**C406.2.2.5.2 Improved low-carbon district energy heating and cooling or heating only systems (20 percent better).** Distribution losses must be accounted for and may not exceed 5 percent of the annual load delivered to buildings served by the system. *Low-carbon district energy heating and cooling or heating only systems* must demonstrate the following:

1. Fifty percent of the annual district-system-net-load-met (sum of heating and cooling energy provided to attached buildings) comes from heat recovery between connected buildings, waste heat, or renewable energy resources and no more than 10 percent of the annual heat input to the system comes from fossil fuel or electric-resistance sources; or

2. No more than 10 percent of the system annual heat input to the system comes from fossil fuels or electric-resistance sources. The remaining annual heat input must be provided using heat pump technology with a minimum annual operating COP of 4.0.

**C406.2.2.6 High performance dedicated outdoor air system (DOAS).** No less than 90 percent of the total conditioned floor area of the whole project, excluding floor area of unoccupied spaces that do not require ventilation as specified by the *International Mechanical Code*, shall be served by DOAS installed in accordance with Section C403.3.5 with the following adjustments:

1. Minimum heat recovery sensible effectiveness of 80 percent, calculated in accordance with Section C403.3.5.1.

2. Where design outdoor airflow is greater than 500 cfm (250 L/s), the DOAS shall be equipped with an economizer bypass, damper control, or wheel speed control that is active between 55°F (13°C) and 75°F (24°C) outdoor air temperature and minimizes energy recovery or maintains an appropriate DOAS leaving air temperature when the build-

ing is generally in cooling, based either on outdoor air temperature or a DDC zone-based cooling system reset.

3. DOAS total combined fan power shall be less than either:

3.1. 0.769 W/cfm (1.55 W/L/s) when calculated in accordance with Section C403.3.5.2.

3.2. Eighty percent of fan power allowance for a constant volume system when calculated in accordance with Section C406.8.1.

This option is not available to areas served by systems utilizing Section C403.2.2.1 exception 5.

**C406.2.2.7 Fault detection and diagnostics system.** A project not required to comply with Section C403.2.3 or C403.6.10(16) shall achieve energy credits for installing a fault detection and diagnostics system to monitor the HVAC system's performance and automatically identify faults. The installed system shall comply with items 1 through 6 in Section C403.2.3.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40623 Section C406.2.3—Lighting measures.**

**C406.2.3 Reduced lighting power.** Interior lighting within the whole project shall achieve credits by complying with Section C406.2.3.1 or C406.2.3.2. In Group R-1 and Group R-2 occupancies, dwelling and sleeping units shall comply with Section C406.2.3.3 and all other areas shall comply with section C406.2.3.1 or C406.2.3.2. Credits apply to the whole Group R-1 or Group R-2 area.

**C406.2.3.1 Reduced lighting power option 1.** The total connected interior lighting power calculated in accordance with Section C405.4.1 shall be 90 percent or less of the lighting power values specified in Table C405.4.2(1) times the floor area for the building types, or 90 percent or less of the total interior lighting power allowance calculated in accordance with Section C405.4.2.

**C406.2.3.2 Reduced lighting power option 2.** The total connected interior lighting power calculated in accordance with Section C405.4.1 shall be 80 percent or less of the lighting power values specified in Table C405.4.2(1) times the floor area of the building types, or 80 percent or less of the total interior lighting power allowance calculated in accordance with Section C405.4.2.

**C406.2.3.3 Lamp efficacy.** No less than 95 percent of the permanently installed light fixtures in dwelling units and sleeping units shall be provided by lamps with a minimum efficacy of 90 lumens per watt.

**C406.2.4 Lighting controls.** For buildings with nontransient *dwelling units* and *sleeping units*, energy credits shall be achieved by installation of systems that comply with the requirements of Section C406.2.4.1. All other buildings shall achieve energy credits by complying with Section C406.2.4.2. For buildings with mixed occupancies, credits shall be prorated based on floor area.

**C406.2.4.1 Residential building lighting control.** In buildings with nontransient dwelling units and sleeping units, lighting controls shall be configured to meet the following:

1. Each *dwelling unit* or *sleeping unit* shall have a main control by the main entrance that turns off all the lights and switched receptacles in the unit. The main control shall be permitted to have two controls, one for permanently wired lighting and one for switched receptacles. The main controls shall be clearly identified as "lights master off" and "switched outlets master off."

2. Switched receptacles shall be clearly identified and all switched receptacles shall be located within 12 inches of an unswitched receptacle. Each room shall have a minimum of two switched receptacles except bathrooms, kitchens, and closets.

**C406.2.4.2 Enhanced digital lighting controls.** Measure credits shall be achieved where no less than 50 percent of the gross floor area within the project has luminaires and lighting controls that include high end trim in compliance with Section C405.2.8.3 and either *luminaire-level lighting controls* in compliance with Section C405.2.8.1 or networked lighting controls in accordance with Section C405.2.8.2. Where *general lighting* in more than 50 percent of the gross floor area complies, the base credits from Table C406.2(1) shall be prorated as follows:

$$[\text{Floor area with high end trim, \%}] \times [\text{Base energy credits for C406.2.4.2}] / 50\%$$

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40624 Section C406.2.5—Renewable energy measures.**

**C406.2.5 On-site and off-site renewable energy.** Projects installing on-site or off-site renewable energy systems with a capacity of at least 0.1 watts per gross square foot (1.08 W/m<sup>2</sup>) of building area in addition to the renewable energy capacity required elsewhere in this code shall achieve energy credits for this measure. Renewable energy systems achieving energy credits shall not be used to satisfy other requirements of this code. Off-site renewable energy systems shall comply with Sections C411.2.2 and C411.2.3. Credits shall be prorated from the table value in accordance with Equation 4-17.

**(Equation 4-17)**

$$AEC_{RRa} = AEC_b \times \frac{\sum (REF \times RR_t) - RR_r}{RR_b \times PGFA}$$

Where:

AEC<sub>RRa</sub> = Section C406.2.5 achieved energy credits for this project as calculated in accordance with Equation 4-17, limited to 50 percent of the required credits in Section C406.1.

RR <sub>t</sub>	=	Actual total rating of on-site and off-site renewable energy systems (W) for each type of renewable energy source in Table C411.2.1.
RR <sub>r</sub>	=	Rating of renewable energy systems required by Section C411.1, other sections in this code, or used to qualify for exceptions in this code (W).
RR <sub>b</sub>	=	0.1 W/square foot (1.08 W/m <sup>2</sup> )
PGFA	=	Project gross floor area, square feet (m <sup>2</sup> ).
AEC <sub>((0.T))b</sub>	=	Section C406.2.5 base credits from Table C406.2(1).
REF	=	Renewable Energy Factor from Table C411.2.1.

*Informative Note:* On-site renewable energy may include thermal service water heating or pool water heating, in which case ratings in Btu/h can be converted to W where  $\bar{W} = \text{Btu/h} / 3.413$ .

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40625 Section C406.2.6—Service water measures.**

**C406.2.6 Reduced energy use in service water heating.** Buildings with service hot water heating equipment that serves the whole building, building addition or tenant space shall achieve credits through compliance with:

1. Section C406.2.6.1, C406.2.6.2, or C406.2.6.3.
2. Sections C406.2.6.1 and C406.2.6.2.
3. Sections C406.2.6.1 and C406.2.6.3.

**C406.2.6.1 Shower drain heat recovery.** Shower drain heat recovery units shall comply with Section C404.10 and preheat cold water supply to the showers. Potable waterside pressure loss shall be less than 10 psi (69 kPa) at maximum design flow. The efficiency of drain water heat recovery units shall be 54 percent in accordance with CSA B55.1. Full credits are applicable to the following building use types: Multi-family, hotel, motel, dormitory, and schools with locker room showers. Where not all showers in the project have drain heat recovery, the credit is adjusted based on the following:

$$[\text{Section C406.2.6.1 table credits}] \times [\text{Showers with drain recovery}] / [\text{Total number of showers}]$$

**C406.2.6.2 Service water heating energy recovery.** Not less than 30 percent of the annual service hot water heating energy use, or not less than 70 percent of the annual service hot water heating energy use in buildings with condenser water systems subject to the requirements of Section C403.9.2.1 or qualifying for one of its exceptions, shall be provided by one or more of the following:

1. Waste heat recovery from service hot water, heat recovery chillers, building equipment, process equipment, or other approved system. Qualifying heat recovery must be above and beyond heat recovery required by other sections of this code.
2. On-site renewable energy water-heating systems where not used to meet other requirements or to obtain other energy credits.



**C406.2.6.3 Heat pump ((service)) water heating.** Projects shall achieve credits through compliance with Section C406.2.6.3.1.

**C406.2.6.3.1 Heat pump water heater.** Credit shall be achieved where ~~((service hot water system capacity is 82,000 Btu/h (24kW) or less and is served using heat pump technology with no more than 4.5 kW of resistance supplemental heating and meets))~~ the primary heat pump service water heating system is sized to deliver no less than 100 percent of the net calculated demand for service water production during the peak demand period with entering dry bulb or wet bulb outdoor air temperature at 40°F (4°C) for air-source heat pumps, or 44°F (7°C) ground temperature for ground-source heat pumps, as calculated using the equipment manufacturer's selection criteria or another approved methodology. For this credit, the net calculated demand shall be the gross building demand less any portion of the demand complying with the exceptions to Section C404.2.1. Supplemental heating is permitted in accordance with Section C404.2.1, but cannot use fossil fuels. Heat pump water heaters shall comply with one of the following:

1. The COP rating shall be a minimum COP of 3.0 reported at the design leaving heat pump water temperature with an entering air temperature of 60°F (16°C) or lower. For water-source equipment, the COP rating will be reported at the design leaving load water temperature with an entering load water temperature of 74°F (23°C) or lower.

2. The uniform energy factor (UEF) shall be a minimum of 3.40 rated based on U.S. Department of Energy requirements.

**C406.2.6.4 High efficiency service water heating, gas-fired.** The credit achieved shall be from Table C406.2(2) where hot water is supplied by gas-fired equipment with minimum efficiency of 0.91 UEF.

**C406.2.7 Improved service hot water temperature maintenance.** For buildings with gross floor area greater than 10,000 square feet, credit shall be achieved when hot water temperature maintenance is installed in accordance with Section C406.2.7.1 or C406.2.7.2.

**C406.2.7.1 Self-regulated heat trace system.** The credit achieved shall be from Table C406.2(1). This system shall include self-regulating electric heat cables, connection kits and electronic controls. The cable shall be installed directly on the hot water supply pipes underneath the insulation to replace standby losses.

**C406.2.7.2. Point of use water heater.** The credit achieved shall be from Table C406.2(1) where any fixtures requiring hot water shall be supplied from a localized electric source of hot water with no recirculation or heat trace and limited to 2 kW and 6 gallons of storage. The supply pipe length from the point of use water heater to the termination of the fixture supply pipe shall be no more than 20 feet.

**C406.2.8 Service hot water distribution right sizing.** To achieve this credit, where Group R-1 and R-2 occupancies are served by a central service hot water system, the distribution system serving *dwelling units, sleeping units* and guestrooms shall be sized using Appendix M of the *Uniform Plumbing Code*.

**C406.2.9 High performance service hot water temperature maintenance system.** Systems with multiple riser service hot water circulation systems shall use only heat pump technology for temperature maintenance. The heat pump technology shall have a minimum COP of 3.0 or UEF of 3.4. For air-source equipment, the COP rating will be reported at the design leaving heat pump water temperature with an entering dry bulb

air temperature of 60°F (16°C) or lower and a relative humidity of 50 percent or lower. For water-source equipment, the COP rating will be reported at the design leaving load side water temperature with an entering source side water temperature of 74°F (23°C) or lower. The system shall comply with the requirements of Section C404.7.1.

**C406.2.10 High efficiency service hot water circulation system.** Multiple riser service hot water circulation systems shall use a variable volume circulation pump controlled to vary the pump speed based on system demand and shall include self-actuated thermostatic balancing valves to control the system flow at each riser.

**C406.2.11 Low flow showerheads for Group R-1 and R-2 occupancies.** All showerheads installed in Group R-1 and R-2 *dwelling units* or *sleeping units* shall have a maximum listed flowrate of 1.25 gallons per minute or less at 80 psi operating pressure for fixed showerheads and a maximum listed flowrate of 1.50 gallons per minute or less at 80 psi operating pressure for handheld showerheads. When a shower is served by more than one showerhead, including handheld showerheads, the combined flow rate of all showerheads and/or other shower outlets controlled by a single valve shall not exceed 1.25 gallons per minute or less for fixed or 1.5 gallons per minute or less for handheld, or the shower shall be designed to allow only one shower outlet to be in operation at a time.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40627 Section C406.2—Other measures.**

**C406.2.14 Enhanced commercial kitchen equipment.** For buildings or areas designated as Group A-2, or facilities whose primary business type involves the use of a commercial kitchen with at least one gas or electric fryer, all fryers, dishwashers, steam cookers and ovens shall comply with all of the following:

1. Achieve the ENERGY STAR label in accordance with the specifications current as of January 1, 2022.
2. Be installed prior to the issuance of the certificate of occupancy.
3. Have the ENERGY STAR qualified model number listed on the construction documents submitted for permitting.

Energy efficiency credits for efficient commercial kitchen equipment shall be determined based on Equation 4-19, rounded to the nearest whole number.

(Equation 4-19)

$$AEEC_K = 20 \times \frac{\text{Area}_K}{\text{Area}_B}$$

Where:

$AEEC_K$  = Section C406.2.14 table credits, to a maximum of those allowed in Table C406.2(1) for this option.

- Area<sub>K</sub> = Floor area of full-service kitchen (ft<sup>2</sup> or m<sup>2</sup>).
- Area<sub>B</sub> = Gross floor area of building (ft<sup>2</sup> or m<sup>2</sup>).

**C406.2.15 Residential kitchen equipment.** For projects with Group R-1 and R-2 occupancies, energy credits shall be achieved where not less than 90 percent of dishwashers, refrigerators, and freezers comply with all of the following:

- 1. Achieve the ENERGY STAR Most Efficient label in accordance with the 2021 specifications.
- 2. Be installed prior to the issuance of the certificate of occupancy.

For Group R-1 where only some guestrooms are equipped with both refrigerators and dishwashers, the table credits shall be prorated as follows:

$$[\text{Section C406.2.15 table credits}] \times [\text{Floor area of guestrooms with kitchens}] / [\text{Total guestroom floor area}]$$

**C406.2.16 Residential laundry appliances.** For projects with Group R-2 occupancies, energy credits shall be achieved where not less than 90 percent of clothes washers and dryers in the project meet the following requirements:

- 1. Each dwelling unit contains in-unit washing washer and dryer equipment that meets the following requirements:
  - 1.1. Achieve the ENERGY STAR Most Efficient label in accordance with the 2021 specifications.
  - 1.2. Be installed prior to the issuance of the certificate of occupancy.
- 2. Where only some dwelling units are equipped with both washers and dryers, the table credits shall be prorated as follows:

$$[\text{Section C406.2.16 table credits}] \times [\text{Floor area of dwelling units with laundry}] / [\text{Total dwelling unit floor area}]$$

**C406.2.17 Heat pump clothes dryers.** Not less than 90 percent of domestic clothes dryers located in Group R-1 and R-2 of the whole project are ENERGY STAR rated heat pump dryers. Credit applies only to buildings where laundry facilities are provided either within each residential dwelling or sleeping units or grouped together in central multi-family use laundry rooms, or a mix of the two.

To claim this credit, the building permit drawings shall specify the appliance type and provide documentation of ENERGY STAR compliance. At the time of inspection, all appliances shall be installed and connected to utilities.

**C406.2.18 Efficient elevator equipment.** Qualifying elevators in the building shall be Energy Efficient Class A in accordance with ISO 25745-2, Table 7. Only buildings three or more floors above grade shall be permitted to use this credit. Credits shall be prorated based on Equation 4-18, rounded to the nearest whole credit. Projects with a compliance ratio (CR<sub>e</sub> in Equation 4-18) below 0.5 do not qualify for this credit.

(Equation 4-18)

$$EC_e = EC_t \times CR_e$$

Where:

- EC<sub>e</sub> = Elevator energy credit achieved for building.
- EC<sub>t</sub> = Section C406.2.18 table energy credit.
- CR<sub>e</sub> =  $\frac{F_A}{F_B}$
- F<sub>A</sub> = Sum of floors served by Class A elevators.
- F<sub>B</sub> = Sum of floors served by all building elevators and escalators.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40702 Section C407.2—Mandatory requirements.**

**C407.2 Mandatory requirements.** Compliance with Section C407 also requires compliance with those sections shown in Table C407.2.

The building permit application for projects utilizing this method shall include in one submittal all building and mechanical drawings and all information necessary to verify that the building envelope and mechanical design for the project corresponds with the annual energy analysis. If credit is proposed to be taken for lighting energy savings, then an electrical permit application shall also be submitted and approved prior to the issuance of the building permit. If credit is proposed to be taken for energy savings from other components, then the corresponding permit application (e.g., plumbing, boiler, etc.) shall also be submitted and approved prior to the building permit application. Otherwise, components of the project that would not be approved as part of a building permit application shall be modeled in the baseline in accordance with ANSI/ASHRAE/IESNA 90.1 Appendix G and in the proposed model in accordance with the requirements of the Washington State Energy Code.

**Table C407.2  
Mandatory Compliance Measures for  
Total Building Performance Method**

Section <sup>a</sup>	Title	Comments
<b>Envelope</b>		
C401	Thermal envelope certificate	
C402.2.7	Airspaces	
C402.5	Air leakage	
<b>Mechanical</b>		
C403.1.2	Calculation of heating and cooling loads	
C403.1.3	Data centers	
((C403.1.4	Use of electric resistance and fossil fuel-fired HVAC heating equipment))	
C403.2	System design	

Section <sup>a</sup>	Title	Comments
C403.3.1	Equipment and system sizing	
C403.3.2	HVAC equipment performance requirements	
C403.3.3	Hot gas bypass limitation	
C403.3.4.4	Boiler turndown	
<del>(C403.3.6)</del>	<del>Ventilation for Group R-occupancy</del>	
C403.4.1	Thermostatic controls	
C403.4.2	Off-hour controls	
C403.4.7	Combustion heating equipment controls	
C403.4.8	Group R-1 hotel/motel guestrooms	See Section C403.7.4
C403.4.9	Group R-2 and R-3 dwelling units	
C403.4.10	Group R-2 sleeping units	
C403.4.11	Direct digital control systems	
C403.5.5	Economizer fault detection and diagnostics (FDD)	
C403.7	Ventilation and exhaust systems	Except for C403.7.6.2
C403.8	Fan and fan controls	
C403.9.1.1	Variable flow controls	For cooling tower fans $\geq 7.5$ hp
C403.9.1.2	Limitation on centrifugal fan cooling towers	For open cooling towers
C403.10	Construction of HVAC elements	
C403.11	Mechanical systems located outside of the building thermal envelope	
C403.14	Commissioning	
<b>Service Water Heating</b>		
C404	Service water heating	Except for C404.2.1
<b>Lighting and Electrical</b>		
C405	Electrical power and lighting systems	
<b>Other Requirements</b>		
C407	Total building performance	
C408	System commissioning	
C409	Energy metering	

Section <sup>a</sup>	Title	Comments
C410	Refrigeration requirements	
C411 <sup>b</sup>	Renewable energy	
C412	Compressed air systems	

<sup>a</sup> Reference to a code section includes all the relative subsections except as indicated in the table.

<sup>b</sup> Compliance with any of these sections includes compliance with any exception to that section.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-40703 Section C407.3—Performance-based compliance.**

**C407.3 Performance-based compliance.** Compliance with this section requires compliance with ASHRAE Standard 90.1 Appendix G, Performance Rating Method, in accordance with Standard 90.1 Section 4.2.1 with the following modifications:

1. The mandatory requirements of the Washington State Energy Code are required to be met, instead of those of Section G1.2.1a of ANSI/ASHRAE/IESNA 90.1.

2. Compliance with Section C407 requires meeting both (~~(an emissions and)~~) a regulated site energy target and a total site energy reduction target in accordance with the following:

2.1. (~~(Carbon emissions)~~) Regulated site energy target. The (~~(carbon emissions)~~) regulated site energy target is focused on regulated load energy efficiency, thus shall be met only via regulated load savings without consideration of the contribution of on-site or off-site renewable energy or unregulated load savings. Adjustments to the PCI, to account for the contribution of renewable energy found in ANSI/ASHRAE/IESNA 90.1 Section 4.2.1.1 shall not be used. References to energy cost in Section 4.2.1.1 and Appendix G shall be replaced by (~~(carbon emissions calculated by multiplying site energy consumption by the carbon emission factor from Table C407.3(1))~~) site energy use. Heating or cooling energy provided by a district energy system may utilize coefficient of performance (COP) ratios acceptable to the code official for the respective district energy sources. The building performance factors in Table 4.2.1.1 of ANSI/ASHRAE/IESNA 90.1 shall be replaced with those in Table C407.3(2).

2.2. Total site energy target. The total site energy performance target shall be met including the contributions of on-site or off-site renewable energy as described in Section C411.2 as well as the contributions of improvements in unregulated loads as allowed by Section C407.3.4. The annual on-site and off-site renewable energy production (as adjusted by the factors in Table C411.2.1) shall be subtracted from the proposed building annual site energy use. Compliance with the site energy performance target requires that the proposed building site energy use/baseline building site energy use is less than or equal to the site energy performance target from Table C407.3(3).

3. Documentation requirements in Section G1.3.2.d shall be replaced by a list showing compliance with the mandatory provisions of Table C407.2.

4. Forms demonstrating compliance with Appendix G developed by the U.S. Department of Energy shall be completed and submitted to the *code official*. The forms are available at [energycodes.gov/ashrae-standard-901-performance-based-compliance-form](http://energycodes.gov/ashrae-standard-901-performance-based-compliance-form).

5. References to yet-to-be-designed future building components in the Proposed Building Performance column of Table G3.1 shall be modified to reference the corresponding sections of the Washington State Energy Code in lieu of the requirements of ANSI/ASHRAE/IESNA 90.1 in the following sections of the table:

5.1. No. 1, Design Model, subclause c.

5.2. No. 6, Lighting, subclause c.

5.3. No. 11, Service Water Heating System, subclause c.

5.4. No. 12, Receptacle and Other Loads, subclause b.

6. HVAC systems, subclauses c and d of Table G3.1, shall meet the following requirements:

6.1. For yet-to-be-designed systems in office, retail, library, education, and multifamily buildings and occupancies subject to the TSPR requirements of Section C403.1.1, the system type and efficiency parameters in the proposed model shall meet but not exceed those shown in Table D602.11 Standard Reference Design HVAC Systems.

6.2. For all other buildings and occupancies, the system type shall be the same as the system modeled in the baseline design and shall comply with but not exceed the requirements of Section C403 in lieu of ANSI/ASHRAE/IESNA 90.1.

6.3. For HVAC systems serving future tenant spaces, where the current building permit applies to only a portion of an HVAC system, and future components will receive HVAC services from systems included in the current building permit, those future components shall be modeled as the type required to complete the HVAC system portions under the current permit and shall meet but not exceed the requirements found in Section C403.

7. The requirements for proposed and baseline building lighting system shall be modified in accordance with Addendum af to ANSI/ASHRAE/IESNA 90.1.

8. Energy modeler qualifications. The energy analyst in responsible charge of the Section C407 submittal shall meet at least one of the following:

8.1. ASHRAE Building Energy Modeling Professional (BEMP) certification.

8.2. Association of Energy Engineer's Building Energy Simulation Analyst (BESA) certification.

8.3. Successful completion of at least five projects modeled following any version of ANSI/ASHRAE/IESNA 90.1 Appendix G within the last three years that were reviewed and approved by a *code official* or rating authority.

**C407.3.1 Limits on nonmandatory measures.** The Proposed Total UA of the proposed building shall be no more than 20 percent higher than the Allowed Total UA as defined in Section C402.1.5.

**C407.3.2 On-site and off-site renewable energy accounting for use with Appendix G.** Qualifying on-site and off-site renewable energy delivered or credited to the building project to comply with Section C407.3 item 2.2 shall meet the requirements of Section C411.2.

**C407.3.3 Low-carbon district energy use with Appendix G.** Qualifying *low-carbon district heating and cooling or heating only systems* and

*low-carbon district energy exchange systems* shall meet the requirements of Section C407.3.3.1 or C407.3.3.2, as applicable.

**C407.3.3.1 Utilization of low-carbon district heating and cooling or heating only systems.** Applicable if heating and cooling or heating only is provided to the *proposed building* from a *low-carbon district heating and cooling or heating only system* that is fully operational prior to the final inspection. Proposed model shall account for all on-site HVAC and service hot water related equipment, such as circulation pump energy and heat-exchanger efficiency.

1. The following modifications shall be applied to Appendix G of ANSI/ASHRAE/IESNA 90.1 in addition to what is described in Section C407.3:

1.1. For low-carbon district heating and cooling systems, strike the text of Sections G3.1.1.1, G3.1.1.2, G3.1.1.3.1, G3.1.1.3.3, and G3.1.1.3.4. Baseline system shall be selected based on unmodified versions of Tables G3.1.1-3 and G3.1.1-4, (~~(with carbon emission factors from Table C407.3(1))~~) comparing energy use to determine compliance.

1.2. For low-carbon district heating only systems, strike the text of Sections G3.1.1.1, G3.1.1.3.1, and G3.1.1.3.4. Baseline system shall be selected based on unmodified versions of Tables G3.1.1-3 and G3.1.1-4, with carbon emission factors from Table C407.3(1).

2. Any heating or cooling energy provided by the *low-carbon district heating and cooling or heating only system* shall utilize (~~(footnote a of Table C407.3(1) for the district system carbon emission factor in the proposed model)~~) a calculated energy use reduction factor acceptable to the code official to account for (~~(carbon emissions)~~) energy use reduction from those end uses.

3. (~~(Carbon emission)~~) Energy "credit" for any waste/recoverable heat exported to the *low-carbon district heating and cooling or heating only systems* shall be accounted for in the proposed design by multiplying the quantity of heat exported by the (~~(Carbon Emissions Factor established in footnote a of Table C407.3(1) multiplied by the)~~) appropriate seasonal utilization factor in Items 3.1 and 3.2 below. This (~~(carbon emissions)~~) energy "credit" is subtracted from the total proposed design (~~(carbon emissions)~~) energy use calculated in accordance with ASHRAE 90.1 Section 4.2.1.1.

3.1. Fifty percent of the waste heat exported to the *low-carbon district heating and cooling or heating only systems* during the months of October through December and January through March.

3.2. Twenty-five percent of the waste heat exported to the *low-carbon district heating and cooling or heating only systems* during the months of April through September.

EXCEPTION: Waste heat exported from the building to the *low-carbon district heating and cooling or heating only system* shall not be subtracted from the proposed design (~~(carbon emissions)~~) energy use if they are already accounted for in the calculation of (~~(emissions)~~) energy use from the district heating or cooling plant as part of the district energy efficiency factor.

Documentation for the low-carbon district system that is operational prior to the final inspection shall be provided to demonstrate the following:

1. Distribution losses must be accounted for and may not exceed 10 percent of the annual load delivered to buildings served by the system.

2. Twenty-five percent of the annual district-system-net-load-met (sum of heating and cooling energy provided to attached buildings) comes from heat recovery between connected buildings, waste heat or renewable energy resources and no more than 25 percent of the annual heat input to the system comes from fossil fuel or electric-resistance



sources, or not more than 10 percent of the system annual heat input to the system comes from fossil fuel or electric-resistance sources.

#### **C407.3.3.2 Utilization of low-carbon district energy exchange systems.**

Applicable if heating or cooling is provided to the *proposed building* from a *low-carbon district energy exchange system* that is fully operational prior to the final inspection. Proposed model shall account for all on-site HVAC and service hot water related equipment, such as circulation pump energy and heat-exchanger efficiency.

1. The following modifications shall be applied to Appendix G of ANSI/ASHRAE/IESNA 90.1 in addition to what is described in Section C407.3:

1.1. Strike the text of Sections G3.1.1.1, G3.1.1.2, G3.1.1.3, G3.1.1.3.1, G3.1.1.3.2, G3.1.1.3.3, and G3.1.1.3.4. Baseline system shall be selected based on unmodified versions of Tables G3.1.1-3 and G3.1.1-4 (~~(, with carbon emission factors from Table C407.3(1))~~).

2. Any heating or cooling energy provided by a low-carbon district energy exchange system shall utilize (~~(footnote a of Table C407.3(1) for the district system carbon emission factor)~~) a calculated energy use reduction factor acceptable to the code official to account for the reduction in the proposed model.

3. (~~(Carbon emission)~~) Energy use "credit" for any waste/recoverable heating exported to the *low-carbon district energy exchange system* shall be accounted for in the proposed design by multiplying the quantity of heat exported by the (~~(Carbon Emissions Factor established in footnote a of Table C407.3(1) multiplied by the)~~) appropriate seasonal utilization factor in Items 3.1 and 3.2 below. This (~~(carbon emissions)~~) energy use "credit" is subtracted from the total proposed design (~~(carbon emissions)~~) energy use calculated in accordance with ASHRAE 90.1 Section 4.2.1.1.

3.1. Fifty percent of the waste heat exported to the *low-carbon district energy exchange system* during the months of October through December and January through March.

3.2. Twenty-five percent of the waste heat exported to the *low-carbon district energy exchange system* during the months of April through September.

EXCEPTION: Waste heat exported from the building to the *low-carbon district heating and cooling or heating only system* shall not be subtracted from the proposed design (~~(carbon emissions)~~) energy use if they are already accounted for in the calculation of (~~(emissions)~~) energy use from the district heating or cooling plant as a part of the district energy efficiency factor.

Documentation for the low-carbon district system that is operational prior to the final inspection shall be provided to demonstrate that the definition of *low-carbon district energy exchange system* is satisfied.

**C407.3.4 Credit for improvements in unregulated loads when using Appendix G.** When calculating savings for site energy targets in accordance with Section C407.3 item 2.2, but not when calculating savings for emissions targets in accordance with Section C407.3 item 2.1, differences in the simulation of unregulated loads and equipment modeled in the baseline building design from those in the *proposed design* shall be approved by the *code official* based on documentation that the equipment installed in the *proposed design* represents a significant verifiable departure from documented current conventional practice. All unregulated equipment for which savings is claimed must be installed by the time of final inspection. The burden of this documentation is to demonstrate that accepted conventional practice would result in baseline building equipment different from that installed in the *proposed design*. Occupancy and occupancy schedules shall not be changed.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-407031 Tables for Section C407.3.**

**Table C407.3(1)  
((Carbon Emissions Factors)) Re-  
served**

<del>((Type</del>	<del>CO<sub>2</sub>e (lb/unit)</del>	<del>Unit</del>
Electricity	0.44	kWh
Natural gas	11.7	Therm
Oil	19.2	Gallon
Propane	10.5	Gallon
Other <sup>a</sup>	195.00	mmBtu
On-site renewable energy	0.00	

<sup>a</sup> District energy systems may use alternative emissions factors supported by calculations approved by the *code official*.)

**Table C407.3(2)  
Building Performance Factors (BPF)  
to be used for Compliance with Sec-  
tion C407.3**

<b>Building Area Type</b>	<b>Building Performance Factor</b>
Multifamily	<del>((0.55))</del> <u>0.51</u>
Health care/hospital	<del>((0.71))</del> <u>0.70</u>
Hotel/motel	<del>((0.53))</del> <u>0.51</u>
Office	<del>((0.45))</del> <u>0.44</u>
Restaurant	<del>((0.35))</del> <u>0.33</u>
Retail	0.41
School	<del>((0.36))</del> <u>0.35</u>
Warehouse	<del>((0.19))</del> <u>0.18</u>
All others	<del>((0.44))</del> <u>0.43</u>

**Table C407.3(3)  
Site Energy Performance Targets to  
be used for Compliance with Section  
C407.3**

<b>Building Area Type</b>	<b>Site Energy Performance Targets</b>
Multifamily	0.59
Health care/hospital	0.72
Hotel/motel	0.62
Office	0.58
Restaurant	0.59
Retail	0.46
School	0.52
Warehouse	0.29
All others	0.55

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-41100 Section C411—Renewable energy.**

**C411.1 On-site renewable energy.** Each new building, or addition larger than 10,000 square feet of gross *conditioned floor area*, shall include a renewable energy generation system consisting of not less than 0.5 W/ft<sup>2</sup> or 1.7 Btu/ft<sup>2</sup> multiplied by the sum of the gross *conditioned floor area*.

- EXCEPTIONS:
1. Any building where more than 50 percent of the roof area is shaded from direct beam sunlight by natural objects or by structures that are not part of the building for more than 2500 annual hours between 8:00 a.m. and 4:00 p.m.
  2. Any building where more than 80 percent of the roof area is covered by any combination of equipment other than for on-site renewable energy systems, planters, vegetated space, skylights or occupied roof deck.
  3. Buildings which can document they do not have adequate roof area to install the required on-site solar and that comply with Section C411.1.1 may install a lesser amount of on-site renewables but not zero.

**C411.1.1 Additional efficiency credits.** Buildings which qualify for one of the exceptions in Section C411.1 to omit installation of on-site renewable energy must achieve an additional 18 efficiency package credits from Table C406.2(1). The additional 18 credits can be reduced based on a prorated fraction of renewable capacity that is installed on-site.

On-site renewable energy installations of lower than required capacity can be counted proportionally toward achievement of required or additional efficiency credits in Section C411.1.1 based on the capacity of renewable energy installed compared to the requirements of Section C411.1.

**C411.2 On-site and off-site renewable energy accounting.** Qualifying on-site and off-site renewable energy delivered or credited to the building project to comply with this code shall meet the requirements of this section. Renewable energy certificates for an on-site or off-site renewable energy system shall be retired on behalf of the building owner for a period of not less than 15 years and tracked in accordance with Section C411.2.3 and submitted to the code official as part of the permit application.

**C411.2.1 Qualifying types of off-site renewable energy systems.** The following are considered qualifying off-site renewable energy systems:

1. Self-generation (an off-site renewable energy system owned by the building project owner) systems complying with Section C411.2.2.
2. Community renewable energy facility systems complying with Section C411.2.2.
3. Purchase contracts complying with Section C411.2.3.
4. Each source of renewable energy delivered to or credited to the building project shall be connected to the Western Interconnection and energy or capacity multiplied by the factors in Table C411.2.1.

**Table C411.2.1  
Multipliers for Renewable Energy Procurement Methods**

Location	Renewable Energy Source	Renewable Energy Factor		
		In the state of Washington	Western Interconnected	In the states of Oregon or Idaho
On-site	On-site renewable energy system	1	NA	NA
Off-site	Directly owned off-site renewable energy system that begins operation after submission of the initial permit application	0.95	0.75	0.85

Location	Renewable Energy Source	Renewable Energy Factor		
		In the state of Washington	Western Interconnected	In the states of Oregon or Idaho
Off-site	Community renewable energy facility that begins operation after submission of the initial permit application	0.95	0.75	0.85
Off-site	Directly owned off-site renewable energy system that begins operation before submission of the initial permit application	0.75	0.55	0.65
Off-site	Community renewable energy facility that begins operation before submission of the initial permit application	0.75	0.55	0.65
Off-site	Renewable Power Purchase Agreement (PPA)	0.75	0.55	0.65

**C411.2.2 Documentation requirements for off-site renewable energy systems.** Off-site renewable energy delivered or credited to the building project to comply with Section C407.3 item 2.2 shall be subject to a legally binding contract to procure qualifying off-site renewable energy. Qualifying off-site renewable energy shall meet the following requirements:

1. Documentation of off-site renewable energy procurement shall be submitted to the *code official*.

2. The purchase contract shall have a duration of not less than 15 years. The contract shall be structured to survive a partial or full transfer of ownership of the building property.

3. Records on renewable power purchased by the building owner from the off-site renewable energy generator that specifically assign the RECs to the building owner shall be retained or retired by the building owner on behalf of the entity demonstrating financial or operational control over the building seeking compliance to this standard and made available for inspection by the *code official* upon request.

4. Where multiple buildings in a building project are allocated energy procured by a contract subject to this section, the owner shall allocate for not less than 15 years the energy procured by the contract to the buildings in the building project. A plan on operation shall be developed which shall indicate how renewable energy produced from on-site or off-site systems that is not allocated before issuance of the certificate of occupancy will be allocated to new or existing buildings included in the building project.

**C411.2.3 Renewable energy certificate (REC) tracking.** For multitenant buildings where RECs are transferred to tenants, the plan for operation shall include procedures for tracking the quantity and vintage of RECs that are required to be retained and retired. The plan shall include provisions to transfer the RECs to building tenants, or to retire RECs on their behalf, in proportion to the gross conditioned and semi-heated floor area leased or rented. The plan shall include provisions to use a REC tracking system that meets the requirements of Section V.B of the Green-e Framework for Renewable Energy Certification. The plan shall describe how the building owner will procure alternative qualifying renewable energy in the case that the renewable energy producer ceases.

**C411.3 Solar readiness.** A solar zone shall be provided on buildings that are 20 stories or less in height above grade plan. The solar zone

shall be located on the roof of the building or on another structure elsewhere on the site. The solar zone shall be in accordance with this section and the *International Fire Code*.

EXCEPTION:

A solar zone is not required under the following conditions:

1. Where the solar exposure of the building's roof area is less than 75 percent of that of an unshaded area, as defined in Section C411.5, in the same location, as measured by one of the following:

1.1. Incident solar radiation expressed in kWh/ft<sup>2</sup>-yr using typical meteorological year (TMY) data.

1.2. Annual sunlight exposure expressed in cumulative hours per year using TMY data.

1.3. Shadow studies indicating that the roof area is more than 25 percent in shadow, on September 21st at 10 a.m., 11 a.m., 12 p.m., 1 p.m., and 2 p.m. solar time.

2. Buildings, building additions, changes in space conditioning or occupancy where the total floor area is equal to or less than 500 square feet.

**C411.3.1 Minimum area.** The minimum area of the solar zone shall be determined by one of the following methods, whichever results in the smaller area:

1. Forty percent of roof area. The roof area shall be calculated as the horizontally projected gross roof area less the area covered by skylights, occupied roof decks, mechanical equipment, mechanical equipment service clearances, and planted areas.

2. Twenty percent of electrical service size. The electrical service size is the rated capacity of the total of all electrical services to the building, and the required solar zone size shall be based upon 10 peak watts of photovoltaic per square foot.

EXCEPTION:

Subject to the approval of the code official, buildings with extensive rooftop equipment that would make full compliance with this section impractical shall be permitted to reduce the size of the solar zone required by Section C411.3 to the maximum practicable area.

**C411.3.2 Contiguous area.** The solar zone is permitted to be comprised of separated subzones. Each subzone shall be at least 5 feet wide in the narrowest dimension.

**C411.3.3 Obstructions.** The solar zone shall be free of pipes, vents, ducts, HVAC equipment, skylights and other obstructions, except those serving photovoltaic systems within the solar zone. The solar zone is permitted to be located above any such obstructions, provided that the racking for support of the future system is installed at the time of construction, the elevated solar zone does not shade other portions of the solar zone, and its height is permitted by the *International Building Code*. Photovoltaic or solar water heating systems are permitted to be installed within the solar zone.

**C411.3.4 Shading.** The solar zone shall be set back from any existing or new object on the building or site that is located south, east or west of the solar zone a distance at least two times the object's height above the nearest point on the roof surface. Such objects include, but are not limited to, taller portions of the building itself, parapets, chimneys, antennas, signage, rooftop equipment, trees, and roof plantings. No portion of the solar zone shall be located on a roof slope greater than 2:12 that faces within 45 degrees of true north.

**C411.3.5 Access.** Areas contiguous to the solar zone shall provide access pathways and provisions for emergency smoke ventilation as required by the *International Fire Code*.

**C411.3.6 Structural integrity.** The as-designed dead load and live load for the solar zone shall be clearly marked on the record drawings and shall accommodate future photovoltaic system arrays at an assumed dead load of 4 pounds per square foot in addition to other required live and dead loads. A location for future inverters shall be designated either within or adjacent to the solar zone, with a minimum area of 2 square feet for each 1000 square feet of solar zone area, and shall

accommodate an assume dead load of 175 pounds per square foot. Where photovoltaic systems are installed in the solar zone, structural analysis shall be based upon calculated loads, not upon these assumed loads.

**C411.3.7 Photovoltaic interconnection.** Interconnection of the future photovoltaic system shall be provided for at the main service panel, either ahead of the service disconnecting means or at the end of the bus opposite the service disconnecting means, in one of the following forms:

1. A space for the mounting of a future overcurrent device, sized to accommodate the largest standard rated overcurrent device that is less than 20 percent of the bus rating.

2. Lugs sized to accommodate conductors with an ampacity of at least 20 percent of the bus rating, to enable the mounting of an external overcurrent device for interconnection.

The electrical construction documents shall indicate all of the following:

1. Solar zone boundaries and access pathways.

2. Location for future inverters and metering equipment.

3. Route for future wiring between the photovoltaic panels and the inverter, and between the inverter and the main service panel.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-50000 Chapter 5 [CE]—Existing buildings.**

**C501 General.**

**C501.1 Scope.** The provisions of this chapter shall control the *alteration, repair, addition* and change of occupancy of existing buildings and structures.

**C501.1.1 Existing buildings.** Except as specified in this chapter, this code shall not be used to require the removal, *alteration* or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this code. Unaltered portions of existing buildings used for residential purposes that received a certificate of occupancy at least three years prior to a permit application for residential uses shall not be required to comply with this code.

**C501.2 Compliance.** *Additions, alterations, repairs, changes in space conditioning and changes of occupancy to, or relocation of, existing buildings and structures shall comply with Section C502, C503, C504, or C505 of this code, and with all applicable provisions in the International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, Uniform Plumbing Code, and NFPA 70.*

**C501.2.1 U-factor requirements for additions and alterations.** For existing building projects where an *addition or building envelope alteration* area is combined with existing-to-remain building areas to demonstrate compliance with this code as a whole building, the *U-factors* applied to existing-to-remain envelope assemblies shall be in accordance with record documents.

EXCEPTION: If accurate record documents are not available, *U*-factors for the existing envelope assemblies may be in accordance with the edition of the Washington State Energy Code that was in effect at the time the building was permitted, or as approved by the *code official*.

**C501.2.2 Calculations of mechanical heating and cooling loads for alterations.** For the installation of new or replacement mechanical equipment that serves existing building areas, design loads associated with heating, cooling and ventilation of the existing building areas served shall be determined in accordance with Section C403.1.2.

*R*-values and *U*-factors used to determine existing thermal envelope performance for the purpose of calculating design loads shall be in accordance with record documents or existing conditions.

EXCEPTION: If accurate record documents are not available, *R*-values and *U*-factors used to determine existing building thermal envelope performance may be in accordance with the edition of the Washington State Energy Code that was in effect at the time the building was permitted, or as *approved* by the *code official*.

**C501.3 Maintenance.** Buildings and structures, and parts thereof, shall be maintained in a safe and sanitary condition. Devices and systems which are required by this code shall be maintained in conformance with the code edition under which installed. The owner or the owner's authorized agent shall be responsible for the maintenance of buildings and structures. The requirements of this chapter shall not provide the basis for removal or abrogation of energy conservation, fire protection and safety systems and devices in existing structures.

**C501.4 New and replacement materials.** Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs, provided no hazard to life, health or property is created. Hazardous materials shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

**C501.5 Historic buildings.** Provisions of this code relating to the construction, *repair*, *alteration*, restoration and movement of structures, and *change of occupancy* shall not be mandatory for historic buildings provided that a report has been submitted to the code official and signed by a registered design professional, or a representative of the state historic preservation office or the historic preservation authority having jurisdiction, demonstrating that compliance with that provision would threaten, degrade or destroy the historic form, fabric or function of the building.

**C501.6 Commissioning.** Existing building systems shall be commissioned in accordance with Section C408. For the purposes of meeting the commissioning thresholds in Section C408.1, only the new and altered system capacities are considered when determining whether the project is exempt from some portion of the commissioning process.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

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

**C503.1 General.** Alterations to any building or structure shall comply with the requirements of Section C503 and the code for new construction. Alterations to an existing building, building system or portion

thereof shall conform to the provisions of this code as they relate to new construction without requiring the unaltered portions of the existing building or building system to comply with this code. Alterations shall be such that the existing building or structure is no less conforming with the provisions of this code than the existing building or structure was prior to the alteration. The additional energy efficiency credit requirements in Section C406.1 and the renewable energy requirements in Section C411 do not apply to alterations.

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

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

### **C503.2 Reserved.**

**C503.3 Building envelope.** New building envelope assemblies that are part of the alteration shall comply with Sections C402.1 through C402.5 and Sections C503.3.1 through C503.3.3.

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

**C503.3.1 Roof replacement.** *Roof replacements* shall comply with Table C402.1.3 or C402.1.4 where the existing roof assembly is part of the *building thermal envelope* and contains no insulation or the insulation is located entirely above the roof deck. In no case shall the *R*-value of the roof insulation be reduced or the *U*-factor of the roof assembly be increased as part of the *roof replacement*.

**C503.3.2 Vertical fenestration.** Alterations that include the addition of new vertical fenestration area shall comply with the following:

1. Where the addition of new *vertical fenestration* area results in a total building vertical fenestration area less than or equal to the maximum allowed by Section C402.4.1, the alteration shall comply with Section C402.4.

2. Where the addition of new *vertical fenestration* area result in a total building *vertical fenestration* area greater than the maximum allowed by Section C402.4.1 (regardless of the ratio prior to the addition), the alteration shall comply with one of the following:

2.1. Vertical fenestration alternate in accordance with Section C402.1.3 for the new vertical fenestration added.

2.2. Vertical fenestration alternate in accordance with Section C402.4.1.1 for the area adjacent to the new vertical fenestration added.

2.3. Existing building and alteration areas are combined to demonstrate compliance with the component performance alternate in accordance with Section C402.1.5 for the whole building. *U*-factors applied to existing envelope assemblies in the UA calculation shall comply with Section C501.2.1. The Proposed Total UA is allowed to be up to 110 percent of the Allowed Total UA.

2.4. Total building performance in accordance with Section C407 for the whole building. The total annual carbon emissions from energy consumption of the proposed design is allowed to be up to 110 percent of the annual carbon emissions from energy consumption allowed in accordance with Section C407.3.



EXCEPTION: Where *approved* by the *code official*, additional *fenestration* is permitted where sufficient envelope upgrades beyond those required by other sections of this code are included in the project so that the addition of new *vertical fenestration* does not cause an increase in the overall energy use of the building.

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

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

**C503.3.3 Skylights.** Alterations that include the addition of new skylight area shall comply with the following:

1. Where the addition of new *skylight* area results in a total building skylight area less than or equal to the maximum allowed by Section C402.4.1, the alteration shall comply with Section C402.4.

2. Where the addition of new *skylight* area results in a total building skylight area greater than the maximum allowed by Section C402.4.1 (regardless of the ratio prior to the addition), the alteration shall comply with one of the following:

2.1. Existing building and alteration area are combined to demonstrate compliance with the component performance alternative with target area adjustment in accordance with Section C402.1.5 for the whole building. *U*-factors applied to existing envelope assemblies in the UA calculation shall comply with Section C501.2.1. The Proposed Total UA is allowed to be up to 110 percent of the Allowed Total UA.

2.2. Total building performance in accordance with Section C407 for the whole building. The annual carbon emissions from energy consumption of the proposed design is allowed to be up to 110 percent of the annual carbon emissions from energy consumption allowed in accordance with Section C407.3.

EXCEPTION: Additional envelope upgrades are included in the project so the addition of new skylights does not cause a reduction in overall building energy efficiency, as *approved* by the *code official*.

**C503.4 Building mechanical systems.** Components of existing mechanical systems that are altered or replaced shall comply with Section C403 or Section C407, unless specifically exempted in (~~this~~) Section C503.4, and Sections C408.2, C409.5, C501.2.2, C501.6, and C503.4.2 through (~~C503.4.5~~) C503.4.6. Additions or alterations shall not be made to an existing mechanical system that will cause the existing system to become out of compliance.

EXCEPTIONS:

- Existing mechanical systems are not required to be modified to comply with Section C403.3.5 where mechanical cooling capacity is not added to a system that did not have cooling capacity prior to the alteration.
- Compliance with Section C403.1.4 is not required where the alteration does not include replacement of a heating appliance.
- Alternate mechanical system designs that are not in full compliance with this code may be approved when the code official determines that existing building constraints including, but not limited to, available mechanical space, limitations of the existing structure, or proximity to adjacent air intakes or exhausts makes full compliance impractical. Alternate designs shall include additional energy saving strategies not prescriptively required by this code for the scope of the project including, but not limited to, demand control ventilation, energy recovery, or increased mechanical cooling or heating equipment efficiency above that required by Tables C403.3.2(1) through C403.3.2 (16).
- Only those components of existing HVAC systems that are altered or replaced shall be required to comply with Section C403.8.1. Section C403.8.1 does not require the removal and replacement of existing system ductwork. Additional fan power allowances are available when determining the fan power budget (Fan kW<sub>budget</sub>) as specified in Table C503.4. These values can be added to the fan power allowance values in Tables C403.8.1.1(1) and C403.8.1.1(2) when calculating a new Fan kW<sub>budget</sub> for the fan system being altered. The additional fan power allowance is not applicable to alterations that add or change passive components which do not increase the fan system static pressure.

**Table C503.4  
Additional Fan Power Allowances (W/CFM)**

Airflow	Multi-Zone VAV Systems <sup>a</sup> ≤5,000 cfm	Multi-Zone VAV Systems <sup>a</sup> >5,000 and ≤10,000 cfm	Multi-Zone VAV Systems <sup>a</sup> >10,000 cfm	All Other Fan Systems ≤5,000 cfm	All Other Fan Systems >5,000 and ≤10,000 cfm	All Other Fan Systems >10,000 cfm
Supply Fan System additional allowance	0.135	0.114	0.105	0.139	0.120	0.107
Supply Fan System additional allowance in unit with adapter curb	0.033	0.033	0.043	0.000	0.000	0.000
Exhaust/ Relief/ Return/ Transfer Fan System additional allowance	0.070	0.061	0.054	0.070	0.062	0.055
Exhaust/ Relief/ Return/ Transfer Fan System additional allowance with adapter curb	0.016	0.017	0.220	0.000	0.000	0.000

<sup>a</sup> See definition of FAN SYSTEM, MULTI-ZONE VARIABLE AIR VOLUME (VAV).

**C503.4.1 New building mechanical systems.** All new mechanical systems and equipment in existing buildings shall comply with Sections C403, C408.2, C409.5, and C501.6.

**C503.4.2 Addition of cooling capacity.** Where mechanical cooling is added to a space that was not previously cooled, the mechanical system shall comply with either Section C403.3.5 or C403.5.

**EXCEPTIONS:**

1. Qualifying small equipment: Economizers are not required for cooling units and split systems serving one zone with a total cooling capacity rated in accordance with Section C403.3.2 of less than 33,000 Btu/h (hereafter referred to as qualifying small systems) provided that these are high-efficiency cooling equipment with SEER and EER values more than 15 percent higher than minimum efficiencies listed in Tables C403.3.2 (1), (2), (4), (8), (9), and (14), in the appropriate size category, using the same test procedures. Equipment shall be listed in the appropriate certification program to qualify for this exception. The total capacity of all qualifying small equipment without economizers shall not exceed 72,000 Btu/h per building, or 5 percent of the building total air economizer capacity, whichever is greater.

Notes and exclusions for Exception 1:

1.1. The portion of the equipment serving Group R occupancies is not included in determining the total capacity of all units without economizers in a building.

1.2. Redundant units are not counted in the capacity limitations.

1.3. This exception shall not be used for the initial tenant improvement of a shell-and-core building or space, or for Total Building Performance in accordance with Section C407.

1.4. This exception shall not be used for unitary cooling equipment installed outdoors or in a mechanical room adjacent to the outdoors.

2. Chilled water terminal units connected to systems with chilled water generation equipment with IPLV values more than 25 percent higher than minimum part load equipment efficiencies listed in Table C403.3.2 (3), in the appropriate size category, using the same test procedures. Equipment shall be listed in the appropriate certification program to qualify for this exception. The total capacity of all systems without economizers shall not exceed 480,000 Btu/h per building, or 20 percent of the building total air economizer capacity, whichever is greater.

Notes and exclusions for Exception 2:

2.1. The portion of the equipment serving Group R occupancy is not included in determining the total capacity of all units without economizers in a building.

2.2. This exception shall not be used for the initial tenant improvement of a shell-and-core building or space, or for total building performance in accordance with Section C407.

**C503.4.3 Alterations or replacement of existing cooling systems.** Alterations to, or replacement of, existing mechanical cooling systems shall not decrease the building total economizer capacity unless the system complies with either Section C403.3.5 or C403.5. System alterations or replacement shall comply with Table C503.4.3 when either the individual cooling unit capacity or the building total capacity of all cooling equipment without economizer does not comply with the exceptions in Section C403.5. Equipment replacements that include space heating shall also comply with Section ~~(C503.4.3)~~ C503.4.6.

**Table C503.4.3  
Economizer Compliance Options for Mechanical Alterations**

	Option A	Option B (alternate to A)	Option C (alternate to A)	Option D (alternate to A)
<b>Unit Type</b>	<b>Any alteration with new or replacement equipment</b>	<b>Replacement unit of the same type with the same or smaller output capacity</b>	<b>Replacement unit of the same type with a larger output capacity</b>	<b>New equipment added to existing system or replacement unit of a different type</b>
1. Packaged Units	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>
2. Split Systems	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	For units ≤ 60,000 Btuh, comply with two of two measures: 1. Efficiency: + 10% <sup>e</sup> 2. Economizer: shall not decrease existing economizer capability	For units ≤ 60,000 Btuh replacing unit installed prior to 1991 comply with at least one of two measures: 1. Efficiency: + 10% <sup>e</sup> 2. Economizer: 50% <sup>f</sup>	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>
		For all other capacities: Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	For all other capacities: Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	
3. Water Source Heat Pump	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	For units ≤ 72,000 Btuh, comply with at least two of three measures: 1. Efficiency: +10% <sup>e</sup> 2. Flow control valve <sup>g</sup> 3. Economizer: 50% <sup>f</sup>	For units ≤ 72,000 Btuh, comply with at least three of three measures: 1. Efficiency: +10% <sup>e</sup> 2. Flow control valve <sup>g</sup> 3. Economizer: 50% <sup>f</sup> (except for certain pre-1991 systems <sup>h</sup> )	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup> (except for certain pre-1991 systems <sup>h</sup> )
		For all other capacities: Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	For all other capacities: Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	
4. Water Economizer using Air-Cooled Heat Rejection Equipment (Dry Cooler)	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: + 5% <sup>d</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>
5. Air-Handling Unit (including fan coil units) where the system has an air-cooled chiller	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup> (except for certain pre-1991 systems <sup>h</sup> )	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup> (except for certain pre-1991 systems <sup>h</sup> )
6. Air-Handling Unit (including fan coil units) and Water-cooled Process Equipment, where the system has a water-cooled chiller <sup>10</sup>	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup> (except for certain pre-1991 systems <sup>h</sup> and certain 1991-2016 systems <sup>i</sup> )	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup> (except for certain pre-1991 systems <sup>h</sup> and certain 1991-2016 systems <sup>i</sup> )
7. Cooling Tower	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	No requirements	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>
8. Air-Cooled Chiller	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: + 10% <sup>k</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: Comply with two of two measures: 1. + 10% <sup>k,l</sup> and 2. Multistage compressor(s) Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>
9. Water-Cooled Chiller	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: Comply with at least one of two measures: 1. Part load IPLV + 15% <sup>n</sup> or 2. Plate frame heat exchanger <sup>o</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: Comply with two of two measures: 1. Part load IPLV + 15% <sup>n</sup> 2. Plate-frame heat exchanger <sup>o</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>
10. Package Terminal Air Conditioner	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Efficiency: + 5% <sup>a</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: + 5% <sup>a</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>
11. Package Terminal Heat Pump	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>	Cooling efficiency: + 5% <sup>d</sup> Heating efficiency: + 10% <sup>e</sup> Shall not decrease existing economizer capacity	Cooling efficiency: + 5% <sup>d</sup> Heating efficiency: + 10% <sup>e</sup> Shall not decrease existing economizer capacity	Efficiency: min. <sup>a</sup> Economizer: C403.5 <sup>b</sup>

- a Minimum equipment efficiency shall comply with Section C403.3.2 and the tables in Section C403.3.2.
- b All separate new equipment and replacement equipment shall have air economizer complying with Section C403.5 including both the individual unit size limits and the total building capacity limits on units without economizer. It is acceptable to comply using one of the exceptions to Section C403.5.
- c Reserved.
- d Equipment shall have a capacity-weighted average cooling system efficiency that is 5% better than the requirements in the tables in Section C403.3.2 (1.05 × values in the tables).
- e Equipment shall have a capacity-weighted average cooling system efficiency that is 10% better than the requirements in the tables in Section C403.3.2 (1.10 × values in the tables).
- f Minimum of 50% air economizer that is ducted in a fully enclosed path directly to every heat pump unit in each zone, except that ducts may terminate within 12 inches of the intake to an HVAC unit provided that they are physically fastened so that the outside air duct is directed into the unit intake. If this is an increase in the amount of outside air supplied to this unit, the outside air supply system shall be configured to provide this additional outside air and be equipped with economizer control.
- g Water-source heat pump systems shall have a flow control valve to eliminate flow through the heat pumps that are not in operation and variable speed pumping control complying with Section C403.4.3 for that heat pump.
  - When the total capacity of all units with flow control valves exceeds 15% of the total system capacity, a variable frequency drive shall be installed on the main loop pump.
  - As an alternate to this requirement, the capacity-weighted average cooling system efficiency shall be 5% better than the requirements in footnote <sup>c</sup> for water-source heat pumps (i.e., a minimum of 15% greater than the requirements in Table C403.3.2(14)).
- h Water economizer equipment shall have a capacity-weighted average cooling system efficiency that is 10% better than the requirements in Tables C403.3.2(7), C403.3.2(10), and C403.3.2(16) (1.10 × values in Tables C403.3.2(7), C403.3.2(10), and C403.3.2(16)).
- i Air economizer is not required for systems installed with water economizer plate and frame heat exchanger complying with previous codes between 1991 and June 2016, provided that the total fan coil load does not exceed the existing or added capacity of the heat exchangers.
- j For water-cooled process equipment where the manufacturers specifications require colder temperatures than available with waterside economizer, that portion of the load is exempt from the economizer requirements.
- k The air-cooled chiller shall have an IPLV efficiency that is a minimum of 10% greater than the IPLV requirements in EER in Table C403.3.2(3) (1.10 × IPLV values in EER in Table C403.3.2(3)).
- l The air-cooled chiller shall be multistage with a minimum of two compressors.
- m The water-cooled chiller shall have full load and part load IPLV efficiency that is a minimum of 5% greater than the IPLV requirements in Table C403.3.2(3).
- n The water-cooled chiller shall have an IPLV value that is a minimum of 15% lower than the IPLV requirements in Table C403.3.2(3) (1.15 × IPLV values in Table C403.3.2 (3)). Water-cooled centrifugal chillers designed for nonstandard conditions shall have an NPLV value that is at least 15% lower than the adjusted maximum NPLV rating in kW per ton defined in Section C403.3.2.3 (1.15 × NPLV).
- o Economizer cooling shall be provided by adding a plate-frame heat exchanger on the waterside with a capacity that is a minimum of 20% of the chiller capacity at standard AHRI rating conditions.
- p Reserved.
- q Systems installed prior to 1991 without fully utilized capacity are allowed to comply with Option B, provided that the individual unit cooling capacity does not exceed 90,000 Btuh.

**C503.4.4 Controls for cooling equipment replacement.** When space cooling equipment is replaced, controls shall comply with all requirements under Section C403.3.5 and related subsections, and Section C403.5.1 for integrated economizer control.

**C503.4.5 Mechanical equipment relocation.** Existing equipment currently in use may be relocated within the same floor or same tenant space if removed and reinstalled within the same permit.

**C503.4.6 Addition or replacement of heating appliances.** Where a mechanical heating appliance is added or replaced, the added or replaced appliance shall comply with Section C401.3, Section C403.1.4, or with an alternate compliance option in Table C503.4.6. Where use of heat pump equipment for space heating is required by this section, it is permissible to utilize the Fossil Fuel Compliance Path in Section C401.3 to attain the credits required for building additions shown in Table C401.3.3.

EXCEPTIONS:

1. Terminal unit equipment including, but not limited to, hydronic VAV boxes, electric resistance VAV boxes, electric duct heaters, water source heat pumps, fan coils, or VRF indoor units that are served by an unaltered central system.
2. Air handling equipment with hydronic coils.
3. Air handling equipment designed for 100 percent outdoor air that is not subject to the requirements in Section C403.3.5 or that qualifies for an exception to Section C403.3.5.
4. Replacement of existing oil-fired boilers.
5. Replacement of existing steam boilers with steam distribution to terminal units and the associated boiler feed equipment.
6. Where compliance with Section C403.1.4 would trigger an unplanned utility electrical service upgrade based on the NEC 220.87 method for determining existing loads.

7. ~~((Like-for-like replacement of a single heating appliance is permitted where that appliance is failing, requires immediate replacement, and where no other HVAC work is planned.)) Replacement of heating equipment with equipment that is the same type and where the rated capacity of the new equipment does not exceed the rated capacity of the existing equipment.~~

**Table C503.4.6  
Compliance Options for Mechanical Heating Equipment Alterations**

	<b>Proposed Heating Equipment Type<sup>a</sup></b>	<b>Heating Efficiency Table Reference</b>	<b>Alternate Compliance Options to Section C403.1.4</b>
1	Air-Cooled Unitary Heat Pumps	Table C403.3.2(2)	1. Compliance with C403.1.4, except heat pump rated capacity in accordance with Section C403.1.4 exception 5d is permitted to be sized equal to the supplemental internal resistance heating capacity in Climate Zone 4 or 5 <sup>c</sup> 2. Compliance with C403.1.4, except electric resistance mixed air preheat is permissible <sup>c</sup>
2	Packaged terminal, single-package vertical, and room air-conditioner heat pumps	Table C403.3.2(4)	1. Compliance with C403.1.4, except heat pump rated capacity in accordance with Section C403.1.4 Exception 5d is permitted to be sized equal to the supplemental internal resistance heating capacity in Climate Zone 4 or 5
3	Furnaces, duct furnaces, and unit heaters	Table C403.3.2(5)	1. Efficiency: <del>+(+0)</del> <u>5%</u> <sup>b</sup>
4	Gas-fired hot water boilers with fewer than 80% of served coils replaced	Table C403.3.2(6)	1. Efficiency: <del>+(+0)</del> <u>5%</u> <sup>b</sup>
5	Variable refrigerant flow air-to-air and applied heat pumps	Table C403.3.2(9)	No alternate compliance option
6	DX-DOAS equipment	Table C403.3.2(12) and Table C403.3.2(13)	1. DX-DOAS is provided with heat recovery if not required by C403.3.5.1.
7	Water-source heat pumps	Table C403.3.2(14)	No alternate compliance option

<sup>a</sup> Includes replacement of equipment with a unit that is the same type or higher efficiency and the same or lower capacity, or a replacement of one equipment type with a different equipment type.

<sup>b</sup> Equipment shall have a capacity-weighted average heating system efficiency that is ~~((+0))~~ five percent better than that shown in the reference table (~~((+0))~~ 1.05 x values in reference table).

<sup>c</sup> Option 1 and Option 2 can be combined.

**C503.4.6.1 Hydronic system alteration supply water temperature.** Hydronic heating coils and appliances subject to Section C503.4.5 or Section C503.4.6 shall comply with Section ~~((C403.3.7.2))~~ C403.3.8.2.

**C503.5 Service water heating equipment.** All new service water heating systems, equipment, and components of existing systems that are altered or replaced shall comply with Section C407 or Sections C404, C408.3, C409.5, and C501.6. Additions or alterations shall not be made to an existing service water heating system that will cause the existing system to become out of compliance. Where use of heat pump equipment for service water heating is required by this section, it is permissible to utilize the Fossil Fuel Compliance Path in Section C401.3 to attain the credits required for building additions shown in Table C401.3.3.

**EXCEPTION:**

The following equipment is not required to comply with Section C401.3 or Section C404.2.1, as applicable:

1. Replacement of ~~((a single electric resistance or fuel-fired))~~ service water heating appliances with ~~((a unit))~~ equipment that is the same type and has the same or higher efficiency and the same or lower capacity, provided there are no other alterations made to the existing service water heating system size or configuration.
2. Replacement of any of the following water heater appliances:
  - 2.1. Electric water heaters with an input of 12 kW or less.
  - 2.2. Gas storage water heaters with an input of 75,000 Btu/h or less.
  - 2.3. Gas instantaneous water heaters with an input of 200,000 Btu/h or less and 2 gallons or less of storage.
3. Where it has been determined by the code official that existing building constraints including, but not limited to, available floor space or ceiling height, limitations of the existing structure, or electrical service capacity, make compliance technically infeasible.

**C503.6 Pools and permanent spas.** All new systems and equipment serving pools and permanent spas and components of existing systems that are

altered or replaced, shall comply with Sections C404.11, C408.3, C409.5, and C501.6. Additions or alterations shall not be made to an existing system serving a pool or spa that will cause the existing system to become out of compliance.

**C503.7 Electrical power and lighting systems and motors.** Alterations or the addition of lighting, receptacles and motors shall comply with Sections C503.7.1 through C503.7.7. Additions or alterations shall not be made to an existing lighting or electrical system that will cause the existing system to become out of compliance.

**C503.7.1 New lighting systems and controls.** All new interior and exterior lighting systems within an existing building site shall be provided with lighting controls in accordance with Section C405.2 and shall comply with C408.4, C409.5, and C501.6.

**C503.7.2 Luminaire additions and alterations.** Alterations that add or replace 20 percent or more of the luminaires in a space enclosed by walls or ceiling-height partitions, replace 20 percent or more of parking garage luminaires, or replace 20 percent or more of the total installed wattage of exterior luminaires shall comply with Sections C405.4 and C405.5. Exterior power allowance shall be determined using the specific area allowances for the areas altered and shall not include the base site allowance. Where less than 20 percent of the fixtures in an interior space enclosed by walls or ceiling-height partitions or in a parking garage are added or replaced, or less than 20 percent of the installed exterior wattage is replaced, the installed lighting wattage shall be maintained or reduced.

**C503.7.3 Rewiring and recircuiting.** Where new wiring is being installed to serve added fixtures and/or fixtures are being relocated to a new circuit, lighting controls shall comply with all applicable requirements in accordance with Sections C405.2.1, C405.2.3, C405.2.4, C405.2.5, C405.2.6, C405.2.7, C405.2.8, C408.4, and C501.6.

**C503.7.4 New or moved lighting panel.** Where a new lighting panel (or a moved lighting panel) with all new raceway and conductor wiring from the panel to the fixtures is being installed, lighting controls shall also comply with, in addition to the requirements of Section C503.7.3, all remaining requirements in Sections C405.2, C408.4, and C501.6.

**C503.7.5 Newly-created rooms.** Where new walls or ceiling-height partitions are added to an existing space and create a new enclosed space, but the lighting fixtures are not being changed, other than being relocated, the new enclosed space shall have lighting controls that comply with all applicable requirements in accordance with Sections C405.2.1, C405.2.2, C405.2.3, C405.2.4, C405.2.5, C405.2.6, C408.4 and C501.6.

**C503.7.6 Motors.** Motors that are altered or replaced shall comply with Section C405.8.

**C503.7.7 Controlled receptacles.** Where electric receptacles are added or replaced, controlled receptacles shall be provided in accordance with Section C405.10 and shall comply with Sections C408.4 and C501.6.

**EXCEPTIONS:**

1. Where an alteration project impacts an area smaller than 5,000 square feet, controlled receptacles are not required.
2. Where existing systems furniture or partial-height relocatable office cubical partitions are reconfigured or relocated within the same area, controlled receptacles are not required in the existing systems furniture or office cubicle partitions.
3. Where new or altered receptacles meet the exception to Section C405.10, they are not required to be controlled receptacles or be located within 12 inches of noncontrolled receptacles.

**C503.8 Refrigeration systems.** Components of existing refrigeration systems that are altered or replaced shall comply with Sections C408.7, C410 and C501.6. Additions or alterations shall not be made to an existing refrigeration system that will cause the existing system to become out of compliance. All new refrigerated spaces and refrigeration systems and equipment in existing buildings, including new refrigerated display cases, shall comply with Sections C408.7, C409.5, C410 and C501.6.

AMENDATORY SECTION (Amending WSR 22-14-091, 23-12-101, and 23-20-021, filed 7/1/22, 6/7/23, and 9/25/23, effective 3/15/24)

**WAC 51-11C-80500 Appendix D—Calculation of HVAC total system performance ratio.**

**D101 Scope.** This appendix establishes criteria for demonstrating compliance using the *HVAC total system performance ratio (HVAC TSPR)* for systems serving office (including medical offices), retail, library and education occupancies and buildings, which are subject to the requirements of Section C403.3.5 without exceptions, and *dwelling units* and common areas within multifamily buildings. Those HVAC systems shall comply with Section C403 and this appendix as required by Section C403.1.1.

**D101.1 Core and Shell/Initial Build-Out, and Future System Construction Analysis.**

Where the *building* permit applies to only a portion of the *HVAC system* in a *building* and the remaining components will be designed under a future *building* permit or were previously installed, the future or previously installed components shall be modeled as follows:

1. Where the HVAC zones that do not include HVAC systems in the current permit will be or are served by independent systems, then the block including those zones shall not be included in the model.
2. Where the HVAC zones that do not include complete HVAC systems in the permit are intended to receive HVAC services from systems in the permit, their proposed zonal systems shall be modeled with equipment that meets, but does not exceed, the requirements of Section C403.
3. Where the zone equipment in the permit receives HVAC services from previously installed systems that are not in the permit, the previously installed systems shall be modeled with equipment matching the certified value of what is installed or equipment that meets the requirements of Section C403.
4. Where the central plant heating and cooling equipment is completely replaced and HVAC zones with existing systems receive HVAC services from systems in the permit, their proposed zonal systems shall be modeled with equipment that meets, but does not exceed, the requirements of Section C403.

*Informative Notes:*

1. Examples of HVAC systems that are intended to receive HVAC services from systems in the permit include future zonal water source heat pumps that will receive loop water that is heated by a boiler or cooled by a cooling tower included in the permit, any system that will receive outdoor ventilation air from a dedicated outdoor air system included in the permit, and future zone terminal units that will be connected to a central VAV system included in the permit.
2. An initial build-out with heating coils served from a previously installed system with a high-efficiency condensing boiler would use the installed efficiency if it exceeded the current requirements. If the installed boiler had a lower efficiency than the current requirements, the current requirement would be used.
3. A partial central plant upgrade (e.g., chiller, but not boiler replacement) cannot use this method.

**D201 Compliance.** Compliance based on *HVAC total system performance ratio* requires that the provisions of Section C403.3 are met and the *HVAC total system performance ratio* of the *proposed design* is more than or equal to the *HVAC total system performance ratio* of the *standard reference design*. The *HVAC TSPR* is calculated according to the following formula:

$$\text{HVAC TSPR} = \frac{\text{annual heating and cooling load}}{\text{annual carbon emissions from energy consumption of the building HVAC systems}}$$

Where:

Annual carbon emissions from energy consumption of the building HVAC systems = sum of the annual carbon emissions in pounds for heating, cooling, fans, energy recovery, pumps, and heat rejection calculated by multiplying site energy consumption by the carbon emission factors from Table ~~((C407.3(1))~~ D201

Annual heating and cooling load = sum of the annual heating and cooling loads met by the building HVAC system in thousands of Btus.

**Table ~~((C407.3(1) (Reprinted from Chapter 4))~~ D201  
Carbon Emissions Factors**

Type	CO2e (lb/unit)	Unit
Electricity	0.44	kWh
Natural gas	11.70	Therm
Oil	19.2	Gallon
Propane	10.5	Gallon
Other <sup>a</sup>	195.00	mmBtu
On-site renewable energy <sup>b</sup>	0.00	

<sup>a</sup> District energy systems may use alternative emissions factors supported by calculations approved by the *code official*.

<sup>b</sup> Not applicable to TSPR calculation in Appendix D.

**D300 Simulation program.**

**D301 General.**

**D302 Calculation of the HVAC TSPR for the *Standard Reference Design*.**

The simulation program shall calculate the HVAC TSPR based only on the input for the *proposed design* and the requirements of this appendix. The calculation procedure shall not allow the user to directly modify the building component characteristics of the *standard reference design*.

**D303 Specific approval.** Performance analysis tools meeting the applicable subsections of Appendix D and tested according to ASHRAE Standard 140 shall be permitted to be *approved*. Tools are permitted to be *approved* based on meeting a specified threshold for a jurisdiction.



The *code official* shall be permitted to approve tools for a specified application or limited scope.

**D400 Climatic data.** The simulation program shall perform the simulation using hourly values of climatic data, such as temperature and humidity, using TMY3 data for the site as specified here: <https://buildingenergyscore.energy.gov/resources>

**D500 Documentation.** Documentation conforming to the provisions of this section shall be provided to the *code official*.

**D501 Compliance report.** Building permit submittals shall include:

1. A report produced by the simulation software that includes the following:

1.1 Address of the building.

1.2 Name of individual completing the compliance report.

1.3 Name and version of the compliance software tool.

1.4 The dimensions, floor heights and number of floors for each *block*.

1.5 By *block*, the *U*-factor, *C*-factor, or *F*-factor for each simulated opaque envelope component and the *U*-factor and SHGC for each fenestration component.

1.6 By *block* or by surface for each *block*, the fenestration area.

1.7 By *block*, a list of the HVAC equipment simulated in the proposed design including the equipment type, fuel type, equipment efficiencies and system controls.

1.8 Annual site HVAC energy use by end use for the proposed and baseline building.

1.9 Annual sum of heating and cooling loads for the baseline building.

1.10 The *HVAC total system performance ratio* for both the *standard reference design* and the *proposed design*.

2. A mapping of the actual building HVAC component characteristics and those simulated in the *proposed design* showing how individual pieces of HVAC equipment identified above have been combined into average inputs as required by Section D601.10 including:

2.1 Fans.

2.2 Hydronic pumps.

2.3 Air handlers.

2.4 Packaged cooling equipment.

2.5 Furnaces.

2.6 Heat pumps.

2.7 Boilers.

2.8 Chillers.

2.9 Cooling towers.

2.10 Electric resistance coils.

2.11 Condensing units.

2.12 Motors for fans and pumps.

2.13 Energy recovery devices.

For each piece of equipment identified above, include the following as applicable:

2.14 Equipment name or tag consistent with that found on the design documents.

2.15 Rated efficiency level.

2.16 Rated capacity.

2.17 Electrical input power for fans and pumps (before any speed or frequency control device) at design conditions and calculation of input value (W/cfm or W/gpm).

3. Floor plan of the building identifying how portions of the building are assigned to the simulated *blocks* and areas of the building that are not covered under the requirements of Section C403.1.1.

**D600 Calculation procedure.** Except as specified by this appendix, the *standard reference design* and *proposed design* shall be configured and analyzed using identical methods and techniques.

**D601 Simulation of the proposed building design.** The *proposed design* shall be configured and analyzed as specified in this section.

**D601.1 Block geometry.** The geometry of buildings shall be configured using one or more *blocks*. Each *block* shall define attributes including *block* dimensions, number of floors, floor to floor height and floor to ceiling height. Simulation software may allow the use of simplified shapes (such as rectangle, L shape, H shape, U shape or T shape) to represent *blocks*. Where actual building shape does not match these predefined shapes, simplifications are permitted providing the following requirements are met:

1. The conditioned floor area and volume of each block shall match the *proposed design* within 10 percent.

2. The area of each exterior envelope component from Table C402.1.4 is accounted for within 10 percent of the actual design.

3. The area of vertical fenestration and skylights is accounted for within 10 percent of the actual design.

4. The orientation of each component in 2 and 3 above is accounted for within 45 degrees of the actual design.

The creation of additional *blocks* may be necessary to meet these requirements.

EXCEPTION: Portions of the building that are unconditioned or served by systems not covered by the requirements of Section C403.1.1 shall be omitted.

**D601.1.1 Number of blocks.** One or more *blocks* may be required per building based on the following restrictions:

1. Each *block* can have only one occupancy type (multifamily dwelling unit, multifamily common area, office, library, education or retail). Therefore, at least one single *block* shall be created for each unique use type.

2. Each *block* can be served by only one type of HVAC system. Therefore, a single *block* shall be created for each unique HVAC system and use type combination. Multiple HVAC units of the same type may be represented in one *block*. Section D601.10.2 provides directions for combining multiple HVAC units or components of the same type into a single *block*.

3. Each *block* can have a single definition of floor to floor or floor to ceiling heights. Where floor heights differ by more than 2 feet, unique *blocks* should be created for the floors with varying heights.

4. Each *block* can include either above grade or below grade floors. For buildings with both above grade and below grade floors, separate *blocks* should be created for each. For buildings with floors partially above grade and partially below grade, if the total wall area of the floor(s) in consideration is greater than or equal to 50 percent above grade, then it should be simulated as a completely above grade *block*, otherwise it should be simulated as a below grade *block*.

5. Each wall on a façade of a *block* shall have similar vertical fenestration. The product of the *proposed design* U-factor times the area of windows (UA) on each façade of a given floor cannot differ by more than 15 percent of the average UA for that façade in each *block*.

The product of the *proposed design SHGC* times the area of windows (SHGCA) on each façade of a given floor cannot differ by more than 15 percent of the average SHGCA for that façade in each *block*. If either of these conditions are not met, additional *blocks* shall be created consisting of floors with similar fenestration.

6. For a building model with multiple *blocks*, the *blocks* should be configured together to have the same adjacencies as the actual building design.

**D601.2 Thermal zoning.** Each floor in a *block* shall be modeled as a single thermal zone or as five thermal zones consisting of four perimeter zones and a core zone. Below grade floors shall be modeled as a single thermal *block*. If any façade in the *block* is less than 45 feet in length, there shall only be a single thermal zone per floor. Otherwise each floor shall be modeled with 5 thermal zones. A perimeter zone shall be created extending from each façade to a depth of 15 feet. Where facades intersect, the zone boundary shall be formed by a 45 degree angle with the 2 facades. The remaining area on each floor shall be modeled as a core zone with no exterior walls.

### **D601.3 Occupancy.**

**D601.3.1 Occupancy type.** The occupancy type for each *block* shall be consistent with the building area type as determined in accordance with Section C405.4.2.1. Portions of the building that are building area types other than multifamily *dwelling unit*, multifamily common area, office, school (education), library, or retail shall not be included in the simulation. Surfaces adjacent to such building portions shall be modeled as adiabatic in the simulation program.

**D601.3.2 Occupancy schedule, density, and heat gain.** The occupant density, heat gain, and schedule shall be for multifamily, office, retail, library, or school as specified by ASHRAE Standard 90.1 Normative Appendix C.

### **D601.4 Envelope components.**

**D601.4.1 Roofs.** Roofs will be modeled with insulation above a steel roof deck. The roof *U*-factor and area shall be modeled as in the *proposed design*. If different roof thermal properties are present in a single *block*, an area weighted *U*-factor shall be used. Roof solar absorptance shall be modeled at 0.70 and emittance at 0.90.

**D601.4.2 Above grade walls.** Walls will be modeled as steel frame construction. The *U*-factor and area of above grade walls shall be modeled as in the *proposed design*. If different wall constructions exist on the façade of a *block* an area-weighted *U*-factor shall be used.

**D601.4.3 Below grade walls.** The *C*-factor and area of below grade walls shall be modeled as in the *proposed design*. If different slab on grade floor constructions exist in a *block*, an area-weighted *C*-factor shall be used.

**D601.4.4 Above grade exterior floors.** Exterior floors shall be modeled as steel frame. The *U*-factor and area of floors shall be modeled as in the *proposed design*. If different wall constructions exist in the *block* an area-weighted *U*-factor shall be used.

**D601.4.5 Slab on grade floors.** The *F*-factor and area of slab on grade floors shall be modeled as in the *proposed design*. If different below grade wall constructions exist in a *block*, an area-weighted *F*-factor shall be used.

**D601.4.6 Vertical fenestration.** The window area and area weighted  $U$ -factor and SHGC shall be modeled for each façade based on the *proposed design*. Each exterior surface in a *block* must comply with Section D601.1.1 item 5. Windows will be combined in to a single window centered on each façade based on the area and sill height input by the user. When different  $U$ -factors, SHGC or sill heights exist on a single façade, area weighted average for each shall be input by the user.

**D601.4.7 Skylights.** The skylight area and area weighted  $U$ -factor and SHGC shall be modeled for each floor based the *proposed design*. Skylights will be combined in to a single skylight centered on the roof of each zone based on the area input by the user.

**D601.4.8 Exterior shading.** Permanent window overhangs shall be modeled. When windows with and without overhangs or windows with different overhang projection factors exist on a façade, window width weighted projection factors shall be input by the user as follows.

$$P_{avg} = \frac{A_1 \times L_{o1} + A_2 \times L_{o2} \dots A_n \times L_{on}}{L_{w1} + L_{w2} \dots L_{wn}}$$

Where:

- $P_{avg}$  = Average overhang projection modeled in the simulation tool.
- $A$  = Distance measured horizontally from the furthest continuous extremity of any overhang, eave or permanently attached shading device to the vertical surface of the glazing.
- $L_o$  = Length off the overhang.
- $L_w$  = Length of the window.

**D601.5 Lighting.** Interior lighting power density shall be equal to the allowance in Table C405.4.2(1) for multifamily, office, retail, library, or school. The lighting schedule shall be for multifamily, office, retail, library, or school as specified by ASHRAE Standard 90.1 Normative Appendix C. The impact of lighting controls is assumed to be captured by the lighting schedule and no explicit controls shall be modeled. Exterior lighting shall not be modeled.

**D601.6 Miscellaneous equipment.** The miscellaneous equipment schedule and power shall be for multifamily, office, retail, library, or school as specified by ASHRAE Standard 90.1 Normative Appendix C. The impact of miscellaneous equipment controls is assumed to be captured by the equipment schedule and no explicit controls shall be modeled.

EXCEPTIONS: 1. Multifamily *dwelling units* shall have a miscellaneous load density of 0.42 W/ft<sup>2</sup>.  
2. Multifamily common areas shall have a miscellaneous load density of 0 W/ft<sup>2</sup>.

**D601.7 Elevators.** Elevators shall not be modeled.

**D601.8 Service water heating equipment.** Service water heating shall not be modeled.

**D601.9 On-site renewable energy systems.** On-site renewable energy systems shall not be modeled.

**D601.10 HVAC equipment.** HVAC systems shall meet the requirements of Section C403.

**D601.10.1 Supported HVAC systems.** At a minimum, the HVAC systems shown in Table D601.10.1 shall be supported by the simulation program.

**Table D601.10.1  
Proposed Building HVAC Systems Supported by HVAC TSPR Simulation Software**

System No.	System Name	System Abbreviation
1	Packaged Terminal Air Conditioner	PTAC
2	Packaged Terminal Air Heat Pump	PTHP
3	Packaged Single Zone Gas Furnace (includes split system)	PSZGF
4	Packaged Single Zone Heat Pump (air to air only) (includes split system)	PSZHP
5	Variable Refrigerant Flow (air cooled only)	VRF
6	Four Pipe Fan Coil	FPFC
7	Water Source Heat Pump	WSHP
8	Ground Source Heat Pump	GSHP
9	Packaged Variable Air Volume (dx cooling)	PVAV
10	Variable Air Volume (hydronic cooling)	VAV
11	Variable Air Volume with Fan Powered Terminal Units	VAVFPTU
12	Dedicated Outdoor Air System (in conjunction with systems 1-8)	DOAS

**D601.10.2 Proposed building HVAC system simulation.** The HVAC systems shall be modeled as in the *proposed design* with clarifications and simplifications as described in Table D601.10.2. System parameters not described in the following sections shall be simulated to meet the minimum requirements of Section C403. All zones within a *block* shall be served by the same HVAC system type as described in Section D601.1.1 item 2. Where multiple system components serve a block, average values weighed by the appropriate metric as described in this section shall be used. Heat loss from ducts and pipes shall not be modeled.

1. Where multiple fan systems serve a single block, fan power shall be based on weighted average using the design supply air cfm.
2. Where multiple cooling systems serve a single block, COP shall be based on a weighted average using cooling capacity. DX coils shall be entered as multi-stage if more than 50% of coil capacity serving the block is multi-stage with staged controls.
3. Where multiple heating systems serve a single block, thermal efficiency or heating COP shall be based on a weighted average using heating capacity.
4. Where multiple boilers or chillers serve a heating water or chilled water loop, efficiency shall be based on a weighted average for using heating or cooling capacity.

5. When multiple cooling towers serving a condenser water loop are combined, the cooling tower efficiency, cooling tower design approach and design range are based on a weighted average of the design water flow rate through each cooling tower.

6. Where multiple pumps serve a heating water, chilled water or condenser water loop, pump power shall be based on a weighted average for using design water flow rate.

7. When multiple system types with and without economizers are combined, the economizer maximum outside air fraction of the combined system shall be based on weighted average of 100% supply air for systems with economizers and design outdoor air for systems without economizers.

8. Multiple systems with and without ERVs cannot be combined.

9. Systems with and without supply air temperature reset cannot be combined.

10. Systems with different fan control (constant volume, multi-speed or VAV) for supply fans cannot be combined.

11. Demand Controlled Ventilation (DCV) shall be modeled using a simplified approach that adjusts the design outdoor supply air flow rate based on the area of the building that is covered by DCV.

**Table D601.10.2  
Proposed Building System Parameters**

Category	Parameter	Fixed or User Defined	Required	Applicable Systems
HVAC System Type	System Type	User Defined	Selected from Table D601.10.1	All
System Sizing	Design Day Information	Fixed	99.6 percent heating design and 1 percent dry-bulb and 1 percent wet-bulb cooling design	All
	Zone Coil Capacity	Fixed	Sizing factors used are 1.25 for heating equipment and 1.15 for cooling equipment	All
	Supply Airflow	Fixed	Based on a supply-air-to-room-air temperature <i>set-point</i> difference of 20°F	1-11
		Fixed	Equal to required outdoor air ventilation	12
Outdoor Ventilation Air	Portion of Supply Air with Proposed Filter ≥ MERV 13	User Defined	Percentage of supply air flow subject to higher filtration (Adjusts baseline fan power higher. Prorated)	All
	Outdoor Ventilation Air Flow Rate	Fixed	As specified in ASHRAE Standard 90.1 Normative Appendix C, adjusted for proposed DCV control	All
	Outdoor Ventilation Supply Air Flow Rate Adjustments	Fixed	Based on ASHRAE Standard 62.1 Section 6.2.4.3 system ventilation efficiency (E <sub>V</sub> S) is 0.75	9-11
		Fixed	System ventilation efficiency (E <sub>V</sub> S) is 1.0	1-8, 12
		Fixed	Base is 1.0 zone air distribution effectiveness	All

Category	Parameter	Fixed or User Defined	Required	Applicable Systems
System Operation	Space Temperature Setpoints	Fixed	As specified in ASHRAE Standard 90.1 Normative Appendix C, except multifamily which shall use 68°F heating and 76°F cooling setpoints	1-11
	Fan Operation - Occupied	User Defined	Runs continuously during occupied hours or cycled to meet load. Multispeed fans reduce airflow related to thermal loads	1-11
	Fan Operation - Occupied	Fixed	Fan runs continuously during occupied hours	12
	Fan Operation - Night Cycle	Fixed	Fan cycles on to meet setback temperatures	1-11
Packaged Equipment Efficiency	DX Cooling Efficiency	User Defined	Cooling COP without fan energy calculated in accordance with ASHRAE Standard 90.1 Section 11.5.2c. <sup>b</sup>	1, 2, 3, 4, 5, 7, 8, 9, 11, 12
	DX Coil Number of Stages	User Defined	Single state or multistage	3, 4, 9, 10, 11, 12
	Heat Pump Efficiency	User Defined	Heating COP without fan energy calculated in accordance with ASHRAE Standard 90.1 Section 11.5.2c. <sup>c</sup>	2, 4, 5, 7, 8
	Furnace Efficiency	User Defined	Furnace thermal efficiency <sup>c</sup>	3, 9, 11, 12
Heat Pump Supplemental Heat	Control	Fixed	Supplemental electric heat locked out above 40°F. Runs in conjunction with compressor between 40°F and 0°F.	2, 4
System Fan Power and Controls	Part-Load Fan Controls	User Defined	Constant volume or two speed	1-8
	Part-Load Fan Controls <sup>a</sup>	User Defined	Constant volume or variable air volume	12
	Part-Load Fan Controls <sup>a</sup>	Fixed	Variable air volume. VFD with static pressure reset.	9-11
	Design Fan Power (W/cfm)	User Defined	Input electric power for all fans is required to operate at <i>fan system design conditions</i> divided by the supply airflow rate. This is a "wire to air" value including all drive, motor efficiency and other losses.	All
	Low-Speed Fan Power	User Defined	Low speed input electric power for all fans required to operate at low speed conditions divided by the low speed supply airflow rate. This is a "wire to air" value including all drive, motor efficiency and other losses.	1-8

Category	Parameter	Fixed or User Defined	Required	Applicable Systems
Variable Air Volume Systems	Supply Air Temperature (SAT) Controls	User Defined	If not SAT reset, constant at 55°F. Options for reset based on outdoor air temperature (OAT) or warmest zone. If warmest zone, then the user can specify the minimum and maximum temperatures. If OAT reset, SAT is reset higher to 60°F at outdoor low of 50°F. SAT is 55°F at outdoor high of 70°F.	9, 10, 11
	Minimum Terminal Unit Airflow Percentage	User Defined	Average minimum terminal unit airflow percentage for <i>block</i> weighted by cfm	9, 10, 11
	Terminal Unit Heating Source	User Defined	Electric or hydronic	9, 10, 11
	Dual Set Point Minimum VAV Damper Position	User Defined	Heating maximum airflow fractions	9, 10
	Fan Powered Terminal Unit (FPTU) Type	User Defined	Series or parallel FPTU	11
	Parallel FPTU Fan	Fixed	Sized for 50 percent peak primary air at 0.35 W/cfm	11
	Series FPTU Fan	Fixed	Sized for 50 percent peak primary air at 0.35 W/cfm	11
Economizer	Economizer Presence	User Defined	Yes or No	3, 4, 9, 10, 11
	Economizer Control Type	Fixed	Differential dry-bulb	3, 4, 9, 10, 11
Energy Recovery	Sensible Effectiveness	User Defined	Heat exchanger sensible effectiveness at design heating and cooling conditions	3, 4, 9, 10, 11, 12
	Latent Effectiveness	User Defined	Heat exchanger latent effectiveness at design heating and cooling conditions	3, 4, 9, 10, 11, 12
	Economizer Bypass	User Defined	If ERV is bypassed during economizer conditions	3, 4, 9, 10, 11, 12
	Bypass SAT Setpoint	User Defined	If bypass, target supply air temperature	3, 4, 9, 10, 11, 12
	Fan Power Reduction during Bypass (W/cfm)	User Defined	If ERV system include bypass, static pressure setpoint and variable speed fan, fan power can be reduced during economizer conditions	3, 4, 9, 10, 11, 12
Demand Controlled Ventilation	DCV Application	User Defined	Percent of block floor area under DCV control	3, 4, 9, 10, 11, 12
DOAS	DOAS Fan Power W/cfm	User Defined	Fan electrical input power in W/cfm of supply airflow	12
	DOAS Supplemental Heating and Cooling	User Defined	Heating source, cooling source	12
	Minimum SAT Setpoint (Cooling)	User Defined	SAT setpoint if DOAS includes supplemental cooling	12
	Minimum SAT Setpoint (Heating)	User Defined	SAT setpoint if DOAS includes supplemental heating	12



Category	Parameter	Fixed or User Defined	Required	Applicable Systems
Heating Plant	Boiler Efficiency	User Defined	Boiler thermal efficiency	1, 6, 7, 9, 10, 11, 12
	Heating Water Loop Configuration <sup>a</sup>	User Defined	Constant flow primary only; variable flow primary only; constant flow primary-variable flow secondary; variable flow primary and secondary	1, 6, 7, 9, 10, 11, 12
	Heating Water Primary Pump Power (W/gpm)	User Defined	Heating water primary pump input W/gpm heating water flow	1, 6, 7, 9, 10, 11, 12
	Heating Water Secondary Pump Power (W/gpm)	User Defined	Heating water secondary pump input W/gpm heating water flow (if primary/secondary)	1, 6, 7, 9, 10, 11, 12
	Heating Water Loop Temperature	User Defined	Heating water supply and return temperatures	1, 6, 9, 10, 11, 12
	Heating Water Loop Supply Temperature Reset Included	User Defined	Yes/No	1, 6, 9, 10, 11, 12
	Heating Water Loop Supply Temperature Reset	Fixed	Reset HWS by 27.3 percent of design delta-T (HWS - 70°F (21.1°C) space heating temperature set point) between 20°F (-6.7°C) and 50°F (10°C) OAT	1, 6, 9, 10, 11, 12
	Boiler Type	Fixed	Noncondensing boiler where input thermal efficiency is less than 86 percent; condensing boiler otherwise	1, 6, 7, 9, 10, 11, 12
Chilled Water Plant	Chiller Compressor Type	User Defined	Screw/scroll, centrifugal or reciprocating	6,10, 11, 12
	Chiller Condenser Type	User Defined	Air cooled or water cooled	6, 10, 11, 12
	Chiller Full Load Efficiency	User Defined	Chiller COP	6, 10, 11, 12
	Chilled Water Loop Configuration <sup>a</sup>	User Defined	Variable flow primary only, constant flow primary - variable flow secondary, variable flow primary and secondary	6, 10, 11, 12
	Chilled Water Primary Pump Power (W/gpm)	User Defined	Primary pump input W/gpm chilled water flow (if primary/secondary)	6, 10, 11, 12
	Chilled Water Secondary Pump Power (W/gpm)	User Defined	Secondary pump input W/gpm chilled water flow	6, 10, 11, 12
	Chilled Water Temperature Reset Included	User Defined	Yes/No	6, 10, 11, 12
	Chilled Water Temperature Reset Schedule (if included)	Fixed	Outdoor air reset: CHW supply temperature of 44°F at 80°F outdoor air dry-bulb and above, CHW supply temperature of 54°F at 60°F outdoor air dry-bulb temperature and below, ramped linearly between	6, 10, 11, 12
	Condenser Water Pump Power (W/gpm)	User Defined	Pump input W/gpm condenser water flow	6, 7, 8, 10, 11, 12
	Condenser Water Pump Control	User Defined	Constant speed or variable speed	6, 7, 8, 10, 11, 12
	Cooling Tower Efficiency	User Defined	gpm/hp tower fan	6, 7, 10, 11, 12

Category	Parameter	Fixed or User Defined	Required	Applicable Systems
	Cooling Tower Fan Control	User Defined	Constant or variable speed	6, 7, 10, 11, 12
	Cooling Tower Approach and Range	User Defined	Design cooling tower approach and range temperature	6, 7, 10, 11, 12
Heat Pump Loop Flow Control	Loop Flow and Heat Pump Control Valve	Fixed	Two position valve with VFD on pump. Loop flow at 3 gpm/ton	7, 8
Heat Pump Loop Temperature Control		User Defined	Restrict to minimum 20°F and maximum 40°F temperature difference	7
GLHP Well Field		Fixed	Bore depth = 250 feet Bore length 200 feet/ton for greater of cooling or heating load Bore spacing = 15 feet Bore diameter = 5 inches 3/4 inch Polyethylene pipe Ground and grout conductivity = 4.8 Btu-in/h-ft <sup>2</sup> -°F	8

<sup>a</sup> Part load fan power and pump power modified in accordance with Table D601.10.3.

**Table D601.10.3  
Fan and Pump Power Curve Coefficients**

Equation Term	Fan Power Coefficients	Pump Power Coefficients	
	VSD + SP Reset	Ride Pump Curve	VSD + DP/Valve Reset
b	0.0408	0	0
x	0.088	3.2485	0.0205
x <sup>2</sup>	-0.0729	-4.7443	0.4101
x <sup>3</sup>	0.9437	2.5295	0.5753

**D602 Simulation of the standard reference design.** The *standard reference design* shall be configured and analyzed as specified in this section.

**D602.1 Utility rates.** Same as proposed.

**D602.2 Blocks.** Same as proposed.

**D602.3 Thermal zoning.** Same as proposed.

**D602.4 Occupancy type, schedule, density, and heat gain.** Same as proposed.

**D602.5 Envelope components.** Same as proposed.

**D602.6 Lighting.** Same as proposed.

**D602.7 Miscellaneous equipment.** Same as proposed.

**D602.8 Elevators.** Not modeled. Same as proposed.

**D602.9 Service water heating equipment.** Not modeled. Same as proposed.

**D602.10 On-site renewable energy systems.** Not modeled. Same as proposed.

**D602.11 HVAC equipment.** The *standard reference design* HVAC equipment consists of separate space conditioning systems and dedicated outside air systems as described in Table D602.11 for the appropriate building occupancies.

**Table D602.11  
Standard Reference Design HVAC Systems**

Parameter	Building Type				
	Large Office <sup>a</sup>	Small Office and Libraries <sup>a</sup>	Retail	School	Multifamily
System Type	Water-source Heat Pump	Packaged air-source Heat Pump	Packaged air-source Heat Pump	Packaged air-source Heat Pump	Packaged air-source Heat Pump
Fan Control <sup>b</sup>	Cycle on Load	Cycle on Load	Cycle on Load	Cycle on Load	Cycle on Load
Space Condition Fan Power (W/cfm) Proposed < MERV 13	0.528	0.528	0.522	0.528	0.528
Space Condition Fan Power (W/cfm) Proposed ≥ MERV 13	0.634	0.634	0.634	0.634	0.634
Heating/Cooling Sizing Factor <sup>c</sup>	1.25/1.15	1.25/1.15	1.25/1.15	1.25/1.15	1.25/1.15
Supplemental Heating Availability	NA	<40°F	<40°F	<40°F	<40°F
Modeled cooling COP (Net of Fan) <sup>d</sup>	4.46	3.83	4.25	3.83	3.83
Modeled heating COP (Net of Fan) <sup>d</sup>	4.61	3.81	3.57	3.81	3.86
Cooling Source	DX (Heat Pump)	DX (Heat Pump)	DX (Heat Pump)	DX (Heat Pump)	DX (Heat Pump)
Heat Source	Heat Pump	Heat Pump	Heat Pump	Heat Pump	Heat Pump
Number of Stages of Cooling	Single	Single	Two	Single	Single
OSA Economizer <sup>e</sup>	No	No	Yes	Yes	Yes
Occupied Ventilation Source <sup>f</sup>	DOAS	DOAS	DOAS	DOAS	DOAS
DOAS Fan Power (W/cfm of Outside Air)	0.819	0.819	0.730	0.742	0.780
DOAS Fan Power (W/cfm) Proposed ≥ MERV 13	1.042	1.042	0.928	0.944	0.944
DOAS Temperature Control <sup>g, h</sup>	Bypass	Wild	Bypass	Bypass	Wild
ERV Efficiency (Sensible Only)	70 percent	70 percent	70 percent	70 percent	70 percent
WSHP Loop Heat Rejection	Cooling Tower <sup>i</sup>	NA	NA	NA	NA
WSHP Loop Heat Source	Gas Boiler <sup>j</sup>	NA	NA	NA	NA
WSHP Loop Temperature Control <sup>k</sup>	50°F to 70°F	NA	NA	NA	NA
WSHP Circulation Pump W/gpm <sup>l</sup>	16	NA	NA	NA	NA
WSHP Loop Pumping Control <sup>m</sup>	HP Valves & Pump VSD	NA	NA	NA	NA

<sup>a</sup> Offices less than 50,000 square feet use "Small Office" parameters; otherwise use "Large Office" parameters.

<sup>b</sup> Space conditioning system shall cycle on to meet heating and cooling setpoint schedules as specified in ASHRAE Standard 90.1 Normative Appendix C. One space conditioning system is modeled in each zone. Conditioning system fan operation is not necessary for ventilation delivery.

<sup>c</sup> The equipment capacities (i.e., system coil capacities) for the *standard reference design* building design shall be based on design day sizing runs and shall be oversized by 15 percent for cooling and 25 percent for heating.

<sup>d</sup> COPs shown are direct heating or cooling performance and do not include fan energy use. See ASHRAE 90.1 Appendix G (G3.1.2.1) for separation of fan from COP in packaged equipment for units where the efficiency rating includes fan energy (e.g., SEER, EER, HSPF, COP).

<sup>e</sup> Economizer on space conditioning systems shall be simulated when outdoor air conditions allow free cooling. Economizer high limit shall be based on differential dry-bulb control. DOAS system continues to operate during economizer mode.

<sup>f</sup> Airflow equal to the outside air ventilation requirements is supplied and exhausted through a separate DOAS system including a supply fan, exhaust fan and sensible only heat exchanger. No additional heating or cooling shall be provided by the DOAS. A single DOAS system will be provided for each *block*. The DOAS supply and return fans shall run whenever the HVAC system is scheduled to operate in accordance with ASHRAE 90.1 Normative Appendix C.

<sup>g</sup> "Wild" DOAS control indicates no active control of the supply air temperature leaving the DOAS system. Temperature will fluctuate based only on entering and leaving conditions and the effectiveness of ERV.

<sup>h</sup> "Bypass" DOAS control includes modulating dampers to bypass ERV with the intent to maintain supply air temperature at a maximum of 60°F when outside air is below 75°F. Once outside air is above 75°F, bypass dampers will be fully closed.

<sup>i</sup> Includes a single axial fan cooling tower with variable speed fans at 40.2 gpm/hp, sized for an approach of 10°F and a range of 10°F.

<sup>j</sup> Includes a single natural draft boiler with 80 percent  $E_t$ .

<sup>k</sup> Loop boiler and heat rejection shall be controlled to maintain loop temperature entering heat pumps between 50°F and 70°F.

<sup>l</sup> Pump motor input power shall be 16 W/gpm.

<sup>m</sup> Loop flow shall be variable with variable speed drive pump and unit fluid flow shutoff at each heat pump when its compressor cycles off.

## WSR 24-03-095

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed January 18, 2024, 8:32 a.m., effective July 1, 2024]

Effective Date of Rule: July 1, 2024.

Purpose: Chiropractic X-ray technician course requirements, continuing education (CE), and expired status. The chiropractic quality assurance commission (commission) is adopting changes to chapter 246-808 WAC pertaining to chiropractic X-ray technicians. The adopted changes amend WAC 246-808-201; create new WAC 246-808-203, 246-808-205, 246-808-207, 246-808-209 and 246-808-211; and repeal WAC 246-808-215. The adopted rules concerning chiropractic X-ray technicians include updates to course requirements, including who can be approved to instruct the course and set new requirements for obtaining, maintaining, and returning from expired status. The commission is also adopting health equity CE requirements to reflect the changes in ESSB 5229 (chapter 276, Laws of 2021).

Citation of Rules Affected by this Order: New WAC 246-808-203, 246-808-205, 246-808-207, 246-808-209 and 246-808-211; repealing WAC 246-808-215; and amending WAC 246-808-201.

Statutory Authority for Adoption: RCW 18.25.180 and 43.70.613.

Adopted under notice filed as WSR 23-20-026 on September 25, 2023.

Changes Other than Editing from Proposed to Adopted Version: Repealed WAC 246-808-215. The requirements are replaced with the new rules.

Editorial changes were made to WAC 246-808-207 Course requirements and approval, for consistency with the rule language.

WAC 246-808-207(c) A qualified instructor. A qualified instructor must verify that during the preceding five years their license has not been suspended, revoked, or otherwise conditioned or restricted and:

(i) Be a diplomate of the American Chiropractic Board of Radiology;

(ii) Be a A chiropractor who has been licensed for five years, with at least five years in practice that includes the taking of X-rays; or

(iii) Be a A chiropractor who has on-campus or postgraduate faculty status in the field of radiology.

A final cost-benefit analysis is available by contacting Betty J. Moe, Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-2868, fax 360-23-2360, TTY 711, email cqac@doh.wa.gov, website 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 1, 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 5, Amended 1, Repealed 1.

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 5, Amended 1, Repealed 1.

Date Adopted: November 16, 2023.

Robert Nicoloff  
Executive Director

#### OTS-4694.4

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

**WAC 246-808-201 Purpose.** The purpose of WAC 246-808-201 through ((246-808-215)) 246-808-211 is to establish eligibility ((eriterion)) criteria for registration of chiropractic X-ray technicians as allowed under RCW 18.25.180.

#### NEW SECTION

**WAC 246-808-203 Definitions.** The definitions in this section apply to WAC 246-808-201 through 246-808-211, unless the context clearly requires otherwise:

- (1) "Classroom hour" means 50 minutes of instruction.
- (2) "In-person learning" means real-time instruction where all of the instructor(s) and student(s) meet in the same physical space.

#### NEW SECTION

**WAC 246-808-205 Registration of chiropractic X-ray technicians.**

- (1) A licensed chiropractor shall employ only chiropractors or chiropractic X-ray technicians to operate X-ray equipment.
- (2) To apply for registration as a chiropractic X-ray technician, the applicant shall submit:
  - (a) A completed application on forms provided by the commission;
  - (b) Applicable fees as required in WAC 246-808-990;
  - (c) Proof of satisfactory completion of a course of instruction of not less than 72 classroom hours, 30 of which are in-person learning. The course must have been approved by the commission in accordance with WAC 246-808-207; and
  - (d) Verification of passing a written and practical proficiency examination in radiologic technology, approved by the commission in accordance with WAC 246-808-207. A passing grade shall be 70 percent.
    - (i) If the applicant fails their first attempt at the written and practical proficiency examination, the applicant may take the examination one additional time without additional classroom instruction.
    - (ii) If the applicant fails their second and any subsequent attempt at the written and practical proficiency examination, the applicant shall complete an additional course of instruction of not less than 16 hours prior to retaking the examination.
- (3) Exceptions allowing registration without meeting the requirements of subsection (2)(c) and (d) of this section.

(a) A chiropractic X-ray technician applicant who holds a current active registration, license, or certification from a national certifying agency or other governmental licensing agency whose standards for registration, licensure, or certification are equal to or exceed the standards under these rules.

(b) A person who has graduated from an accredited and commission approved chiropractic school or college within five years prior to submitting their application.

#### NEW SECTION

**WAC 246-808-207 Course requirements and approval.** (1) A person may request commission approval of a course of classroom instruction for chiropractic X-ray technicians by submitting the following information to the commission:

(a) An outline of the course of instruction, which shall include:

- (i) Physics and equipment;
- (ii) Principles of radiographic exposure;
- (iii) Radiation protection;
- (iv) Anatomy;
- (v) Radiographic positioning and procedures; and
- (vi) Topics that address the requirements listed in WAC 246-808-565.

(b) A written and practical proficiency examination.

(c) A qualified instructor. A qualified instructor must verify that during the preceding five years their license has not been suspended, revoked, or otherwise conditioned or restricted and:

(i) Be a diplomate of the American Chiropractic Board of Radiology;

(ii) Be a chiropractor who has been licensed for five years, with at least five years in practice that includes the taking of X-rays; or

(iii) Be a chiropractor who has on-campus or postgraduate faculty status in the field of radiology.

(d) Any other information deemed necessary by the commission to make a determination.

(2) All information submitted pursuant to this section must be consistent with chapters 18.25 RCW and 246-808 WAC and must cover all aspects of the chiropractic scope of practice as it pertains to X-rays.

#### NEW SECTION

**WAC 246-808-209 Continuing education for chiropractic X-ray technicians.** (1) A chiropractic X-ray technician shall complete six hours of continuing education in compliance with WAC 246-12-170 through 246-12-240. Verification of completion of the continuing education requirement is due upon renewal. If the first renewal period is less than one full year from the date of licensure, no continuing education will be due for the first renewal period.

(2) The commission approves continuing education of the subject matter listed in WAC 246-808-207 (1)(a). Prior approval of continuing education programs is not required by the commission.

(3) Health equity requirements.

(a) Beginning July 1, 2024, as part of the continuing education requirements, a chiropractic X-ray technician must complete a minimum of two hours of training in health equity every four years in accordance with WAC 246-12-800 through 246-12-830.

(b) Hours spent completing health equity continuing education under this section count toward meeting the continuing education requirements for chiropractic X-ray technicians for renewal.

#### NEW SECTION

**WAC 246-808-211 Expired credential—Requirements for reactivating a chiropractic X-ray technician.** If a chiropractic X-ray technician registration is expired, to return to active status, the chiropractic X-ray technician must meet the requirements of WAC 246-12-040 and comply with the following:

(1) If the chiropractic X-ray technician registration has been expired for less than one year, the chiropractic X-ray technician must submit to the commission a written attestation of completing at least six hours of continuing education within the last 12 months in any of the categories listed in accordance with WAC 246-808-207 (1) (a), and meet the requirements as listed in WAC 246-12-040 (3) (a).

(2) If the chiropractic X-ray technician registration has been expired for one year or more, but less than three years, the chiropractic X-ray technician must complete at least 12 hours of continuing education in the two years prior to the date of application in any of the categories listed in accordance with WAC 246-808-207 (1) (a), and meet the requirements as listed in WAC 246-12-040 (3) (b).

(3) If the chiropractic X-ray technician registration has been expired for three years, but less than five years, the chiropractic X-ray technician must complete at least 12 hours of continuing education in the two years prior to the date of application in any of the categories listed in accordance with WAC 246-808-207 (1) (a), and meet the requirements as listed in WAC 246-12-040 (3) (c).

(4) If the chiropractic X-ray technician registration has been expired for five years or more, the chiropractic X-ray technician must meet the course requirements and pass the written and practical proficiency examination as described in WAC 246-808-207 less than one year prior to the date the application was received and meet the requirements as listed in WAC 246-12-040 (3) (c), excluding (c) (ix).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-808-215           Registration of chiropractic X-ray technicians.



**WSR 24-03-112**  
**PERMANENT RULES**  
**BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed January 19, 2024, 10:37 a.m., effective February 19, 2024]

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

Purpose: The purpose of this rule making is to update the pilotage exemption fee schedule to better align with administrative costs of exemption processing and to conduct minor housekeeping of the language for clarity.

Citation of Rules Affected by this Order: Amending WAC 363-116-360 Exempt vessels.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Adopted under notice filed as WSR 23-22-088 on October 30, 2023.

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 1, Repealed 0.

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

Date Adopted: January 18, 2024.

Jaimie C. Bever  
Executive Director

**OTS-5045.1**

AMENDATORY SECTION (Amending WSR 17-14-005, filed 6/22/17, effective 7/23/17)

**WAC 363-116-360 Exempt vessels.** (1) Under the authority of RCW 88.16.070, application via petition may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels, which are not more than (~~one thousand three hundred~~) 1,300 gross tons (international), do not exceed (~~two hundred~~) 200 feet in length, is manned by United States-licensed deck and engine officers appropriate to the size of the vessel with merchant mariner credentials issued by the United States coast guard or Canadian deck and engine officers with Canadian-issued certificates of competency appropriate to the size of the vessel, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia, or yachts, which are not more than (~~one thousand three hundred~~) 1,300 gross tons (international), and do not exceed (~~two hundred~~) 200 feet in length. For purposes of this section, any vessel carrying passengers

for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least ~~((forty-eight))~~ 48 hours prior to planned vessel operations where possible. Petitions filed with less than ~~((forty-eight))~~ 48 hours notice may be considered by the chair at the chair's discretion on a board-approved form. The form shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the areas and dates of planned operations, and such other information as the board shall require.

(b) Pay the appropriate ~~((initial))~~ application ~~((or renewal))~~ fee with the submittal of the petition or upon receipt of invoice from the BPC, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be considered at its next regularly ~~((or specially))~~ scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist.

(3) Any grant of an exemption, including interim exemptions, may contain such conditions as the board, or in the case of an interim exemption, the chair, deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include: A requirement that the vessel employ the services of a pilot on its initial voyage into state pilotage waters; the vessel master attends an orientation meeting with a pilot as determined by the board; the vessel master review all written orientation materials; and/or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than ~~((sixteen hundred))~~ 1,600 gross tons or as a master of inland steam or motor vessels of not more than ~~((five hundred))~~ 500 gross tons, such license to include a current radar endorsement; and/or that the vessel possess specific navigational charts, publications and navigational equipment necessary to ensure safe operation.

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	<del>((3 Months or Less</del>	1-Year or Less	Annual Renewal
A. Yachts			
Up to and including 50-foot LOA	\$50	\$50	\$50
Up to and including 100-foot LOA	700	1000	600
Up to and including 200-foot LOA and 750-gt	1000	1400	800
Up to and including 200-foot LOA and 751 to 1300-gt	1500	1500	1500
B. Passenger Vessels			

	((3-Months or-Less	1-Year or-Less	Annual Renewal
Up to and including 100 feet LOA	1125	1500	1000
Up to and including 200 feet LOA	1500	1500	1200))

<u>1 Year or Less</u>	<u>Annual Renewal</u>
---------------------------	---------------------------

A. Yachts

<u>LOA 65 feet and under</u>	<u>\$100</u>	<u>\$100</u>
<u>LOA 66-125 feet</u>	<u>1100</u>	<u>900</u>
<u>LOA 126-200 feet</u>	<u>1500</u>	<u>1400</u>

B. Passenger  
Vessels

<u>Up to and including 200 feet LOA</u>	<u>1500</u>	<u>1500</u>
---	-------------	-------------

(6) Petitions for annual renewals must be submitted to the board within one year of the expiration of the previous exemption.

**WSR 24-03-113**  
**PERMANENT RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed January 19, 2024, 10:38 a.m., effective February 19, 2024]

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

Purpose: In preparation for the 2024 Washington state marine pilot exam, the board of pilotage commissioners is reviewing and updating these two WAC as needed for continued psychometric validation, diversity, equity, and inclusion, and clarity for applicants, as well as other housekeeping items.

The proposed changes to WAC 363-116-076 will update the psychometric validation requirement of the written exam process to better reflect current industry standards. It includes a description of the process to develop a job task analysis and the updated list of areas pilot applicants are to be tested on according to the job task analysis. It also further clarifies application requirement deadlines and contains minor housekeeping for clarity.

The proposed changes to WAC 363-116-077 will update the list of areas pilot applicants are to be tested on during the simulator evaluation according to the job task analysis. The proposed language also contains minor housekeeping for clarity.

Citation of Rules Affected by this Order: Amending WAC 363-116-076 Examination for pilot applicants and 363-116-077 Simulator evaluation for pilot applicants.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Adopted under notice filed as WSR 23-23-154 on November 21, 2023.

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 2, 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 0, Repealed 0.

Date Adopted: January 18, 2024.

Jaimie C. Bever  
Executive Director

**OTS-5091.1**

AMENDATORY SECTION (Amending WSR 12-05-064, filed 2/15/12, effective 3/17/12)

**WAC 363-116-076 Examination for pilot applicants.** (1) Pilot applicants must pass a written examination (~~(given)~~) administered and

~~((graded))~~ scored by the board or the board's designated contracting entity. The board, in consultation with its ~~((designated contracting entity))~~ contracted psychometrician, will develop the written examination and set the minimum passing or "cut" score in conformance with ~~((a psychometrically validated process))~~ psychometric standards as put forth by *The Standards for Educational and Psychological Testing* (American Educational Research Association (AERA), American Psychological Association (APA), and National Council on Measurement in Education (NCME), 2014). Notice of the examination shall be published at least four months in advance by one paid advertisement in a major marine industry publication and written notice to any party who has requested notice of such examinations. The board may publish additional notices in such publications or in other media ~~((at such times as it deems appropriate))~~. Applications will be accepted by the board immediately following the publication of the notice of the examination, and the application must be received by the board before the close of business on the first business day of the month preceding the exam month. The board may, in an emergency, call for an examination on less than four months' notice.

The notice shall indicate which pilotage district or districts the examination is for and, if for both districts, the notice shall make it clear that applicants can elect to apply for a license in one or both of the districts. If an exam is given for both the Grays Harbor and Puget Sound pilotage districts, the applicants shall be ~~((graded))~~ scored and ~~((evaluated))~~ ranked as one applicant pool.

(2) The examination may be taken by all pilot applicants who the board has determined have met the qualifications of WAC 363-116-0751 and who:

(a) Have ~~((had an))~~ complied with the application ~~((on file with the board for at least one month prior to the examination))~~ deadline provided in subsection (1) of this section. This requirement may be waived by the chairperson of the board upon the showing of good cause. The application shall specify whether the applicant is applying for the Puget Sound pilotage district, the Grays Harbor pilotage district or both.

(b) Have tendered with the application a nonrefundable examination administration fee in such amount as may be set by the board ~~((from time))~~ prior to ~~((time))~~ each administration period. The board may, at its discretion, refund all or part of the examination administration fee for a pilot applicant who is unable to sit for the written examination.

(3) A comprehensive Job Task Analysis (JTA), consisting of a workshop with a Subject Matter Expert (SME) panel, on-the-job observation, and validation survey, must take place at least every other exam administration period, and at a minimum must occur every five years. The SME panel will be chosen by the board and shall consist of at least five members, of whom at least three members shall be active Washington state-licensed pilots.

For exam administration periods conducted between comprehensive JTAs, a SME panel will conduct a formal review to validate the exam blueprint and content outline prior to examination development. The JTA must be conducted in consultation with the contracted psychometrician and within guidelines set forth by AERA, APA, and NCME (2014).

The validation survey will yield the weightings for the exam blueprint, as established by the contracted psychometrician.

(4) The written examination shall be in compliance with RCW 88.16.090 and ~~((may consist of questions covering, but not limited to, the following subjects:~~

- ~~(a) Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying and accompanying information set forth in United States government publications on the subject;~~
- ~~(b) Meaning and understanding of the aids to navigation;~~
- ~~(c) Seamanship, including piloting and ship handling, docking and undocking problems, use of ship assist tugs and anchors;~~
- ~~(d) Vessel traffic system regulations;~~
- ~~(e) Engine and rudder order commands for United States and foreign merchant vessels and United States naval vessels;~~
- ~~(f) Operation and use of marine radar and automatic radar plotting aids (ARPA);~~
- ~~(g) Ability to calculate currents and tides;~~
- ~~(h) Federal laws affecting mariners and pilots including environmental laws;~~
- ~~(i) Use of vessel navigational equipment;~~
- ~~(j) Duties of a pilot;~~
- ~~(k) Relationship between pilot and master;~~
- ~~(l) Bridge resource management;~~
- ~~(m) United States government public health quarantine regulations;~~
- ~~(n) Marine VHF radio usage and phraseology, including bridge-to-bridge communications regulations;~~
- ~~(o) Federal navigation safety and security regulations;~~
- ~~(p) International distress signals;~~
- ~~(q) Nonlocal chart knowledge, including chart symbols and abbreviations as set forth in the latest U.S. Department of Commerce, NOS (National Ocean Survey) Chart No. 1;~~
- ~~(r) Maneuvering behavior for different vessel types; and~~
- ~~(s) Impact of propulsion and maneuvering machinery on vessel navigation.~~

(4)) must consist of multiple-choice items. Each question on the exam will be aligned with the tasks and knowledge statements on the blueprint resulting from the JTA process. The number of questions that are mapped to each content domain will be determined by the exam blueprint.

The written exam shall be designed to test a pilot applicant's capabilities in the following areas:

- (a) Prevoyage planning;
- (b) Master pilot-exchange;
- (c) Operational safety;
- (d) Docking and undocking;
- (e) Use of anchors;
- (f) Safe navigation;
- (g) Shiphandling;
- (h) Restricted water transit; and
- (i) Use of tugs.

(5) The written exam must be administered in a proctored setting. This must be a live proctor, either in-person or via a proctoring platform chosen in consultation with the contracted psychometrician. It shall not be AI-based nor record-and-review.

(6) A preliminary cut score will be derived via psychometric practices (e.g., a modified-Angoff methodology) prior to the administration of the exam. Following an item analysis (conducted by the contracted psychometrician) and subsequent item revisions or removal rec-

ommendations, a secondary cut score will be recommended to the board by the psychometrician. The board will then approve a final cut score, taking into account the preliminary cut score, the item analysis results, and the recommendations of the psychometrician.

(7) The board may require that the cost of the written examination will be at the expense of the pilot applicant.

## OTS-5092.1

AMENDATORY SECTION (Amending WSR 12-05-064, filed 2/15/12, effective 3/17/12)

### **WAC 363-116-077 Simulator evaluation for pilot applicants.** (1)

Pilot applicants who pass a written examination and whose scores are among the top ~~((twenty))~~ 20 (or such other number as may be set by the board) of those taking the written examination (plus any pilot applicants who tie a qualifying score) shall be eligible to take the simulator evaluation set forth in this section.

(2) The simulator evaluation shall take place at a marine simulator facility designated by the board and ~~((may))~~ shall be recorded. In this evaluation pilot applicants shall be observed by available board members but shall be evaluated only by those available board members who hold, or have held a minimum U.S. Coast Guard license as master of steam or motor vessels of not more than 1600 gross tons. The board, with guidance from its contracted psychometrician, shall ~~((also))~~ appoint a minimum of two additional evaluators who hold, or have held within ~~((ten))~~ 10 years of the examination date, a state pilot license issued by Washington or another state. ~~((If the evaluation is for applicants to both the))~~ Applicants for either Puget Sound or Grays Harbor ~~((and Puget Sound pilotage district, the applicants))~~ shall be evaluated as one applicant pool.

~~(3) ((All pilot applicants will be evaluated in writing based on some or all of the following factors:~~

- ~~(a) Fundamental piloting and ship handling ability;~~
- ~~(b) Ability to assimilate and prioritize all data necessary to safely maneuver the ship;~~
- ~~(c) Ability to respond appropriately in routine situations;~~
- ~~(d) Ability to respond appropriately in emergency or nonroutine situations;~~
- ~~(e) Ability to communicate well and project the proper bridge presence;~~
- ~~(f) Understanding of bridge resource management; and~~
- ~~(g) Understanding and command of the Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying.~~

~~(4) The board, in consultation with its designated contracting entity, shall develop this simulator examination, determine the scoring method, the minimum passing or "cut" score, and the relative weight of this score to the whole examination in conformance with a psychometrically validated process.~~

~~(5) The board may require that the cost of the simulator evaluation will be at the expense of the pilot applicant.)~~ The simulator evaluation shall be designed to assess an applicant's competency in:

- (a) Docking and undocking;
- (b) Safe navigation;
- (c) Shiphandling;
- (d) Restricted waterway transit; and
- (e) Other tasks deemed by the board, in consultation with its

contracted psychometrician and a subject matter expert (SME) panel, to be necessary to the performance of safe, efficient, and competent pilotage service.

(4) The design of the exercise shall be conducted by a SME panel, consisting of at least two pilots. The board may appoint additional SMEs to the panel. The panel will work closely with the psychometrician to minimize bias as well as to maximize measurement efficiency. Subsequently, the simulator facility development team shall work with the panel and the psychometrician to develop, beta test, and finalize the exercise with the accompanying scoring rubric. All SMEs will sign confidentiality agreements and will not disclose any content of the simulator evaluation.

(5) All pilot applicants will be graded on the simulator exercise based on a validated rubric created by a SME simulation development panel, with assistance from the psychometrician. The simulator rubric will provide objective measurement points that map to the shiphandling tasks described in subsection (3)(e) of this section.

(6) A preliminary cut score will be derived via psychometric practices (e.g., a modified-Angoff methodology) prior to the administration of the simulator evaluation. Following an item analysis (conducted by the contracted psychometrician) and subsequent item revisions or removal recommendations, a secondary cut score will be recommended to the board by the psychometrician. The board will then approve a final cut score, taking into account the preliminary cut score, the item analysis results, and the recommendations of the psychometrician.

(7) The board may require that the cost of the simulator evaluation be at the expense of the pilot applicant.



## WSR 24-03-114

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed January 19, 2024, 11:25 a.m., effective March 1, 2024]

Effective Date of Rule: March 1, 2024.

Purpose: Creating new chapters in WAC to address criteria for issuance of motorcycle instructional permits and endorsements, for both 2-wheel and 3-wheel motorcycles. These new chapters will address the length of validity for motorcycle permit and endorsement tests.

Citation of Rules Affected by this Order: New WAC 308-109-040 Outlining requirements for 2-wheel motorcycle instruction permit and endorsement, 308-109-050 Outlining requirements for 3-wheel motorcycle instruction permit and endorsement, and 308-109-060 Reinstatement of surrendered endorsements and reciprocity; and amending WAC 308-109-010 Definitions.

Statutory Authority for Adoption: RCW 46.20.510 Instruction permit—Fee—Examinations—Director may adopt and enforce rule.

Adopted under notice filed as WSR 23-21-097 on October 18, 2023.

A final cost-benefit analysis is available by contacting Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-0131, email rulescoordinator@dol.wa.gov, website dol.wa.gov/rulemaking-activity.

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 3, Amended 1, Repealed 0.

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

Date Adopted: January 19, 2024.

Ellis Starrett  
Rules and Policy Manager

**OTS-4987.2**

AMENDATORY SECTION (Amending WSR 20-08-039, filed 3/24/20, effective 4/24/20)

**WAC 308-109-010 Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Contracted training provider" means an agency, firm, provider, organization, individual, or other entity performing services as outlined in RCW 46.20.520 and 46.81A.020 and is under contract with the department.

(2) "Student" means persons who receive a pass, fail or incomplete status on a course completion report furnished to the department.

(3) "2-wheel permit level knowledge test" is a test created/approved by the department of licensing to determine an acceptable novice knowledge level for operating a 2-wheel motorcycle. This test is valid for 365 days.

(4) "2-wheel permit level skills test" is a test created/approved by the department of licensing to determine an acceptable novice skill level for operating a 2-wheel motorcycle. This test is valid for 365 days.

(5) "2-wheel endorsement level knowledge test" is a test created/approved by the department of licensing to determine an acceptable knowledge level for operating a 2-wheel motorcycle. This test is valid for 365 days.

(6) "2-wheel endorsement level skills test is a test created/approved by the department of licensing to determine an acceptable skill level for operating a 2-wheel motorcycle. This test is valid for 365 days.

(7) "3-wheel knowledge test" is a test created/approved by the department of licensing to determine an acceptable knowledge level for operating a 3-wheel motorcycle. This test is valid for 365 days.

(8) "3-wheel skills test" is a test created/approved by the department of licensing to determine an acceptable skill level for operating a 3-wheel motorcycle. This test is valid for 365 days.

(9) "Motorcycle safety course" means any course offered by a contracted training provider and approved by the department of licensing. This also includes approved out-of-state courses.

(10) "2-wheel motorcycle instruction permit" means authorization to ride a 2-wheel motorcycle on the roads and highways of Washington. With limitations found in RCW 46.20.510.

(11) "3-wheel motorcycle instruction permit" means authorization to ride a 3-wheel motorcycle on the roads and highways of Washington. With limitations found in RCW 46.20.510.

#### NEW SECTION

**WAC 308-109-040 Outlining requirements for 2-wheel motorcycle instruction permit and endorsement.** (1) The requirement to add a 2-wheel motorcycle instruction permit (2W MCIP) is passing a permit level knowledge test and a permit level skills test. An approved motorcycle safety course completion (either in state or out-of-state) may waive the required tests.

(a) 2W MCIP may be added at any point the tests and/or motorcycle safety course completion (either in state or out-of-state) are valid.

(b) A valid 2W MCIP may be renewed prior to its expiration for an additional 180 days (effective the day of expiration of original 2W MCIP). Per RCW 46.20.510 the department may only issue two, 180-day permits within a five-year period.

(2) The requirement to add a 2-wheel motorcycle endorsement is **either:**

(a) Valid 2W permit level knowledge and skills tests (a valid motorcycle safety course completion may replace these tests) and valid 2W endorsement level knowledge and skills tests;

**or**

(b) A valid 2W MCIP and valid 2W endorsement level knowledge and skills tests.

(3) Active-duty military personnel may have all permit and endorsement level testing waived upon completion of an approved motorcycle safety training course (either in state or out-of-state).

#### NEW SECTION

**WAC 308-109-050 Outlining requirements for 3-wheel motorcycle instruction permit and endorsement.** (1) The requirement to add a 3-wheel motorcycle instruction permit (3W MCIP) is passing a level knowledge test. A 3W MCIP may be added at any point the tests are valid. A valid 3W MCIP may be renewed prior to its expiration for an additional 180 days (effective the day of expiration of original 3W MCIP).

(2) The requirement to add a 3-wheel motorcycle endorsement is **either:**

(a) A valid 3W knowledge test and a valid 3W skills test;

**or**

(b) A valid 3W MCIP and a valid 3W skills test.

#### NEW SECTION

**WAC 308-109-060 Reinstatement of surrendered endorsements and reciprocity.** (1) If an endorsement is surrendered, the customer has 365 days to reinstate the endorsement without the need for retesting. Once the 365 days passes, the customer is required to pass all required tests in WAC 308-109-040.

(2) Customers transferring from a reciprocal jurisdiction, with a valid motorcycle endorsement, will be issued the appropriate endorsement on their Washington credential (2W or 3W or both). If the jurisdiction the customer is transferring from does not distinguish between 2W and 3W endorsement, the customer will be issued a 2W endorsement unless they can prove they tested on a 3W motorcycle.

(3) If an endorsement is, involuntarily, not transferred from out-of-state, the customer has one renewal cycle to reinstate the endorsement without the need for retesting.

## WSR 24-03-129

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 22, 2024, 11:07 a.m., effective February 22, 2024]

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

Purpose: To update the rules to incorporate SHB 1431's retail sales tax exemption for food, drink, or meals provided by senior living communities.

Citation of Rules Affected by this Order: Amending WAC 458-20-119 Sales by caterers and food service contractors and 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 23-22-013 on October 19, 2023.

Changes Other than Editing from Proposed to Adopted Version: Proposed subsection (4)(c) of WAC 458-20-119 and proposed subsection (2)(c) of WAC 458-20-124 now read:

Food, drink, or meals furnished by a senior living community, as defined in RCW 82.04.040, to tenants as part of a rental or residency agreement for which no separate charge is made, regardless of whether the tenant is a resident for purposes of chapter 18.20 or 18.390 RCW. RCW 82.04.040.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at 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 2, 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: January 22, 2024.

Atif Aziz  
Rules Coordinator

**OTS-5022.3**

AMENDATORY SECTION (Amending WSR 22-14-014, filed 6/23/22, effective 7/24/22)

**WAC 458-20-119 Sales by caterers and food service contractors.**

(1) **Introduction.** This rule explains Washington's business and occupation (B&O) tax and retail sales tax applications for sales by caterers and food service contractors.

(a) **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 other situations must be determined after a review of all facts and circumstances.

(b) **Other rules that may apply.** The following rules may contain additional relevant information:

(i) WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax.

(ii) WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.

(iii) WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses.

(iv) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools.

(v) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

(vi) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce.

(vii) WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

(viii) WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments.

(ix) WAC 458-20-244 Food and food ingredients.

(2) **Sales by caterers.** Sales of meals and prepared food by caterers are subject to the retailing B&O and retail sales taxes when sold to consumers. "Caterer" means a person who provides, prepares, and serves meals for immediate consumption at a location selected by the customer. The tax liability is the same whether the meals are prepared at the customer's site or the caterer's site. The retailing B&O and retail sales taxes also apply when caterers prepare and serve meals using ingredients provided by the customer.

(3) **Food service contractors.** The term "food service contractor" means a person who operates a food service at a kitchen, cafeteria, dining room, or similar facility owned by an institution or business. Food service contractors may manage the food service operation on behalf of the institution or business, or may actually make sales of meals or prepared foods.

(a) **Sales of meals.** Food service contractors who sell meals or prepared foods to consumers are subject to the retailing B&O and retail sales taxes on their gross proceeds of sales. For example, the operation of a cafeteria which provides meals to employees of a manufacturing or financial business is generally a retail activity. The food service contractor is considered to be making retail sales of meals, whether payment for the meal is made by the employees or the business, unless the business itself is reselling the meals to the employees.

In all cases where the meals are prepared at off-site facilities not owned by the institution or business, the food service contractor is considered to be making sales of meals and the retailing B&O and retail sales taxes apply to the gross proceeds of sale, or gross income for sales to consumers.

(b) **Food service management.** The gross proceeds derived from the management of a food service operation are subject to the service and other business activities B&O tax. These tax reporting provisions apply whether the staff actually preparing the meals or prepared foods is employed by the institution or business hiring the food service

contractor, or by the food service contractor itself. If the food service contractor merely manages the food service operation on behalf of an institution or business, that institution or business is considered to be selling meals or providing the meals as a part of the services the institution or business renders to its customers. These institutions and businesses should refer to subsections (4) and (5) in this rule to determine their B&O tax and retail sales tax liabilities.

Food service management includes, but is not limited to, the following activities:

(i) Food service contractors operating a cafeteria or similar facility which provides meals and prepared food for employees or guests of a business, but only where the business owning the facility is the one actually selling the meals to its employees.

(ii) Food service contractors managing or operating a cafeteria, lunch room, or similar facility for the exclusive use of students or faculty at an educational institution or private school. The educational institution or private school provides these meals to the students and faculty as a part of its educational services. The food service contractor is managing a food service operation on behalf of the institution, and is not making retail sales of meals to the students, faculty, or institution. Sales of meals or prepared foods to guests in such areas are, however, subject to the retailing B&O and retail sales taxes.

(iii) Food service contractors managing or operating the dietary facilities of a hospital, nursing home, or similar institution, for the purpose of providing meals or prepared foods to its patients or residents. These meals are provided to the patients or residents by the hospital, nursing home, or similar institution as a part of the services rendered by the institution. The food service contractor is managing a food service operation on behalf of the institution, and is not considered to be making retail sales of meals to the patients, residents, or institution. Sales of meals to doctors, nurses, visitors, and other employees through a cafeteria or similar facility are, however, subject to the retailing B&O and retail sales taxes.

(c) **Examples.**

(i) Example 1. GC Inc. is a food service contractor managing and operating an on-site cafeteria for B College. This cafeteria is operated for the exclusive use of students and faculty. Guests of students or faculty members, however, are allowed to use the facilities. All moneys collected in the cafeteria are retained by B College. B College pays GC's direct costs for managing and operating the cafeteria, including the costs of the unprepared food products, employee salaries, and overhead expenses. GC also receives a management fee.

GC Inc. is managing a food service operation. The measure of tax is the gross proceeds received from B College. GC Inc. may not claim a deduction on account of cost of materials, salaries, or any other expense. GC Inc.'s proceeds are subject to the service and other activities B&O tax classification. B College is considered to be making retail sales of meals to the guests and must collect and remit retail sales tax on the gross proceeds of these sales. B College should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies.

(ii) Example 2. DF Food Service contracts with Hospital A to manage and operate Hospital A's dietary and cafeteria facilities. DF is to receive a per meal fee for meals provided to Hospital A's patients. DF Food Service retains all proceeds for sales of meals to physicians, nurses, and visitors in the cafeteria.

The gross proceeds received from Hospital A regarding the meals provided to the patients are derived from the management of a food service operation. These proceeds are subject to the service and other activities B&O tax classification. DF, however, is making retail sales of meals to physicians, nurses, and visitors in the cafeteria. DF Food Service must pay retailing B&O tax, and collect and remit retail sales tax, on the gross proceeds derived from the cafeteria sales.

(4) **Retailing B&O and retail sales taxes.** The sales of meals to consumers are subject to the retailing B&O tax and generally subject to retail sales tax. However, a retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW. However, this exemption does not apply to purchases of prepared meals by nonprofit organizations, such as hospitals, which provide the meals to patients as a part of the services they render; ~~((and))~~

(c) Food, drink, or meals furnished by a senior living community, as defined in RCW 82.04.040, to tenants as part of a rental or residency agreement for which no separate charge is made, regardless of whether the tenant is a resident for purposes of chapter 18.20 or 18.390 RCW. RCW 82.04.040; and

(d) Prepared meals sold to the federal government. WAC 458-20-190. However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government.

(5) **Wholesale sales of prepared meals.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling B&O tax classification. Sellers must obtain a reseller permit for sales from their customers to document the wholesale nature of any sale as provided in WAC 458-20-102 Reseller permits.

(6) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department for many catering and food service items, as follows:

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) Retail sales tax or use tax does not apply to purchases of food or beverage products that are ingredients of meals being sold at retail or wholesale.

(d) Purchases of food products and prepared meals by persons who are not in the business of selling meals at retail or wholesale are subject to the retail sales tax. However, certain food products are exempt from retail sales or use tax. See WAC 458-20-244.

OTS-5023.3

AMENDATORY SECTION (Amending WSR 22-14-014, filed 6/23/22, effective 7/24/22)

**WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.** (1) **Introduction.** This rule explains how Washington's business and occupation (B&O) tax and retail sales tax apply to sales by restaurants, cocktail bars, taverns, and similar businesses. It discusses sales of meals, beverages, and foods at prices that include retail sales tax. This rule also explains how discounted and promotional meals are taxed. Caterers and persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 Sales by caterers and food service contractors, to determine their tax liability.

(a) **Definition. Restaurants, cocktail bars, and taverns.** The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

(b) **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 other situations must be determined after a review of all facts and circumstances.

(c) **Other rules that may apply.** The following rules may contain other relevant information:

(i) WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax.

(ii) WAC 458-20-119 Sales by caterers and food service contractors.

(iii) WAC 458-20-131 Gambling activities.

(iv) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

(v) WAC 458-20-183 Recreational services and activities.

~~((v))~~ (vi) WAC 458-20-187 Tax responsibility of vending machine owners and operators.

~~((vi))~~ (vii) WAC 458-20-189 Sales to and by the state of Washington and municipal corporations, including counties, cities, towns, school districts, and fire districts.

~~((vii))~~ (viii) WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments.

~~((viii))~~ (ix) WAC 458-20-243 Litter tax.

~~((ix))~~ (x) WAC 458-20-244 Food and food ingredients.

(2) **Retailing B&O and retail sales taxes.** Sales of meals and prepared foods to consumers by restaurants, cocktail bars, taverns, and similar businesses are subject to retailing B&O tax and generally subject to retail sales tax. Retail sales tax exemptions are available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW;

(c) Food, drink, or meals furnished by a senior living community, as defined in RCW 82.04.040, to tenants as part of a rental or residency agreement for which no separate charge is made, regardless of



whether the tenant is a resident for purposes of chapter 18.20 or 18.390 RCW. RCW 82.04.040;

(d) Prepared meals sold to the federal government. WAC 458-20-190. However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government; and

~~((d))~~ (e) Meals provided without specific charge by a restaurant to its employees. RCW 82.08.9995. These meals are also exempt from B&O tax and use tax. RCW 82.04.750 and 82.12.9995. However, if any charge is made for meals to employees, retailing B&O tax and retail sales tax apply.

For purposes of ~~((d))~~ (e) of this subsection, the following definitions apply:

(i) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of ~~((d))~~ (e) of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08.0293.

(ii) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption, if a separate charge is made for such food and beverages, and are located within:

- Hotels, motels, lodges, boarding houses, bed and breakfast facilities;

- Hospitals, office buildings, movie theaters; and

- Schools, colleges, or universities.

Restaurants also include:

- Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge; and

- Public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge is made for such food or beverages.

A restaurant is open to the public for purposes of this subsection (2) ~~((d))~~ (e) if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(3) **Wholesaling B&O tax.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling B&O tax classification. Sellers must obtain a copy of the purchaser's reseller permit to document the wholesale nature of any sale as provided in WAC 458-20-102 Reseller permits.

(4) **Service and other business activities B&O tax.** Compensation received from owners of vending machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. WAC 458-20-187. Persons operating contests of chance should refer to WAC 458-20-131.

(5) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Retail sales tax or use tax applies to purchases of dishes, kitchen utensils, linens, and items that do not become an ingredient of the meal.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) Retail sales tax or use tax does not apply to purchases of food or beverage products that are ingredients of the meals being sold.

(d) Retail sales tax or use tax does not apply to purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles that are furnished to customers, the first actual use of which renders such articles unfit for further use, when purchased by restaurants and similar businesses making actual sales of meals.

(6) **Combination business.** Persons operating a combination of two kinds of food sales, of which one is the sale of prepared food (i.e., an establishment, such as a deli, selling food products ready for consumption and in bulk quantities), should refer to WAC 458-20-244 for taxability information.

(7) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes are calculated on the reduced price actually received by the seller.

Persons who provide meals free of charge to persons other than their employees are consumers of those meals. Persons operating restaurants or similar businesses are not required to report use tax on food and food ingredients given away, even if the food or food ingredients are part of prepared meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food and food ingredients exemption applies. Should the restaurant provide the little league team with soft drinks free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those soft drinks. Soft drinks are excluded from the exemption for food and food ingredients. WAC 458-20-244.

(8) **Sales of meals, beverages and food at prices that include retail sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including retail sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menu and other price information. WAC 458-20-107.

(9) **Spirits, beer, and wine restaurant licensees.** Restaurants operating under the authority of a license from the liquor and cannabis board to sell spirits, beer, and wine by the glass for on-premises consumption generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas may not be given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many spirits, beer, and wine restaurant licensees elect to sell beverages or food at prices inclusive of the retail sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. The department presumes that no retail sales tax has been collected or is included in the gross receipts when a notice is not pos-

ted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of retail sales tax in another. For example, a spirits, beer, and wine restaurant licensee may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the retail sales tax.

(c) Spirits, beer, and wine restaurant licensees are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

(d) **Examples.**

(i) Example 1. XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the retail sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices that separately state the retail sales tax. As an example, a typical well drink purchased in the bar for \$7.00 inclusive of the retail sales tax, is sold for \$7.00 plus retail sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing B&O and retail sales tax liability.

(ii) Example 2. RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area that state the price of the meal exclusive of retail sales tax, the retail sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that retail sales tax is included in the price of the drinks, RBS may factor the retail sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(iii) Example 3. Z Tavern sells all foods and drinks at a price that includes the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing B&O and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including retail sales tax. Z Tavern may not assume the gross receipts include any retail sales tax and may not factor the retail sales tax out of the gross receipts.

(10) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price and not subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise are part of the selling price and are subject to both the retailing B&O and retail sales taxes.

## WSR 24-03-133

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 23, 2024, 10:04 a.m., effective February 23, 2024]

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

Purpose: The department of revenue is updating WAC 458-20-18801 to recognize 2023 legislation to include the new RCW 82.08.814 and 82.12.814 to provide a new retail sales and use tax exemption for mobility enhancing equipment for complex needs patients.

Citation of Rules Affected by this Order: Amending WAC 458-20-18801 Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

Statutory Authority for Adoption: RCW 82.01.060, 82.08.814, and 82.12.814.

Adopted under notice filed as WSR 23-23-016 on November 2, 2023.

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 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: January 23, 2024.

Atif Aziz  
Rules Coordinator

**OTS-5000.1**

AMENDATORY SECTION (Amending WSR 22-19-025, filed 9/13/22, effective 10/14/22)

**WAC 458-20-18801 Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.**

**PART 1 - INTRODUCTION**

(101) **Introduction.** This rule provides tax-reporting information for persons making sales of medical products. It also provides information about the retail sales tax and use tax exemptions available for the sale and use of certain medical products for humans.

(102) **How is this rule organized?** This rule is divided into five parts as follows:

(a) **Part 1 - Introduction.** Part 1 provides information relating to the purpose of the rule, how the rule is organized, and provides a listing of additional rules that may be helpful to the reader in determining taxability related to medical products.

(b) **Part 2 - Medical products.** Part 2 of this rule identifies what "medical products" include for purposes of this rule. Medical products is not a statutory term, but instead, is a term used simply to collectively describe the medical items addressed by this rule.

(c) **Part 3 - Applicable taxes.** Part 3 of this rule provides information on the taxes that apply to the sale, use, purchase, or manufacture of medical products.

(d) **Part 4 - Common exemptions.** Part 4 of this rule provides information on common retail sales tax and use tax exemptions related to medical products.

(e) **Part 5 - Bundled transactions.** Part 5 of this rule addresses the treatment of bundled transactions involving medical products.

(103) **How are examples included in this rule to be used?** This rule contains examples, which identify a number of facts and then state((s)) a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(104) **What are some other department of revenue rules that address medical or health related providers that might apply?** The department of revenue (department) has adopted other rules addressing the taxability of various activities related to the providing of health care. Readers may want to refer to the following rules for additional information:

(a) WAC 458-20-150, Optometrists, ophthalmologists, and opticians;

(b) WAC 458-20-151, Dentists, audiologists, and other health care providers—Dental laboratories and dental technicians;

(c) WAC 458-20-168, Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

## PART 2 - MEDICAL PRODUCTS

(201) **What are medical products for purposes of this rule?** Medical products include durable medical equipment, drugs, mobility enhancing equipment, over-the-counter drugs, and prosthetic devices as defined by Washington statute. Medical products also include other tangible personal property used for medical purposes, not covered by one of the statutory definitions. The remainder of Part 2 of this rule describes these medical products.

(202) **What is durable medical equipment?** Durable medical equipment is equipment, including repair and replacement parts for durable medical equipment that:

(a) Can withstand repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Generally is not useful to a person in the absence of illness or injury; and

(d) Is not worn in or on the body. See RCW 82.08.0283. Also, see subsection (206)(b) of this rule for an explanation of what is considered "worn in or on the body."

Table 1 provides a nonexclusive list of durable medical equipment product examples.

### Table 1

Durable Medical Equipment Examples
------------------------------------

- |   |
|---|
| <ul style="list-style-type: none"> <li>• Anesthesia machine and ventilator</li> <li>• Apnea monitors</li> <li>• Atomizers (medical - Reusable)</li> <li>• Beds, bags, trays, bedpans, commodes, pads, pillows, crash carts, lamps, bulbs, and tables (medical)</li> <li>• Blood parameter monitor, pulse oximetry equipment, and blood gas analyzer</li> <li>• Bone growth stimulator (not worn on the body)</li> <li>• Bovie (cauterization)</li> <li>• Cardiopulmonary bypass machine</li> <li>• Cofflator</li> <li>• Continuous passive motion devices</li> <li>• Continuous positive airway pressure (CPAP &amp; BI-PAP) machine (not worn on the body)</li> <li>• Diagnostic equipment - Audiology, cardiology, mammography, radiology</li> <li>• Electronic speech aids (not worn on the body)</li> <li>• Endoscopes</li> <li>• Enteral feeding bags, tubing, and connectors</li> <li>• Feeding plugs</li> <li>• Glucose meters</li> <li>• Instruments - ((Reuseable)) <u>Reusable</u>, e.g., clamps, drills, forceps, retractors, scalpels, reamers, scissors</li> <li>• Intravenous (IV) stands and poles</li> <li>• Kidney dialysis devices</li> <li>• Lasers</li> <li>• Lithotripters</li> <li>• Nebulizers</li> <li>• Respiratory humidifier</li> <li>• Reusable needles or reusable staplers</li> <li>• Sling scales</li> <li>• Stapler (must be empty as staples are not durable medical equipment)</li> <li>• Stethoscopes, stirrups, and stretchers (medical)</li> <li>• Suction regulators</li> <li>• TENS units (not worn on the body)</li> <li>• Tourniquets</li> <li>• Ultrasound probes, transducers, and mini dopplers</li> <li>• Whirlpools (medical)</li> <li>• X-ray equipment</li> </ul> |
|---|

(203) (a) **What is a drug?** A "drug" is a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, alcoholic beverages, or cannabis, useable cannabis, or cannabis-infused products:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body. See RCW 82.08.0281.

Table 2 provides a nonexclusive list of drug product examples.

**Table 2**

<b>Drug Examples</b>
<ul style="list-style-type: none"> <li>• Dermal fillers - Injectable</li> <li>• Dialysis dialysate solution</li> <li>• Federal prescription (RX) drugs, including biologicals</li> <li>• Gases - Medical grade (nitrous oxide, oxygen, carbon dioxide, helium)</li> <li>• Implanted radioactive isotopes</li> <li>• Insulin</li> <li>• Parenteral nutrition formulas - By prescription</li> <li>• Prescription medicated cotton swabs and gauze wraps</li> <li>• Sterile water - 1cc, 5cc, 10cc vials, sterile normal saline (.9%) - 1cc, 5cc, 10cc vials - Solutions for adding to mixtures and irrigation</li> <li>• Vaccines</li> </ul>

(b) **Substances that are necessary to the performance of durable medical equipment are not drugs.** A compound, substance, or preparation that is necessary for durable medical equipment to perform its function is not a drug, even when it otherwise meets the definition of drug in this subsection.

(c) **Examples of compounds, substances, preparations that are necessary in order for the durable medical equipment to perform its function.**

**Example 1.** A Coulter Blood Cell Counter uses an electrolytic solution to perform its function. The solution is entirely contained within the device and does not physically interact with the patient's tissue (blood) apart from the device. The device cannot perform its function without the electrolytic solution. The solution is an integral part of the Coulter Blood Cell Counter and is not a drug even though the device is used to diagnose disease and the test it performs is conducted pursuant to a prescription.

**Example 2.** A cryoablation device uses extremely cold, thermally conductive solution inside a hollow probe or needle to freeze and remove diseased or malfunctioning cells within a patient's body. The solution is entirely contained within the device and does not physically interact with the patient's tissue apart from the device. The device cannot perform its function without the solution. The solution is an integral part of the device and is not a drug even though the device is used in the cure, mitigation, and treatment of disease as part of a prescribed procedure.

**Example 3.** A specialized medical laser uses certain gases (e.g., argon, helium) to determine the wavelength of the light emitted. This allows the laser to identify specific cells or substance types. The gas is entirely contained within the laser and does not physically interact with the patient's tissue apart from the device. The device cannot perform its function without the gas. The gas is an integral part of the device and is not a drug even though the gas is consumed and the laser is used in the cure, mitigation, and treatment of disease as part of a prescribed procedure.

(204) **What is mobility enhancing equipment?** Mobility enhancing equipment is equipment, including repair and replacement parts for mobility enhancing equipment that:

(a) Is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle;

(b) Is not generally used by persons with normal mobility; and

(c) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. See RCW 82.08.0283.

Table 3 provides a nonexclusive list of mobility enhancing equipment products.

**Table 3**

<b>Mobility Enhancing Equipment Examples</b>
<ul style="list-style-type: none"> <li>• Bath aids - Raised toilet seat, tub and shower stools</li> <li>• Bed pull-up T</li> <li>• Canes</li> <li>• Car seats (mobility enhancing)</li> <li>• Crutches</li> <li>• Handrails and grab bars to assist in rising from commode, tub, or shower</li> <li>• Lift chairs and replacement parts</li> <li>• Lifts (hydraulic or electric) used to raise or transfer patients from bed to chair, commode, or bath</li> <li>• <u>Replacement parts for mobility enhancing equipment, e.g., batteries for electric wheelchairs</u></li> <li>• Scooters and transporters</li> <li>• Swivel seats enabling the disabled to rotate in order to rise from a chair</li> <li>• Transfer belts to assist in the transfer of patients</li> <li>• Walkers</li> <li>• Wheelchairs</li> <li>• Wheelchairs adapted for specific uses or functions, e.g., all terrain wheelchairs</li> </ul>

(205) **Over-the-counter drugs.** An over-the-counter drug is a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(a) A "drug facts" panel; or

(b) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation. See RCW 82.08.0281.

Table 4 provides a nonexclusive list of over-the-counter drug products.

**Table 4**

<b>Over-the-Counter Drug Examples</b>
<ul style="list-style-type: none"> <li>• Antihistamines</li> <li>• Anti-inflammatory</li> <li>• Analgesic</li> <li>• Contact lenses solution</li> <li>• Eternal nutrition formulas with drug facts box</li> </ul>



<b>Over-the-Counter Drug Examples</b>
<ul style="list-style-type: none"> <li>• Hydrogen peroxide</li> <li>• Medicated cotton swabs and gauze wraps (nonlegend)</li> <li>• Paviodine iodine</li> <li>• Rubbing alcohol</li> </ul>

(206) (a) **What is a prosthetic device?** A prosthetic device is a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct a physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body. See RCW 82.08.0283.

Table 5 provides a nonexclusive list of prosthetic device products.

**Table 5**

<b>Prosthetic Device Examples</b>
<ul style="list-style-type: none"> <li>• Abdominal belts, binders, and supports</li> <li>• Acetabular cups</li> <li>• Ankle brace</li> <li>• Antiembolism stocking</li> <li>• Artificial eyes, heart valves, larynx, limbs</li> <li>• Back braces</li> <li>• Bone cement and wax</li> <li>• Bone pins, plates, nails, screws</li> <li>• Breast implants and external prosthesis</li> <li>• Cervical collars</li> <li>• Cochlear implant</li> <li>• Continuous positive airway pressure (CPAP) machines which are specifically designed to be wholly worn on the body and portable</li> <li>• Corrective eye glasses and contact lenses</li> <li>• Dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers</li> <li>• Drainage devices for single patient use because they serve the same drainage functions as the body's natural systems</li> <li>• Ear, nose, and throat implants</li> <li>• Eye glass frames and lenses</li> <li>• Foley catheter</li> <li>• Gastric bands and intragastric balloons</li> <li>• Hand and feet implants</li> <li>• Head halters</li> <li>• Hearing aids</li> <li>• Implanted pacemakers</li> <li>• Insulin pumps</li> <li>• Knee immobilizers</li> <li>• Mastectomy surgical bras</li> <li>• Maxillofacial devices implanted</li> <li>• Membrane implants (neutron, spinal, joint)</li> </ul>

Prosthetic Device Examples
<ul style="list-style-type: none"> <li>• Ocular implants</li> <li>• Orthobiologics implants</li> <li>• Orthopedic shoes, shoe lifts, inserts, arch supports, heel protectors</li> <li>• Pressure garments - Edema gloves</li> <li>• Pressure garments - Mast pants, burn garments</li> <li>• Salem sump with anti-reflux valve</li> <li>• Shoulder and elbow implants</li> <li>• Skin implants - Synthetic</li> <li>• Slings, braces, collars, casts, splints, embolism stockings, arch pads, pelvic traction belts, traction pulley clamp assemblies and cords</li> <li>• Slings - Medical</li> <li>• Specialized orthotic shoes, post-operation shoes, cast shoes, diabetic shoes and inserts, and other similar apparatus</li> <li>• Speech aids (electronic) worn on the body</li> <li>• Sphincters - Medical</li> <li>• Splints and splint materials</li> <li>• Stent implants through endoscopy</li> <li>• Stents (biliary, coronary and urinary)</li> <li>• Stockings - Compression</li> <li>• Sutures, staples, and skin glue for closing wounds</li> <li>• Tendon implants</li> <li>• TENS units worn on the body</li> <li>• Testicular and penile implants</li> <li>• Trachea tubes</li> <li>• Trusses</li> </ul>



(b) **When is a device not worn on or in the body?** For the purpose of this exemption, "worn on the body" means the entire device is something a person puts on or has on their person, to be carried with and habitually becomes part of the person as a whole, much in the sense that a person wears clothing or other personal items. Such devices are designed to be wholly worn on the body and portable. A device is not "worn on or in the body" simply because part of it is attached to the body in some way for a period of time. These devices cannot be partially floor-standing, plugged into an outlet, or moved by virtue of dragging, wheels, or with the assistance of a separate device (e.g., a cart or intravenous stand).

(c) **Examples of items that are not prosthetic devices worn on or in the body.** The following are examples of items not considered prosthetic devices worn on or in the body.

**Example 4.** Continuous positive airway pressure (CPAP) machines are commonly used by patients with sleep apnea disorders to facilitate normal breathing. Patients using a CPAP machine are normally hooked up to the machine via tubing and individually tailored masks. Even though the mask is normally "worn" for significant periods of time each night, the mask by itself cannot accomplish the intended purpose. The machine performing the function is not worn on the body as a complete system. Neither the mask separately, nor the machine as a whole system, is a prosthetic device.

**Example 5.** Heart-lung machines generally replace the function of the heart and lungs during surgery, as well as regulating body temperature and providing an avenue of introduction for anesthetics or other medications directly into a patient's bloodstream. While a heart-lung machine is attached to the patient, it is commonly a floor-standing or wheeled unit and is not a prosthetic device.

### PART 3 - APPLICABLE TAXES

(301) **What basic tax information do I need to be aware of when selling, purchasing, using, or manufacturing medical products?** This subsection provides general tax-reporting information for persons who sell, purchase, use, or manufacture, medical products.

(302) **How are medical products taxed?** In general, sales of medical products are taxable. Sales of medical products to consumers such as doctors, hospitals, or patients are subject to retailing business and occupation (B&O) tax and the retail sales tax. These taxes apply to the sale of medical products as follows:

(a) **Retail sales tax.** Retail sales tax applies to the sale of medical products to a consumer unless a specific exemption applies. RCW 82.04.050 and 82.08.020. Specific exemptions are discussed in Part 4 of this rule.

(b) **Retailing B&O tax.** There is no general B&O tax exemption for sales of medical products. Even if a sale of a medical product is exempt from retail sales tax, the gross proceeds from the sale of the medical product to a consumer is subject to the retailing B&O tax.

(c) **Wholesaling B&O tax.** Sales to persons who resell the medical products (e.g., pharmacies) are subject to the wholesaling B&O tax. Persons making wholesale sales should refer to WAC 458-20-102 for information regarding their responsibility to obtain a reseller permit.

(d) **Manufacturing B&O tax.** Persons who manufacture products including medical products, in this state are subject to the manufacturing B&O tax upon the value of these products. Manufacturers selling the products at retail or wholesale in this state are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a Multiple Activities Tax Credit (MATC). Refer to WAC 458-20-19301 for a more detailed explanation of the MATC.

Persons who manufacture molds or other products that they use in a manufacturing process are subject to the manufacturing B&O tax upon the value of the product manufactured. (See also WAC 458-20-112 and 458-20-134 regarding "value of products" and "commercial or industrial use," respectively.) Such persons also incur a use tax liability with respect to their use of the molds or products, unless a specific exemption applies. For example, RCW 82.12.02565 provides a use tax exemption for the use of certain molds in a manufacturing operation. Refer to WAC 458-20-13601 for additional information regarding the manufacturers machinery and equipment sales tax and use tax exemptions.

(e) **Use tax or deferred retail sales tax.** Purchases of medical products at retail are subject to retail sales tax unless a specific exemption exists in the law. If the seller does not collect retail sales tax, a buyer who is not reselling the products must pay the retail sales tax (commonly referred to as the "deferred retail sales tax") or use tax directly to the department, unless the specific items purchased are exempt under the law. For additional information on use tax see WAC 458-20-178.

(303) **Retail sales tax should be paid by the consumer based on the principal use of the product.** Some medical products can be put to both an exempt and taxable use. At the time of purchase a buyer may not know exactly how the item or items will be used. In such cases, retail sales tax must be paid to the seller at the time of purchase when the buyer expects to principally (i.e., more than 50 percent of the time) put the item to a taxable use in the normal course of business. However, if the buyer expects to principally put the item to use in an exempt manner, the buyer may provide the seller with an appropriately completed exemption certificate that lists the retail sales tax exempt item or types of items included in the purchase, such as a Streamlined Sales Tax Agreement Certificate of Exemption (SSUTA exemption certificate), or the seller may capture the relevant data elements that would otherwise be captured in a completed SSUTA exemption certificate, or otherwise meet the requirements of RCW 82.08.050(7). See subsection (304) of this rule for more information on exemption certificates and other department approved documentation. When a seller receives an appropriately completed exemption certificate or other approved documentation, that seller is relieved of the responsibility to collect the retail sales tax for those specific items or types of items identified on the certificate and sold in that transaction.

(a) **Items put to taxable use where tax was not paid.** If the buyer does not pay sales tax on an item, and later puts that item to use in a manner that is not exempt of sales tax, the buyer must pay deferred sales or use tax to the department. The deferred sales tax liability should be reported by the buyer on the use tax lines of the excise tax return (including both state and local portions of the tax). The tax should be reported based on the location and sales tax rate which is in effect where the buyer took possession of the item.

(b) **Items put to exempt use where tax was paid.** If the buyer does not give an exemption certificate or other approved documentation to the seller indicating a certain item is exempt of retail sales tax, or the seller does not capture the relevant data elements required under SSUTA or otherwise meet the requirements of RCW 82.08.050(7), the seller must collect the tax at the time of purchase on that item. If the buyer later puts that item to first use in an exempt manner, the buyer may take a deduction on the excise tax return equal to the value of the item. This deduction should be claimed in the deduction column of the retail sales tax line, and should be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet. When completing the local sales tax section of the tax return, the value of the item must be credited using the seller's tax location code (assuming the buyer took possession of the item at the seller's location) and computed at the local sales tax rate paid to the seller.

(c) **Examples.**

**Example 6. Purchase of items which are principally exempt.** ABC Medical Center (ABC) purchases a case of sterile silicon tubing. One case contains 20 units of sterile tubing in individually sealed sterile packaging. The tubing purchased by ABC is either used to deliver medically prescribed oxygen from tanks to a patient (an exempt use), or used by ABC's laboratory to conduct certain tests (not an exempt use). At the time of purchase, ABC does not know how many of the 20 packages in the case will be used for oxygen tank systems versus how many will be drawn out of inventory by the lab. However, according to ABC's inventory records from past periods, the tubing will principally be used as part of the medically prescribed oxygen systems. ABC provides the seller of the tubing with a properly completed exemption

certificate (in this case, the "Sales Tax Exemption Certificate for Health Care Providers") or other approved documentation. The seller is not required to collect retail sales tax on the case of sterile tubing. As ABC puts the tubing to use, it must keep track of when a package of tubing is used by the laboratory. Deferred sales tax is due and should be reported on and remitted with the excise tax return for the period in which ABC used the tubing.

**Example 7. Purchase of items which are principally taxable.** Assume the same items and situation as in Example 6, except that for this example, according to ABC's inventory records from past periods, the tubing will be principally used for retail sales taxable purposes in the laboratory. ABC cannot provide an exemption certificate or other approved documentation for purchase of the tubing and must pay retail sales tax to the seller. As ABC puts the tubing to use, it may keep track of when a package of tubing is put to exempt use with a medically prescribed oxygen system. ABC may then take on its excise tax return a tax paid at source deduction for the value of the package used.

(304) **Sellers must obtain required exemption documentation or information on any retail sales exempted from the retail sales tax.** Unless otherwise provided in this rule, sellers making retail sales to medical practitioners, nursing homes, and hospitals must obtain an exemption certificate approved by the department, such as a SSUTA exemption certificate, capture the relevant data elements required in completing a SSUTA exemption certificate, or otherwise meet the requirements of RCW 82.08.050(7) to document any tax-exempt sales of the products discussed in this rule when those businesses are the consumers. Information about exemption certificates may be obtained by:

- (a) Using the department's website at [dor.wa.gov/](http://dor.wa.gov/);
- (b) Reference to RCW 82.08.050(7); or
- (c) Calling the department's telephone information center at 1-360-705-6705.

#### **PART 4 - COMMON RETAIL SALES TAX AND USE TAX EXEMPTIONS**

(401) **What common retail sales tax and use tax exemptions apply to the sale of medical products?** This part of the rule provides a non-exhaustive list of retail sales tax and use tax exemptions available with respect to various medical products.

(402) **Sales of medical products pursuant to a prescription.** Most retail sales tax exemptions available for sales of medical products require that the item is purchased under authority of a prescription.

(a) **What is a prescription?** A "prescription" is an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe. See RCW 82.08.0281. The specific requirements for a prescription may differ depending on the item exempted and the RCW chapter under which the person issuing the prescription is licensed. Close attention must be paid to the details given for each specific exemption explained in the following subsections of this rule.

(b) **No automatic exemption.** A prescription does not automatically qualify a sale of a medical product for a sales tax or use tax exemption. Unless a specific exemption exists in statute for the sale or use of the item in question the item is not exempt, even with a prescription. For example, if a physician prescribes a regimen of exercise at the local fitness club, the mere issuance of the prescription

does not qualify the sales of that service for a retail sales tax exemption because no such exemption exists in statute.

(c) **When medical procedures are prescribed.** When a medical procedure is prescribed by a duly licensed practitioner authorized to prescribe the same, that overall prescription fulfills the prescription requirement (if any) for each eligible exempt item used in the procedure. For example, an orthopedic surgeon conducts joint replacement surgery for a patient's diseased joint. As part of that surgical procedure, prescription drugs and other eligible exempt items are used. The surgeon does not specifically issue a separate written prescription for each eligible exempt item. The surgeon's order for the surgical procedure and the oral directions provided by the surgeon during the procedure fulfill any prescription requirement for each eligible item used in an exempt manner during that procedure.

(d) **Dispensed pursuant to a prescription.** The purchase of drugs to be dispensed in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the body, by hospitals or other persons licensed to prescribe such drugs, are considered dispensed pursuant to a prescription and therefore exempt, providing the buyer gives the seller an exemption certificate or other approved documentation as discussed in Part 3 of this rule.

**(403) Sales tax and use tax exemptions available with respect to various medical products.**

(a) **Sales to a free hospital are exempt from sales tax and use tax.** RCW 82.08.02795 and 82.12.02745 provide retail sales tax and use tax exemptions for items sold to and used by a "free hospital" when those items are reasonably necessary for the operation of, and provision of health care by a free hospital. For the purpose of these exemptions, "free hospital" is a hospital that does not charge patients for health care provided by the hospital.

(b) **Sales of drugs for human use can be exempt from retail sales tax and use tax when sold under the authority of a prescription.** RCW 82.08.0281 and 82.12.0275 provide retail sales tax and use tax exemptions for drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. These exemptions apply to the distribution of "sample" prescription drugs provided free of charge to duly licensed practitioners authorized by the laws of this state to prescribe. For the exemptions to apply, the drug involved must be intended to interact with a specific patient through direct contact with that patient, whether applied internally or externally to the patient's body, or as part of a test conducted on a tissue sample taken from that patient. A seller is not required to collect sales tax when it obtains a properly completed exemption certificate indicating prescription drugs, intended for human use sold to medical practitioners, nursing homes, and hospitals, will be put to an exempt use under the authority of a prescription, captures the data elements described in subsection (304) of this rule, or otherwise meets the requirements of RCW 82.08.050(7). Otherwise, the retail sales tax must be collected. See Part 3 of this rule for information about exemption certificates and other approved documentation.

(c) **Sales of disposable devices used to deliver prescription drugs for human use.** RCW 82.08.935 and 82.12.935 provide retail sales tax and use tax exemptions for disposable devices used to deliver drugs for human use, pursuant to a prescription.

(i) **What are disposable devices used to deliver drugs?** "Disposable devices used to deliver drugs" include single-use items such as a single-use syringe, intravenous (IV) tubing, and IV catheters. A stand

or device that holds the tubing or catheter is not a disposable device used to deliver drugs.

(ii) **Example 8. Disposable devices.** A nursing home purchases single-use syringes, tubing used to deliver drugs, and stands used to hold the IV fluid containers. If the nursing home provides the seller with a completed "Sales Tax Exemption Certificate for Health Care Providers," or other approved documentation, retail sales tax does not apply to the purchase of single-use syringes and tubing. However, retail sales tax applies to the IV stands because the stands are "durable medical equipment," not disposable or single-use, and no specific exemption for them exists in the law. For information about durable medical equipment, see Part 2 of this rule.

(d) **Sales of "over-the-counter" drugs with a prescription are exempt from retail sales tax and use tax.** RCW 82.08.940 and 82.12.940 provide retail sales tax and use tax exemptions for over-the-counter drugs sold for human use, pursuant to a prescription. See subsection (205) of this rule for the definition of over-the-counter drug.

(i) **Example 9.** A patient's medical practitioner prescribes over-the-counter pain relief medication. The patient takes the prescription to a pharmacy. The sale of the over-the-counter drug is exempt from retail sales tax. In contrast, if the patient's medical practitioner simply recommends that the patient use an over-the-counter pain relief medication, without completing a prescription for the medication, the sale of the over-the-counter drug is subject to retail sales tax.

(ii) **Example 10.** A hospital makes bulk purchases of various over-the-counter drugs to dispense to patients pursuant to a doctor's prescription. The hospital's purchases of such drugs are exempt from retail sales tax providing the hospital gives the seller an exemption certificate or other approved documentation as discussed in Part 3 of this rule.

(iii) **Example 11.** An employer purchases drug test kits from a local drug store and administers them to current and prospective employees as a condition of employment. The employer's purchase of the drug tests is subject to retail sales tax because the tests are not prescribed by a licensed physician for the employees or prospective employees.

(e) **Dietary supplements (also known as nutrition products) with a prescription are exempt from retail sales and use taxes.** Sales of dietary supplements not covered by either of the retail sales tax or use tax exemptions for "food and food ingredients" are generally subject to retail sales tax or use tax. See RCW 82.08.0293 and 82.12.0293. However, RCW 82.08.925 and 82.12.925 provide specific retail sales tax and use tax exemptions for sales of "dietary supplements" for human use, pursuant to a prescription. A "dietary supplement" is any product, other than tobacco, intended to supplement the diet, and that satisfies all three of the criteria listed in (e)(i) through (iii) of this subsection.

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection.

(ii) Is intended for ingestion in tablet, capsule, powder, soft-gel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003. See RCW 82.08.0293.

(f) **Licensed naturopaths have their own retail sales tax and use tax exemptions available.** The sale or use of medicines of mineral, animal, and botanical origin which are prescribed, administered, dispensed, or used by a licensed naturopath in the treatment of a human patient are exempt from retail sales and use taxes. See RCW 82.08.0283 and 82.12.0277.

"Naturopathic medicines" are vitamins, minerals, botanical medicines, homeopathic medicines, hormones, and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the secretary of health. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW. See RCW 18.36A.020.

(g) **Drugs and devices used for family planning may be exempt.** RCW 82.08.0281 and 82.12.0275 provide sales tax and use tax exemptions for drugs and devices sold or used under certain conditions for family planning purposes. Family planning purposes include promoting, inhibiting, preventing, and determining of conception. This includes all single-patient use items, whether ingested, attached, or applied to persons for family planning purposes. Persons making tax-exempt sales of these drugs and devices to medical practitioners, clinics, or hospitals must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7) to substantiate the exempt nature of any sale, as discussed in Part 3 of this rule.

The purchase, sale, or use qualifies for exemption when either one of the following conditions exists:

- The drug or device is supplied by a family planning clinic that is under contract with the Washington state department of health to provide family planning services; or

- The family planning items are or will be dispensed to patients, pursuant to a prescription. Persons dispensing these items are required to obtain and maintain files of prescriptions to document the exempt nature of such sales.

(h) **Medically prescribed oxygen is exempt from retail sales tax and use tax.** RCW 82.08.0283 provides a retail sales tax exemption for sales of medically prescribed oxygen for an individual prescribed by a person licensed under chapter 18.57 RCW (Osteopathy—Osteopathic medicine and surgery) or chapter 18.71 RCW (Physicians) for use in the medical treatment of that individual. A comparable use tax exemption is provided in RCW 82.12.0277. Persons making tax-exempt sales of these items must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7) to substantiate the exempt nature of any sale as discussed in Part 3 of this rule.

(i) **What is medically prescribed oxygen?** The exemption for "medically prescribed oxygen" is not limited to gaseous or liquid oxygen (chemical designation O<sup>2</sup>). Medically prescribed oxygen is defined by



RCW 82.08.0283 to include, among other things, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems. The primary use of the equipment must be for the generation or storage of medically prescribed oxygen (O<sup>2</sup>). These systems include regulators, cannulae, masks, and similar items used to deliver the oxygen to the individual from the tax-exempt oxygen generation or storage device.

(ii) **Accessories may not be exempt.** Exempt medical oxygen systems are sometimes connected to the patient through taxable systems. The exemption for medically prescribed oxygen only applies to items up to the point the exempt oxygen system is connected to the taxable system. From that point of connection forward to the patient, masks, tubing, or other similar items remain part of the taxable system and are subject to retail sales tax.

(iii) **Examples.**

(A) **Example 12.** A physician prescribes oxygen for a patient. The patient rents an oxygen concentrator system and a separate cart to transport the system. The prescribed oxygen concentrator system can be rented exempt of sales tax. However, the exemption for "medically prescribed oxygen" does not include a separate cart used to transport a tax-exempt system. For information about durable medical equipment, see Part 2 of this rule. If the oxygen concentrator system and cart are rented for one nonitemized price the rental may be a bundled transaction. See Part 5 of this rule for information on how tax applies to a bundled transaction.

(B) **Example 13.** A physician prescribes a "continuous positive airway pressure (CPAP)" system for a patient diagnosed with a sleep apnea disorder. The CPAP system primarily supplies room air, under pressure, to keep the patient's airway passages open and thereby prevent obstruction of airflow in and out of the lungs. As a result, the sale of the CPAP system is subject to retail sales tax because it is not a system that satisfies the statutory definition of "medically prescribed oxygen." Note: Certain CPAP systems, when designed to be entirely worn on the body, can qualify for exemption from retail sales tax as prosthetic devices. See Part 2 of this rule for more information.

(C) **Example 14.** Assume the same facts for a CPAP system as provided in the previous example (h) (i) (B) of this subsection. In addition, the physician prescribes an oxygen trickle by which medical oxygen is provided to the patient from an oxygen tank through a tube attached to the mask of the CPAP system. The addition of an oxygen trickle does not change the purpose or taxability of any part of the CPAP system. The CPAP system does not generate or store oxygen and is not eligible for the exemption provided for medically prescribed oxygen. The oxygen, oxygen tank, and any tubing used to convey the oxygen is covered by the exemption for medically prescribed oxygen, but only up to the point that it attaches to the taxable CPAP system.

(i) **Insulin has its own specific exemption from retail sales tax and use tax - No prescription is required.** RCW 82.08.985 and 82.12.985 provide specific sales tax and use tax exemptions for insulin for human use. A prescription is not required for the sale of insulin to be exempt from tax.

(j) **Sales of laboratory reagents and other diagnostic substances may be exempt from retail sales and use taxes, under the right circumstances.** The definition of drug includes compounds, substances, or preparations (e.g., laboratory reagents and other diagnostic substan-

ces) used for the diagnosis of disease. Thus, sales of laboratory reagents and other diagnostic substances are not subject to retail sales tax when prescribed for an individual by a duly licensed practitioner and used to diagnose, cure, mitigate, treat, or prevent disease in humans. RCW 82.08.0281. A comparable use tax exemption is provided in RCW 82.12.0275. Laboratory reagents and diagnostic substances must physically interact with a specific patient's specimen to qualify for exemption. Persons making tax-exempt sales of these items must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7) to substantiate the exempt nature of any sale as discussed in Part 3 of this rule.

(i) **What are laboratory reagents and other diagnostic substances?**

"Laboratory reagents and other diagnostic substances" are substances employed to produce a chemical reaction in order to detect, measure, or produce, other substances. To be a diagnostic substance, the application of the substance to a patient's specimen must result in identification of the characteristics of a particular disease.

(ii) **Laboratory reagents, other diagnostic substances or prepared media when sold in a container.** Reagents, diagnostic substances, and prepared media often come prepared in a container (test tube, vial, cylinder, Petri dish, etc.) ready for use. It makes no difference to the taxability of the substance if it is sold with or without a container. The function of the substance determines its taxability. The term "prepared media" includes transport media if the resulting culture grown on the medium is used in performing diagnostic tests for specific patients.

(iii) **Laboratory reagents and other diagnostic substances.** This subsection provides examples of laboratory reagents and other diagnostic substances that may qualify for sales and use tax exemptions under RCW 82.08.0281 and 82.12.0275, provided all requirements for the exemptions are met. The following items are reagents or other diagnostic substances:

(A) Stains, dyes, and decolorizers that react with and cause a change in a cellular tissue. The substances are used to stain the cell tissues in a manner that will mark or highlight certain portions of cells;

(B) Decalcifying solution, dehydrating solution, and clearing agents that chemically react with the patient's specimen; and

(C) Test strips impregnated with a reagent which, when applied to a patient's specimen, test for indicators of a disease.

(iv) **What substances are not reagents?** Some substances are used solely for purposes of preparing specimens for examination and diagnosis or to facilitate examination of a specimen. Such substances do not themselves produce a chemical reaction resulting in the detection, measurement, or production of another substance. They merely facilitate or enable specimen testing and are not exempt under RCW 82.08.0281 or 82.12.0275. The following lists examples of substances and items which are not reagents:

(A) Paraffin that is extracted from a tissue specimen without having chemically altered the cells;

(B) Gelatin that is extracted out of the specimen before staining and leaves the cell structures unaffected;

(C) Electrodes;

(D) Tissue cassettes;

(E) Freezing medium;

(F) Liquid agar when used to gel patient specimens;

- (G) Test tubes or cylinders that do not contain a reagent;
- (H) Plain slides and cover slips that are not coated with a reagent;
- (I) Mounting medium to adhere the cover slip to the slide; and
- (J) Acids and other solutions when used for cleaning purposes.

(v) **What about reagents and diagnostic substances that can be used in more than one way (multiple use substances)?** Some reagents or other diagnostic substances have multiple uses, some of which may qualify for a sales or use tax exemption. Such substances are exempt only to the extent they are used as part of a test prescribed to diagnose disease in humans. For example, alcohol can be used either as a reagent (e.g., to react with a cellular tissue) or to clean counters, furniture, etc. Alcohol used as a cleaning agent is subject to retail sales or use tax. See Part 3 of this rule for guidance on when to apply retail sales tax to products with multiple uses, with both retail sales taxable and exempt uses being possible.

(k) **Sales of controls, calibrators, and standards used with laboratory test equipment are not exempt from retail sales and use taxes.** The sales tax and use tax exemptions provided by RCW 82.08.0281 and 82.12.0275 do not apply to drugs (compounds, substances, or preparations) used as a control, calibrator or standard in conjunction with the test of patient specimens in a medical laboratory.

(i) **What are controls?** A "control" is a material, solution, lyophilized (freeze-dried) preparation or pool of collected serum designed to be used in the process of quality control. Controls do not physically interact with a specific patient's specimen. The concentrations of the substances of interest in the control are known within limits determined during its preparation or before routine use. Controls are generally used with each test of patient specimens to validate the accuracy of that particular test.

(ii) **What are calibrators?** A "calibrator" is a material, solution, or lyophilized (freeze-dried) preparation designed to be used in calibration of medical laboratory machines. The values or concentrations of substances of interest in the calibration material are known within limits determined during its preparation or before use. Calibrators are generally used at specified intervals such as every eight hours, at midnight, or at shift changes, in accordance with the machine manufacturer's requirements or the requirements of administering agencies to verify the accuracy of the machine.

Calibrators are subject to retail sales tax or use tax because they are used to diagnose problems with machines and they do not physically interact with a patient's specimen to diagnose disease.

(iii) **What are standards?** A "standard" is a reference material of fixed and known chemical composition capable of being prepared in an essentially pure form. Standard also includes any certified reference material generally accepted or officially recognized as the unique standard used to test and calibrate medical lab equipment. Standards are often used in the original setup of medical lab equipment.

A standard is subject to retail sales tax and use tax because it is used to test and calibrate equipment and does not physically interact with a patient's specimen.

(l) **Sales of human blood, tissue, organs, or body parts may be exempt from retail sales and use taxes - No prescription or exemption certificate is required.** RCW 82.08.02806 provides a retail sales tax exemption for human blood, tissue, organs, bodies or body parts when used for medical research and quality control testing purposes. RCW 82.12.02748 provides a comparable use tax exemption.

(i) **Definitions of human blood, tissue, organs, or body parts.**

For the purposes of this exemption the following definitions apply:

(A) "Blood" means human whole blood, plasma, blood derivatives, and related products (e.g., bone marrow).

(B) "Tissue" includes human musculoskeletal tissue, musculoskeletal tissue derivatives, ligament tissue, skin tissue, heart valve tissue, human bone, and human eye tissue.

(C) "Organs" or "body parts" means a part of a human body having a special function.

(ii) **Materials consisting of both human and animal components.**

Materials consisting of both human and animal components are not "human blood, tissue, organs, or body parts" and do not qualify for this exemption.

(iii) **Sales of spermatozoa.** These retail sales tax and use tax exemptions do not apply to sales or purchases of spermatozoa (male reproductive cell).

(m) (i) Durable medical and mobility enhancing equipment - Retail sales tax or use tax applies in most cases. Retail sales tax or use tax applies to the sale or use of durable medical equipment and mobility enhancing equipment, unless a specific exemption applies. See subsections (202) and (204) of this rule for the definition of durable medical and mobility enhancing equipment.

(ii)(A) Mobility enhancing equipment - Complex needs patient exemption. Beginning on August 1, 2023, retail sales tax and use tax does not apply to the sale or use of mobility enhancing equipment when that equipment is purchased for or used by a complex needs patient. To qualify for this exemption the mobility enhancing equipment must meet the user's specific and unique medical, physical, or functional needs and capacities for basic activities when medically necessary to prevent hospitalization or institutionalization of the complex needs patient.

(B) For the purposes of this subsection (403)(m)(ii), "complex needs patient" means an individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities.

(C) This exemption includes repair service and replacement parts for mobility enhancing equipment.

(D) To claim this exemption, the buyer must provide the seller with a retail sales tax exemption certificate. The seller must retain a copy of the certificate for the seller's files. Information about exemption certificates may be obtained by:

(I) Using the department's website at dor.wa.gov;

(II) Reference to RCW 82.08.050(7); or

(III) Calling the department's telephone information center at 1-360-705-6705.

(n) **Sales of prosthetic devices may be exempt of retail sales and use taxes.** RCW 82.08.0283 provides a retail sales tax exemption for sales of prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices. The exemption includes repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving prosthetic devices. RCW 82.12.0277 provides a corresponding use tax exemption. Persons making tax-exempt sales of these prosthetic devices to medical practitioners, nursing homes, and hospitals, must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7)

to substantiate the exempt nature of any sale as described in Part 3 of this rule. See subsection (206) of this rule for the definition of prosthetic device.

(o) **Kidney dialysis devices are exempt of retail sales and use taxes with a prescription.** RCW 82.08.945 provides a retail sales tax exemption for sales of kidney dialysis devices for human use pursuant to a prescription. The exemption also includes repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving kidney dialysis devices. RCW 82.12.945 provides a comparable use tax exemption. For the purpose of this exemption, a "kidney dialysis device" is a device which physically performs the dialyzing or separating process on blood. Kidney dialysis device does not include other equipment or tools used in conjunction with a kidney dialysis device.

**Example 15.** A kidney dialysis device is wired to a dedicated backup generator that exists only to service the dialysis device when the main source of power is interrupted or is unavailable. Under those conditions the dialysis process cannot be performed without the use of the generator to power the dialysis device. Even so, the generator does not perform the actual dialysis process on the patient's blood and is not a kidney dialysis device.

(p) **Nebulizers are exempt of retail sales and use taxes with a prescription.** RCW 82.08.803 and 82.12.803 provide sales tax and use tax exemptions in the form of a refund for the sale or use of a nebulizer for human use pursuant to a prescription. A nebulizer is "a device, and not a building fixture, that converts a liquid medication into a mist so that it can be inhaled." The exemptions include repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving a nebulizer.

Under these exemptions, sellers must collect the tax on sales subject to these exemptions. To obtain a refund of tax paid, buyers must apply for a refund directly from the department by submitting a completed refund application form to the department and including the original sales receipt. Any buyer submitting an application for refund should refer to WAC 458-20-229 or use the department's website at [dor.wa.gov/content/ContactUs](http://dor.wa.gov/content/ContactUs).

(q) **Ostomic items are exempt of retail sales and use taxes - No prescription is required.** RCW 82.08.804 and 82.12.804 provide specific sales tax and use tax exemptions for ostomic items for colostomy, ileostomy, or urostomy patients. "Ostomic items" are disposable medical supplies used by colostomy, ileostomy, and urostomy patients and include bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and related supplies. "Ostomic items" do not include undergarments, pads and shields to protect undergarments, sponges, or rubber sheets. A prescription is not required for the sale of ostomic items to be exempt from tax.

## PART 5 - BUNDLED TRANSACTIONS

(501) **What is a bundled transaction?** A "bundled transaction" is the retail sale of two or more products, except real property and services to real property, where:

- The products are otherwise distinct and identifiable; and
- The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the buyer of the products included in the transaction.

(a) **How are bundled transactions generally taxed for retail sales tax purposes?** A transaction is generally considered a bundled transaction subject to retail sales tax if more than 10 percent of the purchase price or sales price is attributable to retail sales taxable products. RCW 82.08.190 and 82.08.195.

(b) **Exception.** A transaction which otherwise meets the definition of a "bundled transaction" is not a bundled transaction when both of the following are true:

(i) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies; and

(ii) The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

(502) **How are kits (or trays) used for medical procedures taxed if they contain a combination of individually taxable and nontaxable items?** Medical procedure kits are often purchased as a plastic-wrapped package that includes the various items needed to perform a particular medical procedure. A procedure kit can combine items that are either subject to retail sales tax or exempt from retail sales tax if sold separate from a kit or tray, as individual items. However, when a kit involves a bundled transaction sold for one nonitemized price, the sale of the entire kit is either subject to retail sales tax or exempt. This subsection explains how to determine whether a particular medical procedure kit is subject to or exempt from retail sales tax. Persons making a tax-exempt sale of a kit must obtain an exemption certificate from the buyer that lists the general item types within the kit that are exempt as discussed in Part 3 of this rule, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7). If a particular item within a kit is only exempt pursuant to a prescription, the item (or the procedure in which the item is used) must be prescribed by a duly licensed practitioner authorized by the laws of this state to prescribe the same.

**Example 16.** A glucose testing kit is prescribed for a human patient. The kit includes a glucose meter, five sample test reagent strips, and a lancet. The glucose meter is durable medical equipment, has a purchase price of \$40.00, and is subject to retail sales tax when sold separately. (See Part 2 of this rule for more information concerning durable medical equipment.) The lancet is a single-use tool not covered by any exemption, has a purchase price of \$40.00, and is subject to retail sales tax when sold separately. In this case, the test reagent strips qualify as disposable drug delivery devices, have a purchase price of \$20.00, and are exempt from retail sales tax when sold separately pursuant to a prescription. The total purchase price of the kit is \$100.00.

To determine if the full purchase price of the kit is subject to retail sales tax, the purchase (or sales) price of the taxable components should be compared to the total purchase (or sales) price of the kit. If the taxable components exceed 50 percent of the price, the entire kit is subject to retail sales tax. In this case, the purchase price for both the glucose meter and lancet ( $\$40.00 + \$40.00 = \$80.00$ ) are more than 50 percent of the total kit purchase price of \$100.00. Therefore, retail sales tax is due on the sale of the kit. But if the

taxable components were 50 percent or less of the total kit purchase price, sales tax would not be due on the kit.

## WSR 24-03-135

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 23, 2024, 10:12 a.m., effective February 23, 2024]

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

Purpose: The department of revenue is updating WAC 458-20-15503 to recognize 2023 legislation to repeal former RCW 82.12.02088, which was superseded by RCW 82.12.0208(7). This update amends the rule to incorporate reference to current definitions and citations.

Citation of Rules Affected by this Order: Amending WAC 458-20-15503 Digital products.

Statutory Authority for Adoption: RCW 82.02.060 and 82.12.0208.

Adopted under notice filed as WSR 23-23-068 on November 9, 2023.

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 1, Repealed 0.

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

Date Adopted: January 23, 2024.

Atif Aziz  
Rules Coordinator

**OTS-5072.1**

AMENDATORY SECTION (Amending WSR 16-04-099, filed 2/2/16, effective 3/4/16)

**WAC 458-20-15503 Digital products.** This rule provides a structured approach for determining tax liability for digital products and digital codes. For purposes of this rule, a digital product includes digital goods or digital automated services, which are described in detail below. The sale or use of digital products and digital codes is generally subject to retail sales or use tax unless purchased for resale or some other exemption applies.

This rule is organized into six parts. Each part addresses a question or topic relevant to the determination of whether a person is selling or purchasing a digital product or digital code and, if so, what are the tax consequences that follow from such activity. In this respect this rule is intended to function similar to the decision tree provided in ETA 9003.2010.

1. Part 1: Are the products or services transferred electronically? If yes, go to Part 2.

2. Part 2: Does the product or service meet the general definitions of digital product or digital code? If yes, go to Part 3.



3. Part 3: Are there applicable exclusions from the general definitions of the digital product or digital code? If no, go to Part 4.

4. Part 4: Are the sales of the digital product or digital code sourced to Washington? If yes, go to Part 5.

5. Part 5: Are there applicable retail sales or use tax exemptions for the purchase or use of the digital product or digital code? If no, the transaction is likely taxable in Washington.

6. Part 6: Miscellaneous provisions.

Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances. Additionally, each fact pattern in each example is self contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

### **Part 1. Are the Products or Services Transferred Electronically?**

(101) **Introduction.** Products or services must be transferred electronically in order to be digital products. If a product is transferred by means of a tangible storage media (e.g., compact disc, magnetic tape, hard drive, etc.), it is not a digital product. Digital codes need not be transferred electronically in order to be digital codes, but may be obtained by any means, including tangible storage media.

(102) **Transferred electronically.** Means the purchaser obtains the product by means other than tangible storage media. Generally, this means the product is transferred using the public internet, a private network, or some combination. However, it is not necessary that the product be delivered to the purchaser. As long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser. For example, whether a digital movie is downloaded by the user or streamed by the user, it is considered to be "transferred electronically." Alternatively, the same movie purchased on tangible media (e.g., DVD, etc.) is the purchase of tangible personal property and is not considered to be either the sale of a digital product or transferred electronically.

### **Part 2. Does the Product or Service Meet the General Definition of Digital Product or Digital Code?**

(201) **Introduction.** The term "digital product" means (1) digital goods and (2) digital automated services. Digital products transferred to an end user are generally subject to retail sales or use tax regardless of whether the purchaser's right of use is permanent, less than permanent (e.g., 24-hour period), or the purchaser is obligated to make continued payments as a condition of the sale (e.g., "subscriptions").

(202) **Digital goods.** Means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, with certain exclusions discussed in Part 3 of this rule. The term "digital goods" includes within it the specific term "specified digital products" (as required by the Streamline Sales and Use Tax Agreement). The sale of a digital good is generally subject to retail sales tax and retailing business and occupation (B&O) tax.

(a) **Specified digital products.** Means electronically transferred digital audio-visual works, digital audio works, and digital books.

(i) **Digital audio works.** These are products that result from the fixation of a series of musical, spoken, or other sounds. Digital audio works include ringtones, recorded or live music, readings of books or other written materials, speeches, and other sound recordings. For example, a music file in MP3 format accessed or downloaded through the internet is a digital audio work.

(A) A "ringtone" is a digitized sound file that is downloaded onto a communication device (e.g., mobile phone) and may be used to alert the user to an incoming communication such as a call or text message.

(B) A ringtone does not include "ring-back tones" or other digital audio files that are not stored on the purchaser's communication device. In other words a ring-back tone is not a "specified digital product." A ring-back tone may be a digital automated service or a digital good depending on the facts. See analysis for digital automated services in subsection (203) of this rule.

(ii) **Digital audio visual works.** These products are a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Digital audio visual works include movies, music videos, videos of live events, and news and entertainment programs. For example, a movie downloaded or accessed via the internet is a digital audio visual work.

(iii) **Digital books.** These are books in a digital format that are generally recognized in the ordinary and usual sense as books. A digital book does not include periodicals, magazines, newspapers, chat rooms, or weblogs. For example, a cookbook in a PDF format downloaded or accessed through the internet is a digital book.

(b) **Other digital goods.** The following list illustrates the types of products that are also digital goods in addition to the subclass of "specified digital products" discussed above. This list is merely illustrative and not exhaustive:

(i) A digital schematic of a lawnmower engine transferred electronically.

(ii) A digital car history report transferred electronically.

(iii) A digital picture transferred electronically.

(iv) Digital periodicals or magazines transferred electronically.

(v) A digital presentation that includes still photos and accompanying audio content transferred electronically.

(c) **Digital goods prior to July 26, 2009.** The mere accessing or streaming of a digital good was not a retail sale before July 26, 2009. Instead, accessing or streaming a digital good was subject to the service and other activities B&O tax. The sale of a digital good to a customer who downloaded the digital good was a retail sale. See Part 6, subsection (604) of this rule for a discussion of tax amnesty for past periods.

(203) **Digital automated services.** Means services transferred electronically that use one or more software applications. The sale of a digital automated service is generally subject to retail sales tax and retailing B&O tax.

(a) **Digital automated services may include.** One or more software applications either prewritten or custom, as well as components that are similar to stand-alone digital goods. For example, an online information service may contain data, facts, or information the use of which is facilitated by one or more software applications that provide search capabilities and other functionality. Thus, digital automated services will include software and may include elements similar to

stand alone digital goods, which operate together in an integrated fashion to provide an electronically transferred service.

**Example 1.** BFC provides an online service that facilitates apartment building management. The online service lists and advertises apartment vacancies, screens applicants, routes maintenance requests, and accepts and processes rental payments. In this example the software based service facilitates and automates various administrative functions and coordinates third-party services for apartment renting. The service is a digital automated service the sale of which is generally subject to retail sales tax and retailing B&O tax.

**Example 2.** QPR provides a service that uses one or more software applications to "crawl the internet" in order to identify, gather, and categorize digital information according to specified criteria. In this example software facilitates the gathering, identifying and categorizing of information acquired from the internet. The service is a digital automated service the sale of which is generally subject to retail sales tax and retailing B&O tax.

(i) **Distinguishing a digital good from digital automated services.** A digital good is not a service involving one or more software applications. A digital good consists solely of images, sounds, data, facts, information or any combination thereof. Clear examples of digital goods are digital books, digital music, digital video files, and raw data.

**Example 3.** XYZ provides an online service that uses one or more software applications to facilitate the use of news and information with features such as: Research history, natural and boolean searching, industry chat forums, chart creation, document and word flagging, and information organizing folders. In this example software features facilitate the search of the news or information. XYZ's service is a digital automated service the sale of which is subject to retail sales tax and retailing B&O tax.

**Example 4.** Company sells digital music files (i.e., digital goods) on its website. In order to locate specific digital music files customers may use a free software based search function that is integrated into Company's website. Customers may also find the digital music file they are seeking by clicking on a series of links to get to the desired music file. Company's software based search function associated with the sale of the digital music file does not transform the sale of the digital music file into a digital automated service. Company is selling a digital good (i.e., music file) subject to retail sales tax and retailing B&O tax.

(ii) **Distinguishing remote access prewritten software from digital automated services.** Remote access prewritten software (defined in RCW 82.04.050 (6)(b)) is solely prewritten software that is made remotely accessible from the vendor's server or other third-party server for a customer. To the extent that components similar to digital goods and/or additional services are supplied with the prewritten software the sale may be the sale of a digital automated service (see also Part 3, subsection (303)(h) of this rule).

**Example 5.** CFC provides an online gaming service that allows subscribers to play a game with other subscribers in a real time multiplayer environment using software accessed via the internet. In this example the gaming software is combined with additional capabilities that enable a real time multiplayer environment that is not otherwise available. The service is a digital automated service, the sale of which is generally subject to retail sales tax and retailing B&O tax.

**Example 6.** Company sells prewritten word processing software that is accessed by customers but hosted on Company's computers. The software includes access to clip-art image files that can be inserted into documents created with the remotely accessed prewritten word processing software. Company is selling remote access prewritten software and not a digital automated service or digital goods. The clip art made available with the software does not transform the remotely accessed prewritten software into a digital automated service or a digital good. Company is selling remote access prewritten software subject to retail sales tax and retailing B&O tax.

(b) **Digital automated service prior to July 26, 2009.** The sale of a digital automated service to consumers was not a retail sale before July 26, 2009. Generally, income earned from such sales was subject to B&O tax under the service and other activities classification.

(204) **Digital codes.** These are codes that provide a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same retail sales and use tax treatment. A digital code may be obtained by any means, including email or by tangible media regardless of its designation as song code, video code, book code, or some other term. For example, a digital code includes the sale of an alphanumeric code that, when entered online at a website, provides the customer with a digital music file for download.

(a) **Products with mixed tax treatment.** Codes that provide the right to obtain one or more products that do not have the same retail sales and use tax treatment are not digital codes.

(b) **Codes that represent a stored monetary value, redeemable cards, gift cards, or gift certificates.** Codes that represent a stored monetary value that is deducted from a total as it is used by the purchaser or that represent a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value, are not digital codes.

**Example 7.** Calvin purchases a code at his local grocery store for use on Joe Seller's (JS) website. At check out, Calvin tells the grocery store clerk to put \$25.00 in value on the plastic card containing the code. Calvin then goes to JS's website and inputs the code from the card. The \$25.00 value of the card is stored in Calvin's "account" and can be used on any purchase by Calvin from JS's website. Calvin then purchases five digital songs for \$5.00 from JS. At check-out from JS's website, \$5.00 is deducted from Calvin's account to pay for the songs. When the transaction is complete, Calvin has a \$20.00 balance remaining in his account on JS's website. Because the code represents a stored monetary value it is not a digital code and the sale of the code is not subject to retail sales tax or retailing B&O tax.

### **Part 3. Are There Applicable Exclusions from the General Definitions of Digital Product and Digital Code?**

(301) **Introduction.** For certain products or services transferred electronically that otherwise meet the definition of digital good or digital automated service (as discussed in Part 2) there may be a specific exclusion from the applicable definition. If an exclusion applies, then the product or service will generally not be considered a digital good or digital automated service for retail sales and use tax purposes. For example, a service that is transferred electronically and that uses one or more software applications will generally be subject to retail sales tax as a digital automated service. However, if the service is an advertising service, then an exclusion applies, and

the service will not be a digital automated service subject to retail sales tax; however, the service may still be subject to B&O tax. An excluded service may also still be subject to retail sales tax under certain circumstances. For example, telecommunications services are excluded from the definition of digital automated services, but remain subject to retail sales tax under their own separate definition of retail sale.

(302) **Exclusions from the definition of digital good are:**

(a) **Telecommunications and ancillary services** as defined in RCW 82.04.065. These services may be used to distribute digital goods, digital automated services, and digital codes, but are not themselves any of these products.

(b) **Computer software** as defined in RCW 82.04.215 and WAC 458-20-15502. These are coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(c) **The internet and internet access** as defined in RCW 82.04.297.

(d) **Professional or personal services** represented in electronic form are not a digital good. This exclusion applies where the service primarily involves the application of human effort by the service provider, and the human effort originated after the customer requested the service. For example, an electronic engineering report created at the customer's request that reflects an engineer's professional analysis, calculations, and judgment, which is sent to the customer electronically, is considered evidence of a professional service and not a digital good.

**Photography.** This exclusion for professional or personal services does not apply to photographers in respect to amounts received for the taking of digital photographs that are transferred electronically to the end user/customer as defined in RCW 82.04.190(11). See Example 39 for an example of a nonend user transaction involving photography that is subject to royalties B&O tax.

(e) **Exclusions listed directly below for digital automated services** are also exclusions from the definition of digital good.

(303) **Exclusions from the definition of digital automated service are:**

(a) **Services that require primarily human effort by the seller** and the human effort originated after the customer requested the service. In this context, "primarily" means greater than ~~((fifty))~~ 50 percent of the effort to perform the service involved human labor. To determine whether the ~~((fifty))~~ 50 percent or greater threshold is satisfied, the average of the time and cost factors is considered. The time factor is determined by dividing the time spent to perform the human effort portion for customers by the total time spent performing the service. The cost factor is determined by dividing the direct costs incurred to perform the human effort portion for customers by the total direct costs incurred to perform the service. Direct costs of the human effort component include salaries, employee benefits and similar direct costs. Direct costs of the automated component include the cost of software, computers, hosting services and other similar direct costs. If the average of the time and cost factors is greater than ~~((fifty))~~ 50 percent then the service requires primarily human effort and is not a digital automated service in which case the service will generally be subject to service and other activities B&O tax.

**Example 8.** RepuCo.com performs a reputation monitoring service on the internet for its clients. The service utilizes software and other technology that searches the internet for websites that allow posting of information that may be harmful to RepuCo.com's client's reputation

("the automated component"). If the automated component finds a website that is posting erroneous or harmful information about one of ReputCo.com's clients, then a ReputCo.com employee will contact the owner of the website by phone or email and work with the owner and the client to resolve the matter to the satisfaction of the client ("the human effort component"). If the human effort time factor is 20% and the human effort direct cost factor is 60%, then the average of the two factors is 40% ( $80\%/2 = 40\%$ ). Accordingly, the service is performed using 40% human effort which is less than 50% and therefore the service does not require primarily human effort and is subject to retail sales tax as a digital automated service.

**Alternative methods.** If the time and cost factors in this rule do not fairly represent the extent to which the service is performed using primarily human effort, the taxpayer may ask in writing for, or the department may require, the employment of another reasonable method to equitably determine whether the service is performed using primarily human effort.

(b) **Loaning or transferring money or the purchase, sale, or transfer of financial instruments.** For purposes of this rule, "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options. For example, the electronic transfer of money from a savings account to a checking account, whether done for the customer by a bank teller or by an ATM machine, is excluded from the definition of digital automated service.

(c) **Dispensing cash or other physical items from a machine.** Includes an ATM that dispenses cash to users.

(d) **Payment processing services,** including services such as electronic credit card processing activities conducted online or in physical retail stores via electronic transmission.

(e) **Parimutuel wagering and handicapping contests** as authorized by chapter 67.16 RCW.

(f) **Telecommunications services and ancillary services** as those terms are defined in RCW 82.04.065. For additional information, refer to the discussion above concerning the comparable exclusion from the definition of digital goods (see Part 3, subsection (302)(a) of this rule).

(g) **The internet and internet access** as those terms are defined in RCW 82.04.297.

(h) **Remote access prewritten software.** Remote access prewritten software (defined in RCW 82.04.050 (6)(b)) provided on a standalone basis is excluded from the definition of digital automated service. However, software that is used in connection with a service that is transferred electronically would generally be included in the definition of a digital automated service.

**Example 9.** Company sells prewritten gaming software that is identical in all substantive respects to the same software available in stores for individual use and installation on home computers except that it is hosted on Company's servers and accessed by customers. Company's sales to consumers would be treated as a sale of remote access prewritten software and therefore is excluded from the definition of digital automated services and generally subject to retail sales tax and retailing B&O tax.

**Example 10.** Same facts as Example 9 except that Company uses the remote access prewritten software to provide a monthly subscription service that provides a real item multiplayer environment. Company is

selling a digital automated service. In this case the customers are not merely receiving the individual use of software, but instead an online gaming service facilitated by the software. Thus, the monthly subscription service is not excluded from the definition of digital automated service and is subject to retail sales tax and retailing B&O tax.

(i) **Online education programs** provided by the following:

(i) Public or private elementary or secondary schools; or

(ii) An institution of higher education as defined in Sections 1001 or 1002 of the federal Higher Education Act of 1965 (Title 20 U.S.C. Sections 1001 and 1002), as existing on July 1, 2009. This would include most colleges and universities. For the purposes of this rule, an online educational program must be encompassed within the institution's accreditation.

**Example 11.** ABC University, a qualifying institution of higher education under the federal Higher Education Act of 1965, provides an accredited online Spanish course for which it charges a quarterly access and use fee to students. The course is remotely accessed by students logging into a website and accessing a fully interactive program that includes components of video, text, and audio, as well as extensive software code. This service would generally be considered a digital automated service. However, it is specifically excluded from the definition of digital automated service as an online educational program and may be subject to service and other activities B&O tax if another exclusion, deduction, or exemption does not apply.

(j) **Live presentations** such as lectures, seminars, workshops, or courses, where participants are connected to other participants and presenters via the internet or other networks, allowing the participants and the presenters to provide, receive, and discuss information together in real time.

**Example 12.** Company provides an online seminar service for Customer. Company provides a panel of live speakers that make a presentation to Customer's employees listening to and viewing the seminar through an internet connection supplied by a third-party service provider. The seminar allows Customer's employees and panelists to ask and answer questions on a real time basis. Company's online seminar service is transferred electronically and uses one or more software applications and therefore would generally be considered a digital automated service. However, this type of service allowing live interaction is specifically excluded from the definition of digital automated service and would generally be subject to service and other activities B&O tax.

**Example 13.** Same facts as Example 12 except that Company records the seminar and charges other individuals a fee for accessing the seminar from Company's website. The recorded presentation allows these customers to watch the presentation but it does not allow them to ask questions on a real time basis. Because the presentation was prerecorded there is no live interaction contemporaneous with the presentation and therefore Company is selling a digital good generally subject to retail sales tax and retailing B&O tax.

**Example 14.** Company provides online training courses to Steve for a fee. The training courses provide key interactive elements such as study guides, knowledge testing, and automated help, all facilitated by one or more software applications. Such courses are not live presentations and do not provide human interaction. Accordingly, Company is selling a digital automated service generally subject to retail sales tax and retailing B&O tax.

(k) **Travel agent services**, including online travel services, and automated systems used by travel agents to book reservations.

(l) **Online marketplace related activities**, which are services that allow the person receiving the services to make online sales of products or services, digital or otherwise, using either:

(i) The service provider's website; or

(ii) The service recipient's website, but only when the service provider's technology is used either to:

(A) Create or host the service recipient's website; or

(B) Process orders from customers using the service recipient's website.

**Example 15.** Company provides an "electronic marketplace" service to Holcomb that allows Holcomb to list and sell his coffee mugs on the internet using Company's website. This online marketplace service is excluded from the definition of digital automated services and charges for the service would generally be subject to service and other activities B&O tax.

**Example 16.** Same facts as Example 15, except that now Holcomb decides he no longer wants to be just another seller on Company's website. Instead, Holcomb wants his own "retailing presence" on the internet so Holcomb contracts with Company to create and host Holcomb's new coffee mug website, "HolcombsCoffeeWorld.com." This is still an online marketplace service that is excluded from the definition of digital automated services and charges for the service would generally be subject to service and other activities B&O tax.

(iii) **Exclusion limitation.** The services described in this subsection do not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service. For instance, in Examples 15 and 16, the sale by Holcomb of coffee mugs would still generally be subject to retail sales tax and retailing B&O tax as the sale of tangible personal property.

(m) **Advertising services** means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include: Layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration.

**Example 17.** Company provides marketing services to customers wishing to promote their products using the internet. Amy sells widgets on the internet and hires Company to market her products. Company consults with Amy on her marketing needs and then creates a marketing plan for her business. Company also creates and distributes online banners, links, and targeted "email blasts" that promote Amy's business. All of the services provided by Company are advertising services excluded from the definition of digital automated services and would generally be subject to service and other activities B&O tax.

**Example 18.** RVP, Inc. creates "sponsored links" on its website that drive customer traffic to Amy's website. RVP is paid by Amy for each click on a sponsored link on RVP's website. The services provided by RVP are advertising services excluded from the definition of digi-



tal automated services and charges for such would generally be subject to service and other activities B&O tax.

(n) **Storage, hosting, and back-up.** The mere storage of digital products, digital codes, computer software, or master copies of software is excluded from the definition of digital automated services. This exclusion includes providing space on a server for web hosting or backing-up data or other information.

**Example 19.** Company charges Rowe a fee for 25 terabytes of storage space under its "basic storage service" offering. Company also charges Rowe an additional and optional fee for its "premium service" package offering, which involves services beyond mere storage. The "basic storage" services are mere storage services and excluded from the definition of digital automated services. These services would generally be subject to service and other activities B&O tax. However, the charges for the optional premium services are more than mere storage or hosting services. As such, the premium services are not excluded from the definition of digital automated services and would generally be subject to retail sales tax and retailing B&O tax.

(o) **Data processing services** means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to: (i) Extract the required information in an appropriate form, or (ii) to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include remote access prewritten software used by the customer to process their own data.

**Example 20.** Bango Corp., in preparation for litigation, hires Company to use its automated technology to search Bango's computers and gather documents relevant to the lawsuit. Company's service also provides software tools that allow Bango to categorize, copy, store, and notate the gathered documents. Company's service is not data processing. The services performed primarily involve gathering data, and providing software tools that allow the customer to categorize, copy, store and notate documents in preparation for litigation. Accordingly, Company is selling a digital automated service generally subject to retail sales tax and retailing B&O tax.

**Example 21:** Company provides check processing services to Wallo Corp., a bank operating in Washington. Company accepts scanned checks provided by Wallo and then uses its software and technology to extract the check dollar amount, account number, and verify the check has been signed. Company then provides this extracted and reformatted data back to Wallo allowing it to reconcile its customer's accounts. Company provides data processing services which are excluded from the definition of digital automated services. These services would generally be subject to service and other activities B&O tax.

**Example 22.** Same facts as Example 21, except that Company accepts checks provided directly by Wallo's customers. Thus, check images come from both Wallo and Wallo's customers. The services provided by Company are still data processing services excluded from the definition of digital automated services even though the data does not come exclusively from Wallo. These services would generally be subject to service and other activities B&O tax.

#### **Part 4. Are the Sales of the Digital Product or Digital Code Sourced to Washington?**

(401) **Introduction.** Once it is determined that a transaction involves the sale of a digital product or digital code, the sale must be sourced to Washington in order to be subject to Washington's retail sales tax and B&O tax. If the sale is sourced outside Washington it is not subject to Washington sales tax or B&O tax. Sales of digital products are sourced using the same statute that applies to other retail sales, RCW 82.32.730 as outlined below.

(402) **Sourcing retail sales.**

(a) **Business location.** When a digital product or digital code is received by the buyer at a business location of the seller, the sale is sourced to that business location.

**Example 23.** Frank goes to BigBox brick-and-mortar store in Washington and purchases a music file from an electronic kiosk in the store. Frank purchases and downloads the music file inside BigBox's store by connecting his digital music player to the kiosk in the store. The sale of the music file is sourced to BigBox's store location in Washington and is generally subject to retail sales tax and retailing B&O tax.

(b) **Place of receipt.** If the first sourcing rule explained above in (a) of this subsection does not apply, the sale is sourced to the location where receipt takes place.

(i) The digital product or digital code may be received by the buyer at the buyer's location or by the buyer's donee (e.g., a gift recipient) at the donee's location.

(ii) In the context of digital products and digital codes, "receive" and "receipt" means: (A) Making first use of digital automated services; or (B) taking possession or making first use of digital goods or digital codes, whichever comes first.

**Example 24.** Drogba Inc., located in Olympia, Washington, purchases a digital automated service generally subject to retail sales tax from Company. Drogba's employees access and make first use of the service at their computer workstations located in Olympia. Company knows that the digital automated service is received in Olympia and therefore will source the sale of the digital automated service to that location.

(c) **Address in records.** If the first two sourcing rules explained in (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer that is available from the seller's business records maintained in the ordinary course of business, so long as use of this address does not constitute bad faith. For example, any address of the buyer held by the seller that reasonably estimates the receipt location will be sufficient, including an address contained in a relevant service contract or an address used for accounts receivable purpose.

**Example 25.** Nani Corp., located in California, purchases a digital automated service generally subject to retail sales tax and retailing B&O tax from Company located in Washington. The purchase contract between Nani and Company provides that Nani may have 5 users access the digital automated service. Company does not know where the digital automated service is actually received. However, Company has Nani's California address in its business records and will therefore source the sale to Nani's California address. Because the sale is sourced outside Washington, it is not subject to Washington's retail sales tax or retailing B&O tax. Note, to the extent that Nani Corp., receives the service at locations in Washington, it may have a use tax liability. See subsection (403) of this rule for more on use tax.

(d) **Address obtained during sale.** If the first three sourcing rules explained in (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer obtained during the consummation of the sale. For example, an address obtained during consummation of the sale would include the address of a buyer's payment instrument (e.g., billing address for a credit card), if no other address is available, so long as use of this address does not constitute bad faith.

**Internet protocol (IP) address.** The buyer's IP address is acceptable location information obtained at the time of sale if an address cannot otherwise be obtained during consummation of the sale.

(e) **Origin.** If the first four sourcing rules explained in (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the sale must be sourced to the location determined by the address from which the digital good or digital code was first available for transmission by the seller, or from which the digital automated service was provided. Any location that merely provided the digital transfer of the product sold shall be disregarded.

(403) **Sourcing for use tax purposes.** The sales sourcing rules above in subsection (402) of this rule are for sourcing sales subject to retail sales tax under RCW 82.08.020 and RCW 82.32.730. What follows below is a discussion of use tax reporting obligations with respect to digital goods, digital automated services, and digital codes. Generally, use tax applies to the use of a digital product or digital code in Washington if retail sales tax has not already been paid and no exemption otherwise applies.

(a) **Digital good or digital code.** "Use" means the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code.

(b) **Digital automated service.** "Use" means the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service.

**Example 26.** Company, located in New York, sells a digital automated service generally subject to retail sales tax and retailing B&O tax to Lampard Inc., located in Washington. Lampard's employees in Washington use the internet to access Company's services using an internet web browser. However, Company does not have nexus with Washington and is therefore not required to charge and collect retail sales tax on the sale of its service to Lampard. Lampard has a use tax reporting obligation because it uses, enjoys, or otherwise receives the benefit of Company's digital automated service at its location in Washington.

## **Part 5. Are there Applicable Retail Sales or Use Tax Exemptions for the Purchase or Use of the Digital Product or Digital Code?**

(501) **Introduction.** After determining that a digital product or digital code has been sold or used and the sale or use is sourced to Washington, exemptions from retail sales or use tax should be examined. What follows is not an exhaustive list of exemptions but instead an explanation of the most common exemptions for digital products. Some exemptions may apply only with respect to certain digital products (e.g., some exemptions apply only to digital goods, not digital automated services). Exemptions may also require an exemption certificate or reseller permit.

(502) **Resale.** The purchase of a digital product or digital code for resale with no intervening use is not subject to retail sales or use tax. Sellers should obtain from buyers a copy of the buyer's reseller permit, a properly completed "Digital Products and Remote Access Software Exemption Certificate," or otherwise comply with RCW 82.04.470 to substantiate the wholesale nature of the sale. See RCW 82.32.780.

(503) **Component of a new product.** Generally, purchasing, acquiring, owning, holding, or using any digital product or digital code for purposes of incorporating it into a new product for sale will not be subject to retail sales tax. The digital product or digital code must become a component of the new product for sale. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product. RCW 82.04.190(11). This is also discussed in subsection (602) of this rule in the context of wholesale sales.

**Product.** For purposes of this subsection, "product" means a digital product, an article of tangible personal property, or remote access prewritten software as defined in RCW 82.04.050 (6)(b). For example, an industrial drill manufacturer and seller combines hardware, software, and data to create a new product, a "smart drill." Software embedded in the drill uses the variance data (also embedded in the drill) to control the hardware during drill operations. The data is a digital good purchased for use as a component of a new product for sale (i.e., the drill). Sellers should obtain from buyers a copy of the buyer's reseller permit, a properly completed "Digital Products and Remote Access Software Exemption Certificate," or otherwise comply with RCW 82.04.470 to substantiate the wholesale nature of the sale.

(504) **Made available free to the general public.** Retail sales and use tax does not apply to the purchase or use by a business or other organization of a digital product (including a digital product acquired through the use of a digital code) in order to make that digital product (1) available free of charge for the use or enjoyment of (2) the general public. Buyers claiming this exemption must provide the seller with a properly completed "Digital Products and Remote Access Software Exemption Certificate" or other exemption certificate acceptable to the department. See RCW 82.08.02082.

(a) **Available for free.** In order to qualify, the digital product purchased must be made available for free. In this context, "free" means that the recipient of the digital product does not need to provide anything of significant value. If the purchaser requires something of significant value from the recipient in exchange for the digital product, it is not given away for free.

**Example 27.** Mauro purchases 1,000 digital music files from Company to be used for a "give away" to the first 1,000 people to visit Mauro's website. When people visit Mauro's website they are required to fill out a marketing survey before they may receive a digital music file. The information gathered from the marketing survey is then sold to a marketing company by Mauro. Thus, Mauro has required that recipients provide something of significant value in exchange for the digital music file. This is not a "free" transaction and therefore, Mauro's purchase of the digital music from Company does not qualify for the exemption and would be subject to retail sales tax and retailing B&O tax. (See also Example 29.)

(b) **"General public"** means all persons and is not limited or restricted to a particular class of persons, except that the general public includes:

(i) **Certain classes of persons defined by their residency or property ownership.** The general public includes a class of persons residing or owning property within the boundaries of any state (e.g., Washington), political subdivision of a state (e.g., King County), or a municipal corporation (e.g., Seattle).

**Example 28.** The City of Evergreen (a municipal corporation) makes satellite images of land parcels available for free only to persons residing in Evergreen. Residents are required to enter their zip code prior to accessing the images and certify that they are a resident of the City. Accordingly, the City of Evergreen can purchase the satellite images exempt from retail sales tax.

(ii) **Library customers.** With respect to libraries, the term general public includes authorized library patrons.

(c) **Buyer must have the legal rights to provide the digital product to the general public.** The exemption provided in this subsection does not apply unless the purchaser has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the digital product, in whole or in part, to the general public.

**Example 29.** Same facts as Example 27, except this time visitors to Mauro's website are provided free access to the digital music files and no survey information is required in exchange. Additionally, Mauro purchased the digital music files from Company with the right to distribute them to the general public. Mauro also provided the seller with an exemption certificate. Accordingly, Mauro's purchase from Company qualifies for the exemption because he has made the digital audio files available free of charge to the general public pursuant to a contract that gives him rights of distribution. Mauro only purchased 1,000 files and therefore must limit the distribution to the first 1,000 people. Most "give-aways" will have similar quantity limitations but this fact alone will not disqualify such transactions under the "general public" requirement.

(505) **Purchased solely for business purpose.**

(a) **Introduction.** Retail sales and use tax does not apply to the sale to or use by a business of digital goods and services rendered in respect to those digital goods, where the digital goods and services rendered in respect to digital goods are purchased solely for business purposes. This exemption only applies to purchases of digital goods and does not apply to the purchase of digital automated services, pre-written software, or remote access prewritten software. The exemption is only available when the buyer provides the seller with an exemption certificate. Buyers may use the department's "Digital Products and Remote Access Software Exemption Certificate" to claim this exemption. See RCW 82.08.02087.

(b) **Digital codes.** This exemption also applies to the sale to or use by a business of a digital code if all of the digital goods to be obtained through the use of the code will be used solely for business purposes. If the digital code purchased by a business for a business purpose provides access to both digital goods and digital automated services, the purchase of the digital code does not qualify for this exemption.

(c) **"Business purposes"** means the digital good is relevant to the buyer's business needs.

(d) **Personal or household purpose.** This exemption does not apply to the purchase for personal or household purposes.

(e) **Government entities.** This exemption does not apply to purchases by a governmental entity.

(f) **Prior periods.** For the period July 26, 2009, through June 30, 2010, the "business purpose" exemption applied only to "standard digital information." Standard digital information is a subset of digital goods.

**Standard digital information** is a digital good that consists primarily of data, facts, and/or information that is not generated or compiled for a specific client or customer. Standard digital information does not include a digital good that is comprised primarily of sounds or images.

(506) **Purchases of standard financial information by qualifying international investment management companies.** (~~Effective October 1, 2013,~~) The purchase of standard financial information by a qualifying international investment management company, or persons affiliated with a qualifying international investment management company, is exempt from retail sales and use tax. RCW 82.08.207 and 82.12.207. The exemption applies regardless of whether the standard financial information is provided in a tangible format or on a tangible storage medium or as a digital product transferred electronically. This retail sales and use tax exemption expires July 1, ((2021)) 2031.

~~((a))~~ **"Qualifying international investment management company"** means a person(~~:~~

~~(i) Who is primarily engaged in the business of providing investment management services; and~~

~~(ii) Who has gross income that is at least ten percent derived from providing investment management services to:~~

~~(A) Persons or collective investment funds residing outside the United States; or~~

~~(B) Collective investment funds with at least ten percent of their investments located outside the United States.~~

~~(b) The definitions in RCW 82.04.293 generally apply here to this subsection (506) except as follows:~~

~~(i) **Important distinction.** This definition of "qualifying international investment management company" is more narrow than the definition in RCW 82.04.293; this definition in (a) (ii) (B) of this subsection excludes "persons" and only allows for "collective investment funds" unlike RCW 82.04.293 (1) (b) (ii) which includes "persons or collective investment funds" for B&O tax purposes.~~

~~(ii)) engaging within this state in the business of providing qualifying international investment management services as defined in RCW 82.04.293(1).~~

(a) "Standard financial information" means financial data, facts, or information, or financial information services, not generated, compiled, or developed only for a single customer. Standard financial information includes, but is not limited to, financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports. RCW 82.08.207 (4) (b) (i).

~~((iii))~~ (b) "Financial market data" means market pricing information, such as for securities, commodities, and derivatives; corporate actions for publicly and privately traded companies, such as dividend schedules and reorganizations; corporate attributes, such as domicile, currencies used, and exchanges where shares are traded; and currency information. RCW 82.08.207 (4) (b) (ii).

~~((iv))~~ (c) **Filing and documentation.** Sellers making tax-exempt sales should obtain a completed buyer's retail sales tax exemption certificate from the buyer. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. The seller must retain a copy

of the exemption certificate or other relevant data elements for the seller's files and must meet the records requirement in subsection (607) of this rule for tax liabilities owed to this state. For sellers who electronically file their taxes, the department will provide a separate tax reporting line for exemption amounts claimed under this rule.

((v)) **(d) Limitations on exemption.** A buyer may not continue to claim the exemption once the buyer has purchased standard financial information during the current calendar year with an aggregate total selling price in excess of (~~fifteen million dollars~~) \$15,000,000 and an exemption has been claimed for such standard financial information. The (~~fifteen million dollar~~) \$15,000,000 limitation under this subsection does not apply to any other exemption that applies to standard financial information.

((vi)) **(e) Sellers' responsibilities.** Sellers are not responsible for ensuring a buyer's compliance with the (~~fifteen million dollar~~) \$15,000,000 limitation under this subsection. Sellers may not be assessed for uncollected sales tax on a sale to a buyer claiming an exemption under this rule after having exceeded the (~~fifteen million dollar~~) \$15,000,000 limitation under this subsection, except as provided in RCW 82.08.050 (4) and (5).

((vii)) **(f) Reporting requirements for buyers.** This retail sales and use tax exemption for standard financial information is subject to additional reporting requirements. Buyers must report the amount of tax preference received as directed by the department. Buyers are not required to report the amount of preference received if the tax benefit to a buyer is less than (~~one thousand dollars~~) \$1,000 per year; or the buyer files an annual tax return with the department.

(507) **Multiple points of use (MPU).** Retail sales tax does not apply to the sale of digital products or digital codes concurrently available for use within and outside this state. See RCW (~~82.12.02088 and 82.08.02088~~) 82.08.0208 and 82.12.0208. Note that Washington use tax still applies to the use of the digital product or digital code used in Washington. See RCW 82.12.0208.

(a) **Requirements.** A buyer is entitled to claim the MPU exemption only if:

(i) The buyer is a business or other organization.

(ii) The digital product purchased (or obtained by using the digital code purchased) will be concurrently available for use within and outside this state (not for personal use).

(iii) The buyer provides the seller with a valid exemption certificate acceptable to the department claiming the MPU exemption. Buyers may use the department's "Digital Products and Remote Access Software Exemption Certificate" to claim this exemption.

(b) **Concurrently available.** "Concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital product simultaneously from one or more locations within this state and one or more locations outside this state.

**Example 30.** Company sells an online patent searching service to Iniesta Corp., for simultaneous use at Iniesta's headquarters in Washington and its research and development facility in California. This service would generally be considered the sale of a digital automated service subject to retail sales tax and retailing B&O tax. In this case, the digital automated service is concurrently available for use by Iniesta's employees both within Washington and outside Washington,

and therefore Iniesta may claim the MPU exemption from retail sales tax for its purchase of the digital automated service from Company. See (c) of this subsection for an explanation of how to apportion the use tax in this example.

(c) **Apportionment (allocation) of use tax.** For purposes of this subsection on multiple points of use, "allocation" and "apportionment" have the same meaning. A business or other organization subject to use tax on digital products or digital codes that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. For example, in the case of Iniesta in Example 30, if we assume Iniesta had five employees in California and five employees in Washington using the service concurrently, Iniesta would allocate one-half of the purchase price to Washington because five of its (~~ten~~) 10 users are in Washington (e.g.,  $5/10 = 50\%$ ). Thus Iniesta would pay use tax to Washington based on (~~fifty~~) 50 percent of the value of the digital automated service. Additionally, the department may authorize or require an alternative method of allocation supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer.

(i) **Records requirement.** No allocation under this rule is allowed unless the allocation method is supported by the taxpayer's records kept in the ordinary course of business in compliance with the records requirement in subsection (607) of this rule for tax liabilities owed to this state.

(ii) **"User"** means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital product purchased in the performance of his or her duties as an employee or other agent of the taxpayer.

(d) **Application to digital codes.** A digital code is concurrently available for use within and outside this state if users may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

(e) **Reporting.** A buyer claiming an exemption under this rule must report and pay state and local use tax directly to the department. As explained in (c) of this subsection, use tax may be reported and paid on an apportioned basis if supported by the buyer's records in compliance with the records requirement in subsection (607) of this rule for tax liabilities owed to this state.

(508) **Machinery and equipment.** Generally retail sales and use tax does not apply to sales to or use by a manufacturer or processor for hire of certain machinery and equipment used directly in a manufacturing or research and development operation. This exemption is commonly referred to as the M&E exemption. (See RCW 82.08.02565 and 82.12.02565 and WAC 458-20-13601 for information regarding the M&E exemption.) Included within the definition of "machinery and equipment" for purposes of the M&E exemption are digital goods. Accordingly, digital goods acquired by manufacturers and processors for hire and used directly in a manufacturing or research and development operation are exempt from retail sales and use tax, provided all of the requirements for the M&E exemption are met.

(509) **Audio or video programming.** Income received from the sale of regular audio or video programming by a radio or television broadcaster is generally subject to service and other B&O tax and therefore not subject to retail sales tax. However, the sale of audio or video programming sold on a pay per program or subscription on-demand basis



is generally subject to retail sales and use tax except as provided in (d) and (e) of this subsection.

(a) **"Radio and television broadcasters"** include satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television.

(b) **"Pay per program or subscription on-demand basis"** means programming that the buyer pays for on a per program basis or a service that allows the buyer to access a library of programs at any time for a specific charge.

(c) **"Regular programming"** is scheduled programming. The person watching cannot stop, pause, rewind, or otherwise control the broadcast of the scheduled programming, including the time that the scheduled program is broadcast.

The fact that a customer uses a recording device, such as a VCR or DVR, does not result in the broadcaster's programming being characterized as a digital good.

(d) **Cable television providers paying franchise fees.** Cable television providers' sales of programming to consumers on a pay-per-program or subscription on-demand basis are not subject to retail sales and use tax if the cable television provider is subject to a franchise fee (under the authority of Title 47 U.S.C. Sec. 542(a)) on the gross revenue received from such sales. If the cable television provider is not subject to a franchise fee on the income from the sale of programming on a pay-per-program or subscription on-demand basis, then the exemption does not apply and the cable television provider must collect and remit retail sales tax on the retail sale of such programming.

**Example 31.** XYZ sells video programming to customers using cable technology. XYZ does not pay a franchise fee. Customers of XYZ are charged a monthly subscription fee to receive video programming. Customers are charged additional fees to view selected movies. XYZ must charge and collect retail sales tax on the additional fees charged to view the selected movies, but not on the monthly subscription fee which would generally be subject to service and other activities B&O tax.

(e) Satellite television providers do not generally pay franchise fees and therefore do not qualify for the retail sales and use tax exemption based on payment of franchise fees as described in (d) of this subsection.

(510) **Newspapers.** Generally, retail sales and use tax does not apply to sales of newspapers transferred electronically, provided that the electronic version has a printed counterpart, and the electronic version:

(a) Shares content with the printed newspaper; and

(b) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

(c) **"Printed newspaper"** means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper.

(511) **Received for free by end user.** Digital products and digital codes obtained by the end user for free are not subject to use tax.

(a) For example, a person's use of a free search engine is not subject to use tax.

(b) For example, a person reading an online article or viewing an online picture for free is not subject to use tax.

(512) **Other use tax exemptions.** Use tax does not apply to the use of digital goods that are:

(a) Noncommercial in nature, such as personal email communications;

(b) Created solely for an internal audience; or

(c) Created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business email communications.

**Example 32.** Gary, an employee of Kadabbera Corp., creates a digital audio-visual presentation using presentation authoring software and his innate creative capacity. Gary distributes the presentation internally to various divisions within Kadabbera in order to train employees on changes to company policies. Gary has created and distributed an item that meets the definition of "digital good." However, the distribution and use of this digital good is not subject to use tax as long as it is used solely internally or solely for the business needs of Kadabbera.

## Part 6. Miscellaneous Provisions

(601) **Retail services.** Washington imposes retail sales and use tax on certain enumerated services under RCW 82.04.050 ("retail services"). For example, the sale of credit bureau services is subject to retail sales tax. However, when a retail service is transferred electronically and also meets the definition of digital automated service or digital good, such service will be treated as a digital product and is eligible for all applicable digital products retail sales and use tax exemptions as described above in Part 5 of this rule. Retail services that are not transferred electronically or those retail services that are excluded from the definitions of digital good or digital automated service (e.g., telecommunications services and ancillary services) continue to be taxed as retail services.

**Example 33.** ABC creates a "canned" digital report on Company X's creditworthiness prepared prior to a customer request for the report. The report may be a credit bureau service and/or a digital good (if transferred electronically). The "canned" report is listed for sale on ABC's website. An employee of InvestCo, Inc. purchases and downloads a digital copy of the "canned" credit report from ABC's website for InvestCo's business purpose. ABC is selling a digital good generally subject to retail sales tax. However, the "canned" report is purchased by InvestCo solely for a business purpose and therefore exempt from retail sales tax (see subsection (505) of this rule for more on this exemption).

**Example 34.** Company sells credit reports and credit research services. EPD Corp., requests that Company prepare a credit report for EPD's specialized business purposes. After receiving the request, Company's employee researches, analyzes and generates information from various digital sources to prepare the credit report for EPD. Company then sends the report electronically as a digital file to EPD. Company is not selling a digital good because the digital item supplied to EPD is merely a representation of a professional service performed by EPD's employee. Therefore, Company's services are not a "digital product." However, Company is still required to charge and collect retail sales tax because Company is still providing credit bureau services, a retail service, subject to retail sales tax.

**Example 35.** Company sells an online credit reporting service. The service includes access to searchable databases, digital data analysis, and digital data reporting tools. ManageCo investigates the credit worthiness of individuals and therefore purchases access to Company's online service. Company is selling a digital automated service to be used solely for a business purpose by ManageCo. However, the "used solely for a business purpose" exemption is limited to digital goods and is not applicable to digital automated services. As such, Company is required to charge and collect retail sales tax on its sale of the digital automated service to ManageCo.

(602) **Royalties and wholesaling B&O tax on digital products.** The sale of digital products to "nonend users" may be subject to royalties or wholesaling B&O tax depending on the type of transaction and the intangible rights provided to the purchaser. Transactions which provide the right to resell digital products (no copying rights) to consumers will generally be treated as wholesale sales. Additionally, transactions which allow the purchaser the right to incorporate a digital product into a new product for sale will also be treated as wholesale sales. See also subsection (503) of this rule. Other nonend user transactions involving digital products or digital codes will generally be treated as royalties transactions.

**Example 36.** Media Corp., licenses to Rerun Inc., the right to further broadcast a digital movie file on Rerun's website for a specified period of time. In this case Media Corp. provides Rerun with the right by contract to further commercially broadcast or exhibit a digital movie to its subscribers. This is a nonend user transaction subject to royalties B&O tax. Media Corp. would report its gross receipts from this transaction under the royalties B&O tax classification and not charge and collect retail sales tax on the transaction with Rerun. Rerun's charges for the subscription service provided to consumers are generally subject to retail sales tax and retailing B&O tax.

**Example 37.** Same facts as Example 36 except Rerun purchases individual digital movie files from Media Corp. with the right to resell those individual files to end users at retail instead of rebroadcasting or exhibiting to the public. In this case Media Corp. has provided Rerun with the right to resell individual digital movie files to end users. Media Corp. would report its gross receipts from this transaction under the wholesaling B&O tax classification and not charge and collect retail sales tax on the transaction with Rerun. Rerun's charges to consumers for the movie files are generally subject to retail sales tax and retailing B&O tax.

**Example 38.** Same facts as Example 37 except that Rerun purchases a single digital movie file with the right provided by contract to duplicate and sell that movie file. In this case Media Corp. has provided Rerun with the right to duplicate and sell individual digital movie files. Media Corp. would report its gross receipts from this transaction under the royalties B&O tax classification. Media Corp. would not need to charge and collect retail sales or use tax from Rerun. Rerun's charges to consumers for the movie files are generally subject to retail sales tax and retailing B&O tax.

**Example 39.** Jack is a photographer who creates a digital picture of Mt. Rainier. Jack licenses, by contract, to Cashman the right to duplicate and sell copies of the Mt. Rainier picture in retail stores. Cashman's payment to Jack is for the grant of an intangible right and subject to royalties B&O tax. Cashman's sale of the picture at retail to customers is subject to retail sales tax and retailing B&O tax.

(603) **Substantial nexus** is not established in Washington if a business's only contact with the state of Washington is ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; a digital goods or digital codes residing on servers in Washington. For purposes of this rule, "substantial nexus" means the requisite connection that a person must have with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the United States Constitution.

(604) **Amnesty.** Before July 26, 2009, retail sales of downloaded digital goods on a permanent or nonpermanent basis were subject to retail sales tax. This did not include accessed or streamed digital goods. However, amnesty is available to those who did not collect or pay retail sales or use tax on digital goods and digital codes during that time. Sales of digital automated services and accessed or streamed digital goods were subject to service and other B&O tax before July 26, 2009, and amnesty does not extend to these transactions because they were not subject to retail sales tax during that time period.

(a) **Refunds and credits of retail sales or use tax.** No refund or credit will be given for state and local retail sales and use taxes properly paid on the sale or use, before July 26, 2009, of digital goods or of installing, repairing, altering, or improving digital goods.

(b) **No B&O tax refund or credit unless sales tax was paid.** If a taxpayer paid B&O tax under the service and other activities classification prior to July 26, 2009, on income received from retail sales of digital products or digital codes, the taxpayer may not receive a refund or credit for the difference between the B&O tax actually paid and the B&O tax that should have been paid under the retailing classification unless the taxpayer has remitted the retail sales tax for those sales.

(605) **Bundled transactions.** A "bundled transaction" is the retail sale of two or more products, which are distinct and identifiable for one nonitemized price. Because retail sales of digital products and digital codes are subject to retail sales tax, the general rules on the taxation of bundled transactions may apply to certain transactions involving digital products and digital codes. See RCW 82.08.190 and 82.08.195 for more information on the tax treatment of bundled transactions.

(606) **Property tax.** The excise tax laws relating to digital products and digital codes do not have any impact in the characterization of digital goods and digital codes as tangible or intangible personal property for purposes of property taxation and may not be used in any way in construing Title 84 RCW. See section 1201, chapter 535, Laws of 2009.

(607) **Records requirement.** Every taxpayer liable for any tax collected by the department must keep and preserve, for a period of five years, suitable records to determine the amount of tax owed. Such records must include copies of all federal income tax and state tax returns and reports. All of taxpayer's books, records, and invoices must be open to examination by the department. An out-of-state taxpayer that does not keep the necessary books and records within this state may produce within this state the books and records required by the department, or permit the examination by an agent authorized or designated by the department at the place the books and records are kept.

## WSR 24-03-139

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed January 23, 2024, 1:04 p.m., effective February 23, 2024]

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

Purpose: Substance use disorder professional certification, reducing barriers for pharmacists and applicants with a national certification.

The department of health (department) is adopting amendments to WAC 246-811-070, 246-811-076, and 246-811-300 in chapter 246-811 WAC, Substance use disorder professionals and substance use disorder professional trainees, to reduce barriers to certification. Changes include: (1) Removing the requirement to verify educational coursework for applicants with a national certification in WAC 246-811-070; (2) making pharmacists eligible for the alternative training pathway in WAC 246-811-076 and removing osteopathic physician assistants pursuant to SHB 2378 (chapter 80, Laws of 2020); and (3) removing the obsolete AIDS training from the list of probationary license requirements in WAC 246-811-300 pursuant to ESHB 1551 (chapter 76, Laws of 2020).

Citation of Rules Affected by this Order: Amending WAC 246-811-070, 246-811-076, and 246-811-300.

Statutory Authority for Adoption: RCW 18.205.060.

Other Authority: ESHB 1551 (chapter 76, Laws of 2020), SHB 2378 (chapter 80, Laws of 2020).

Adopted under notice filed as WSR 23-20-120 on October 3, 2023.

A final cost-benefit analysis is available by contacting Ted Dale, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov, website 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 2, 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 3, Repealed 0.

Date Adopted: January 23, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-4865.1

AMENDATORY SECTION (Amending WSR 16-14-052, filed 6/29/16, effective 7/30/16)

**WAC 246-811-070 National certification.** (1) A person who is certified through the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) or the International Certification and Reciprocity Consortium (ICRC) as an alcohol and drug counselor (ADC) or advanced alcohol and drug counselor (AADC), is considered to meet the experience requirements of WAC 246-811-046.

(2) A person who is certified through NAADAC or ICRC as an ADC or AADC is considered to have met the education requirements of WAC 246-811-030(2). (~~Verification of the additional forty-five quarter or thirty semester credits as required in WAC 246-811-030(1) will be required upon application to the department.~~)

(3) Verification of certification must be sent directly to the department from NAADAC or ICRC.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-076 Eligibility for certification through alternative training.** A practitioner listed in subsections (1) through (7) of this section who holds an active license in good standing may apply for certification as a substance use disorder professional using alternative training under WAC 246-811-077 or 246-811-078:

(1) Advanced registered nurse practitioner under chapter 18.79 RCW;

(2) Marriage and family therapists, mental health counselor, advanced social worker, or independent clinical social worker under chapter 18.225 RCW;

(3) Psychologist under chapter 18.83 RCW;

(4) Osteopathic physician under chapter 18.57 RCW;

(5) (~~Osteopathic physician assistant under chapter 18.57A RCW;~~

~~(6))~~ Physician under chapter 18.71 RCW; (~~or~~

~~(7))~~ (6) Physician assistant under chapter 18.71A RCW; or

(7) Pharmacist under chapter 18.64 RCW.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-300 Probationary license.** (1) The department shall issue a probationary license to out-of-state applicants seeking licensure in Washington state for substance use disorder professional according to the conditions and restrictions of the reciprocity program established RCW 18.205.140 and this chapter.

(2) The out-of-state license must be from a state or territory identified on a list published by the department as eligible for reciprocity for the purposes of a probationary license for the particular behavioral health profession.

(3) An initial probationary license is valid for one year. To receive an initial probationary license, the applicant must submit to the department a completed application to include:

(a) Verification of their out-of-state license; and

(b) The fee according to WAC 246-811-990.

(4) A probationary license may be renewed a single time and is valid for one year after the date of renewal. To renew a probationary license, the applicant must submit to the department a completed application to include:

(a) Completion of suicide assessment, treatment, and management training according to WAC 246-811-280(1); and

(b) (~~(AIDS education according to WAC 246-811-075; and~~  
~~(c))~~) The fee according to WAC 246-811-990.

(5) Continuing education. With the exception of the requirements in subsection (4) of this section, continuing education requirements will apply once a probationary licensee transitions to a full license.

(6) Approved supervision. If the department determines a probationary licensee must complete supervised hours of experience as a condition for full licensure, the licensee must complete the stated hours under an approved supervisor according to the conditions of this chapter.

## WSR 24-03-146

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed January 23, 2024, 3:05 p.m., effective February 23, 2024]

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

Purpose: Safe medication return—Multiple program operators. The department of health (department) is adopting amendments to rules regarding safe medication return to update rules about multiple program operators. The amendments to WAC 246-480-050, 246-480-070, and 246-480-080 ensure a consistent statewide safe medication return system and allow the department to accurately analyze data. Amendments to WAC 246-480-990 set a fee for proposal review as required by RCW 69.48.120 and provide transparency for the department's method of calculating program operator annual fees. The department is repealing WAC 246-480-010 in its entirety, as the purpose and scope of chapter 246-480 is clear in statute.

The purpose of this rule is to clarify the process for applying to the department; clarify program operator requirements for coordinating to present a consistent statewide safe medication return system as required by RCW 69.48.050(12) and 69.48.070 (1) and (2), clarify and identify additional requirements for program operator annual reports to ensure reporting consistency amongst program operators and ensure the department receives information necessary to allow for appropriate evaluation and enforcement, set a proposal review fee, clarify that approved program operators do not submit a proposal review fee, and clarify how the department calculates annual operation fees.

Citation of Rules Affected by this Order: Repealing WAC 246-480-010; and amending WAC 246-480-050, 246-480-070, 246-480-080, and 246-480-990.

Statutory Authority for Adoption: RCW 69.48.050 and 69.48.180.

Adopted under notice filed as WSR 23-15-102 on July 18, 2023.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-480-070(15) was changed to increase the amount of time program operators have to comply with WAC 246-480-070. The department expects this change to reduce the cost to program operators by allowing them to update kiosk signage during regularly scheduled collection site visits and update mail-back distribution location material during regular resupply.

WAC 246-480-080 (2)(f)(i) was changed to require program operators to report the locations where mailers were provided by zip code rather than by population center. Reporting by zip codes will provide the department substantially the same information and will reduce costs for program operators.

WAC 246-480-080 (2)(j) was changed to ensure safety or security reports are not required when an empty kiosk is opened for maintenance. Opening an empty kiosk does not present a safety or security risk.

WAC 246-480-080 (2)(k)(ii) was changed for clarity. This does not change the information required in program operator reports.

WAC 246-480-080 (2)(k)(iv) was changed for clarity. This does not change the information required in program operator reports.

A final cost-benefit analysis is available by contacting Mary Kellington, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2988, TTY 711, email SafeMedReturn@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 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 4, Repealed 1.

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

Date Adopted: January 23, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

#### OTS-4504.4

AMENDATORY SECTION (Amending WSR 19-14-090, filed 7/1/19, effective 8/1/19)

**WAC 246-480-050 Program application.** (1) A potential drug take-back program operator (~~must~~) shall submit to the department:

(a) Its (~~program~~) proposal (~~and~~) to be an approved program in the format provided by the department; and

(b) The proposal review fee in WAC 246-480-990.

(2) An approved drug take-back program operator shall submit to the department:

(a) Any substantial changes to an approved program (~~on forms~~) in the format provided by the department;

(b) The annual operating fee in WAC 246-480-990; and

(c) By July 1, 2024, and every four years thereafter, an updated proposal in the format provided by the department.

~~((2))~~ (3) If the department takes enforcement action as provided in RCW 69.48.050 (3)(c)(iv), the applicant through its authorized representative may request an adjudicative proceeding under chapter 246-10 WAC. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within (~~twenty-eight~~) 28 days of the program operator's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within (~~twenty-eight~~) 28 days of the date of the program operator's receipt of the adverse notice, the secretary's decision is final.

AMENDATORY SECTION (Amending WSR 19-14-090, filed 7/1/19, effective 8/1/19)

**WAC 246-480-070 Promotion, education, and public outreach.**

~~((Approved program operators must update their list of authorized collectors, collection sites, locations to receive mailers, and locations for drug take-back events at least quarterly on their website.))~~

(1) Program operators shall coordinate to present a consistent statewide drug take-back system as described in RCW 69.48.050 and 69.48.070.

(2) Each program operator is independently responsible for complying with all requirements of chapter 69.48 RCW and this chapter. Each program operator is responsible for their own promotional material.

(3) Collection sites at long-term care facilities and substance use disorder treatment programs are not available to the general public. Program operators shall exclude these collection sites from public promotional material.

(4) For the purpose of this section:

(a) "Promotional material" means promotion, education, and outreach material about the safe storage and secure collection of covered drugs and includes, but is not limited to: Websites; telephone numbers; secure collection receptacle (kiosk) signage; posters; brochures; mailer instructional inserts; advertising for drug take-back events; media material; and information for authorized collectors, collection sites, mail-back distribution locations, and take-back event partners.

(b) Public promotional material means promotional material focused on increasing understanding and use of safe medication return.

(c) Partner promotional material means promotional material focused on recruiting and educating authorized collectors, collection sites, mail-back distribution locations, and take-back event partners.

(5) Each program operator shall ensure their public promotional materials are easy for people to use and understand. This includes people with limited-English proficiency and people with disabilities including, but not limited to, people who are deaf or blind.

(6) Each program operator shall ensure their public promotional material describes how to access all collection sites, mail-back distribution locations, and take-back events regardless of program operator.

(7) Each program operator shall refer to the statewide drug take-back system as "Safe Medication Return" on all their promotional material. Program operators shall not use any other name to refer to their drug take-back program. Nothing in this section prohibits inclusion of program operator name in or on promotion, education, or outreach material.

(8) Program operators shall coordinate to develop a safe medication return logo or mark and shall use the logo or mark to promote safe medication return as the statewide drug take-back system.

(a) The logo or mark must be approved by the department prior to use by any program operator.

(b) The logo or mark must be included on all promotional material.

(9) Program operators shall ensure the single website required by RCW 69.48.070 presents a consistent statewide drug take-back system.

(a) The single website domain name must be descriptive of safe medication return, Washington's drug take-back system, and must not appear specific to any program operator.

(b) The single website must describe the statewide safe medication return system including, but not limited to, information on:

(i) Why and how to safely store and securely dispose of medication, including discouraging disposal of medication down drains or in the garbage;

(ii) What safe medication return accepts and does not accept; and

(iii) The single toll-free telephone number.

(c) The single website must display all collection sites and mail-back distribution locations available to the general public for all program operators on one map and in one table. The single website must display all drug take-back events for all program operators in one table. This information must be searchable by zip code and city and must display all options regardless of program operator.

(d) Each program operator shall update their collection sites, mail-back distribution locations, and locations and dates for drug take-back events on the single website at least quarterly.

(e) The single website must include, in a prominent place, links to the department's safe medication return website and contact information. The single website must inform the public that the department welcomes comments, questions, and concerns. The department shall provide program operators the appropriate URL and contact information.

(10) Program operator specific websites must present a consistent statewide drug take-back system.

(a) Program operator specific websites must include links to the single website described in subsection (9) of this section.

(b) Program operator specific websites must present all collection sites, mail-back distribution locations, and take-back events for all program operators whenever presenting information about any collection site, mail-back distribution location, or take-back event. Information about other program operator's collection sites, mail-back distribution locations, and take-back events must be at least as current as single website.

(c) Program operators shall not include program operator specific websites in any public promotional material.

(11) Program operators may include program operator specific email address on secure collection receptacles (kiosks) and mailer instructional inserts to inform the public how to receive support or provide comments about secure collection receptacle (kiosk) or mailer. Program operator specific email addresses must not be included on any other public promotional material.

(12) Program operators shall ensure the single toll-free telephone number required by RCW 69.48.070(2) and all call centers accessed through that single toll-free telephone number present a consistent statewide drug take-back system. The single toll-free telephone number and all call centers accessed through it must:

(a) Answer calls 24 hours a day, seven days a week;

(b) Allow callers to access information about the statewide safe medication return system including, but not limited to:

(i) Why and how to safely store and securely dispose of medication, including discouraging disposal of medication down drains or in the garbage;

(ii) What safe medication return accepts and does not accept; and

(iii) The single website.

(c) Provide callers with all collection sites, mail-back distribution locations, and drug take-back events available to the general public for all program operators based on location criteria provided by the caller. Callers shall not be required to choose between program operators to receive this information;

(d) Allow callers to order mail-back supplies; and

(e) Provide the department's contact information to callers who would like to provide feedback, including comments, questions, and concerns. The department shall provide program operators the appropriate contact information.

(13) Program operator specific telephone numbers and call centers must present a consistent statewide drug take-back system.

(a) Program operator specific telephone numbers and call centers must present all collection sites, mail-back distribution locations, and take-back events available to the general public for all program operators whenever presenting information about any collection site, mail-back distribution location, or take-back event.

(b) Program operators shall not include program specific telephone numbers in any public promotional material, except on secure collection receptacles (kiosks) and mailer instructional inserts to inform the public how to receive support and provide comments about secure collection receptacle (kiosk) or mailer.

(14) Current program operators shall coordinate with newly approved program operators to ensure subsections (1), (9), and (12) of this section are met within 180 days of the department's approval of a new program operator's proposal.

(15) Requirements of this section must be implemented by program operators within one year of the date the rule is adopted.

AMENDATORY SECTION (Amending WSR 19-14-090, filed 7/1/19, effective 8/1/19)

**WAC 246-480-080 Program operator annual report.** (1) ~~((To comply with RCW 69.48.100(1),))~~ Each program operator shall submit an annual report to the department by July 1st ((on a form developed)) in the format provided by the department.

~~(2) ((In addition to the elements identified and described in RCW 69.48.100, the report must include a summary of the program's annual expenditures organized using the same criteria as described in WAC 246-480-040(5).))~~ To ensure consistency of program operator reporting and ensure the department can accurately analyze the data, the annual program report must include:

(a) A list of covered manufacturers participating with the program operator.

(b) The amount, by weight, of covered drugs collected, including the amount by weight from each collection method used.

(c) The list of collection sites with addresses must:

(i) Indicate collection sites added since previous annual report was submitted to the department;

(ii) Also be provided as a map; and

(iii) Identify any retail pharmacy, hospital or clinic with an on-site pharmacy, or law enforcement agency that offered to participate and was not included as an authorized collector within 90 days of the program operator receiving offer.

(A) If potential authorized collector was included later, describe reason for delay.

(B) If potential authorized collector was not included, describe reason for exclusion.

(d) A description of prompt collection, maintenance, and kiosk inner liner supply requests.

(i) Describe whether agreements with collection sites include requirement for collection site to report need for prompt collection, maintenance, or inner liner supplies.

(ii) Describe any instances where program operator identified issues related to collection receptacle (kiosk) not being available to accept covered drugs when collection site was open for business, including issues identified during program operator inspection of receptacles; number of requests for prompt collection, maintenance, or inner liner supplies; and average number of days between request and collection or response.

(iii) Describe any instances where requests for prompt collection, maintenance, or inner liner supplies were not provided by the program operator as described in their approved plan. The description shall include the reason prompt collection, maintenance, or inner liner supplies were not provided and the number of days between request and collection or response.

(e) The number of mailers provided as reported by zip code and must include the number of mailers provided for each of the following categories:

(i) Directly to individuals as the result of requests made through website or toll-free telephone number;

(ii) Directly to households without anyone requesting them;

(iii) To retail pharmacies that are not mail-back distribution locations;

(iv) To other businesses or organizations that are not mail-back distribution locations; and

(v) To mail-back distribution locations.

(f) The locations where mailers were provided and must include a list of:

(i) Zip codes where individuals requested mailers from the single website, single toll-free telephone number, program operator specific website, or program operator specific telephone number;

(ii) Zip codes where households were sent mailers directly without requesting them. This list must indicate the percentage of households per zip codes that were sent mailers;

(iii) Nonresidential locations that are not mail-back distribution locations with addresses; and

(iv) Mail-back distribution locations with addresses.

(g) Dates and locations of collection events held.

(h) A description of collection sites, mail-back distribution locations, take-back events, and other methods for accessing safe medication return in areas outside of population centers.

(i) List all law enforcement, retail pharmacies, and hospitals or clinics with on-site pharmacies on islands and outside population centers and indicate whether they are authorized collectors.

(ii) For each law enforcement facility, retail pharmacy, and hospital or clinic with on-site pharmacy that is not an authorized collector, describe the reason they are not participating. Include recruitment efforts and the result of those efforts.

(i) Transporters and disposal facilities used.

(j) Safety or security problems including, but not limited to, all instances where collection, transportation, or disposal did not follow processes described in the approved plan, including processes for prompt collection and maintenance. Safety and security problems described must include any instances where a secure collection receptacle (kiosk) is opened for a reason other than packaging the inner liner for shipping, installing a new inner liner, or maintenance on a kiosk that does not contain an inner liner. The description of whether safety or security problems occurred during collection, transportation, or disposal of covered drugs must include:

(i) Whether the problem occurred during collection, transportation, or disposal;

(ii) Whether the problem met criteria for reporting to law enforcement, Washington state pharmacy quality assurance commission, United States Drug Enforcement Administration, or other entity and whether the operator can confirm that the reporting happened;

(iii) If covered drugs were lost during transportation, whether transporter has policies for safely managing undeliverable packages that might include drugs;

(iv) If transporter delivered covered drugs to the wrong address, description of attempts to retrieve covered drugs and whether those attempts were successful;

(v) Program operator actions to ensure problem was reported, if required; appropriate investigation occurred; and risk of similar problem occurring in the future was minimized; and

(vi) Changes to policies, procedures, or tracking mechanisms to address the problem and improve safety and security.

(k) A description of public education, outreach, and evaluation activities implemented and shall include the following. "Promotional material" shall have the same definition as in WAC 246-480-070(4):

(i) List of languages that printed or downloadable public promotional material are available in, with description of any printed or downloadable promotional material not available in these languages. List or description of languages used in any television, radio, social media, or other nonprint promotional material;

(ii) List or description of languages available on the single website and program operator specific website; the single toll-free telephone number and program operator specific telephone number; and call centers associated with the single toll-free telephone number and program operator specific telephone number. This list or description must include the name of language service providers where applicable;

(iii) Description of how these languages or language services meet the language needs of people in Washington;

(iv) Copies of all public promotional material, including signage and changes to websites and telephone number scripts, developed since last annual report;

(v) Description of how education and outreach efforts were implemented including:

(A) Date, type, and description of all social media and email promotion activity;

(B) Date, frequency, reach, and description of outreach for radio, television, print, and digital media platforms;

(C) List of brochures and posters available from single website and program operator specific website, number of times each was viewed, and number of times each was downloaded;

(D) Name, address, facility type, and date of email or hard copy distribution of brochures and posters to nonresidential entities; and

(E) Total number of views and number of unique visitors for each page of single website and program operator specific website.

(vi) Description of evaluation activities shall include:

(A) Evaluation of comments, questions, and concerns received from the public including evaluation of feedback themes and actions program operator has implemented or planned in response to feedback; and

(B) Evaluation of public education and outreach efforts, including evaluation of education and outreach implementation described in (g) (v) of this subsection.

(l) A description of how collected packaging was recycled to the extent feasible.

(m) A summary of the program's goals for collection amounts and public awareness shall include:

(i) Description of goals for the reporting year;

(ii) Description of goals for the following year, including identification of any unmet goals carried forward; and

(iii) Description of how program operator calculates or quantifies progress toward goals, including any percentages included in goals.

(n) A summary of degree of success in meeting goals shall include description of why goals were not met and what effort program operator will make to achieve those goals the following year.

(o) The program's annual expenditures, itemized by program category shall be organized using the criteria described in WAC 246-480-040(5).

AMENDATORY SECTION (Amending WSR 19-14-090, filed 7/1/19, effective 8/1/19)

**WAC 246-480-990 Fees.** ~~((This section establishes the initial and annual fees for a program operator implementing a drug take-back program under chapter 69.48 RCW and this chapter.~~

~~(1) Initial fee. By no later than October 1, 2019, a program operator shall submit to the department an initial fee of seven hundred thousand dollars.~~

~~(2) Renewal fee.~~

~~(a) By August 1, 2020, and each August 1st thereafter, the department shall notify a program operator the amount of its annual renewal fee as determined according to RCW 69.48.120. Renewal fees will reflect the department's actual administrative, oversight, enforcement, and contractual costs for that fiscal year, or not more than ten percent of the program operator's annual expenses as reported on July 1st of each year, whichever amount is smaller.~~

~~(b) By October 1, 2020, and each October 1st thereafter, a program operator shall submit to the department the renewal fee.)~~ (1) Until January 1, 2024, a potential program operator applicant submitting a proposal in accordance with RCW 69.48.050(8) shall submit a nonrefundable proposal review fee of \$157,000 to the department when they submit their proposal.

(2) After January 1, 2024, a potential program operator applicant shall submit a nonrefundable proposal review fee of \$63,000 to the department when they submit their proposal in accordance with RCW 69.48.050(1). Approved program operators submitting updated proposals to the department do not submit a proposal review fee.

(3) All program operators' annual operating fees shall be identical. Each program operator's annual operating fee shall not exceed the lesser of:

(a) The department's estimated actual administrative, oversight, enforcement, and contractual costs for that fiscal year divided by the number of approved program operators; or

(b) Ten percent of the lowest annual expenditures reported to the department in any program operator's annual report and determined by the department.

(4) Annually, on or before September 1st, the department shall notify each program operator the amount of the program operator's annual operating fee.

(5) Each program operator shall submit their annual operating fee to the department by October 1st each year.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-480-010          Purpose and scope.



## WSR 24-03-147

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)

[Filed January 23, 2024, 3:13 p.m., effective February 23, 2024]

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

Purpose: Nursing home administrator licensing requirements and retired-active license. The board of nursing home administrators (board) is adopting rule amendments to WAC 246-843-071 Application, 246-843-090 Administrator-in-training program, 246-843-130 Continuing education requirements, 246-843-180 Expired license and 246-843-231 Temporary practice permits; and adopting new WAC 246-843-335 Retired active credential.

The board adopted rule amendments and a new rule to expand and clarify licensure requirements in the following ways:

- Clarifies the administrator-in-training program requirements as the primary path to licensure. Changes are made to update the process;
- Requires that applicants renewing an expired license provide proof of completing previously required trainings;
- Expands paths to licensure by increasing access to temporary practice permits and creating a retired active credential;
- Corrects and updates continuing education requirements such as removing HIV/AIDS education and adding health equity continuing education according to recent changes in statute;
- Corrects or removes outdated language and citations as needed without changing the effect of the rule; and
- Corrects a typographical error to WAC 246-843-335 (4)(c) to include nursing "home administrator."

Citation of Rules Affected by this Order: New WAC 246-843-335; and amending WAC 246-843-071, 246-843-090, 246-843-130, 246-843-180, and 246-843-231.

Statutory Authority for Adoption: RCW 18.52.030, 18.52.061, 18.52.071, 18.130.250, and 43.70.613.

Adopted under notice filed as WSR 23-20-116 on October 3, 2023.

Changes Other than Editing from Proposed to Adopted Version: No changes other than editing were made from the proposed version. The board corrected a typographical error in WAC 246-843-335 (4)(c) to include nursing "home administrator."

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4723, fax 360-236-2901, TTY 711, email nha@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 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 1, 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 1, Amended 5, Repealed 0.

Date Adopted: November 13, 2023.

Rosalie Romano, Ph.D., Chair  
Board of Nursing Home Administrators

## OTS-4645.7

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-071 Application.** (1) An applicant for licensure as a nursing home administrator shall:

(a) Be at least (~~twenty-one~~) 21 years old;

(b) Submit to DOH a completed application for licensure provided by DOH that includes all information requested and payment of fees as required in (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-020 through 246-12-051 and WAC 246-843-990;

(c) Request the official transcripts of successful completion of a baccalaureate degree to be sent directly to DOH from a recognized institution of higher learning. If transcripts showing successful completion of a baccalaureate degree are not available, the recognized institution of higher learning must submit documentation specifically recognizing that the applicant has completed the requirements for a baccalaureate degree. A "recognized institution of higher learning" is a degree granting institution that is:

(i) Accredited by an organization recognized by the Council for Higher Education Accreditation (CHEA) and is included in the CHEA list recognized accrediting organizations; or

(ii) Accredited by an organization recognized by the United States Department of Education (USDOE) and is included in the USDOE Database of Accredited Postsecondary Institutions and Programs; or

(iii) A foreign institution with a program that the board has found to be the equivalent of programs approved by CHEA or by the USDOE. The transcript must also be evaluated and found to be valid and the academic program the equivalent of programs approved by CHEA or the USDOE, by:

(A) An organization that is a current member of the National Association of Credential Evaluation Services (NACES); or

(B) An organization that is a current member of the Association of International Credential Evaluators, Inc. (AICE); or

(C) An organization that reviews foreign transcripts and is recognized by a Washington state department of health board or program.

(d) (~~Verification of successful completion of seven hours of AIDS education and training as required in chapter 246-12 WAC, Part 8, (e)~~) Documentation of having satisfied training requirements including that the applicant:

(i) Has successfully completed an AIT program as described in WAC 246-843-090 and 246-843-091; or

(ii) Has met the requirements for an AIT exemption described in WAC 246-843-093.

(~~(f)~~) (e) Documentation that the applicant has successfully passed the examination as described in WAC 246-843-070.

(2) If an applicant is required to complete an AIT program, the applicant may concurrently earn their degree but shall submit proof of enrollment in a degree program at a recognized institution of higher learning. The transcript showing successful completion of the degree, sent directly from the institution, must be received before the applicant is approved to take the current NAB national examination.

(3) An applicant who has HSE designation from NAB may submit verification of the HSE directly from NAB to verify that he or she meets the requirements of subsection (1)(c) and ~~((+f+))~~ (e) of this section.

(4) An applicant licensed as a nursing home administrator outside the state of Washington may apply for initial licensure through endorsement by meeting the requirements of WAC 246-843-230.

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-090 Administrator-in-training program.** ~~((To qualify for a nursing home administrator license, an applicant must successfully complete a board approved nursing home administrator-in-training (AIT) program as described below:~~

~~(1))~~ Unless exempt by WAC 246-843-093, an applicant for the original license must complete an administrator-in-training (AIT) program according to this section as part of the original licensure process. The board must approve the AIT program before the applicant may begin the training.

(1) To participate in an AIT program, the applicant must submit to the department of health:

(a) In addition to the original license fee, the AIT program fee required in WAC 246-843-990; and

(b) (i) Information on forms provided by the department showing how the AIT program meets the requirements of subsection (2) of this section.

(ii) If the AIT program is less than 1,500 hours, the applicant must also include a resume and explanation of how the applicant meets the relevant requirements in WAC 246-843-091; and

(c) A statement sent directly by the preceptor on a form provided by the department that describes how the preceptor meets the requirements of WAC 246-843-095.

(2) The AIT program must consist of the following:

(a) Be under the guidance and supervision of a qualified preceptor as described in WAC 246-843-095;

(b) Be designed to provide for individual learning experiences and instruction based upon the person's academic background, training, and experience;

(c) Provide for a broad range of experience with a close working relationship between preceptor and AIT. A sponsoring facility of less than ~~((fifty))~~ 50 beds will be considered for an AIT program only if there is a board approved plan to broaden the AIT experience with an equal percentage of experience in a larger facility under the guidance and supervision of a qualified preceptor as described in WAC 246-843-095;

(d) Be described in a prospectus signed by the preceptor. The prospectus must include a description of the rotation through departments. The board must approve the prospectus before the AIT program start date.

~~((2))~~ The ~~((AIT program))~~ prospectus shall include the following components:

~~((a))~~ (i) A minimum of ~~((ninety))~~ 90 percent of the required AIT program hours are spent in a rotation through each department of a resident occupied nursing home licensed under chapter 18.51 RCW or a Washington state veterans home established under chapter 72.36 RCW ~~((b))~~; and

(ii) The remaining ~~((ten))~~ 10 percent of the AIT program will include:

~~((i))~~ (A) A written project assignment including at least one problem-solving assignment to improve the nursing home or nursing home procedures. A description of the project must be submitted in writing to the board and approved before the AIT program start date. The description of the project should indicate the definition of the project and method of approach such as data gathering. A project report that includes possible alternatives, conclusions, and final recommendations to improve the facility or procedure is to be submitted to the board for approval at least ~~((ten))~~ 10 days before the scheduled end date of the AIT program;

~~((ii))~~ (B) Planned reading and writing assignments as designated by the preceptor; and

~~((iii))~~ (C) Other planned learning experiences including learning about other health and social services agencies in the community.

~~(3) ((The AIT program must be approved by the board before the AIT may begin the program.~~

~~(4) Quarterly written reports to the board shall include a detailed outline of AIT activities during the reporting period. Reports must be submitted by both the AIT and preceptor.~~

~~(5))~~ Preceptors of approved AIT programs shall submit quarterly reports to the department as follows:

(a) If the approved AIT program has more than one preceptor, each preceptor shall submit a quarterly report.

(b) The preceptor shall submit the final report to the department at least 10 days before the scheduled end date of the AIT program.

(c) Each quarterly report must:

(i) Be on forms provided by the department;

(ii) Describe a detailed outline of AIT activities during the reporting period which includes:

(A) A document completed by the AIT and signed by the preceptor;  
and

(B) A document completed and signed by the preceptor.

(4) Changes in the AIT program, including a change of preceptor, facility or topic, must be immediately reported in writing to the board. A request for change must be in writing and explain why the change is needed. ((The request must be co-signed by the AIT and the approved preceptor. In cases where the preceptor is no longer available, the request may be signed by the governing body. Only two changes for the duration of the AIT program will be allowed.

~~(6))~~ (5) A site visit by a board member will take place before the program plan is considered complete.

~~((7))~~ (6) The AIT program must be completed to the board's satisfaction as a condition of licensure. The board may withdraw approval or alter conditions under which approval was given if the board finds that the approved program has not been or is not being followed.

AMENDATORY SECTION (Amending WSR 21-17-079, filed 8/12/21, effective 10/10/21)

**WAC 246-843-130 Continuing education requirements.** (1) A licensed nursing home administrator shall demonstrate completion of ~~((thirty-six))~~ 36 hours of continuing education every two years and comply with ~~((chapter 246-12 WAC, Part 7))~~ WAC 246-12-170 through 246-12-240.

(2) Continuing education approved by the National Continuing Education Review Service (NCERS) is acceptable for continuing education credit.

(3) Continuing education that is not approved by NCERS must meet the following requirements:

(a) The basic methods of continuing education learning are:

- (i) Seminars;
- (ii) Teleconferencing;
- (iii) Webinars; and
- (iv) Self-study programs.

(b) Continuing education courses shall consist of a minimum of one hour of instruction. Hours are based upon clock hours and are calculated in half hour increments. College courses are rated at ~~((fifteen))~~ 15 hours per each semester unit and ~~((ten))~~ 10 hours per each quarter credit.

(c) Continuing education must relate to nursing home administration, be designed to promote continued knowledge and skills with nursing home administration standards, and improve and enhance professional competencies. Continuing education must fit within the following subjects:

- (i) Resident centered care;
- (ii) Human resources;
- (iii) Finance;
- (iv) Environment;
- (v) Leadership and management;
- (vi) Suicide prevention;
- (vii) Cultural competency training, including health equity as required in subsection (4) of this section;

(viii) Laws relating to Washington state nursing homes;

(ix) Pandemic response and compliance measures. Examples include, but are not limited to, infection control measures, resident engagement, personal protective equipment procurement and training, emergency staffing, writing and updating policies and procedures pertaining to pandemic management, and other pandemic-related training.

(d) The licensee shall retain proof of course completion. To receive full credit, attendees shall attend the full program. The maximum number of hours allowed for continuing education is ~~((twelve))~~ 12 hours per day.

~~((e) Until December 31, 2022, licensees due to demonstrate completion of continuing education may accrue up to thirty-six of those hours in pandemic response and compliance measure subjects described in (c)(ix) of this subsection. During this time, if proof of course completion is not provided for pandemic response and compliance measure courses earned under self-study programs as allowed under (a)(iv) of this subsection, the licensee may sign an attestation on a form provided by the department.))~~

(4) A licensee must complete a minimum of two hours of health equity education every four years according to the requirements of WAC 246-12-830. The two hours may count toward the total 36 hours required

for a continuing education cycle. Health equity means all people have the same opportunities and equal access in order to attain their full health potential regardless of the color of their skin, ancestry, ethnicity, level of education, gender identity, sexual orientation, age, religion, socioeconomic status, the job they have, the neighborhood they live in, or their ability status.

(5) Continuing education credit of two hours per month may be granted to a preceptor of an administrator-in-training program.

~~((5))~~ (6) Continuing education credit of a maximum of two hours per month may be granted for serving as a board member for the board of nursing home administrators.

~~((6))~~ (7) Within ~~((one hundred eighty))~~ 180 days after becoming licensed, a nursing home administrator shall attend a board approved course on laws relating to nursing homes in Washington. The board will grant retroactive credit to those licensees who obtain the required training as administrators-in-training under WAC 246-843-090. The state law training course consists of a minimum of a six-hour program, with formal training objectives, that covers the requirements of chapter 18.52 RCW and essential areas of laws that apply to nursing homes regulated by the department of social and health services under chapter 388-97 WAC to include:

- (a) Resident services, medical and social;
- (b) Resident rights, including resident decision making, informed consent, advance directives and notices to residents;
- (c) Enforcement;
- (d) Criminal history inquiries;
- (e) Differences between federal and state law.

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-180 Expired license.** (1) To return to active status, the nursing home administrator with an expired license shall ~~((meet))~~ provide the department of health an application meeting the requirements of WAC 246-12-040.

(2) If the license has been expired for one year or more, the applicant must also submit proof of completing the course required by WAC 246-843-130(7) if the applicant did not do so prior to the license expiring.

(3) If the license has been expired for five years or more, the ~~((nursing home administrator))~~ applicant shall also meet one of the following requirements:

- (a) Provide proof of an active status license as a nursing home administrator from another state that has requirements that are substantially equivalent to Washington requirements;
- (b) Provide proof that the applicant has been in active practice as a licensed nursing home administrator in another jurisdiction during that time; or
- (c) Successfully pass the current licensing examination as described in WAC 246-843-170.

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-231 Temporary practice permits.** (1) An applicant seeking permanent licensure who satisfies all licensing requirements other than a fingerprint-based national background check may receive a temporary practice permit by satisfying requirements listed in WAC 246-12-050.

~~(2) ((Temporary practice permits for applicants seeking licensure for interim placement at specific facilities.~~

~~(a-)) A temporary practice permit for interim placement at specific facilities may be issued to an applicant who ((meets the following conditions)):~~

~~(a) Has no violations identified in the Washington criminal background check; and~~

~~(b) (i) Holds an unrestricted active license in another state ((+ (ii-)) where the license holder is not subject to denial of a license or issuance of a conditional or restricted license; ((and~~

~~(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by DOH of a completed Federal Bureau of Investigation (FBI) fingerprint card.~~

~~(b-)) or~~

~~(ii) Meets one of the requirements for an AIT exemption described in WAC 246-843-093.~~

~~(3) The temporary practice permit for interim placement allows the applicant to work in the state of Washington as a nursing home administrator within the full scope of practice during the time specified on the permit. ((The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:~~

~~(i) A temporary practice permit is valid only for the specific nursing home for which it is issued unless otherwise approved by the board;~~

~~(ii) A temporary permit holder))~~

~~(4) A holder of a temporary permit for interim practice shall consult with a Washington state licensed nursing home administrator with whom they have a written agreement for consultation.~~

~~((c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:~~

~~(i) The permit holder departs from the nursing home, unless otherwise approved by the board;~~

~~(ii) One hundred eighty days after the temporary practice permit is issued.~~

~~(d-)) (5) A temporary permit for interim practice expires 180 days after it is issued and will not be renewed, reissued, or extended.~~

~~(6) To receive a temporary practice permit for interim placement, the applicant shall submit to DOH:~~

~~((i-)) (a) Fees and a completed application for the permit;~~

~~((ii) Verification from each state in which the applicant is currently licensed and is in good standing as a nursing home administrator)) (b) Through use of state or national online data banks or records, verification of the applicant's currently held state nursing home administrator's license in good standing; and~~

~~((iii))~~ (c) A written agreement for consultation with a Washington state licensed nursing home administrator.

NEW SECTION

**WAC 246-843-335 Retired active credential.** (1) A licensed nursing home administrator may place their credential in "retired active" status by meeting the requirements of this section.

(2) A licensed nursing home administrator who holds a retired active credential may practice not more than 90 days a year. This limit may be exceeded in emergent emergency circumstances including, but not limited to, earthquakes, floods, times of declared war, or other federal or state emergencies.

(3) To obtain a retired active credential, a licensed nursing home administrator must:

- (a) Meet the requirements in WAC 246-12-120; and
- (b) Pay the appropriate fee in WAC 246-843-990.

(4) To renew a retired active credential, the licensed nursing home administrator must:

- (a) Meet the requirements in WAC 246-12-130.
- (b) Pay the appropriate fee in WAC 246-843-990.
- (c) Complete 36 hours of continuing nursing home administrator education within a two-year period prior to the renewal of licensure in compliance with WAC 246-843-130.

(d) Renew their retired active credential every year on their birthday.

(5) To return to active status, the licensed nursing home administrator must meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-843-990.

(6) A licensed nursing home administrator who holds a retired active credential is subject to a continuing competency audit as outlined in WAC 246-12-170 through 246-12-240.



WSR 24-03-148

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed January 23, 2024, 3:19 p.m., effective February 23, 2024]

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

Purpose: Establishing a new retired active license fee in WAC 246-843-990 Nursing home administrator fees and renewal cycle. The department of health (department) is establishing a retired active fee for the nursing home administrator license. The board of nursing home administrators (board) is concurrently adopting a retired active status as allowed by RCW 18.130.250 to allow an individual to practice in emergent or intermittent circumstances and pay a reduced renewal fee. This will allow individuals to fill in at nursing homes that need a temporary administrator while recruiting a new administrator and to immediately assist in emergency circumstances such as a pandemic.

Citation of Rules Affected by this Order: Amending WAC 246-843-990.

Statutory Authority for Adoption: RCW 18.130.250 and 43.70.250.

Adopted under notice filed as WSR 23-22-094 on October 30, 2023.

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 1, Repealed 0.

Date Adopted: January 23, 2024.

Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-5032.1**

AMENDATORY SECTION (Amending WSR 21-16-002, filed 7/22/21, effective 11/1/21)

**WAC 246-843-990 Nursing home administrator fees and renewal cycle.** ~~((1))~~ Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

~~((2) Between the effective date of this rule and October 31, 2022, the following fees will apply:~~

<b>Title of Fee</b>	<b>Fee</b>
<del>Application-Original license</del>	<del>\$690.00</del>
<del>Administrator-in-training</del>	<del>285.00</del>

<b>Title of Fee</b>	<b>Fee</b>
<b>Application-Endorsement</b>	715.00
<b>License renewal</b>	
Renewal	835.00
Late renewal penalty	300.00
Expired license reissuance	285.00
<b>Inactive license</b>	
Inactive license renewal	315.00
Late renewal penalty	160.00
Expired inactive license reissuance	190.00
<b>Temporary permit</b>	325.00
<b>Duplicate license</b>	10.00
<b>Verification of license</b>	25.00

~~(3) On and after November 1, 2022, the following fees apply:))~~

<b>Title of Fee</b>	<b>Fee</b>
<b>Application-Original license</b>	\$805.00
<b>Administrator-in-training</b>	285.00
<b>Application-Endorsement</b>	805.00
<b>License renewal</b>	
Renewal	975.00
Late renewal penalty	300.00
Expired license reissuance	285.00
<b>Inactive license</b>	
Inactive license renewal	315.00
Late renewal penalty	160.00
Expired inactive license reissuance	190.00
<b><u>Retired active license</u></b>	<u>150.00</u>
<b>Temporary permit</b>	325.00
<b>Duplicate license</b>	10.00
<b>Verification of license</b>	25.00

## WSR 24-03-170

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed January 24, 2024, 11:27 a.m., effective February 24, 2024]

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

Purpose: The agency revised this rule in accordance with the settlement agreement in the case of *National Association of Chain Drug Stores, et al., v. Washington State Health Care Authority, et al.* (Case No. 51489-3-II) and for the purpose of ensuring the continuation of federal medicaid funding. The agency also filed an emergency rule-making order under WSR 23-22-074, while the permanent rule-making process was being completed. The emergency rule-making order expires February 23, 2024, and the permanent rule will be effective February 24, 2024.

Citation of Rules Affected by this Order: Amending WAC 182-530-7050.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-01-140 on December 20, 2023.

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: January 24, 2024.

Wendy Barcus  
Rules Coordinator

**OTS-5053.2**

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

**WAC 182-530-7050 Reimbursement—Dispensing fee determination.**

(1) Subject to the provisions of WAC 182-530-7000 and the exceptions permitted in WAC 182-530-2000, the medicaid agency pays a dispensing fee for each covered, prescribed drug.

(2) The agency does not pay a dispensing fee for:

- (a) Nondrug items, devices, or drug-related supplies; or
- (b) Drugs administered by a health care professional.

(3) The agency periodically examines the sufficiency of pharmacy dispensing fees and may adjust the dispensing fee by considering factors including, but not limited to:

- (a) Legislative appropriations for vendor rates;
- (b) Input from provider and advocacy groups;

(c) Input from state-employed or contracted actuaries; and

(d) Dispensing fees paid by other third-party payers including, but not limited to, health care plans and other states' medicaid agencies.

(4) The agency uses a tiered dispensing fee system which pays higher volume pharmacies at a lower fee and lower volume pharmacies at a higher fee.

(5) The agency uses total annual prescription volume (both medicaid and nonmedicaid) reported to the agency to determine each pharmacy's dispensing fee tier. The following tier levels are effective for dates of service on and after July 1, 2023:

(a) A pharmacy which fills (~~more than thirty-five thousand~~) 70,000 or more prescriptions annually is a high-volume pharmacy. The agency considers hospital-based pharmacies that serve both inpatient and outpatient clients as high-volume pharmacies.

(b) A pharmacy which fills between (~~fifteen thousand one and thirty-five thousand~~) 30,000 and 69,999 prescriptions annually is a mid-volume pharmacy.

(c) A pharmacy which fills (~~fifteen thousand or fewer~~) less than 30,000 prescriptions annually is a low-volume pharmacy.

(6) The agency determines a pharmacy's annual total prescription volume as follows:

(a) The agency sends out a prescription volume survey form to pharmacy providers during the first quarter of the calendar year;

(b) Pharmacies return completed prescription volume surveys to the agency each year. Pharmacy providers not responding to the survey by the specified date are assigned to the high volume category;

(c) Pharmacies must include all prescriptions dispensed from the same physical location in the pharmacy's total prescription count;

(d) The agency considers prescriptions dispensed to nursing facility clients as outpatient prescriptions; and

(e) Assignment to a new dispensing fee tier is effective on the first of the month, following the date specified by the agency.

(7) A pharmacy may request a change in dispensing fee tier during the interval between the annual prescription volume surveys. The pharmacy must substantiate such a request with documentation showing that the pharmacy's most recent six-month dispensing data, annualized, would qualify the pharmacy for the new tier. If the agency receives the documentation by the twentieth of the month, assignment to a new dispensing fee tier is effective on the first of the following month.

(8) The agency grants general dispensing fee rate increases only when authorized by the legislature. Amounts authorized for dispensing fee increases may be distributed nonuniformly (e.g., tiered dispensing fee based upon volume).

(9) The agency may pay true unit dose pharmacies at a different rate for unit dose dispensing.