

WSR 21-24-018

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 19, 2021, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-059.

Title of Rule and Other Identifying Information: WAC 192-170-015
Verification requirement for an underlying health condition under RCW
50.20.010 (4) (b) (ii).

Hearing Location(s): On January 6, 2022, at 9:00 a.m., Zoom,
Meeting ID 828 9254 8635, Passcode 542603, Call-in 253-215-8782. Join
Zoom meeting [https://us02web.zoom.us/j/82892548635?](https://us02web.zoom.us/j/82892548635?pwd=WnY3V212Yk1QMkdYcU1BQ2hnb2lsZz09)
[pwd=WnY3V212Yk1QMkdYcU1BQ2hnb2lsZz09](https://us02web.zoom.us/j/82892548635?pwd=WnY3V212Yk1QMkdYcU1BQ2hnb2lsZz09).

Date of Intended Adoption: January 14, 2022.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia,
WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by January 5,
2022.

Assistance for Persons with Disabilities: Contact Teresa Eck-
stein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email
teckstein@esd.wa.gov, by December 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: ESSB 5061 (2021) provides, among other
things, good cause to leave work when, during a public health emergen-
cy, the claimant was unable to perform their work for the employer
from the claimant's home; the claimant is able and available to per-
form, and can actively seek suitable work which can be performed for
an employer from the claimant's home; and the claimant or another in-
dividual residing with the claimant is at higher risk of severe ill-
ness or death from the disease that is the subject of the public
health emergency because the higher risk individual has an underlying
health condition, verified as required by the department by rule, that
is identified as a risk factor of a disease that is the subject of a
public health emergency. ESSB 5061, section 10, chapter 2, Laws of
2021 (codified at RCW 50.20.050 (2) (b) (xii) (C) (II)). ESSB 5061 (2021)
also provides that during the weeks of a public health emergency, an
unemployed individual may meet the availability requirements of RCW
50.20.010 (1) (c) if they are able and available to perform, and ac-
tively seeking suitable work which can be performed for an employer
from the individual's home; and if the unemployed individual or anothe-
r individual residing with the unemployed individual is at higher
risk of severe illness or death from the disease that is the subject
of the public health emergency because the higher risk individual has
an underlying condition, verified as required by the department by
rule, that is identified as a risk factor for the disease that is the
subject of the public health emergency. Section 8, chapter 2, Laws of
2021 (codified at RCW 50.20.010 (4) (b) (ii)). Both provisions of SB
5061 direct the employment security department to adopt rules specify-
ing how it will verify a higher risk individual's underlying health
condition. The proposed rules provide that a claiming individual ob-
tain a certification from a health care provider that includes the
provider's qualification and contact information as well as informa-
tion sufficient to establish the underlying health condition.

Reasons Supporting Proposal: Pursuant to ESSB 5061 (2021), the
department is required to verify the underlying health condition of
higher risk individuals under RCW 50.20.010 (4) (b) (ii) and 50.20.050
(2) (b) (xii) (C) (II). The proposed rules should be adopted because they

adequately explain how the department will undertake the verification process.

Statutory Authority for Adoption: RCW 50.20.010 (4)(b)(ii) and 50.20.050 (2)(b)(xii)(C)(II) provide specific rule-making authority for verifying underlying health conditions. RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department.

Statute Being Implemented: RCW 50.20.010 and 50.20.050.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Joshua Dye, Olympia, 360-890-3472; Implementation and Enforcement: Julie Lord, Olympia, 360-890-3635.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not create additional tax burden on employers.

November 19, 2021
Dan Zeitlin
Employment Security
Policy Director

OTS-2980.2

NEW SECTION

WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (4)(b)(ii). (1)(a) An individual who limits their availability for work because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency may need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department may require the individual to provide additional documentation or certification to substantiate the underlying health condition if:

(i) Circumstances of the underlying health condition change;

(ii) Information is provided to the department that the employee may no longer have an underlying health condition; or

(iii) Other circumstances cause the department to question the existence or continued existence of the individual's underlying health condition.

(d) The department will deny benefits under WAC 192-140-070 if the individual fails to provide the certification when requested.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

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WSR 21-24-020
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed November 19, 2021, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-072.

Title of Rule and Other Identifying Information: WAC 363-116-301
New revenue collection.

Hearing Location(s): On January 20, 2022, at 10:00 a.m., virtual via Microsoft Teams. Please contact Jaimie Bever at 206-515-3887 for information regarding meeting access.

Date of Intended Adoption: January 20, 2022.

Submit Written Comments to: Jaimie C. Bever, Executive Director, 2901 Third Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, by January 13, 2022.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, email HamelJ@wsdot.wa.gov, by January 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to comply with legislative intent, through the passage of SB [SSB] 5165, which stipulates certain conditions in order for the board of pilotage commissioners (BPC) to receive state appropriation from the pilotage account solely for self-insurance liability premium expenditures. This revised rule defines these two stipulated conditions.

Reasons Supporting Proposal: Revising the mechanisms already in place to collect the revenue needed to pay the self-insurance liability premium expenditures is necessary for BPC to show compliance with legislative intent thus prompting the state to transfer the funds from the pilotage account. Without the fund sources allocated by SB [SSB] 5165, the agency would be in financial crisis, putting the BPC's mission to ensure against the loss of lives, loss of or damage to property and vessels, and to protect the marine environment by maintaining efficient and competent pilotage services in jeopardy.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The BPC's self-insurance liability premium is comprised of monetary contributions from the BPC, Puget Sound pilots, and those vessels taking pilots in the Puget Sound pilotage district. This revised rule enforces the collection of revenue from all participants.

Name of Proponent: BPC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jaimie C. Bever, 2901 Third Avenue, Suite 500, Seattle, WA 98121, 206-515-3887.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. BPC is not a listed agency in RCW 34.05.328 (5) (a) (i).

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

Is exempt under chapter 88.16 RCW.

Explanation of exemptions: This was a legislative mandate. The application of the proposed language is clear in the description of the proposal and its anticipated effects as well as the attached proposed revised WAC language.

November 19, 2021
Jaimie C. Bever
Executive Director

OTS-3332.1

AMENDATORY SECTION (Amending WSR 19-20-013, filed 9/20/19, effective 10/21/19)

WAC 363-116-301 New revenue collection. With respect to the passage of (~~Engrossed Substitute House Bill No. 1160, Section 108~~) section 107, chapter 333, Laws of 2021 (Substitute Senate Bill No. 5165), the board of pilotage commissioners is appropriated (~~three million one hundred twenty five thousand dollars~~) \$2,926,000 from the pilotage account state appropriation solely for self-insurance liability premium expenditures. This appropriation is contingent upon two stipulated conditions:

(1) The Puget Sound pilots shall pay to the board, from its tariffs, (~~one hundred fifty thousand dollars~~) \$150,000 annually on July 1, (~~2019~~) 2021, and July 1, (~~2020~~) 2022. These amounts shall be deposited by the board into the pilotage account and used solely for the expenditure of self-insurance premiums; and

(2) A self-insurance premium surcharge of (~~sixteen dollars~~) \$16 shall be added to each Puget Sound pilotage assignment on all vessels requiring pilotage in the Puget Sound pilotage district. The Puget Sound pilots shall remit the total amount of such surcharges generated to the board by the tenth of each month. The surcharge shall be in effect from July 1, (~~2019~~) 2021, through June 30, (~~2021~~) 2023. These amounts shall be in addition to those fees to be paid to the board pursuant to subsection (1) of this section and shall be deposited by the board into the pilotage account solely for the expenditure of self-insurance premiums.

These two directives are in effect beginning May (~~16, 2019~~) 18, 2021, through June 30, (~~2021~~) 2023.

[Statutory Authority: Chapter 88.16 RCW. WSR 19-20-013, § 363-116-301, filed 9/20/19, effective 10/21/19; WSR 17-20-009, § 363-116-301, filed 9/22/17, effective 10/23/17.]

WSR 21-24-023

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 19, 2021, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-034.

Title of Rule and Other Identifying Information: WAC 182-550-4300 Hospitals and units exempt from the DRG payment method.

Hearing Location(s): On January 4, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_EO-r4q2sQmeswJiqMwS3Rw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 5, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 4, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by December 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-4300 to align the rule with the medicaid state plan, which does not have specific time limitations on inpatient withdrawal management services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Cynde Rivers, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-5282.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule removes limitations on a client medical benefit and does not impose costs on small businesses.

November 19, 2021

Wendy Barcus
Rules Coordinator

OTS-3422.1

AMENDATORY SECTION (Amending WSR 21-15-128, filed 7/21/21, effective 8/21/21)

WAC 182-550-4300 Hospitals and units exempt from the DRG payment method.

(1) Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are paid under the ratio of costs-to-charges (RCC) payment method described in WAC 182-550-4500, the per diem payment method described in WAC 182-550-3000, the per case rate payment method described in WAC 182-550-3000, or other payment methods identified in this chapter (e.g., long term acute care (LTAC), certified public expenditure (CPE), critical access hospital (CAH), etc.). Inpatient services provided by hospitals and units are exempt from the DRG payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) The agency exempts the following hospitals, units, and services from the DRG payment method for inpatient services provided to clients eligible for Washington apple health:

(a) Hospitals participating in the agency's certified public expenditure (CPE) payment program (see WAC 182-550-4650);

(b) Hospitals participating in the agency's critical access hospital program (see WAC 182-550-2598);

(c) Rehabilitation services. All rehabilitation services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000);

(d) Military hospitals when no other specific arrangements have been made with the agency. The agency, or the military hospital, may elect or arrange for one of the following payment methods in lieu of the RCC payment method:

(i) Per diem payment method; or

(ii) DRG payment method; and

(e) Psychiatric services. All psychiatric services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000). An agency designee that arranges to directly pay a hospital and/or a designated distinct psychiatric unit of a hospital may use the agency's payment methods or contract with the hospital to pay using different methods.

(3) Inpatient psychiatric services, Involuntary Treatment Act services, and withdrawal management services provided in out-of-state hospitals are not covered or paid by the agency or the agency's designee. The agency does not cover or pay for other hospital services provided to clients eligible for those services in the following programs, when the services are provided in out-of-state hospitals that are not in designated bordering cities:

(a) Medical care services; and

(b) Other state-administered programs.

(4) The agency has established an average length of stay (ALOS) for each DRG classification and publishes it on the agency's website. The agency uses the DRG ALOS as a benchmark to authorize and pay inpatient hospital stays exempt from the DRG payment method. When an inpatient hospital stay exceeds the agency's DRG ALOS benchmark or prior authorized LOS:

(a) For a psychiatric inpatient stay, the hospital must obtain approval for additional days beyond the prior authorized days from the

agency or the agency's designee who prior authorized the admission.
See WAC 182-550-2600;

(b) For an acute physical medicine and rehabilitation (PM&R) or a long term acute care (LTAC) stay, the hospital must obtain approval for additional days beyond the prior authorized days from the agency unit that prior authorized the admission. See WAC 182-550-2561 and 182-550-2590;

(c) For an inpatient hospital stay for withdrawal management for a chemical using pregnant (CUP) client, see WAC 182-550-1100;

(d) For other medical inpatient stays for withdrawal management, see WAC 182-550-1100 (~~(and subsection (5) of this section)~~);

(e) For an inpatient stay in a certified public expenditure (CPE) hospital, see WAC 182-550-4690; and

(f) For an inpatient hospital stay not identified in (a) through (e) of this subsection, the agency may perform retrospective utilization review to determine if the LOS was medically necessary and at the appropriate level of care.

~~((5) If subsection (4)(d) of this section applies to an eligible client, the agency will:~~

~~(a) Pay for three-day withdrawal management services for an acute alcoholic condition; or~~

~~(b) Pay for five-day withdrawal management services for acute drug addiction when the services are directly related to withdrawal management; and~~

~~(c) If WAC 182-550-1100 (5)(b) applies, extend the three- and five-day limitations when the following are true:~~

~~(i) The days are billed as covered;~~

~~(ii) A medical record is submitted with the claim;~~

~~(iii) The medical record clearly documents that the days are medically necessary; and~~

~~(iv) The level of care is appropriate according to WAC 182-550-2900.)~~

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-15-128, § 182-550-4300, filed 7/21/21, effective 8/21/21. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4300, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4300, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4300, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 06-08-046, § 388-550-4300, filed 3/30/06, effective 4/30/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 05-12-132, § 388-550-4300, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-4300, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4300, filed 12/18/97, effective 1/18/98.]

WSR 21-24-024
PROPOSED RULES
CONSOLIDATED TECHNOLOGY SERVICES

[Filed November 19, 2021, 4:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-081.

Title of Rule and Other Identifying Information: Chapter 143-06 WAC, fee waivers. Updating this rule to comply and conform with EHB 1595 and agency policies.

Hearing Location(s): On January 7, 2022, at 10:00 a.m., virtual, meeting information will be posted at <https://watech.wa.gov/Understanding-and-participating-Rule-Making-Process>.

Date of Intended Adoption: January 10, 2022, or later.

Submit Written Comments to: Brianna Southworth-Schultz, 1500 Jefferson Street S.E., Olympia, WA 98504, email Brianna.southworth@watech.wa.gov, by January 5, 2022.

Assistance for Persons with Disabilities: Contact Brianna Southworth-Schultz, phone 360-407-2753, email Brianna.southworth@watech.wa.gov, by January 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending its rules relating to public records to confirm [conform] with chapter 304, Laws of 2017, and to make other updates relating to fee waivers for electronic production of records.

Reasons Supporting Proposal: To ensure the best interests of the public and the agency.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.120.

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Consolidated technology services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brianna Southworth-Schultz, 1500 Jefferson Street, Olympia, WA 98504, 360-407-2953.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 42.56.070, 42.56.120.

Explanation of exemptions: To the extent there are costs assessed by this agency for records provided in response to public records requests by small businesses, the authorized costs are set out in statute and apply to all requesters. RCW 42.56.070, 42.56.120.

November 15, 2021
Brianna Southworth-Schultz
Records Manager

OTS-3340.1

AMENDATORY SECTION (Amending WSR 19-06-020, filed 2/27/19, effective 3/30/19)

WAC 143-06-180 Fee waivers. (1) Requestors are required to pay for copies in advance of receiving records. ~~((Fee waivers are an exception and are available for some small requests under the following conditions.~~

~~(1) It is within the discretion of))~~ (2) The public records officer ~~((to))~~ may waive copying fees when:

(a) All of the records responsive to an entire request are paper copies only and are ~~((twenty-five))~~ 25 or fewer pages; ~~((or))~~

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule ~~((-~~

~~(2) Fee waivers are not applicable to records provided in installments.))~~; or

(c) The public records officer determines, based upon the circumstances of the records request, that fee waiver is in the public interest.

[Statutory Authority: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120, and 43.10.110. WSR 19-06-020, § 143-06-180, filed 2/27/19, effective 3/30/19.]

WSR 21-24-033
PROPOSED RULES
PARAEDUCATOR BOARD

[Filed November 22, 2021, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-097.

Title of Rule and Other Identifying Information: WAC 179-09-040
Fundamental course of study, the proposed rule allows online synchronous learning to meet the in-person fundamental course of study requirement through September 1, 2022.

Hearing Location(s): On January 19, 2022, at 8:00 a.m., at Educational Service District 113, Olympia.

Date of Intended Adoption: January 19, 2022.

Submit Written Comments to: Paraeducator Board, 600 Washington Street S.E., Room 400, Olympia, WA 98504, email paraboard@k12.wa.us, by January 17, 2022.

Assistance for Persons with Disabilities: Contact professional educator standards board, phone 360-725-6275, email pesb@k12.wa.us, by January 17, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC regarding the in-person training requirement. This amendment will allow school districts to train paraeducators on the fundamental course of study through online synchronous learning. This rule will remain in effect until September 1, 2022.

Reasons Supporting Proposal: COVID-19 continues making the in-person training requirement a severe challenge for school districts to meet. In addition, the health of students and educators must be in consideration. Allowing online synchronous learning to meet the in-person training requirement will permit districts to meet state mandated training.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: [Information not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Jack Busbee, 600 Washington Street S.E., Olympia, WA 98504, 360-867-8034.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no cost to the state.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

November 22, 2021
Jack Busbee
Rules Coordinator

OTS-3268.1

AMENDATORY SECTION (Amending WSR 20-20-002, filed 9/23/20, effective 10/24/20)

WAC 179-09-040 Fundamental course of study. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) (a) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. At least one day of the fundamental course of study must be provided in person. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(b) Beginning March 1, 2020, through September 1, ((2021)) 2022, virtual learning environments that use synchronous learning with an instructor will meet the one day in-person training requirement of the fundamental course of study.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a) (i) For paraeducators hired on or before September 1st, the first two days of the fundamental course of study must be provided by September 30th of that year and the second two days of the fundamental course of study must be provided within six months of the date of hire, regardless of the size of the district; and

(ii) For paraeducators hired after September 1st:

(A) For districts with ten thousand or more students, the first two days of the fundamental course of study must be provided within four months of the date of hire and the second two days of the fundamental course of study must be provided within six months of the date of hire or by September 1st of the following year, whichever is sooner; and

(B) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(b) (i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and

(ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.

(4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.

(5) (a) Providers of the fundamental course of study must provide to the paraeducator written documentation of each unit completed by a paraeducator. The documentation is as published by the professional educator standards board.

(b) Upon request, if such request is made within seven calendar years of unit completion, the provider shall provide the paraeducator with documentation of unit completion.

(6) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.

(7) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

[Statutory Authority: Chapter 28A.413 RCW. WSR 20-20-002, § 179-09-040, filed 9/23/20, effective 10/24/20; WSR 19-21-070, § 179-09-040, filed 10/11/19, effective 11/11/19; WSR 18-16-106, § 179-09-040, filed 7/31/18, effective 8/31/18.]

WSR 21-24-067

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed November 30, 2021, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-076.

Title of Rule and Other Identifying Information: Chapter 456-09 WAC, Formal hearings—Practice and procedure.

Hearing Location(s): On January 7, 2022, at 10:00 a.m., electronic meeting via Teams information on agency website.

Date of Intended Adoption: January 31, 2022.

Submit Written Comments to: Keri Lamb, email bta@bta.wa.gov, fax 360-586-9020, by December 30, 2021.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by December 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes is to clarify statutory language, simplify the calculation of deadlines, and streamline the formal hearings process.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: Chapters 34.05 RCW and 10-08 WAC.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, board of tax appeals, 360-753-5446; Implementation and Enforcement: Board of tax appeals, 360-753-5446.

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

A cost-benefit analysis is not required under RCW 34.05.328. Changes have no fiscal impact

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No substantive changes in the board's administrative process.

November 29, 2021
Andrea Vingo
Tax Referee

OTS-3504.1

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-001 Purpose and application of chapter. (1) This chapter ~~((concerns administrative matters of))~~ explains the practice and procedure of formal hearings conducted before the board of tax appeals (board) ~~((and explains how adjudicative proceedings are conducted before the board))~~ in accordance with the Administrative Procedure Act, chapter 34.05 RCW. This chapter ~~((augments))~~ adds to but does not ~~((supplant))~~ replace the provisions ~~((of))~~ in chapter 82.03 RCW.

(2) The rules of practice and procedure contained in this chapter ~~((govern the conduct of formal hearings before the board and))~~ will be construed to secure the just, speedy, and ~~((economical))~~ efficient determination of every ~~((action))~~ appeal.

(3) To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and ~~((found in))~~ chapter 10-08 WAC, these rules ~~((shall))~~ will prevail.

(4) Where procedures are not ~~((covered))~~ addressed by this chapter ~~((and))~~ or chapter 10-08 WAC, the board may, upon its own motion or upon written ~~((application))~~ motion by any party, refer to and apply any rule provided for in the Washington state superior court civil rules, including the rules of evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-001, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-010 ((Distinction between)) Formal and informal hearings ((and converting an appeal)). (1) ~~((In all appeals over which the board has jurisdiction,))~~ A party making an appeal may ~~((elect in writing, with its notice of appeal,))~~ choose either a formal or informal hearing in its written notice of appeal. Formal hearings are conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of this chapter. Informal hearings are conducted pursuant to chapter 456-10 WAC. Failure to ~~((elect in writing))~~ choose a formal ~~((or informal))~~ hearing ~~((at the time of submitting the notice of appeal shall))~~ will result in the proceeding being conducted as informal.

~~((a))~~ (2) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record ~~((made of the proceedings))~~ includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted ~~((to the board))~~ by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted ~~((thereto.~~

~~((b))~~ Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.

~~((c))~~ Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.

~~(2) The)) to it pursuant to WAC 458-14-170.~~

~~(3) An appeal may be converted from a formal to an informal proceeding ((as provided below.~~

~~(a) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.~~

~~(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.~~

~~(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.~~

~~(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing)) at any time up to 30 calendar days before the date of the hearing as long as the parties submit a notice signed by all parties of the intent to convert the proceedings.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-010, filed 6/21/05, effective 8/1/05; WSR 94-07-044, § 456-09-010, filed 3/10/94, effective 4/10/94; WSR 89-10-056 (Order 89-02), § 456-09-010, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-110 Definitions. ~~((As used)) (1) In this chapter, the ((following)) subsequent terms ((shall)) have the following meanings:~~

~~((1)) (a) "Appellant" means a person or entity who appeals any order or decision.~~

~~(b) "Board" means the board of tax appeals as described in chapter 82.03 RCW, and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers, tax referees, or agents of the board of tax appeals.~~

~~((2)) (c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees, or agents of the board of tax appeals.~~

~~(d) "File" means to present or deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably.~~

~~(e) "Order" means a written direction given by the board instructing that some act be done or that some act is prohibited. Orders are not appealable unless otherwise provided by law.~~

~~(f) "Party" means any person or entity who is an appellant, respondent, or intervenor.~~

(g) "Presiding officer" or "hearing officer" ((shall)) means any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer ((shall have)) has the authority ((as provided by)) outlined in WAC 10-08-200 and chapter 34.05 RCW.

~~((3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.~~

~~(4)) (h) "Respondent" means a person ((, natural or otherwise,)) or entity who is ((named)) listed as a responding party in any appeal ((before the board of tax appeals.~~

~~(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and this chapter.~~

~~(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.~~

~~(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.~~

~~(8) "Party" means any person who in a proceeding before the board is an appellant, respondent, or an intervenor as allowed in WAC 456-09-340.~~

~~(9) "To submit") .~~

(i) "Submit" means to present or to deliver to the board. Submissions ~~((to the board))~~ may be delivered personally, by mail, by commercial delivery service, ~~((or))~~ by fax or by electronic transmission as provided in these rules. ~~((As used herein,))~~ The terms "to submit" and "to file" are used interchangeably.

~~((10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.)~~ (j) "Transmit" means to deliver electronically.

(2) If a term has not been defined in this section, the board will interpret the term as having its ordinary meaning.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-110, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-110, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-210 Appearance and practice before the board. Practice before the board in formal proceedings ~~((shall be))~~ is limited to the following:

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law duly qualified and entitled to practice in the ~~((courts of the state of Washington))~~ highest court of any state;
- (3) An authorized officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears ~~((for))~~ with the permission of such firm, association, partnership, or corporation;
- (4) County assessors or their duly authorized representatives;

- (5) Certified public accountants currently licensed in ((Washington)) any state; and
 (6) Other persons permitted by law.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-210, filed 6/21/05, effective 8/1/05; WSR 91-07-038 (Order 91-01), § 456-09-210, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-210, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-210, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-220 Rules of professional conduct. (1) All persons appearing in proceedings before the board ((, whether on their own behalf or in a representative capacity, shall conform to)) are required to follow the rules of professional conduct (RPC) required of attorneys before the courts of Washington. If any such person does not follow these standards, the hearing officer may, in his/her discretion and depending on the circumstances, admonish or reprimand such person, exclude such person from further participation in the proceedings, adjourn the hearing, or report the matter to the board. Outside of the proceedings, all persons are required to treat all parties, representatives, and the board's staff courteously and fairly.

(2) The board in its discretion, either upon referral by a hearings officer or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, may take appropriate disciplinary action including, but not limited to, refusal to permit such person to appear or appear in a representative capacity in any proceeding before the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-220, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-220, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 95-05-033, filed 2/8/95, effective 3/11/95)

WAC 456-09-230 Ex parte communication. ((1) No one shall) Neither the board nor any person may make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which is prohibited by the Administrative Procedure Act. ((The board, in conducting a formal proceeding governed by the Administrative Procedure Act, may not make or attempt to make ex parte communications prohibited by such act.)) Attempts by anyone to make such prohibited ex parte communications ((shall)) will be subject ((such person)) to the sanctions ((of)) in WAC 456-09-220 and 456-09-750.

((2) The requirements and procedures of RCW 34.05.455 apply to ex parte communications.))

[Statutory Authority: RCW 82.03.170. WSR 95-05-033 (Order 95-01), § 456-09-230, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-230, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-230, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-300 ((Commencing the)) Initiating an appeal. (1)

~~((Persons wishing to make))~~ Those who wish to initiate an appeal must ~~((submit to the board))~~ file an original notice of appeal and a copy of the order or determination that is being appealed. ~~((The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.))~~

(2) The board will acknowledge ~~((to the appellant in writing))~~ receipt of a notice of appeal in writing to all parties in a timely fashion.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-300, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-310 Contents of notice of appeal. (1) ~~((For all appeals,))~~ An appellant must submit ~~((to the board))~~ a notice of appeal that substantially contains the following:

(a) The appellant's name, mailing address, telephone number, email address, and that of the representative, if any.

(b) The name of the respondent together with the respondent's mailing and email address, and phone number, if known.

~~((When the respondent is a government agency or agencies,))~~ The board may add additional respondents in order to ensure that all necessary ~~((persons))~~ entities are a party to the appeal.

(c) ~~((The date of the order or determination from which the appeal is taken together with))~~ A copy of the order, decision, or ~~((application))~~ determination appealed from.

(d) The ~~((nature))~~ type of ~~((the))~~ tax.

(i) In excise tax cases, the amount of the tax in controversy and the period ~~((covered thereby))~~ at issue;

(ii) In property tax cases, the parcel number of the property ~~((under appeal, the year for which the valuation has been determined, the full value as)),~~ the assessment-year at issue, the value determined by the local board of equalization, and ~~((a declaration of true and fair value as alleged by the appellant))~~ the appellant's contended value; and

(iii) In property tax exemption cases, the parcel number of the property ~~((under appeal)),~~ and the year(s) for which the exemption is at issue ~~((, the basis under which exempt status should be granted or denied, and the use of the property)).~~

- (e) ~~((Specification of the issue to be decided by the board.~~
- ~~(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.~~
- ~~(g)) A notice of ((intention)) intent that the hearing be formal and held pursuant to the Administrative Procedure Act.~~
- ~~((h)) (f) The relief sought.~~
- ~~((i)) (g) The signature ((of)) or acknowledgment, electronic or otherwise, by the appellant or the appellant's representative that all the information contained in the notice of appeal is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.~~
- (2) The board may, upon motion of a party or upon its own motion, require ~~((a more complete statement of the claim or defense or)) additional information or explanation of any matter stated in ((any)) a notice of appeal.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-310, filed 6/21/05, effective 8/1/05; WSR 98-22-039, § 456-09-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-310, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-310, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

- WAC 456-09-315 Deadlines for submitting ((the)) a notice of appeal.** (1) The jurisdiction of the board ~~((to hear an appeal))~~ is limited to those appeals ~~((submitted within))~~ that comply with and are filed by the deadlines stated in this section~~((Any appeal to the board shall be submitted within the time required by the statute governing the respective agency or proceeding involved. All time periods set forth below are expressed in calendar days including, but not limited to the following:))~~ or the statute governing the respective agency or proceeding involved.
- (a) ~~((Appeals))~~ For appeals of a denial of petition or notice of determination for a reduction or refund taken pursuant to RCW 82.03.190, ((thirty)) 30 days from the ((mailing of the determination)) date the determination was mailed or transmitted.
- (b) For appeals from a county board of equalization pursuant to RCW 84.08.130, ((thirty)) 30 days from the ((mailing of the decision)) date the decision was mailed or transmitted.
- (c) For appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, ((thirty)) 30 days from the ((mailing of the determination)) date the determination was mailed or transmitted.
- (d) For appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and ((the)) its apportionment ((thereof to a county)) made pursuant to chapters 84.12 and 84.16 RCW, ((thirty)) 30 days from the ((mailing of the order)) date the order was mailed or transmitted.
- (e) For appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of

any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, ~~((fifteen))~~ 15 days ~~((after the mailing of the certification))~~ from the date the certification was mailed or transmitted.

(f) For appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, ~~((thirty))~~ 30 days from the ~~((mailing of the notification))~~ date the notification was mailed or transmitted.

(g) For appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, ~~((thirty))~~ 30 days from the ~~((mailing of the ordinance))~~ date the ordinance was mailed or transmitted.

(h) For appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, ~~((thirty))~~ 30 days after the ~~((publication of the))~~ rate was published.

(i) For appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the ~~((sixtieth))~~ 60th day after the date of final adoption.

(j) For appeals from the denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, ~~((thirty))~~ 30 days from the ~~((mailing of the determination))~~ date the determination was mailed or transmitted.

(2) All time periods set forth in this section are expressed in calendar days unless otherwise noted. If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday as defined in RCW 1.16.050(1), the submission ~~((shall))~~ will be considered timely if ~~((performed))~~ submitted on the next business day by 5:00 p.m. Pacific Standard Time.

(3) Any party may ~~((, by motion,))~~ file a written motion to challenge the jurisdiction of the board ((in any appeal)). The board may, upon its own motion, raise ~~((such jurisdictional issues))~~ a question about jurisdiction.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-315, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-325 Date and manner of submitting ((the)) a notice of appeal. (1) ~~((The date of submitting))~~ A notice of appeal ~~((shall be))~~ is considered submitted on the date of ~~((actual))~~ receipt by the board at its Olympia office if the notice of appeal is hand delivered. The board's date stamp ~~((placed thereon shall))~~ will be evidence of the date of receipt. If the notice of appeal is mailed, the postmark ~~((control and shall))~~ be evidence of the date of submission.

(2) ~~((All documents may be submitted with the board via fax machine or electronic mail transmission. However, the submission will not be deemed complete and the board will not acknowledge receipt of~~

~~the notice of appeal as provided in WAC 456-09-300 unless the following procedures are strictly observed:~~

~~(a) Documents received by fax machine or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's fax machine or computer shall be evidence of the date and time of receipt of transmission.~~

~~(b) The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.~~

~~(c) All fax or electronic transmissions are sent at the risk of the sender.) A notice of appeal may be submitted by fax, electronic mail, or uploaded through the board's website. A submission will not be considered timely unless received by 5:00 p.m. Pacific Time on the date due. The date and time indicated by the board's fax or computer will be evidence of the date and time of receipt.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-325, filed 6/21/05, effective 8/1/05; WSR 98-22-039, § 456-09-325, filed 10/29/98, effective 11/29/98; WSR 95-05-033 (Order 95-01), § 456-09-325, filed 2/8/95, effective 3/11/95; WSR 94-07-044, § 456-09-325, filed 3/10/94, effective 4/10/94; WSR 91-07-038 (Order 91-01), § 456-09-325, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-325, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-335 Response to a notice of appeal. (1) The respondent ((may submit an original and three copies of a response to the notice of appeal with the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-09-345)) must submit a response to the notice of appeal within 30 calendar days of the board acknowledging receipt of the notice of appeal, unless otherwise ordered, together with proof of service pursuant to WAC 456-09-345.

(2) The response must include:

(a) The respondent's name, mailing address, telephone number, email address, and that of the representative, if any;

(b) The type of tax.

(i) In excise tax cases, the amount of the tax in controversy and the period at issue;

(ii) In property tax cases, the parcel number of the property, the assessment year at issue, and the respondent's contended value; and

(iii) In property tax exemption cases, the parcel number of the property, and the year(s) for which the exemption is at issue.

(c) A notice of intent that the hearing be formal and held pursuant to the Administrative Procedure Act;

(d) The relief sought; and

(e) A signature or acknowledgment, electronic or otherwise, by the respondent or the respondent's representative that all the information contained in the response is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-335, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-335, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-340 Intervention. (1) Any person or ~~((agency))~~ entity whose interest may be substantially affected by an appeal may petition the board to be granted status as an intervenor ~~((in the appeal))~~.

(2) In determining whether a petitioner qualifies as an intervenor, the presiding officer ~~((shall))~~ will apply the rules of the superior courts of this state.

(3) If the ~~((petitioner qualifies for))~~ presiding officer grants intervention, ~~((the presiding officer))~~ he or she may impose conditions upon the intervenor's participation ~~((in the proceedings))~~, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting ~~((the intervenor's))~~ participation to designated issues in which the intervenor has a particular ~~((interest as))~~ and demonstrated ~~((by the petition))~~ interest;

(b) Limiting the ~~((intervenor's))~~ use of discovery, cross-examination, and other procedures ~~((so as))~~ to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence ~~((and))~~ argument, cross-examination, discovery, and other participation in the proceedings.

~~((4) The presiding officer may timely grant or deny each petition and specify conditions, if any.)~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-340, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-340, filed 2/8/95, effective 3/11/95; WSR 89-10-056 (Order 89-02), § 456-09-340, filed 5/2/89.]

SERVICE OF ((PAPERS)) DOCUMENTS

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-345 Service ((of papers on parties)) and filing of documents and proof of service. (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board ((shall)) must be served ((upon)) on all counsel and representatives of record, and to unrepresented parties or ((upon)) on their designated agents ((designated by them or)), or to other persons or entities as required by law.

(a) Service ((shall)) must be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax ((and same-day mailing of copies)); ((or)) by commercial delivery company; or electronically.

(b) Service by mail ((shall be regarded as)) will be considered completed ((upon deposit in the United States mail,)) as evidenced by the postmark((, properly stamped and addressed)). Service by fax ((shall be regarded as)) will be considered completed ((upon production by the fax machine of)) as evidenced by a confirmation of transmission ((and deposit on the same day in United States mail)). Service by commercial ((parcel)) delivery ((shall be regarded as)) will be considered completed ((upon)) on delivery to the ((parcel)) delivery company((, properly addressed with charges prepaid)). Electronic service will be considered completed as evidenced by a sent receipt or the equivalent.

(c) Service must be completed by 5:00 p.m. Pacific Time on the date due.

(2) ((Where proof of service is required by statute or rule, receipt of the papers)) Receipt by the board, together with one of the following, ((shall constitute)) will serve as proof of service:

(a) ((An acknowledgment of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.) A copy was mailed to each party or his or her attorney or representative;

(b) A copy was faxed, to each party to the proceeding or his or her attorney or representative;

(c) A copy was delivered to a commercial delivery company; or

(d) A copy was electronically transmitted to each party or his or her attorney or representative.

(3) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers are considered filed with the board:

(a) On the date of receipt by the board at its Olympia office if the document is hand delivered, commercially delivered, or mailed. The board's date stamp will be evidence of the date of receipt; or

(b) On the date and time indicated by the board's fax or computer, if the document is submitted by fax, electronic mail, or uploaded

through the board's website as long as the document shows it was received by 5:00 p.m. Pacific Time on the date due.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-345, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-345, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-510 Limitations on discovery. (1) ~~((Insofar as))~~ If applicable and not in conflict with this chapter, the board will apply the statutes and court rules regarding pretrial procedures and discovery used in civil cases in the state of Washington's superior courts ~~((of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions))~~.

(2) The board may limit or prohibit discovery ~~((upon))~~ on its own motion or on a motion made by any party ~~((-~~

~~(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules))~~. The board may also condition the use of discovery on a showing of necessity and the unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-510, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-510, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-520 Subpoena. Subpoenas ~~((shall))~~ will be issued and enforced, and witness fees paid, as provided in RCW 34.05.446. Parties ~~((wishing))~~ who wish to issue a subpoena must comply with the ~~((rules))~~ requirements in WAC 10-08-120.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-520, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-520, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-520, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-530 Settlement conference. (1) At any time prior to a hearing, the board may, ~~((upon))~~ on its own motion or ~~((upon))~~ a written ~~((application by))~~ request of a party, order a settlement conference. The conference ~~((shall))~~ will be scheduled with ~~((not less~~

than fourteen)) at least 14 calendar days' notice to each party, and occur at a time and place ((fixed)) determined by the board ((and conducted in a form and manner prescribed by the board with notice to the parties)).

(2) In the event ~~((the appeal does not settle,))~~ a settlement conference is unsuccessful, a hearing ((on the matter shall)) will be set. The presiding officer of the hearing will not be the person who ~~((conducts))~~ conducted the settlement conference.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-530, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-530, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-530, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-540 Prehearing conference. (1) The board, ~~((upon))~~ on its own motion or ((upon)) a request of a party, may conduct a prehearing conference ~~((or conferences))~~ to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of ~~((amendments to))~~ amending the pleadings or other documents;
- (c) The possibility of obtaining stipulations ~~((,))~~ or admissions ((of fact and admissions of the genuineness of documents which will avoid unnecessary proof));
- (d) Limitations on the number and consolidation of ~~((the))~~ witness examinations ((of witnesses));
- (e) Procedural matters;
- (f) ~~((Dates by which the parties must provide documentary evidence to the board and to other parties,))~~ Deadlines for completing discovery, disclosures of fact and expert witnesses, submissions of stipulations of facts and exhibit lists, and filing of briefs;
- (g) The ~~((method for))~~ manner of identifying exhibits and ((other)) attachments to briefs, motions, and other pleadings;
- (h) The number of copies ~~((of documentary evidence, briefs, motions and other pleadings))~~ to be submitted ~~((to the board));~~ and
- (i) ~~((Such))~~ Other matters ((as may aid in the disposition or settlement of)) that may help to dispose of the case in whole or in part, or streamline the proceeding.

(2) Prehearing conferences may be held by ~~((teleconference or at a time and place))~~ phone, video, or other electronic means, or in-person as specified by the presiding officer.

(3) Following the prehearing conference, the board ~~((shall))~~ will issue an order ((reciting)) outlining the action taken at the prehearing conference, and ((the)) any agreements made by the parties ((concerning all of the matters considered)). The order ~~((shall))~~ will control the ((subsequent)) course of the proceeding unless modified for good cause by a subsequent order.

(4) Documentary evidence that is not submitted ((in accordance with)) as outlined in the prehearing conference order ~~((may))~~ will not be ((received in)) allowed into evidence ((in the absence of)) absent a clear showing that the ((offering)) party offering the evidence had good cause for ((the failure)) failing to comply with the order.

(5) Nothing in this rule ((shall)) will be construed to limit the right of the parties to ((attempt settlement)) settle the appeal at any time.

(6) The board has authority to issue a prehearing order even if a prehearing conference has not been held.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-540, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-540, filed 2/8/95, effective 3/11/95; WSR 89-10-056 (Order 89-02), § 456-09-540, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-545 Summary judgment. A motion for summary judgment may be granted ((and an order issued)) if the written record shows that, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue as to any material fact and that ((the moving)) a party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-09-555.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-545, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-550 Time ((in which)) for filing evidence, briefs, ((and)) replies ((must be submitted)), witness lists, stipulations, and documentary evidence. (1) In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board ((within the times stated below.

~~(1))~~ by the following deadlines:

(a) A list of fact or expert witnesses who will testify at the hearing must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 100 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(b) Any factual stipulations must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 55 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(c) Documentary evidence ((which is)) to be introduced at a hearing ((shall)) must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Documentary evidence must be introduced at least ((ten business)) 38 calendar days ((prior to)) before the hearing. Each page of documentary evidence ((shall)) must be numbered and indicate whether it is submitted by the appellant or respondent ((and shall be numbered)). ((Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-09-750.

~~(2) An original and three copies of briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least fifteen calendar days prior to hearing.~~

~~(3) An original and three copies of reply briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten calendar days prior to hearing.~~

~~(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.) A list of the documentary evidence submitted must be filed at the same time.~~

(d) Pretrial motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Pretrial motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(e) Summary judgment motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Summary judgment motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(f) Trial briefs are required and must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Trial briefs must be submitted at least 31 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(g) Replies to any motion or brief are optional, but if filed they must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Replies must be submitted at least 17 calendar days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(h) Posthearing briefing and proposed findings of fact and conclusions of law may be required by the board. If so, this document must be submitted together with proof of service pursuant to WAC 456-09-345. Proposed findings of fact and conclusions of law must be received by the board no later than the date specified by the board, or if no date is specified, no later than 21 calendar days after a hearing. Three copies are required if the proceeding occurs in front of the entire board.

(2) Failure to comply with these requirements may be grounds to exclude the evidence, witness, reply, or brief, or to dismiss the appeal in accordance with WAC 456-09-750.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-550, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-550, filed 5/2/89.]

NEW SECTION

WAC 456-09-551 Limits on exhibits and evidence. (1) Each party must indicate the specific pages it intends to rely on, if any, from the body from which the party appeals. Failure to indicate specific page numbers will result in the presumption that the party does not intend to rely on the underlying record, and instead intends to submit and rely only on new evidence.

(2) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. These page limitations exclude the findings or determination of the body from which the decision or finding is appealed, audit documents, property tax assessments, and formal appraisals from a licensed appraiser:

(a) For residential property tax appeals, each party is limited to submitting a total of 175 pages per assessment-year appealed, including any evidence from the record of the county board of equalization that the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 275 pages per assessment-year appealed, including any evidence from the record of the county board of equalization that the party intends to rely on;

(c) For property tax exemption appeals, each party is limited to submitting a total of 375 pages, including any evidence from the record of the department of revenue that the party intends to rely on;

(d) For department of revenue excise tax appeals, each party is limited to submitting a total of 500 pages, including any evidence from the record of the department of revenue that the party intends to rely on, if any;

(e) For all other appeals, including appeals to reconvene a county board of equalization, each party is limited to submitting a total of 175 pages, including any evidence from the record of the body from which a decision is appealed, and which the party intends to rely on.

(3) A party may file a motion with the board to submit evidence and/or exhibits up to 1,000 pages, which the board will grant for good cause. Requests for submissions beyond 1,000 pages are strongly discouraged, and will only be granted if justice so requires. Exceeding the page limits without the board's advance, written permission may result in the hearing being continued, or the exclusion of evidence beyond the page limits.

(4) For property tax appeals, the board strongly encourages each party to submit the following exhibits or evidence in the following instances:

(a) A table of comparable sales if the party intends to rely on such evidence. The table should include at least the age, size, sales price, date of sale, and location relative to the subject property of each comparable sale. A suggested table is available on the board's website or by contacting the board's staff.

(b) An income approach to valuation outline if the party intends to rely on such evidence. The outline should include at least the subject property's square footage, contended price per square foot, vacancy rate, operating expenses, and capitalization rate.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-552 Amicus. (1) Any person or entity whose interest may be substantially affected by a proceeding before the board may ~~((by motion))~~ request status as an amicus ~~((in the case))~~. The ~~((motion))~~ request must be made by written motion, and must comply with WAC 456-09-555 and 456-09-345.

(2) The motion requesting amicus status must include ~~((a state-ment of the following))~~:

(a) The applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) The applicant's familiarity with the issues ~~((involved))~~ in the proceeding before the board, and with the scope of the arguments presented or to be presented by the parties;

(c) The specific issues to which the ~~((amicus curiae))~~ brief will be directed; and

(d) The applicant's reason ~~((for believing that))~~ as to why additional argument is necessary on ~~((these specific))~~ the issues identified.

(3) ~~The ~~((brief of))~~ deadline for filing an amicus ~~((curiae may be filed with the motion but must be filed no later than the time set))~~ brief is the same as the deadline for the filing of the brief for the party whose position the amicus supports.~~

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus ~~((curiae))~~ from any person or entity deemed to be substantially affected by a proceeding ~~((before the board))~~.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-552, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-555 Motions. (1) Any ~~((application))~~ request for an order or ruling or a request for relief ~~((from any provision of this chapter))~~ is considered a motion. Every motion, unless made during hearing, ~~((shall))~~ must be in writing and ~~((shall))~~ include ~~((the following))~~:

(a) A statement of the relief ~~((or order))~~ sought;

(b) The ~~((reason))~~ basis for the relief ~~((or order))~~;

(c) A statement that the moving party ~~((has))~~ made a good faith effort to meet and confer with the other party or parties to resolve the subject ~~((matter))~~ of the motion;

(d) ~~((The amount of time needed for argument;~~

~~-(e) Whether court reporting services are requested; and~~

~~-(f) Shall include))~~ A request for oral argument, if any, and if so, how much time the party desires;

(e) Proof of service pursuant to WAC 456-09-345; and

(f) A proposed order.

(2) All motions ~~((shall))~~ must be properly captioned and signed by the party, their attorney, or their representative.

(3) At the discretion of the board, ~~((the))~~ a hearing on a motion may be ~~((by teleconference or in person))~~ held in person, by phone, by video, or by other electronic means.

(4) A response to ~~((the))~~ a motion ~~((shall))~~ must be submitted to the board and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-09-345 ~~((within ten business days following the date of service of the motion))~~.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-555, filed 6/21/05, effective 8/1/05.]

NEW SECTION

WAC 456-09-557 Requirements for briefs, motions, responses, replies, memorandum, and other documentary evidence. (1) All briefs, motions, responses, replies, and memorandum must:

(a) Be legibly printed on letter-size paper (8-1/2 by 11 inches). All margins must be a minimum of one inch. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(b) Be double spaced and in 12 point or larger type in one of the following fonts or their equivalent: Times New Roman, Courier, CG Times, or Arial. Footnotes may be single spaced in 10 point or larger type. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(c) Include a signature block that the signer certifies the number of words in the brief, motion, or memorandum that substantially states: "I certify that this memorandum contains words, in compliance with the board's rules."

(d) Refrain from including, or partially redact where inclusion is necessary, the following personal data identifiers from all documents filed or used as exhibits, unless otherwise ordered by the board:

(i) Dates of birth - Redact to the year of birth, unless deceased;

(ii) Social Security numbers and taxpayer-identification numbers - Redact in their entirety;

(iii) Financial accounting information - Redact to the last four digits; and

(iv) Driver license numbers - Redact in their entirety.

(2) In the absence of a prehearing order, the following word limits will apply:

(a) Trial briefs may not exceed 5,000 words (approximately 10 pages).

(b) Motions *in limine* and any brief in opposition may not exceed 9,000 words (approximately 18 pages).

(c) Dispositive motions, including motions for summary judgment and motions to dismiss, must not exceed 12,000 words (approximately 24 pages). Responses must not exceed 12,000 words, and replies 6,000 words (approximately 12 pages).

(d) Exceptions and motions for reconsideration and any responses must not exceed 3,000 words (approximately six pages).

(e) All other motions must not exceed 3,000 words (approximately six pages), and responses 1,500 words (approximately three pages).

(3) The board may refuse to consider any text, including footnotes, which is beyond the word limit. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the word limit.

(4) Motions to file over-length motions or briefs are disfavored, but may be filed subject to the following:

(a) The motion must be no more than 1,000 words (approximately two pages) in length, and must request a specific number of additional words; and

(b) No opposition to the motion may be filed unless requested by the board.

If the board grants leave to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional words. In all cases, the reply brief cannot exceed one-half the total length of the brief filed in opposition.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-560 Postponement, continuance, and extensions of time. (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference (, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date) must be made in writing and comply with WAC 456-09-555 and 456-09-345. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-09-555 and 456-09-345, and be filed 30 calendar days before the scheduled hearing. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

(4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-09-555 and 456-09-345. ((The board shall promptly schedule a conference to hear argument and rule on the request. Requests for continuance will not be granted absent a showing of good cause)) The presiding officer will decide whether to hear argument and will rule on the request.

((4)) (5) This section ((shall)) does not extend any ((applicable time for appeal to this board)) deadline to file an initial appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-560, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-560, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-565 Teleconference proceeding. ~~((1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby,)) All or part of ((the)) a hearing, prehearing, or settlement conference may be conducted by ((telephone, television)) phone, video, or other electronic means. Each party and participant in the proceeding ((must)) will have an opportunity to hear and effectively participate ((effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.~~

~~(2) The board may require documentary evidence to be submitted sufficiently in advance of)) in the proceeding.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-565, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-570 Requirements for a notice of hearing. (1) A notice of a hearing will be ((mailed)) sent or transmitted to all parties and to ((all persons having submitted written petitions to intervene not less than twenty)) those granted intervention or amicus status at least 20 calendar days before the hearing date unless a different period is required by law. The notice ((shall)) will include the information specified in RCW 34.05.434, and ((if)) whether the hearing ((is to)) will be conducted by ((teleconference call the notice shall so state)) phone, video or other electronic means.

(2) The notice ((shall)) will state that if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed ((and that there will be)) at no cost ((to the party or witness)). The notice will include a form to indicate whether an interpreter is needed and in what language and dialect.

(3) The notice ((shall)) will also state that ((persons)) a party or witness with disabilities may request reasonable accommodations to allow ((their participation in the hearing)) for effective participation in the proceedings. The notice ((shall)) will include a form ((for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired, or)) to describe the reasonable accommodations requested.

~~((3) Defects in notice)) (4) Notice of the requirements listed in this section may be waived if the waiver is knowing and voluntary.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-570, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-570, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-575 (~~(Notice of)~~) Hearing (~~(to)~~) notices for limited-English speaking parties. (~~((1) When an agency))~~ If the board is notified or otherwise made aware that a limited-English-speaking person as defined in RCW 2.43.020 is a party, all notices (~~((concerning))~~) about the hearing, including (~~((notices of hearing,))~~) continuances (~~((,))~~) and dismissals (~~((, either))~~):

(~~((a) Shall))~~) (1) Must be written in the primary language of the party; or

(~~((b) Shall))~~) (2) Must include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

(~~((2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.))~~)

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-575, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-740 Testimony under oath. (1) (~~((All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of chapter 5.28 RCW.))~~) Every person testifying before the board must swear or affirm in any manner allowed in chapter 5.28 RCW that the person's testimony will be truthful.

(2) Every interpreter (~~((shall, before beginning to interpret,))~~) will take an oath affirming that the interpreter will make a true interpretation (~~((will be made))~~) to the person being examined (~~((of all the proceedings))~~) in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the board, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-740, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-740, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-740, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-742 Recording devices. (1) All hearings (~~((shall))~~) will be (~~((officially))~~) recorded by manual, electronic, or other (~~((type of))~~) recording device.

(2) Photographic and recording equipment of others (~~((shall))~~) will be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-742, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-742, filed 5/22/90, effective 6/22/90.]

NEW SECTION

WAC 456-09-743 Hearing procedure. (1) Unless otherwise ordered, hearings will be conducted in the following format:

- (a) Administration of an oath to all persons testifying;
- (b) The appellant's opening statement;
- (c) The respondent's opening statement;
- (d) The appellant's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the respondent;
 - (iii) Redirect examination by the appellant;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
- (e) The respondent's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the appellant;
 - (iii) Redirect examination by the respondent;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
- (f) The appellant's closing argument;
- (g) The respondent's closing argument;
- (h) The appellant's closing rebuttal;

(2) The board may pose questions to the parties, their representatives, and any witnesses at any time during the hearing.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-745 Failure to attend and hearing on the record. (1) When a party (~~((to these proceedings))~~) has (~~((, after notice,))~~) failed to attend a hearing after receiving timely notice, the board will consider a motion for default or dismissal (~~((may be sought))~~) brought by any party to the proceedings or (~~((raised by the board upon))~~) on its own motion. (~~((Any such order shall))~~) An order for default or dismissal

will include ~~((a statement of the grounds))~~ the reason for the order and ~~((shall))~~ will be served upon all parties ~~((to the proceeding))~~.

Within ~~((ten business))~~ 10 calendar days ~~((after))~~ of service of the default order or dismissal ~~((under this section))~~, the party against whom the order was entered may submit ~~((to the board together with proof of service pursuant to WAC 456-09-345))~~ a written objection requesting that the order be vacated ~~((and stating the specific grounds relied upon))~~. The objection must state the specific reasons why the order should be vacated together with proof of service pursuant to WAC 456-09-345. The board may ~~((, for good cause,))~~ set aside ~~((an entry of))~~ a dismissal ~~((,))~~ or default ~~((, or final order))~~ for good cause.

~~((2))~~ ~~((Upon stipulation by both parties, an appeal may be submitted to the board))~~ If the parties agree in writing and the presiding officer approves, the board may hold an appeal on the record and the attendance of ~~((a party may be excused. However, the board in its discretion may require attendance for argument))~~ one or more parties will not be required.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-745, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-745, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-750 Dismissal, stipulation, and withdrawal of actions. ~~((Any action))~~ (1) An appeal may be dismissed ~~((by the board))~~ for any of the following reasons ~~((-~~

~~((1) When))~~ :

~~((a))~~ (a) All parties ~~((se))~~ stipulate to dismissal. Stipulations ~~((on))~~ of the value of real property ~~((shall contain))~~ must include the parcel number, assessment year(s), the agreed upon value(s) of the subject property, and a brief statement supporting the agreed upon value(s). The board may request additional information as to the reason or reasons for the stipulation.

~~((2))~~ As a matter of right when the appellant requests in writing to withdraw the appeal prior to the scheduled hearing.

~~((3))~~ Upon motion of the appellant at the hearing prior to the presentation of the respondent's case.

~~((4))~~ (b) The appellant makes a motion to dismiss or withdraw the appeal any time before the respondent presents his or her case.

(c) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

~~((5))~~ (d) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

(2) An appeal will be dismissed when the appellant requests in writing to withdraw the appeal before the scheduled hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-750, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-750, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-755 Rules of evidence and admissibility criteria.

(1) All relevant evidence, including hearsay (~~(evidence)~~), is admissible if, in the opinion of the board, (~~(the offered evidence)~~) it is the kind of evidence (~~(on which)~~) that a reasonably prudent person (~~(s are)~~) is accustomed to (~~(rely in the conduct of their)~~) relying on his or her business affairs. The board may exclude evidence (~~(that is excludable on)~~) for constitutional or statutory (~~(grounds or on the basis of evidentiary)~~) reasons or for a privilege recognized in the courts of this state. The board may also exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used (~~(in evaluation of)~~) to evaluate evidence.

(3) If not inconsistent with subsection (1) of this section, the board may (~~(refer to)~~) rely on, but (~~(shall)~~) will not be bound by, the Washington rules of evidence.

(4) Copies or excerpts of documentary evidence may be submitted (~~(in the form of copies or excerpts, or by incorporation by reference)~~) instead of the original evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-755, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-755, filed 5/2/89.]

NEW SECTION

WAC 456-09-763 Record evidence. (1) A board of equalization or other tribunal should submit their record in a numbered format specified by the board. If the record is not properly numbered, the board will number the record.

(2) Parties relying on evidence from a board of equalization or other tribunal must indicate which pages they intend to rely on. Failure to do so will be considered by the board to indicate that the party does not want the record considered and will instead submit other evidence.

(3) The board will not review the record of a county board of equalization or any other tribunal that is unduly large or disorganized.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-765 Official notice. (1) The board may take official notice of the following:

- (a) Any judicially cognizable facts;
- (b) Any matter of public record;
- (c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by ~~((an agency of the United States, of this state or of another state,))~~ any state or federal agency or by a nationally recognized organization or association.

(2) ~~((If any decision is stated to rest in whole or in part upon official notice of a fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by petition for review if such notice is taken in an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-09-955. Such controversion shall))~~ Any party may controvert such a fact by filing a petition for review of an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration of a final decision pursuant to WAC 456-09-955. The petition must concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party ~~((proposing that))~~ asking the board to take official notice ~~((be taken))~~ may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-765, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-765, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-910 Assistance to the board. (1) The board may obtain assistance ~~((concerning the appeal of any case within the scope of))~~ from a county board of equalization as allowed by RCW 82.03.130 (1) (b) ~~((appeals from a county board of equalization))~~, or from the staff of the department of revenue as provided by RCW 82.03.160. If the board intends to seek assistance, the board will notify the parties ~~((of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue.))~~ and indicate the reason or reasons for seeking such assistance. Once notified, the parties may recommend an alternative to the board to achieve the same objectives ~~((without contacting the department of revenue.)).~~

(2) Any evidence from the department of revenue ~~((concerning assistance requested))~~ about requested assistance under this section ~~((shall))~~ will only be presented in an open hearing after notice to all parties.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-910, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-910, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-915 ((Presentation of)) Posthearing evidence. Unless requested ~~((by the board, no posthearing))~~, the board will not accept

any evidence ((will be accepted)) after a hearing unless such evidence could not reasonably have been anticipated ((or discovered prior to hearing. The board may request that the parties submit posthearing briefing or proposed findings of fact and conclusions of law)) before the hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-915, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-915, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-920 ((Initial or final)) Contents of a decision. Every decision, whether initial or final, ((shall)) will:

(1) Be ((correctly)) captioned ((as to the name of the board and)) to include the name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain ((appropriate numbered)) findings of fact ((meeting the requirements)) in a manner outlined in RCW 34.05.461;

(5) Contain ((appropriate numbered)) conclusions of law, including citations of statutes and rules relied upon in a manner outlined in RCW 34.05.461;

(6) ((Contain)) Indicate whether it is an initial or final decision ((disposing of all contested issues)), and whether all contested issues have been resolved; and

(7) Contain a ((statement describing the)) description of available posthearing remedies.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-920, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-920, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-925 Initial decision. (1) ((An initial decision shall be prepared)) The board will issue an initial decision when:

(a) An appeal has been heard by only one member of the board;

(b) An appeal has been heard by only two members of the board ((at a time)) when there is no vacancy ((on the board)) and the two members cannot agree on ((a conclusion;)) an outcome. In such instances, the third member of the board will review the decision; or

(c) An appeal has been heard by a hearing officer((; or

~~(d) The board shall otherwise elect to do so).~~

(2) ((If a petition for review as provided in WAC 456-09-930 is not submitted to the board within twenty calendar days of the date of mailing of the initial decision, the initial decision shall be deemed the final decision of the board unless the decision specifies otherwise.)) An initial decision will be considered a final decision 20

calendar days after transmission to or service on the parties unless a petition for review is timely filed and served as provided in WAC 456-09-930.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-925, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-925, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-925, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-930 Petition for review of an initial decision, replies, and disposition. (1) ~~((Any party to an adjudicative proceeding may make a))~~ A party may petition for review of an initial decision. A petition for review of an initial decision is also referred to as an exception.

(2) ~~((The))~~ A petition for review ((shall be made, by mail or otherwise, with)) must be sent or transmitted to the board within ((twenty)) 20 calendar days of the date ((of mailing of)) the initial decision was transmitted unless ((the decision specifies)) specified otherwise ((together with)). Proof of service must be filed with the board pursuant to WAC 456-09-345.

(3) ~~((The))~~ A petition for review ((shall specify the)) must indicate which portions of the initial decision ((to which exception is taken and shall refer to the evidence of record which is relied upon to)) or what evidence in the record supports the petition.

(4) Any party may make a reply to a petition for review within 10 calendar days of the date the petition is served on the opposing party or parties. The ((reply shall be made, by mail or otherwise, with the board together with proof of service pursuant to WAC 456-09-345 within ten business days of the date of the letter acknowledging receipt by the board of the petition for review)) response, if any, must be sent or transmitted to the board together with proof of service pursuant to WAC 456-09-345.

(5) ~~((The disposition may be in the form of a written order denying the petition and adopting the initial decision as the final decision, granting the petition and issuing a final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which review was sought, within such time and on such terms as may be prescribed.))~~ The board will address a petition for review in a written order. The board may require the parties to submit briefs or to appear and present oral argument on the petition.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-930, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-930, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-930, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-930, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-955 Petition for reconsideration of a final decision.

(1) A petition for reconsideration of a final decision is not available where an initial decision was first issued, unless:

(a) The alleged error or errors could not have been previously addressed in an exception to the initial decision; or

(b) The alleged error or errors are of constitutional concern.

(2) After ~~((a final decision has been issued))~~ the board issues a final decision, any party may submit a petition for reconsideration ~~((with the board))~~ as provided ~~((by))~~ in RCW 34.05.470. ~~((Such))~~ The petition must be ~~((made, by mail or otherwise, within ten business days from the mailing of the final decision, and shall state the specific grounds upon which relief is requested. The petition for reconsideration shall be submitted to the board and served upon all parties and representatives of record in compliance with WAC 456-09-345. The board may require or a party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board a response together with proof of service pursuant to WAC 456-09-345.~~

~~((2) The petition shall be deemed denied if, within twenty calendar days from the date the petition is received by the board, the board does not either dispose of the petition; or provide the parties with a written notice specifying the date by which it will act on the petition.~~

~~((3) The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument within such time and on such terms as may be prescribed.)) submitted to the board and served on all parties or their representatives within 14 calendar days from the date the final decision was sent or transmitted to the parties together with proof of service as outlined in WAC 456-09-345. The petition must also state the specific grounds for relief.~~

(3) The party opposing a petition for reconsideration must submit a response together with proof of service pursuant to WAC 456-09-345. The response must be filed within 10 calendar days of the date the petition for reconsideration was served on the responding party.

(4) The board must accept or deny a petition within 30 calendar days from the date a petition is served on the opposing party. If the board does not act within this time period, the petition is deemed to be denied.

(5) Except as outlined in subsection (4) of this section, the board will address a petition by written order. The board may also require the parties to submit briefs or to appear and present oral argument on a petition.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-955, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-955, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-955, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-955, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-960 Record on appeal. ~~((1))~~ When an appeal is ~~((taken))~~ made to superior court ~~((from a decision of the board rendered in a formal proceeding, the appealing party is responsible for ordering and paying for the transcript of the testimony from the court reporter.~~

~~(2) If a petition for judicial review of a final order is made, by stipulation the parties may agree to shorten the record to be filed with the court. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved as allowed in RCW 34.05.566), the appealing party is responsible for ordering and paying for a transcript of the board's hearing.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-960, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-960, filed 5/22/90, effective 6/22/90.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-09-120	Organization and office.
WAC 456-09-130	Quorum.
WAC 456-09-140	Meetings of the board.
WAC 456-09-215	Notice of appearance by representatives.
WAC 456-09-330	Amendments to notice of appeal.
WAC 456-09-762	Hearings—Interpreters.
WAC 456-09-970	Applicability of SEPA guidelines.

WSR 21-24-068
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 30, 2021, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-119.

Title of Rule and Other Identifying Information: Proposed amendments to the elevator fees under WAC 296-96-00922, 296-96-01005, 296-96-01010, 296-96-01025, 296-96-01027, 296-96-01030, 296-96-01035, 296-96-01040, 296-96-01045, 296-96-01055, 296-96-01057, 296-96-01060, and 296-96-01065.

Hearing Location(s): On January 5, 2022, at 9:00 a.m., virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) by visiting [Date of Intended Adoption: February 15, 2022.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_Y2FhNDYzZDYtNTljNy00OTNjLTkwOWMtMzFiMDU2MjExYjRh%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22acbl6f6f-3588-43aa-b503-63aebce21ddc%22%7d; or calling (audio only) 1-253-372-2181, Phone Conference ID 559 975 560# (pound sign must be entered). The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.</p></div><div data-bbox=)

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-6244, by 5:00 p.m. on January 5, 2022.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by December 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose a 5.79 percent fee increase for inspections of conveyances and other elevator program public safety activities. This is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2022.

Reasons Supporting Proposal: The current fee levels are not enough to cover current program expenses. A fee increase is needed to ensure the program's revenues match expenditures; otherwise, service levels may need to be reduced.

Statutory Authority for Adoption: Chapter 70.87 RCW.

Statute Being Implemented: Chapter 70.87 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Gerald Brown, Program Manager, Tumwater, Washington, 360-902-6456; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act. Specifically, RCW 34.05.328 (5) (b) (vi) exempts rules that set or adjust fees under the authority of RCW

19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

November 30, 2021
Joel Sacks
Director

OTS-3415.1

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-00922 Licensing fees. The following are the department's elevator license fees:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic application fee (not required for renewal of valid license)	Per application	(\$70.10) <u>\$74.10</u>
Elevator contractor/mechanic examination fee	Per application	(\$211.50) <u>\$223.70***</u>
Reciprocity application fee	Per application*	(\$70.10) <u>\$74.10</u>
Elevator mechanic license	2 years	(\$140.90) <u>\$149.00</u>
Elevator contractor license	2 years	(\$140.90) <u>\$149.00</u>
Temporary elevator mechanic license application fee (not required for renewal)	Per application	(\$70.10) <u>\$74.10</u>
Temporary elevator mechanic license	1 year	(\$140.90) <u>\$149.00</u>
Emergency elevator mechanic license	30 days	(\$34.80) <u>\$36.80</u>
Elevator mechanic/contractor timely renewal fee	2 years	(\$140.90) <u>\$149.00</u>

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator mechanic/ contractor late renewal fee	2 years	((\$282.20) \$298.50)
Temporary elevator mechanic timely renewal fee	1 year	((\$140.90) \$149.00)
Temporary elevator mechanic late renewal fee	1 year	((\$282.20) \$298.50)
Training provider application/ renewal fee	2 years	((\$140.90) \$149.00)
Continuing education course fee by approved training provider	1 year**	Not applicable
Replacement of any licenses		((\$20.90) \$22.10)
Refund processing fee		((\$42.00) \$44.40)

* Reciprocity application is only allowed for applicants who are applying for licensing based upon possession of a valid license that was obtained in state(s) with which the department has a reciprocity.

** This fee is paid directly to the continuing education training course provider approved by the department.

*** This fee may be collected by an outside vendor for some exams and may differ from the fee shown above.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-00922, filed 8/31/21, effective 10/1/21; WSR 19-24-086, § 296-96-00922, filed 12/3/19, effective 12/3/19. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-00922, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-068, § 296-96-00922, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-00922, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-00922, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-00922, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-00922, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-00922, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185, 70.87.190, 2002 c 98, 2003 c 143 and 2004 c 66. WSR 04-12-047, § 296-96-00922, filed 5/28/04, effective 6/30/04.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01005 Obtaining permits. (1) See WAC 296-96-01000 for the permit process.

- (2) Construction and alteration permits are valid for one year from the date of issue. However, permits may be renewed if:
 - (a) Application for a renewal permit is submitted before the current permit expires;
 - (b) The department approves the request for a renewal permit; and
 - (c) A renewal fee of (~~(\$63.60)~~) \$67.20 is paid to the department for each permit renewed;
- (3) If the permit has expired the applicant shall reapply for a new permit.
- (4) See WAC 296-96-01006 for work requiring a permit.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01005, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01005, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01005, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01005, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01005, filed 11/30/07, effective 1/1/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01005, filed 5/22/07, effective 6/30/07. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185, 70.87.190, 2002 c 98, 2003 c 143 and 2004 c 66. WSR 04-12-047, § 296-96-01005, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-96-01005, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01005, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01010 Installation and alteration permit fees. Permit fees are based on the total cost of the conveyance or alteration and the labor to install or alter the conveyance. The following permit fees apply to the construction, alteration, or relocation of all conveyances except personnel and material hoists (see WAC 296-96-01025):

TOTAL COST OF INSTALLATION OR ALTERATION	FEE
\$0 to and including \$1,000	((\$70.40)) <u>\$74.10</u>
\$1,001 to and including \$5,000	((\$105.40)) <u>\$111.50</u>
\$5,001 to and including \$7,000	((\$176.40)) <u>\$186.20</u>
\$7,001 to and including \$10,000	((\$211.50)) <u>\$223.70</u>
\$10,001 to and including \$15,000	((\$282.20)) <u>\$298.50</u>
OVER \$15,000 for installation only*	((\$395.40)) <u>\$417.90</u> plus
OVER \$15,000 for alteration only*	((\$282.20)) <u>\$298.50</u>

TOTAL COST OF INSTALLATION OR
ALTERATION

FEE

*Each additional \$1,000 or fraction thereof

((~~\$9.60~~)
\$10.10)

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01010, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01010, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01010, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01010, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01010, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01010, filed 11/30/07, effective 1/1/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01010, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01010, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01010, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185, 70.87.190, 2002 c 98, 2003 c 143 and 2004 c 66. WSR 04-12-047, § 296-96-01010, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01010, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01010, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01010, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01025 Permit fees for personnel and material hoists.

The fee for each personnel hoist or material hoist installation is (~~(\$282.20)~~) \$298.50.

See WAC 296-96-01035(2) for requirements for jumps.

Note: An operating certificate is also required for these types of conveyances.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01025, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01025, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01025, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01025, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01025, filed 3/6/12, effective 4/30/12.]

Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01025, filed 11/30/07, effective 1/1/08. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01025, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01025, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01027 Permit fee refunds. The initial installation permit fees are refundable minus a processing fee if the installation work has not been performed. No refunds will be issued for expired permits. All requests for refunds shall be submitted in writing to the elevator section and shall identify the specific permits and the reasons for which the refunds are requested.

The processing fee for each refund is (~~(\$42.00)~~) \$44.40.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01027, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01027, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01027, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01027, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01027, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01027, filed 11/30/07, effective 1/1/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01027, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01027, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01027, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185, 70.87.190, 2002 c 98, 2003 c 143 and 2004 c 66. WSR 04-12-047, § 296-96-01027, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01027, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01027, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01027, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01030 Plan approval. Prior to the start of construction and the issuance of a permit, the applicant shall submit to the department for approval a permit application and plans for new installations or major alterations. To be approved, the plan shall comply with the latest adopted applicable standard and applicable Washington Administrative Code (WAC). In addition, the plans shall include all information necessary to determine whether each installation/alteration complies with all applicable codes. The permit holder shall keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan shall be submitted to the department for approval before a final inspection will be conducted. The nonrefundable fees for processing the applications are (~~(\$34.80)~~) \$36.80 for each installation/major alteration.

Exception: Residential incline chair lifts will not require plan review. Equipment shall be listed and labeled by a product testing laboratory which is accredited by the department and plans supplied by the manufacturer shall be on-site. If the equipment is not listed and labeled as per RCW 19.28.010 it shall be field evaluated or replaced with equipment that is listed and labeled by a product testing laboratory which is accredited by the department. The department may request additional information as deemed necessary to determine if lifts comply with current codes and testing standards. Governor overspeed safety testing shall be verified by manufacturer's documentation (see A18.1 Requirement 9.9.3). The test results certified by, a nationally recognized testing laboratory (NRTL). Certification shall be provided at time of application.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01030, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01030, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01030, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01030, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01030, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01030, filed 11/30/07, effective 1/1/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01030, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01030, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01030, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-96-01030, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01030, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01030, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01030, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01035 Inspection fees. The initial inspection of construction, alteration or relocation of a conveyance is included with the permit fee. Once the department has approved the initial installation of the conveyance, a temporary 30-day operating certificate will be issued. Prior to the expiration of the 30-day temporary operating certificate, the application for an annual operating certificate and the appropriate fees shall be paid to the department. Once the department has received the appropriate fees and application the owner will be issued the first annual operating certificate. The owner or owner's representative will receive an invoice from the department for renewal. The owner is required to renew the annual operating certificate yearly.

The following inspections require an additional inspection fee:

(1) **Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is (~~(\$140.90)~~) \$149.00 per conveyance plus (~~(\$68.40)~~) \$72.30 per hour for each hour in addition to the first hour.

The department may waive reinspection fees.

(2) **Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is (~~(\$140.90)~~) \$149.00 plus (~~(\$70.10)~~) \$74.10 per hour for each hour in addition to ((2)) two hours. This fee is for inspections occurring during regular working hours.

The permit holder may be allowed to operate a hoist prior to the jump inspection if:

(a) The electrical limits will not allow the lift to operate above the previously inspected landing; and

(b) The state elevator inspector is contacted, agrees and can schedule an inspection within ((3)) three days.

(3) **Variance inspections.**

(a) The fee for an on-site variance inspection is (~~(\$211.50)~~) \$223.70 per conveyance plus (~~(\$70.10)~~) \$74.10 per hour for each hour in addition to ((2)) two hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance that does not require an on-site inspection is (~~(\$70.10)~~) \$74.10 per conveyance. The individual requesting the variance shall provide the department with pictures, documentation, or other information necessary for the department to review the variance. The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) **"Red tag" status fee.** The annual fee for a conveyance in "Red tag" status is (~~(\$34.80)~~) \$36.80.

Note: The department shall be provided with written approval from the building official, indicating that the conveyance is not required for building occupancy, when applying to have the conveyance placed in voluntary red tag status.

(5) **Decommission inspection.** The fee for performing a decommission inspection is (~~(\$70.10)~~) \$74.10. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back

into service. Prior to operating the conveyance, a new inspection and annual operating permit shall be obtained.

(6) **Voluntary inspections by request.** The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be (~~(\$140.90)~~) \$149.00 per conveyance and (~~(\$70.10)~~) \$74.10 per hour for each hour in addition to ((2)) two hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01035, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01035, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01035, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01035, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01035, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01035, filed 11/30/07, effective 1/1/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01035, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01035, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01035, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185, 70.87.190, 2002 c 98, 2003 c 143 and 2004 c 66. WSR 04-12-047, § 296-96-01035, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01035, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01035, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01035, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01040 Construction-use inspection fee. (1) The fee for the inspecting and testing of elevators used for construction is (~~(\$112.60)~~) \$119.10, in addition to any other fees required in this chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department shall be conspicuously posted in the elevator.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01040, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01040, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01040, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01040, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01040, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01040, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01040, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01040, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01040, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01040, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01040, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01045 Residential elevator inspection and fees. (1)

Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated exclusively for single-family use in private residences. Prior to installation, a licensed elevator contractor shall complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

(3) No annual inspection and operating certificate is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operating certificate, the following fee shall be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence	((\$32.70)) <u>\$34.50</u>
Each inclined wheel chair lift in a private residence	((\$32.70)) <u>\$34.50</u>
Each vertical wheel chair lift in a private residence	((\$41.30)) <u>\$43.60</u>

TYPE OF CONVEYANCE	FEE
Each dumbwaiter in a private residence	((\$32.70)) <u>\$34.50</u>
Each inclined elevator at a private residence . .	((\$117.10)) <u>\$123.80</u>
Each private residence elevator	((\$75.40)) <u>\$79.70</u>
Duplication of a lost, damaged or stolen operating permit	((\$13.70)) <u>\$14.40</u>

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01045, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01045, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01045, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01045, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01045, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01045, filed 11/30/07, effective 1/1/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01045, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01045, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01045, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01045, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01045, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01045, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01055 Technical services and consultations. A person, firm, corporation, or governmental agency may request elevator field technical services from the department by paying a fee of ((~~\$84.30~~)) \$89.10 per hour or any portion thereof (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation, and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01055, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01055, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01055, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01055, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01055, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01055, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01055, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01055, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-96-01055, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01055, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01055, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01055, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01057 Accident investigations. The department shall investigate an injury-related accident reported by the owner or owner's duly authorized agent. The department may charge at a rate of (~~(\$84.30)~~) \$89.10 per hour or portion thereof (including travel time) plus the standard per diem and mileage allowance granted to department inspectors.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01057, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01057, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01057, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01057, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01057, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01057, filed 11/30/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01060 Inspections after normal business hours. An inspection outside of normal business hours and business days (i.e., Monday through Friday excluding holidays; 7:00 a.m. to 5:00 p.m.) may be requested under the following conditions:

- (1) An inspector is available; and
- (2) The inspection is authorized by the department.
- (3) The minimum fee for an after-hours inspection is (~~(\$105.40)~~) \$111.50 and (~~(\$105.40)~~) \$111.50 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors.
- (4) This fee is in addition to any other fees required for the project.

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01060, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01060, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01060, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01060, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01060, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01060, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01060, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01060, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01060, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01060, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01060, filed 12/22/00, effective 1/22/01.]

AMENDATORY SECTION (Amending WSR 21-18-096, filed 8/31/21, effective 10/1/21)

WAC 296-96-01065 Annual operating permit fees. An annual operating certificate will be issued to the building owner upon payment of the appropriate fee. The owner of record shall be invoiced by the department. If a change of ownership has occurred, it is the new owner's responsibility to ensure the department has the corrected information. Below is the fee structure table:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator	(((\$140.90)) \$149.00
Each roped-hydraulic elevator	(((\$176.10)) \$186.20
plus for each hoistway opening in excess of two	(((\$13.70)) \$14.40
Each cable elevator	(((\$176.10)) \$186.20
plus for each hoistway opening in excess of two	(((\$13.70)) \$14.40
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled	(((\$13.70)) \$14.40
Each limited-use/limited-application (—LULA) elevator	(((\$140.90)) \$149.00
Each escalator	(((\$117.00)) \$123.70
Each dumbwaiter in other than a private residence	(((\$75.40)) \$79.70
Each material lift	(((\$140.90)) \$149.00
Each incline elevator in other than a private residence	(((\$151.50)) \$160.20
Each belt manlift	(((\$140.90)) \$149.00
Each stair lift in other than a private residence	(((\$75.40)) \$79.70
Each wheel chair lift in other than a private residence	(((\$75.40)) \$79.70
Each personnel hoist	(((\$140.90)) \$149.00
Each grain elevator personnel lift	(((\$117.00)) \$123.70
Each material hoist	(((\$140.90)) \$149.00
Each special purpose elevator	(((\$140.90)) \$149.00
Each private residence elevator installed in other than a private residence	(((\$140.90)) \$149.00
Each casket lift	(((\$117.00)) \$123.70
Each sidewalk freight elevator	(((\$117.00)) \$123.70
Each hand-powered manlift or freight elevator	(((\$79.30)) \$83.80
Each boat launching elevator	(((\$117.00)) \$123.70
Each auto parking elevator	(((\$117.00)) \$123.70
Each moving walk	(((\$117.00)) \$123.70
Duplication of a damaged, lost or stolen operating permit	(((\$13.70)) \$14.40

[Statutory Authority: Chapter 70.87 RCW. WSR 21-18-096, § 296-96-01065, filed 8/31/21, effective 10/1/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-96-01065, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 70.87 RCW. WSR 18-18-070, § 296-96-01065, filed 8/31/18, effective 10/1/18. Statutory Authority: Chapter 70.87 RCW and 2013 2nd sp.s. c 4. WSR 14-06-041, § 296-96-01065, filed 2/26/14, effective 4/1/14. Statutory Authority: Chapter 70.87 RCW and 2011 1st sp.s. c 50. WSR 12-06-065, § 296-96-01065, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapter 70.87 RCW. WSR 07-24-041, § 296-96-01065, filed 11/30/07, effective 1/1/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-96-01065, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-96-01065, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-96-01065, filed 5/24/05, effective 6/30/05. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-96-01065, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-96-01065, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 70.87.020, 70.87.030, 70.87.034, 70.87.120, 70.87.185 and chapter 70.87 RCW. WSR 01-02-026, § 296-96-01065, filed 12/22/00, effective 1/22/01.]

WSR 21-24-085

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 30, 2021, 4:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-016.

Title of Rule and Other Identifying Information: WAC 182-550-4100
Payment method—New hospitals.

Hearing Location(s): On January 4, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance for this public hearing https://zoom.us/webinar/register/WN_EO-r4q2sQmeswJiqMwS3Rw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 5, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 4, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by December 17, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to include, as part of subsection (2), an exception to per diem rate calculations for psychiatric per diem rates to align with the agency's state plan.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Sarah Cook, P.O. Box 55688, Olympia, WA 98504-5688, 360-725-1577.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

November 30, 2021
Wendy Barcus
Rules Coordinator

OTS-3312.2

AMENDATORY SECTION (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

WAC 182-550-4100 Payment method—New hospitals. (1) For rate-setting purposes, the agency considers as new:

- (a) A hospital which began services after the most recent rebasing; or
- (b) A hospital that has not been in operation for a complete fiscal year.

(2) With the exception of determining psychiatric per diem rates as directed by the Washington state legislature (see WAC 182-550-3800(6)), the agency determines a new hospital's conversion factor, per diem rate, or per case rate, to be the statewide average rate for the conversion factor, category of per diem rate, or per case rate adjusted by the geographically appropriate hospital specific medicare wage index.

(3) The agency determines a new hospital's ratio of costs-to-charges (RCC) by calculating and using the average RCC for all current Washington in-state hospitals.

(4) When a hospital changes ownership, the agency does not consider it a new hospital.

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4100, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4100, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.09.090, 42 U.S.C. 1395x(v) and 1396r-4, 42 C.F.R. 447.271, 11303 and 2652. WSR 99-14-027, § 388-550-4100, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4100, filed 12/18/97, effective 1/18/98.]

WSR 21-24-086

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 30, 2021, 4:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-041.

Title of Rule and Other Identifying Information: WAC 182-550-3800 Rebasing, 182-550-3830 Adjustments to inpatient rates, and 182-550-7500 OPPS rate.

Hearing Location(s): On January 4, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance at https://zoom.us/webinar/register/WN_EO-r4q2sQmeswJiqMwS3Rw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 5, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 4, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by December 17, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these sections to add qualifying criteria for and reflect an extension of the current rate increase for Sole Community hospitals. ESSB 5092, section 211(46) extends the rate increase through June of 2023. HCA also plans to implement ESSB 5092, section 215(66) to adjust rates paid for long-term civil commitments. Hospitals may now submit costs not included in their medicare cost report to be evaluated by the agency for a potential rate increase.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESSB 5092, sections 211(46) and 215(66).

Statute Being Implemented: RCW 41.05.021, 41.05.160; ESSB 5092, sections 211(46) and 215(66).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Sarah Cook, P.O. Box 55688, Olympia, WA 98504-5688, 360-725-1577.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose a disproportionate cost impact on businesses.

November 30, 2021
Wendy Barcus
Rules Coordinator

OTS-3313.2

AMENDATORY SECTION (Amending WSR 21-02-087, filed 1/6/21, effective 2/6/21)

WAC 182-550-3800 Rebasing. The medicaid agency redesigns (rebases) the medicaid inpatient payment system as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of fee-for-service (FFS) paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598; and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(c) FFS and managed care encounter data.

(2) Estimates costs. The agency uses one of two methods to estimate costs. The agency may perform an aggregate cost determination by multiplying the ratio of costs-to-charges (RCC) by the total billed charges, or the agency may use the following detailed costing method:

(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;

(b) The agency estimates costs for each claim in the dataset as follows:

(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and

(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery

room, radiology, laboratory, pharmacy, or clinic) by the allowed charges reported at the claim line level by type of service; and

(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:

- (i) Routine cost components:
 - (A) Routine care;
 - (B) Intensive care;
 - (C) Intensive care-psychiatric;
 - (D) Coronary care;
 - (E) Nursery;
 - (F) Neonatal ICU;
 - (G) Alcohol/substance abuse;
 - (H) Psychiatric;
 - (I) Oncology; and
 - (J) Rehabilitation.
- (ii) Ancillary cost components:
 - (A) Operating room;
 - (B) Recovery room;
 - (C) Delivery/labor room;
 - (D) Anesthesiology;
 - (E) Radio, diagnostic;
 - (F) Radio, therapeutic;
 - (G) Radioisotope;
 - (H) Laboratory;
 - (I) Blood administration;
 - (J) Intravenous therapy;
 - (K) Respiratory therapy;
 - (L) Physical therapy;
 - (M) Occupational therapy;
 - (N) Speech pathology;
 - (O) Electrocardiography;
 - (P) Electroencephalography;
 - (Q) Medical supplies;
 - (R) Drugs;
 - (S) Renal dialysis/home dialysis;
 - (T) Ancillary oncology;
 - (U) Cardiology;
 - (V) Ambulatory surgery;
 - (W) CT scan/MRI;
 - (X) Clinic;
 - (Y) Emergency;
 - (Z) Ultrasound;
 - (AA) NICU transportation;
 - (BB) GI laboratory;
 - (CC) Miscellaneous; and
 - (DD) Observation beds.

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by 3MTM Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system. The agency periodically reviews and determines the most appropriate APR-DRG grouper version to use.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter. The agency models the rebased system to be budget neutral on a prospective

basis, including global adjustments to the budget target determined by the agency. The agency ensures that base DRG conversion factors and per diem rates are sufficient to support economy, efficiency, and access to services for medicaid recipients. The agency will publish base rate factors on its website.

(5) To maintain budget neutrality, the agency makes global adjustments as needed.

(a) Claims paid under the DRG, rehab per diem, and ~~((detox))~~ withdrawal management per diem payment methods were reduced to support an estimated three million five hundred thousand dollar increase in psychiatric payments to acute hospitals.

(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by three million five hundred thousand dollars.

(c) Effective for dates of admission on and after October 1, 2017, the agency increased psychiatric per diem rates as directed by the legislature. The increase applies to any hospital with two hundred or more psychiatric bed days.

(i) The agency prioritized the increase for hospitals not currently paid based on provider-specific costs using a similar methodology to set rates for existing inpatient facilities utilizing cost report information for hospital fiscal years ending in 2016.

(ii) The distribution of funds for each fiscal year is as follows:

(A) Free-standing psychiatric hospitals receive 68.15 percent of the statewide average cost per day.

(B) All other hospitals receive the greater of 78.41 percent of their provider-specific cost, or their current medicaid psychiatric per diem rate.

(iii) The agency set the increased rates to assure that the distribution of funds does not exceed the amounts provided by the legislature.

(iv) The agency conducts annual reviews for updated cost information to determine whether new and existing providers meet the two hundred or more bed criteria.

(v) The agency will apply the same cost percentage criteria for future rebasing of the psychiatric per diem rates.

(6) Effective July 1, 2020, ~~((through June 30, 2021,))~~ the agency sets psychiatric per diem rates specific to long-term civil commitments separately from other psychiatric per diem rates.

(a) In order to qualify for a provider-specific long-term civil commitment psychiatric per diem, the provider must be contracted with the agency to provide long-term civil commitment beds.

(b) The agency sets the provider-specific rate at the time of contracting.

(c) The agency sets the rate ~~((as follows:~~

~~(i) For a hospital that has a medicare cost report on file with the agency for the most recent filing year, the rate is set using hospital specific costs or nine hundred forty dollars, whichever is greater.~~

~~(ii) For a hospital that does not have a medicare cost report on file with the agency, the rate is set using the average of all in-state long-term psychiatric per diem rates based on provider type or the hospital's current short-term psychiatric per diem rates, whichever is greater.~~

~~(d))~~ for acute care hospitals with distinct psychiatric units as follows:

(i) Hospitals that have a 12-month medicare cost report with at least 200 psychiatric bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the costs documented on the medicare cost report.

(ii) Hospitals that do not have a 12-month cost report with at least 200 bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the greater of the average of all acute care hospitals providing long-term psychiatric services in-state, provider-specific long-term psychiatric per diem rates, or the current short-term psychiatric per diem. The long-term psychiatric rate is applied to any hospital that accepts patients committed to a psychiatric facility for a period of 90 days or greater. The agency sets the rate so as not to exceed the amount provided by the legislature.

(d) The agency sets the rates for free-standing psychiatric hospitals as follows:

(i) Hospitals without an existing long-term rate receive a per diem rate equivalent to either the greater of the short-term rate or the state-wide average long-term psychiatric rate for free-standing psychiatric hospitals.

(ii) Hospitals that have an existing long-term per diem will continue to receive the \$940 established for July 1, 2021. In addition to the \$940 per diem rate, the hospital may submit supplemental cost data with the cost report to the agency for consideration. If approved, the agency will make appropriate adjustments to the medicaid inpatient psychiatric per diem payment rate of the hospital. Adjustment of costs may include any of the following:

(A) Costs associated with professional services and fees not accounted for in the hospital's medicare cost report or reimbursed separately;

(B) Costs associated with the hospital providing the long-term psychiatric patient access to involuntary treatment court services that are not reimbursed separately;

(C) Other costs associated with caring for long-term psychiatric patients that are not reimbursed separately.

(iii) The agency sets the rate(~~s~~) so as to not exceed the amount(~~s~~ appropriated) provided by the legislature.

(7) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:

(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

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

(ii) The amount in (a)(i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

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

(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and

(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of

direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

(8) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (6) and (7) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 357 § 215 (24) (b). WSR 21-02-087, § 182-550-3800, filed 1/6/21, effective 2/6/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-12-043, § 182-550-3800, filed 5/30/18, effective 7/1/18. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-3800, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-3800, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-3800, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 05-06-044, § 388-550-3800, filed 2/25/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-3800, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-3800, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 20-01-075, filed 12/11/19, effective 1/11/20)

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

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

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

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

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

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

- (a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then
- (b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then
- (c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) July 1, 2018, through June 30, ~~((2021))~~ 2023, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.50.

(c) July 1, ~~((2021))~~ 2023, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25.

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

AMENDATORY SECTION (Amending WSR 20-01-075, filed 12/11/19, effective 1/11/20)

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

(a) A base conversion factor established by the agency;

(b) An adjustment for direct graduate medical education (DGME);

and

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

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its website.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) July 1, 2018, through June 30, ((2021)) 2023, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;

(c) July 1, ((2021)) 2023, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.

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

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

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

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

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 21-24-093
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed November 30, 2021, 6:31 p.m.]

Supplemental Notice to WSR 21-15-127.

Preproposal statement of inquiry was filed as WSR 21-11-091.

Title of Rule and Other Identifying Information: WAC 332-130-020, 332-130-050, 332-130-060, and 332-130-080; amending current land boundary survey standards, updating the definition and use of error analysis and relative accuracy as they relate to land boundary surveys positioning. Removing the graphic depiction requirement of auditor indexing information for records of survey.

Hearing Location(s): On January 13, 2022, at 1:00 p.m., at Department of Natural Resources (DNR), Engineering Division, Room 342, 1111 Washington Street [S.E.], Olympia, WA 98504-7030. Online access with M365 Teams, contact Pat Beehler for meeting sign-in link.

Date of Intended Adoption: January 20, 2022.

Submit Written Comments to: Patrick J. Beehler, PLS, CFedS, 1111 Washington Street S.E., Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1778, 360-902-1181, by January 13, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes and additions update existing language and clarify definitions and procedures in the practice of professional land surveying.

Reasons Supporting Proposal: These proposed changes to update and clarify WAC 332-130 should have little to no effect on the practice of professional land surveying. The profession has already adopted field and office procedures that comply with most of the proposed changes.

Statutory Authority for Adoption: RCW 58.24.040(1).

Statute Being Implemented: RCW 58.24.040(1).

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

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1181; Implementation: David Icenhower, PLS, 801 88th Avenue S.E., Tumwater, WA, 98501-7019, 360-902-1190; and Enforcement: Rich Larson, PLS, P.O. Box 9025, Olympia, WA 98507-9025, 360-968-4804.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is little or no additional cost to the professional land surveyor. The profession has already adopted field and office procedures to comply with the proposed changes.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed revisions provide clarification and guidance on land survey professional practice. Little or no additional cost is projected due to these updates.

November 29, 2021
Angus W. Brodie
Deputy Supervisor State Uplands

OTS-3079.3

AMENDATORY SECTION (Amending WSR 20-23-021, filed 11/6/20, effective 12/7/20)

WAC 332-130-020 Definitions. The following definitions shall apply to this chapter:

(1) **Local geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the National Geodetic Survey horizontal and vertical control nets, also known as the National Spatial Reference System (NSRS), but not submitted to the National Geodetic Survey for inclusion in the NSRS.

(2) **GLO and BLM:** The General Land Office and its successor, the Bureau of Land Management.

(3) **Land boundary surveys:** All surveys, whether made by individuals, entities or public bodies of whatever nature, for the specific purpose of establishing, reestablishing, laying out, subdividing, defining, locating and/or monumenting the vertical or horizontal boundary of any easement, right of way, lot, tract, or parcel of real property or which reestablishes or restores General Land Office or Bureau of Land Management survey corners.

(4) **Land corner record:** The record of corner information form as prescribed by the department of natural resources in WAC 332-130-025.

(5) **Land description:** A description of real property or of rights associated with real property.

(6) **Land surveyor:** Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

(7) **Redundant measurements:** Independent observations of a quantity that are collected under different conditions. Horizontal angles measured to a point from multiple backsights, observing reciprocal zenith angles and backsight distances, "closing the horizon," and GNSS positions for a point that are computed using different satellite constellations are examples of redundant measurements.

(8) **Parcel:** A part or portion of real property including but not limited to GLO and BLM segregations, easements, rights of way, aliquot parts of sections or tracts.

(9) **Survey Recording Act:** The law as established and designated in chapter 58.09 RCW.

(10) **Washington plane coordinate system:** The system of plane coordinates as established and designated by chapter 58.20 RCW.

(11) **Intelligent interpretation:** A land boundary survey capable of intelligent interpretation will provide, either on the face of the document or by reference to other pertinent surveys of record, information that is sufficient in kind and quality to explain the rationale for the boundary locations shown thereon and to allow for the accurate and unambiguous retracement or re-creation thereof without requiring oral testimony for clarification. Includes, but is not limited to, information required in RCW 58.09.060(1) and WAC 332-130-050.

(12) **Relative accuracy:** Relative accuracy is the theoretical uncertainty in the horizontal position of any subordinate point or corner with respect to other controlling points or corners, whether set, found, reestablished, or established. Relative accuracy is not related to uncertainties due to differences between measured values and record values (~~(or uncertainties in the geodetic position)~~).

(13) **Relative precision:** An expression of linear misclosure, e.g., 1 part in 5000, in a closed traverse. Relative precision is com-

puted after azimuths in a traverse have been adjusted. Relative precision is not a reliable predictor of relative accuracy.

(14) **Controlling point or corner:** Those points, whose horizontal positions are used to compute, establish or reestablish the horizontal positions of other subordinate points or corners. Subordinate points or corners are therefore dependent upon the positions of controlling points or corners.

(15) **GNSS:** Global navigation satellite system.

(16) **Signature:** A handwritten identification, or a scanned image of a handwritten identification, that represents the act of signing the person's name on a document to attest to its validity. This must be made with black ink on the document being certified; applied to the document by the identified person; and under the exclusive control of the person.

[Statutory Authority: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160. WSR 20-23-021, § 332-130-020, filed 11/6/20, effective 12/7/20. Statutory Authority: RCW 58.24.040(1). WSR 19-01-045, § 332-130-020, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160. WSR 09-03-084, § 332-130-020, filed 1/20/09, effective 7/1/09. Statutory Authority: Chapter 58.24 RCW. WSR 05-13-104, § 332-130-020, filed 6/17/05, effective 7/18/05. Statutory Authority: RCW 58.09.050 and 58.24.040(1). WSR 92-03-007 (Order 597), § 332-130-020, filed 1/3/92, effective 2/3/92. Statutory Authority: RCW 58.24.040(1). WSR 91-19-013 (Order 581), § 332-130-020, filed 9/9/91, effective 10/10/91; WSR 89-11-028 (Order 561), § 332-130-020, filed 5/11/89; Order 275, § 332-130-020, filed 5/2/77.]

AMENDATORY SECTION (Amending WSR 20-23-021, filed 11/6/20, effective 12/7/20)

WAC 332-130-050 Survey map requirements. The following requirements apply to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county.

(1) All such documents filed or recorded shall conform to the following:

(a) They shall display a county recording official's information block which shall be located along the bottom or right edge of the document unless there is a local requirement specifying this information in a different format. The county recording official's information block shall contain:

(i) The title block, which shall be on all sheets of maps, plats or plans, and shall identify the business name of the firm and/or land surveyor that performed the survey. For documents not requiring ((a)) the surveyor's certificate ((and seal)) required by RCW 58.09.080, the title block shall show the name and business address of the preparer and the date prepared. Every sheet of multiple sheets shall have a sheet identification number, such as "sheet 1 of 5";

(ii) The auditor's certificate, where applicable, which shall be on the first sheet of multiple sheets; however, the county recording official shall enter the appropriate volume and page and/or the auditor's file number on each sheet of multiple sheets;

(iii) The surveyor's certificate, where applicable, which shall be on the first sheet of multiple sheets and shall show the name, license number, signed seal of the land surveyor who had responsible charge of the survey portrayed, and the date the land surveyor approved the map or plat. Every sheet of multiple sheets shall have the signed seal of the land surveyor and the date signed;

(iv) The following indexing information on the first sheet of multiple sheets:

(A) The section-township-range and quarter-quarter(s) of the section in which the surveyed parcel lies, except that if the parcel lies in a portion of the section officially identified by terminology other than aliquot parts, such as government lot, donation land claim, homestead entry survey, townsite, tract, and Indian or military reservation, then also identify that official subdivisional tract and call out the corresponding approximate quarter-quarter(s) based on projections of the aliquot parts. Where the section is incapable of being described by projected aliquot parts, such as the Port Angeles townsite, or elongated sections with excess tiers of government lots, then it is acceptable to provide only the official GLO designation (~~A graphic representation of the section divided into quarter-quarters must also be used with the quarter-quarter(s) in which the surveyed parcel lies clearly marked~~);

(B) Additionally, if appropriate, the lot(s) and block(s) and the name and/or number of the filed or recorded subdivision plat or short plat with the related recording data;

(b) They shall contain:

(i) A north arrow;

(ii) The vertical datum when topography or elevations are shown;

(iii) The basis for bearings, angle relationships or azimuths shown. The description of the directional reference system, along with the method and location of obtaining it, shall be clearly given (such as "North by Polaris observation at the SE corner of section 6"; "Grid north from azimuth mark at station Kellogg"; "North by compass using twenty-one degrees variation"; "None"; or "Assumed bearing based on..."). If the basis of direction differs from record title, that difference should be noted;

(iv) Bearings, angles, or azimuths in degrees, minutes and seconds;

(v) Distances in feet and decimals of feet;

(vi) Curve data showing the controlling elements.

(c) They shall show the scale for all portions of the map, plat, or plan provided that detail not drawn to scale shall be so identified. A graphic scale for the main body of the drawing, shown in feet, shall be included. The scale of the main body of the drawing and any enlargement detail shall be large enough to clearly portray all of the drafting detail, both on the original and reproductions;

(d) The document filed or recorded and all copies required to be submitted with the filed or recorded document shall, for legibility purposes:

(i) Have a uniform contrast suitable for scanning or microfilming;

(ii) Be without any form of cross-hatching, shading, or any other highlighting technique that to any degree diminishes the legibility of the drafting detail or text;

(iii) Contain dimensioning and lettering no smaller than 0.08 inches, vertically, and line widths not less than 0.008 inches (equiva-

lent to pen tip 000). This provision does not apply to vicinity maps, land surveyors' seals and certificates.

(e) They shall not have any adhesive material affixed to the surface;

(f) For the intelligent interpretation of the various items shown, including the location of points, lines and areas, they shall:

(i) Reference record survey documents that identify different corner positions;

(ii) Show deed calls that are at variance with the measured distances and directions of the surveyed parcel;

(iii) Identify all corners used to control the survey whether they were calculated from a previous survey of record or found, established, or reestablished;

(iv) Give the physical description of any monuments shown, found, established or reestablished, including type, size, and date visited;

(v) Show the record land description of the parcel or boundary surveyed or a reference to an instrument of record;

(vi) Identify any ambiguities, hiatuses, and/or overlapping boundaries;

(vii) Give the location and identification of any visible physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title.

(2) All signatures and writing shall be made with permanent black ink.

(3) The following criteria shall be adhered to when altering, amending, changing, or correcting survey information on previously filed or recorded maps, plats, or plans:

(a) Such maps, plats, or plans filed or recorded shall comply with the applicable local requirements and/or the recording statute under which the original map, plat, or plan was filed or recorded;

(b) Alterations, amendments, changes, or corrections to a previously filed or recorded map, plat, or plan shall only be made by filing or recording a new map, plat, or plan;

(c) All such maps, plats, or plans filed or recorded shall contain the following information:

(i) A title or heading identifying the map, plat, or plan as an alteration, amendment, change, or correction to a previously filed or recorded map, plat, or plan along with, when applicable, a cross-reference to the volume and page and auditor's file number of the altered map, plat, or plan;

(ii) Indexing data as required by subsection (1)(a)(iv) of this section;

(iii) A prominent note itemizing the change(s) to the original map, plat, or plan. Each item shall explicitly state what the change is and where the change is located on the original;

(d) The county recording official shall file, index, and cross-reference all such maps, plats, or plans received in a manner sufficient to provide adequate notice of the existence of the new map, plat, or plan to anyone researching the county records for survey information;

(e) The county recording official shall send to the department of natural resources, as per RCW 58.09.050(3), a legible copy of any map, plat, or plan filed or recorded which alters, amends, changes, or corrects survey information on any map, plat, or plan that has been previously filed or recorded pursuant to the Survey Recording Act.

(4) Survey maps, plats and plans filed with the county shall be an original that is legibly drawn in black ink and is suitable for

producing legible prints through scanning, microfilming or other standard copying procedures. The following are allowable formats for the original that may be used in lieu of the format stipulated above:

(a) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. Provided, that records of survey filed pursuant to chapter 58.09 RCW are subject to the restrictions stipulated in RCW 58.09.110(5);

(b) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(5) The following checklist is the only checklist that may be used to determine the recordability of records of survey filed pursuant to chapter 58.09 RCW. There are other requirements to meet legal standards. This checklist also applies to maps filed pursuant to the other survey map recording statutes, but for these maps there may be additional sources for determining recordability.

CHECKLIST FOR SURVEY MAPS BEING RECORDED

(Adopted in WAC 332-130)

The following checklist applies to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county. There are other requirements to meet legal standards. Records of survey filed pursuant to chapter 58.09 RCW, that comply with this checklist, shall be recorded; no other checklist is authorized for determining their recordability.

ACCEPTABLE MEDIA:

- Acceptable media are:
 - Any standard material compatible with county processes; or, an electronic version of the original.
 - All signatures must be made with black ink.
 - The media submitted for filing must not have any material on it that is affixed by adhesive.

LEGIBILITY:

- The documents submitted, including paper copies, must have a uniform contrast throughout the document.
- The documents submitted must be legible and reproducible by the auditor's recording system regardless of media used for recording.
- No information, on either the original or the copies, should be obscured or illegible due to cross-hatching, shading, or as a result of poor drafting technique such as lines drawn through text or improper pen size selection (letters or number filled in such that 3's, 6's or 8's are indistinguishable).
- Signatures, date, and seals must be legible on the prints or the party placing the seal must be otherwise identified.
- Text must be 0.08 inches or larger; line widths shall not be less than 0.008 inches (vicinity maps, land surveyor's seals and certificates are excluded).

INDEXING:

- The recording officer's information block must be on the bottom or right edge of the map.
- A title block (shows the name of the preparer and is on each sheet of multiple sheets).
- An auditor's certificate (on the first sheet of multiple sheets, although Vol./Pg. and/or AF# must be entered by the recording officer on each sheet).
- A surveyor's certificate (on the first sheet of multiple sheets; seal, date, and signature on multiple sheets).
- The map filed must provide the following indexing data:
 - S-T-R and the quarter-quarter(s) or approximate quarter-quarter(s) of the section in which the surveyed parcel lies (~~(r and a graphic representation of the section divided into quarter-quarters in which the surveyed parcel lies are clearly marked)~~).

MISCELLANEOUS:

- If the function of the document submitted is to change a previously filed record, it must also have:
 - A title identifying it as a correction, amendment, alteration or change to a previously filed record.
 - A note itemizing the changes.
- For records of survey:
 - The sheet size must be 18" x 24".
 - The margins must be 2" on the left and 1/2" for the others, when viewed in landscape orientation.
 - In addition to the map being filed there must be two prints included in the submittal; except that, in counties using imaging systems fewer prints, as determined by the auditor, may be allowed.

[Statutory Authority: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160. WSR 20-23-021, § 332-130-050, filed 11/6/20, effective 12/7/20. Statutory Authority: RCW 58.24.040(1). WSR 19-01-045, § 332-130-050, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 58.24.040(1) and 58.09.110. WSR 00-17-063 (Order 704), § 332-130-050, filed 8/9/00, effective 9/9/00. Statutory Authority: RCW 58.24.040(1). WSR 89-11-028 (Order 561), § 332-130-050, filed 5/11/89; Order 275, § 332-130-050, filed 5/2/77.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

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 19-01-045, filed 12/13/18, effective 1/13/19)

WAC 332-130-060 Local geodetic control survey standards. The following standards shall apply to local geodetic control surveys:
 The datum for the horizontal control network in Washington shall be the Washington plane coordinate system as officially adjusted and published by the National Geodetic Survey of the United States Department of Commerce as established in accordance with chapter 58.20 RCW.

~~((The datum tag and coordinate epoch date shall be reported on all documents prepared, which show local geodetic control.))~~ All final documents, as defined in WAC 196-23-020(1), listing Washington plane coordinate system information must comply with RCW 58.20.180 requirements for recording.

[Statutory Authority: RCW 58.24.040(1). WSR 19-01-045, § 332-130-060, filed 12/13/18, effective 1/13/19. Statutory Authority: Chapter 58.24 RCW. WSR 05-13-104, § 332-130-060, filed 6/17/05, effective 7/18/05. Statutory Authority: RCW 58.24.040(1). WSR 91-19-013 (Order 581), § 332-130-060, filed 9/9/91, effective 10/10/91; WSR 89-11-028 (Order 561), § 332-130-060, filed 5/11/89; Order 275, § 332-130-060, filed 5/2/77.]

AMENDATORY SECTION (Amending WSR 90-06-028, filed 3/1/90, effective 4/1/90)

WAC 332-130-080 Relative accuracy—Principles. The following principles of relative accuracy are provided to guide those who may be analyzing their work by these procedures.

(1) Relative accuracy means the theoretical uncertainty in the location of any point or corner relative to other points or corners set, found, reestablished, or established. A standard of relative accuracy can be achieved by using appropriate equipment and implementing field and office procedures that will result in a ~~((ninety-five))~~ 95 percent probability of achieving the accuracy required.

(2) ~~((Relative accuracy is not related to uncertainties due to differences between measured values and record values or uncertainties in the geodetic position.~~

~~((3))~~) In the application of a relative accuracy standard, the surveyor must consider the established land use patterns, land values of and in the vicinity of the surveyed parcel, and the client's intended use of the property. Higher levels of precision are expected to be used in situations necessitating higher accuracy.

~~((4))~~) (3) Each land boundary survey should contain a statement identifying the method of mathematical analysis used in achieving a stated relative accuracy.

[Statutory Authority: RCW 58.24.040(1). WSR 90-06-028 (Order 568), § 332-130-080, filed 3/1/90, effective 4/1/90; WSR 89-11-028 (Order 561), § 332-130-080, filed 5/11/89; Order 275, § 332-130-080, filed 5/2/77.]

WSR 21-24-098

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed December 1, 2021, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-141.

Title of Rule and Other Identifying Information: Long-term services and supports trust program (WA cares). Adding WAC 192-910-025 Election of coverage for federally recognized tribes.

Hearing Location(s): On January 6, 2022, at 9:00 a.m., Microsoft Teams. Join online, link available at esd.wa.gov/newsroom/rulemaking/ltss; join by phone 564-999-2000, PIN 779405926#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after January 13, 2022.

Submit Written Comments to: April Amundson, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by January 6, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by December 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new proposed rule implements section 7, chapter 112, Laws of 2021, of SHB 1323, as codified under RCW 50B.04.095. The bill, among other things, provides a pathway for federally recognized tribes to elect WA cares program coverage. The bill also requires ESD to adopt rules to implement the section. Consistent with the elective coverage administrative rules for tribes under the paid family and medical leave (PFML) program, the proposed rule says that any tribe that opts in to the program is considered an employer as that term is defined under the law, and that the tribe's employees are considered employees as that term is defined under the law.

Reasons Supporting Proposal: The proposed rule is necessary to implement portions of the WA cares program and provide guidance to federally recognized tribes that may be interested in electing program coverage.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.080, 50B.04.095.

Statute Being Implemented: RCW 50B.04.080, 50B.04.095.

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

Name of Proponent: ESD, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt under RCW 34.05.328 (5) (b) (v) and (c) (i) (C) because the rule is dictated by statute (RCW 50B.04.095) and is a procedural rule related to internal operations of the department.

RCW 50B.04.095 outlines conditions under which federally recognized tribes may elect WA cares program coverage. The rule is also a procedural rule that adopts policies related to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii). In addition, RCW 50B.04.080 requires the department, to the extent feasible, to use the

premium assessment, collection, and reporting procedures required for PFML under Title 50A RCW. The rule ensures that standards and procedures for tribes to opt in to the program are consistent with rules previously adopted for PFML.

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

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

Explanation of exemptions: The proposed rule is exempt under RCW 34.05.310 (4) (e) because the rule is dictated by statute. RCW 50B.04.095 outlines conditions under which federally recognized tribes may elect WA cares program coverage. In addition, RCW 50B.04.080 requires the department, to the extent feasible, to use the premium assessment, collection, and reporting procedures required for PFML under Title 50A RCW. The rule ensures that standards and procedures for tribes to opt in to the program are consistent with rules previously adopted for PFML.

December 1, 2021
April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3496.1

NEW SECTION

WAC 192-910-025 Election of coverage for federally recognized tribes. (1) A federally recognized tribe that elects coverage under RCW 50B.04.095 is an employer as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

(2) An employee of a federally recognized tribe that elects coverage under RCW 50B.04.095 is an employee as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

[]

WSR 21-24-104

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed December 1, 2021, 9:49 a.m.]

Continuance of WSR 21-20-127.

Preproposal statement of inquiry was filed as WSR 20-15-112.

Title of Rule and Other Identifying Information: Chapter 246-100 WAC, Communicable and certain other diseases. The state board of health (board) is proposing amending this chapter to implement changes made by ESHB 1551 as it relates to HIV/AIDS. The board also proposes other technical or editorial changes as needed.

Hearing Location(s): On January 12, 2022, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical space, will be held instead. Board members, presenters, and staff will all participate remotely. Zoom webinar hyperlink to register <https://us02web.zoom.us/join/957396>. Zoom webinar dial-in only: 1. Webinar phone number +1 (253) 215-8782; 2. webinar ID 894 7406 4216; 3. webinar Passcode 957396.

Date of Intended Adoption: January 12, 2022.

Submit Written Comments to: Email <https://fortress.wa.gov/doh/policyreview>, by January 1, 3000 [2022].

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-41014 [4104], TTY 711, email melanie.hisaw@sboh.wa.gov, by January 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to revise chapter 246-100 WAC to assure [ensure] consistency with the statutory requirements and protect public health and safety. Revisions include, but are not limited to, establishing reporting requirements and procedures for investigations for sexually transmitted infections; specifying behavior that endangers the public health; defining specimens that can be obtained and tests that can be administered for sexually transmitted infections, bloodborne pathogens, and other infections; determining categories of employment that are at risk of substantial exposure to a bloodborne pathogen; and defining what constitutes an exposure that presents a possible risk of transmission of a bloodborne pathogen.

At the January 12, 2022, meeting, the board will continue discussion of the proposed rule and comments received.

November 30, 2021
Michelle A. Davis
Executive Director