

WSR 22-17-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed August 16, 2022, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-046.

Title of Rule and Other Identifying Information: The department is amending WAC 388-71-0837, 388-71-0839, 388-71-0841, 388-71-0846, 388-71-0850, 388-71-0855, 388-71-0860, 388-71-0875, 388-71-0906, 388-71-0911, 388-71-0916, 388-71-0932, 388-71-0936, 388-71-0941, 388-71-0946, 388-71-0970, 388-71-0971, 388-71-0973, 388-71-0980, 388-71-0985, 388-71-0990, 388-71-0991, 388-71-1001, 388-71-1026, 388-71-1031, 388-71-1045, 388-71-1050, 388-71-1051, 388-71-1055, 388-71-1060, 388-71-1064, 388-71-1076, 388-71-1091, 388-71-1096, 388-71-1106, 388-71-1111, 388-71-1120, 388-71-1125, 388-71-1130, 388-112A-0105, 388-112A-0110, 388-112A-0115, 388-112A-0120, 388-112A-0125, 388-112A-0130, 388-112A-0200, 388-112A-0210, 388-112A-0220, 388-112A-0310, 388-112A-0320, 388-112A-0330, 388-112A-0520, 388-112A-0550, 388-112A-0560, 388-112A-0580, 388-112A-0610, 388-112A-0611, 388-112A-0612, 388-112A-0920, 388-112A-0940, 388-112A-0950, 388-112A-1010, 388-112A-1020, 388-112A-1230, 388-112A-1240, 388-112A-1250, 388-112A-1270, 388-112A-1285, 388-112A-1292, 388-112A-1300, and 388-112A-1310.

Repealing WAC 388-71-058329, 388-71-05833, 388-71-05834, 388-71-0921, 388-71-0931, 388-71-0951, 388-71-1006, 388-71-1021, 388-71-1083, 388-112A-0240, 388-112A-0350, 388-112A-0480, 388-112A-0530, 388-112A-0540, 388-112A-0585, 388-112A-0620, and 388-112A-0840.

New WAC 388-71-0958 Is there a challenge test for nurse delegation core or specialized diabetes training?, 388-71-0961 What knowledge and skills must nurse delegation core training include?, 388-71-0962 What knowledge and skills must specialized diabetes nurse delegation training include?, 388-71-1067 What are the minimum qualifications for community instructors for mental health specialty training?, 388-71-1068 What are the minimum qualifications for community instructors for dementia specialty training?, 388-71-1069 What are the minimum qualifications for community instructors to teach expanded specialty trainings?, and 388-112A-0118 What documentation is required for completion of each training?

Hearing Location(s): On October 25, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than October 26, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on October 25, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Training requirements for all long-term care workers are regulated by the same policies. Long-term care workers who work in home environments are regulated under chapter 388-71 WAC, while workers in assisted living facilities, enhanced services facilities, and adult family homes are regulated under chapter 388-112A WAC. As a result of many years of amendments and additions to rules that were not done in concert between the two chapters, the language between chapters 388-71 and 388-112A WAC have diverged, resulting in significant differences. These differences cause unnecessary confusion. The modifications contained in this proposal will not change policy or practice, but will reconcile the differences, update language, and create more current and uniform policies for long-term care workers. Amendments fall under the following categories: Changing numbers over 10 to numbers rather than words; adding rules to chapter 388-71 WAC that are already in place in chapter 388-112A WAC, but should be in both training sections; moving rules to new, more logical locations; clarifying language suggested by stakeholders; making wording between chapters more consistent; gender equity changes; consolidating several redundant rules into a single rule; changing "70-hour long-term care basic training" to "70-hour home care aide basic training"; correction of typographical and other unintended errors; and anticipation of a future department of health rule change related to the date of hire.

Reasons Supporting Proposal: See purpose above.

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

Statute Being Implemented: RCW 18.20.270, 70.128.230, 74.08.090, 74.39A.070, and 74.39A.074.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2366.

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. Exempt under RCW 34.05.328 (5)(b)(iv), rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(4).

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

Explanation of exemptions: Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

August 12, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4921.4

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0837 How does DSHS determine a long-term care worker's date of hire? (1) The department determines a long-term care worker's date of hire according to ~~((WAC 246-980-010))~~ chapter 246-980 WAC.

(2) The date of hire is specific to each long-term care worker. It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-71-0980.

(3) This section does not apply to background check requirements under this chapter.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0837, filed 8/30/21, effective 10/1/21.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0839 Which long-term care workers are exempt from the ~~((seventy hour))~~ 70-hour, ~~((thirty hour))~~ 30-hour, or ~~((twelve hour))~~ seven-hour basic training requirements? The following long-term care workers are exempt from the ~~((seventy))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training requirement:

(1) An individual employed as a long-term care worker on January 6, 2012, who complied with the basic training requirements in effect on the date of ~~((his or her))~~ hire;

(2) An individual previously employed as a long-term care worker who completed the basic training requirements in effect on the date of ~~((his or her))~~ hire, and was employed as a long-term care worker at some point between January 1, 2011, and January 6, 2012;

(3) Registered nurses, licensed practical nurses, and advanced registered nurse practitioners licensed under chapter 18.79 RCW;

(4) Nursing assistants certified under chapter 18.88A RCW and persons in an approved training program for certified nursing assistants under chapter 18.88A RCW provided that they complete the training program within ~~((one hundred twenty))~~ 120 days of the date of hire and the department of health has issued ~~((them their))~~ a nursing assistant certified credential within ~~((two hundred))~~ 200 days of the date of hire;

(5) A home health aide who was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R., Sec. 484.36;

(6) An individual with special education training who has an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A.300.010; and

(7) ~~((H))~~ A home care aide ~~((s))~~ (HCA((s))) certified under chapter 18.88B RCW.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0839, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0839, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0841 What is orientation training, who should complete it, and when should it be completed? (1) (~~(Orientation)~~) Long-term care worker orientation is (~~(a training of)~~) two hours of orientation training regarding the long-term care worker's role (~~(as long-term care workers)~~) and the applicable terms of employment. Individuals required to complete the 70-hour home care aide basic training must complete long-term care worker orientation before providing care to a client.

(2) Long-term care worker orientation training, unless taken through a department approved online training program, must be provided by qualified instructors who meet the requirements of WAC 388-71-1060.

(~~((2))~~) (3) The department must approve orientation curricula and instructors.

(~~((3))~~) (4) There is no (~~(challenge)~~) competency test for long-term care worker orientation.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0841, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0846 What content must be included in long-term care worker orientation? (~~(Orientation must include introductory information in the following areas:)~~)

(~~((1) The care setting and the characteristics and special needs of the population served or to be served;~~)

(~~(2) Basic job responsibilities and performance expectations;~~)

(~~(3) The care plan, including what it is and how to use it;~~)

(~~(4) The care team;~~)

(~~(5) Process, policies, and procedures for observation, documentation and reporting;~~)

(~~(6) Client rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;~~)

(~~(7) Mandatory reporter law and worker responsibilities; and~~)

(~~(8) Communication methods and techniques that can be used while working with a client or guardian, and other care team members.~~)

One hour of completed classroom instruction or other form of training (such as video or online course) equals one hour of training.

~~The training entity must establish a way for the long-term care worker to ask the instructor questions.)~~

~~(1) For those individuals identified in WAC 388-71-0841(1) who must complete orientation training:~~

~~(a) Orientation training may include the use of videos, audio recordings, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Orientation must include introductory information in the following areas:~~

~~(i) The care setting;~~

~~(ii) The characteristics and special needs of the population served;~~

~~(iii) Fire and life safety, including:~~

~~(A) Emergency communication (including phone system if one exists);~~

~~(B) Evacuation planning (including fire alarms and fire extinguishers where they exist);~~

~~(C) Ways to handle client injuries and falls or other accidents;~~

~~(D) Potential risks to clients or staff (for instance, challenging client behaviors and how to handle them); and~~

~~(E) The location of policies and procedures;~~

~~(iv) Communication skills and information, including:~~

~~(A) Methods for supporting effective communication among the client/guardian, care team, and family members;~~

~~(B) Use of verbal and nonverbal communication;~~

~~(C) Review of written communications and documentation required for the job, including the client's service plan;~~

~~(D) Expectations about communication with other members of the care team; and~~

~~(E) Who to contact about problems and concerns;~~

~~(v) Standard precautions and infection control, including:~~

~~(A) Proper hand washing techniques;~~

~~(B) Protection from exposure to blood and other body fluids;~~

~~(C) Appropriate disposal of contaminated/hazardous articles;~~

~~(D) Reporting exposure to contaminated articles, blood, or other body fluids; and~~

~~(E) What caregivers should do if they are ill;~~

~~(vi) Client rights, including:~~

~~(A) The client's right to confidentiality of information about the client;~~

~~(B) The client's right to participate in making decisions about the client's care and to refuse care;~~

~~(C) The caregiver's duty to protect and promote the rights of each client and assist the client to exercise their rights;~~

~~(D) How the caregiver should report concerns they may have about a client's decision on their care and who they should report these concerns to;~~

~~(E) The caregiver's duty to report any suspected abuse, abandonment, neglect, or exploitation of a client;~~

~~(F) Advocates that are available to help clients (such as long-term care ombudsmen and organizations); and~~

~~(G) Complaint lines, hot lines, and client grievance procedures such as, but not limited to:~~

~~(I) The DSHS complaint hotline at **1-800-562-6078**;~~

~~(II) The Washington state long-term care ombudsman program;~~

~~(III) The Washington state department of health and local public health departments;~~

- (IV) The local police; and
- (V) Employer grievance procedure.

(2) One hour of completed classroom instruction or other form of training (such as a video or online course) in long-term care orientation training equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0846, filed 12/20/12, effective 1/20/13.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0850 What is safety training, who must complete it, and when should it be completed? (1) Safety training is part of the long-term care worker requirements. It is a ((training of)) three ((hours that)) hour training that must meet the requirements as described in WAC 388-71-0855, and includes basic safety precautions, emergency procedures, and infection control. ((The)) Safety training must be completed prior to providing care to the client.

(2) All long-term care workers who are not exempt from home care aide certification as described in RCW 18.88B.041 hired after January 7, 2012, must complete three hours of safety training. This safety training must be provided by qualified instructors who meet the requirements in WAC 388-71-1060.

((2)) (3) The department must approve safety training curricula and instructors.

((3)) (4) There is no ((challenge)) competency test for safety training.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0850, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0855 What content must be included in safety training? Safety training consists of introductory information in the following areas:

(1) Safety planning and accident prevention, including but not limited to:

- (a) Proper body mechanics;
- (b) Fall prevention;
- (c) Fire safety;
- (d) In-home hazards;
- (e) Long-term care worker safety; and
- (f) Emergency and disaster preparedness.

(2) Standard precautions and infection control, including but not limited to:

- (a) Proper hand washing;

- (b) When to wear gloves and how to correctly put them on and take them off;
- (c) Basic methods to stop the spread of infection;
- (d) Protection from exposure to blood and other body fluids;
- (e) Appropriate disposal of contaminated/hazardous articles;
- (f) Reporting exposure to contaminated articles; and
- (g) What to do when sick or injured, including whom to report this to.
- (3) Basic emergency procedures, including but not limited to:
- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a client is falling or falls;
- (d) Location of any advanced directives (~~and when they are given~~) if available; and
- (e) Basic fire emergency procedures.

(4) One hour of completed classroom instruction or other form of training (such as video or online course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0855, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0860 Who must complete orientation and safety, (~~training and~~) by when, and when does an orientation and safety training attestation process need to be completed? (1) Unless exempted in WAC 388-71-0839 (1) through (7), all long-term care workers must complete orientation and safety training prior to providing care to a client.

(2) All individual providers must contact the training partnership and follow the required procedures to confirm that they have completed the orientation and safety training, once it is completed.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0860, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0860, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0875 Who must complete the (~~seventy~~) 70-hour basic training and by when? Unless exempt from training in WAC 388-71-0839(1) through (7), all long-term care workers must complete core and population specific competencies within (~~one hundred twenty~~) 120 days of the date of hire as described in chapter 246-980 WAC.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0875, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0875, filed 12/20/12, effective 1/20/13.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0906 What topics must be taught in the core competencies of the 70-hour home care aide basic training? Basic training must include all of the competencies under WAC 388-71-0911 for the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Client rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation, and mandatory reporting;
- (6) Client directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0906, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0911 What are the core competencies and learning objectives for the ((core competencies of)) 70-hour home care aide basic training? ((Long-term care worker)) Home care aide basic training includes core competencies that describe the behavior and skills that a long-term care worker must exhibit when working with clients and the learning objectives associated with each competency as follows:

- (1) ((Regarding communication:
 - (a)) Communicate effectively and in a respectful and appropriate manner with clients, family members, and care team members((+)):
 - ((b)) (a) Recognize how verbal and nonverbal cues impact communication with the client and care team;

- ~~((e))~~ (b) Engage and respect the client through verbal and non-verbal communication;
- ~~((d))~~ (c) Listen attentively and determine that the client, when able, understands what has been communicated;
- ~~((e))~~ (d) Recognize and acknowledge clients' communication including indicators of pain, confusion, or misunderstanding;
- ~~((f))~~ (e) Utilize communication strategies to deal with difficult situations; and
- ~~((g))~~ (f) Recognize common barriers to effective communication and identify how to eliminate them;
- (2) Regarding long-term care worker self-care:
- (a) Identify behaviors, practices, and resources to reduce stress and avoid burnout;
- (b) Recognize common barriers to self-care and ways to overcome them; and
- (c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout~~((r))~~, and the importance of taking action to practice self-care to avoid burnout;
- (3) Regarding the competency of effective problem solving, use effective problem solving skills to:
- (a) Explain why it is necessary to understand and utilize a problem solving method;
- (b) Implement a problem solving process/method; and
- (c) Identify obstacles to effective problem solving and ways to overcome them;
- (4) Regarding the competency of client rights and dignity, take appropriate action to promote and protect a client's legal and human rights as protected by federal and Washington state laws including:
- (a) Protect a client's confidentiality, including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a non-care team member asks for confidential information;
- (b) Promote client's dignity and privacy, and encourage, and support a client's maximum independence when providing care;
- (c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use; and
- (d) Protect and promote the client's right to live free of abuse, neglect, abandonment, and financial exploitation;
- (5) Regarding the competency of recognizing indicators of abuse and understanding the mandatory reporting requirements, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:
- (a) Describe long-term care worker's responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.053; and
- (b) Identify common indications of abuse, abandonment, neglect, and financial exploitation;
- (6) Regarding the competency of client directed care, take appropriate action when following a client's direction regarding ~~((his or her))~~ care:
- (a) Describe a long-term care worker's role in client directed care including determining, understanding, and supporting a client's choices;
- (b) Describe the importance and impact of client directed care on a client's independence, self-determination, and quality of life;

- (c) Identify effective problem solving strategies that help balance a client's choice with personal safety; and
- (d) Report concerns when a client refuses care or makes choices that present a possible safety concern;
- (7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:
- (a) Describe how cultural background, lifestyle practices, and traditions can impact care; and
- (b) Use methods to determine and ensure that these are respected and considered when providing care;
- (8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan;
- (9) Regarding the competency on fall prevention:
- (a) Identify fall risk factors and take action to reduce fall risks for a client; and
- (b) Take proper steps to assist when a client is falling or has fallen;
- (10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:
- (a) Explain the importance of observing a client's skin, when to observe it, and what to look for including common signs and symptoms of skin breakdown;
- (b) Identify risk factors of skin breakdown;
- (c) Observe skin at pressure point locations and report any concerns;
- (d) Describe what a pressure ulcer is, what it looks like, and what actions to take if a client appears to be developing or develops a pressure ulcer;
- (e) Describe current best practices that protect and maintain a client's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;
- (f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and
- (g) Identify when to report skin changes and who to report them to;
- (11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:
- (a) Identify when, how, and why to obtain information from appropriate sources about a client's condition or disease for which they are receiving services, and describe how to use this information to provide appropriate, individualized care;
- (b) Describe a client's baseline based on information provided in the care plan and explain why it is important to know a client's baseline;
- (c) Identify changes in a client's physical, mental, and emotional state through observation;
- (d) Report changes from baseline and concerns to the appropriate care team member(s);
- (e) Identify basic job standards and requirements (such as coming to work on time) and describe how maintaining these standards are critical to a client's safety and well-being;
- (f) Explain the purpose of a care plan and describe how it is created, used, and modified;

(g) Use a client's care plan to direct a long-term care worker's job tasks and any client directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in the care team;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them;

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

(i) Helping an individual walk;

(ii) Transferring an individual from bed to wheelchair;

(iii) Turning and repositioning an individual in bed;

(iv) Providing oral care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting an individual with a weak arm to dress;

(xi) Putting knee-high elastic stockings on an individual;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting an individual to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance;

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain privacy and dignity, support the client's level of ability, and assure (~~his or her~~) the client's comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes;

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and pre-

vent food borne illness by preparing and handling food in a safe manner:

- (a) Describe how nutrition and hydration can impact a client's health;
 - (b) Plan, shop, and prepare meals for a client according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions from the care plan and client preferences;
 - (c) Describe common signs of poor nutrition and hydration, and when to report concerns and who to report concerns to;
 - (d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;
 - (e) Recognize when a client's food choices vary from specifications on the care plan, describe when to report concerns and who to report them to;
 - (f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;
 - (g) Describe appropriate food handling practices, including:
 - (i) Avoiding cross contamination from one food to another;
 - (ii) Safe storage requirements for cooling of leftover foods, including:
 - (A) Depth;
 - (B) Types of containers and temperatures;
 - (C) The need to maintain food at proper temperatures to limit bacterial growth; and
 - (D) Safe food storage and holding temperatures for both cold and hot foods;
 - (iii) Best practices for thawing and re-heating food; and
 - (iv) Using clean gloves (if possible), and clean utensils when preparing food;
 - (h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and
 - (i) Describe why a long-term care worker with certain types of illnesses, symptoms, or both must not prepare food;
- (14) Regarding the competency of medication assistance, appropriately assist with medications:
- (a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;
 - (b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;
 - (c) Identify common symptoms of medication side effects and when and to whom to report concerns;
 - (d) Store medications according to safe practices and the label instructions;
 - (e) Describe, in the proper sequence, each of the five rights of medication assistance; and
 - (f) Identify what to do for medication-related concerns, including describing ways to work with a client who refuses to take medications, identifying when and to whom to report when a client refuses medication or there are other medication-related concerns, and identifying what is considered a medication error, when to report a medication error, and who to report it to;

(15) Regarding the competency of infection control and blood-borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit, and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy microorganisms on surfaces;

(h) Describe what blood-borne (BB) pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality, and nondiscrimination; and

(p) Explain the importance of emotional issues and support for clients and long-term care workers;

(16) Regarding the competency on grief and loss, support yourself and the client in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a client and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss;

(17) Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250;

(18) Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health for the home care aide requirement in WAC 246-980-040; and

(19) Regarding the competency on identifying indicators of hearing loss, which may be part of the basic training or population specific hours:

(a) Identify common symptoms associated with hearing loss; and

(b) Identify what to do for hearing loss related concerns, including describing ways to communicate with a client who is experiencing hearing loss and identifying when and to whom to report when a client's hearing ability changes.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0911, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0911, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0916 ~~What ((topics may be taught in))~~ is the population specific ((competencies of basic)) component of the 70-hour home care aide training and what required training may be used as population specific training? (1) Population specific basic training ((may include but is not limited to one or more of the following)) is training on topics ((. Which topic(s) to include in population specific training is based on the needs of the population(s) served or to be served.)) unique to the care needs of the population that the home or provider serves. Topics may include but are not limited to:

- (a) Dementia;
- (b) Mental health;
- (c) Developmental disabilities;
- (d) Young adults with physical disabilities; and
- (e) Aging and older adults.

(2) ~~((Specialty training per))~~ Population specific classes may ((WAC 388-112-0110 may be used to meet the population specific component of basic training. The training program will provide a department issued specialty certificate in these instances.)) include but are not limited to:

- (a) DSHS developed or approved specialty training, such as:
 - (i) Dementia specialty training;
 - (ii) Mental health specialty training; and
 - (iii) Developmental disabilities specialty training.

(b) DSHS developed or approved curriculum on population specific topics, such as:

- (i) Traumatic brain injury, surviving and thriving; and
- (ii) Navigating challenging behaviors.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0916, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0932 **What is on-the-job training?** (1) Effective July 1, 2012, on-the-job training is a method of training where the long-term care worker successfully demonstrates in the ~~((seventy))~~ 70-hour ~~((long term care worker))~~ home care aide basic training, ~~((any or all of))~~ the core competencies for personal care or infection control skills while working with a client on the job, instead of in a practice training setting.

(2) ~~((On the job training must be provided by a))~~ A qualified instructor as described in WAC 388-71-1055, ((who)) provides on-the-job training and directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The qualified instructor ((providing)) who provides the on-the-job training:

(a) ~~((Does not have to))~~ Need not be the instructor who ~~((has))~~ taught the core competency training; and

(b) ~~((Must not be someone whose primary job duty is providing direct care to clients; and~~

~~(-e-))~~ May be the immediate supervisor in a home care agency of the long-term care worker receiving this training.

(3) ~~The ((instructor overseeing this))~~ person who oversees on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; ~~((and))~~

(b) Verify on a DSHS approved skills checklist or other department approved form, the long-term care worker's successful completion of the demonstrated skills~~((-.))~~; and

(c) Not relinquish required duties to trainee caregivers when acting as a trainer.

(4) ~~((For the person receiving on-the-job training, the hours spent in on the job training may count toward the completion of basic training requirements.~~

~~((5))~~ The training program must get department approval for the on-the-job training hours as part of the seventy hour training)) The department must approve the number of on-the-job hours included in the 70-hour home care aide basic training.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0932, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0932, filed 12/20/12, effective 1/20/13.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0936 What is nurse delegation core training? (1)

Nurse delegation core training is ~~((the))~~ required before ~~((course a nursing assistant,))~~ certified or registered((r)) nursing assistants or certified home care aides ~~((must))~~ ~~((successfully complete before being))~~ may be delegated a nursing task.

(2) ~~((Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants and Home Care Aides" meets the training requirement for nurse delegation core training.~~

~~(3))~~ DSHS ~~((must))~~ approves ~~((the))~~ instructors for nurse delegation core training ~~((prior to an instructor offering a course)).~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0936, filed 8/30/21, effective 10/1/21. Statutory

Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0936, filed 12/20/12, effective 1/20/13.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0941 What is ~~((specialized diabetes))~~ nurse delegation specialized diabetes training? (1) ~~((Specialized diabetes))~~ Nurse delegation specialized diabetes training is the required course for nursing assistants, certified or registered, and certified home care ~~((aide))~~ aides who will be delegated the task of insulin injections.

(2) ~~((The specialized diabetes nurse delegation training consists of three modules which are diabetes, insulin, and injections.~~

~~((3) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes" may be used for the specialized diabetes nurse delegation training.~~

~~((4)) DSHS approves the instructors for the ~~((specialized diabetes))~~ nurse delegation specialized diabetes training ~~((prior to an instructor offering a course)).~~~~

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0941, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0946 Who is required to complete the nurse delegation core training and nurse delegation specialized focus on diabetes training~~((r))~~ and by when? ~~((Before performing any delegated task, a long-term care worker must:))~~

(1) ~~((Be a:))~~ Before performing any delegated nursing task, long-term care workers must:

(a) Successfully complete the DSHS designated nurse delegation core training, "nurse delegation for nursing assistants & home care aides";

(b) Be one or more of the following:

~~((a))~~ (i) Certified home care aide under chapter 18.88B RCW;
~~((e))~~

~~((b))~~ (ii) Nursing assistant certified under chapter 18.88A RCW~~((; or))~~.

~~((c))~~ (2) If the long-term care worker is exempt from the home care aide certification under WAC 246-980-025, the long-term care worker must be ~~((become))~~ a nursing assistant registered and complete the core competencies of basic training, unless they already completed the ~~((twenty-eight))~~ 28 hours of revised fundamentals of care or a department approved alternative ~~((was already completed.))~~;

~~((d))~~ (3) If nurse delegation is needed to implement a care plan or negotiated service agreement earlier than home care aide certification can be obtained, the long-term care worker must become a

nursing assistant registered and complete core competencies (the core (of) basic training) of the 70-hour home care aide basic training.

(4) Before long-term care workers may perform the task of insulin injections, the long-term care workers must:

(a) Meet the requirements in subsection (1)(a) and (b) of this section; and

((2)) (b) Successfully complete ("Nurse Delegation for Nursing Assistants") the DSHS designated nurse delegation specialized diabetes training.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0946, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0958 Is there a challenge test for nurse delegation core or specialized diabetes training? There is no challenge test for nurse delegation core or specialized diabetes training.

[]

NEW SECTION

WAC 388-71-0961 What knowledge and skills must nurse delegation core training include? Only the DSHS developed curriculum for nurse delegation entitled, "nurse delegation for nursing assistants & home care aides," meets the training requirement for nurse delegation core training.

[]

NEW SECTION

WAC 388-71-0962 What knowledge and skills must nurse delegation specialized diabetes training include? Nurse delegation specialized diabetes training consists of three modules on diabetes, insulin, and injections. Only the curriculum developed by DSHS, "nurse delegation for nursing assistants: special focus on diabetes," may be used for the nurse delegation specialized diabetes training.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0970 What documentation is required for completion of each training? (1) Orientation, safety, basic training, including core and population specific, the ((thirty)) 30-hour training, the ((twelve)) seven-hour parent provider training, on-the-job training,

continuing education, ~~((and))~~ nurse delegation core and specialized diabetes training, specialty and expanded specialty training, and adult education training must be documented by a certificate~~((s) or)~~, transcript, or proof of completion of training issued by a qualified instructor or qualified training entity that includes:

- ~~((1))~~ (a) The name of the student;
 - ~~((2))~~ (b) The title of the training as approved by the department;
 - ~~((3))~~ (c) For continuing education the department assigned curriculum approval code;
 - ~~((4))~~ (d) The number of hours of the training;
 - ~~((5))~~ (e) The name and identification number of the training entity;
 - ~~((6))~~ (f) The instructor's name~~((r))~~;
 - (g) For core basic training and the 75-hour certificate, the instructor's name and identification number;
 - ~~((7))~~ (h) The instructor's signature or an authorized signature from the training entity the qualified instructor is training on behalf of; and
 - ~~((8))~~ (i) The completion date of the training.
- (2) The long-term care worker must ~~((retain the original certificate or transcript for))~~ be given documentation of the proof of completion of the training that the student should retain. A home care agency must keep a copy of the ~~((certificate or transcript))~~ proof of completion as specified in subsection (1) of this section on file.
- (3) An instructor who is approved for Core Basic may sign a 75-hour certificate from the same training program.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0970, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0971 Prior to hiring a long-term care worker, what training and certification requirements must be reviewed by the home care agency or department? Before hiring a long-term care worker, the home care agency or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the consumer directed employer under chapter 74.39A RCW; must review and verify the highest level of training or certification achieved by the individual.

(1) When the individual is a home care aide certified under chapter 18.88B RCW, the home care agency, CDE, or department must:

- (a) Verify that the individual's home care aide certification is current and in good standing; and
- (b) Confirm and document that the individual ~~((has completed))~~ is in compliance with continuing education as required under WACs 388-71-0990 and 388-71-0991 for the compliance year in which they are hired.

(2) When the individual is exempt from the ~~((seventy))~~ 70-hour ~~((long-term care worker))~~ home care aide training and certification requirements under WAC 388-71-0839, the home care agency, CDE, or department must review and verify the following:

- (a) Documents demonstrating the individual's exemption status from training and certification which may include:

(i) Washington state provider active credential number, showing that the individual's license or certification is current and in good standing;

(ii) (~~Letter~~) A letter from a former or current employer documenting work history during the exemption period described in WAC 388-71-0839;

(iii) Employment history records from the Washington state employment security department documenting work history information during the exemption period;

(iv) Federal tax statements documenting work history information during the exemption period; or

(v) Documentation showing completion of the basic training as required under WAC 388-71-0839;

(b) For the year in which they are hired, documentation of completion of (~~twelve~~) 12 hours of continuing education, or information on when the continuing education must be completed, that complies with WAC 388-71-0990 and WAC 388-71-0991.

(3) Individuals who have worked as long-~~(-)~~ term care workers in the past, but who did not complete the basic training or certification required at the time, may be eligible to have (~~their~~) the date of hire reset in accordance with this section and WAC 388-71-0980.

(a) Individuals who are eligible to reset their date of hire as provided in WAC 388-71-0980 must submit a new application and fee to the department of health and adhere to the training or certification requirement under this chapter.

(b) Individuals who are not eligible to reset (~~their~~) the date of hire as provided in WAC 388-71-0980 must not be paid to provide personal care assistance until they complete required training and become certified as a long-term care worker.

(4) The home care agency, or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the consumer directed employer under chapter 74.39A RCW must comply with continuing education documentation requirements under WAC 388-71-0970.

(a) Individuals who worked in the previous year in a long-term care setting during the previous calendar year, are held accountable for (~~their~~) continuing education completion by their new employer on the date of hire and shall provide at new hire, documentation of their continuing education compliance during the calendar year (~~in which they are~~) hired; or

(b) Individuals who work for multiple employers or move between employers shall on the date of hire, provide documentation of continuing education compliance for the year in which they are hired, if hired after their birthdate.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0971, filed 8/30/21, effective 10/1/21.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0973 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of (~~seventy-five hours of~~) the

70-hour home care aide basic training, the two hours of orientation, and the three hours of safety training (referred to collectively as the 75 hours of training) must be documented on a DSHS ((seventy-five)) approved 75-hour training certificate, transcript, or proof of completion by an approved training entity verifying that ((has provided or verified that)) a total of ((seventy-five)) 75 hours of training ((has)) have occurred.

(2) An approved training entity issuing and signing a DSHS ((seventy-five)) 75-hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and ((seventy hours of DSHS-approved)) the 70-hour home care aide basic training, as described in this chapter. ((Only a DSHS)) When applying to the department of health for home care aide certification, the long-term care worker may only submit a 75-hour training certificate that has been issued by the department or the training partnership ((seventy-five hour training certificate or transcript can be submitted by a long-term care worker applying to the department of health for a home care aide certification)).

(3) For annual home care aide recertification, successful completion of ((twelve)) 12 hours of DSHS-approved continuing education training must be documented on a certificate(s) or transcript(s) issued by a department((-))_approved training entity.

(4) The long-term care worker, certified home care aide, and ((their)) employer must retain ((the original seventy-five hour training certificate or transcript and)) any ((twelve)) 12-hour continuing education training certificates, transcripts, or other approved proof of completion as described in WAC 388-71-0970(1) as long as the worker is employed ((and up to three years after termination of employment. Training entities must keep a copy of these certificates on file for six years)).

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0973, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0980 May a home care agency or client employ a long-term care worker who has not completed the ((seventy)) 70-hour basic training or certification requirements? (1) If an individual has previously worked as a long-term care worker, but did not complete the training or certification requirements under RCW 18.88B.041, ((RCW)) 74.39A.074, and ((RCW)) 74.39A.096, ((or)) and this chapter, a home care agency or client must not employ the individual to work as a long-term care worker until the individual has completed the required training certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The date of hire may be reset once for each home care applicant after a minimum of one year has passed since the initial date of hire. If chapter 246-980 WAC provides for additional resets for date of hire, chapter 246-980 WAC shall supersede.

(3) Individuals who meet the criteria in subsection (2) of this section are allowed a new ((one hundred twenty)) 120 days to complete the ((seventy)) 70-hour ((long-term care worker)) home care aide basic

training and a new ~~((two hundred))~~ 200 days to become certified as a home care aide, if required by WAC 246-980-020.

(4) Individuals who meet the criteria in subsection ~~((+3))~~ (2) of this section must submit a new application and fee to the department of health.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0980, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0980, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0985 What is continuing education and what topics may be covered in continuing education? (1) Continuing education is annual training designed to promote professional development and increase a person's knowledge, expertise, and skills. DSHS must approve continuing education curricula and instructors.

(2) The same continuing education course ~~((may))~~ must not be repeated for credit unless it is a new or more advanced training on the same topic ~~((or, there is a demonstrated or documented need for re-training. Exceptions to this include)).~~ However, a long-term care worker may repeat up to five credit hours per year on the following topics:

- (a) Blood~~((-))~~borne pathogens and infection control;
- (b) CPR training;
- (c) First-aid training;
- (d) Food handling training;
- (e) Health Insurance Portability and Accountability Act (HIPAA);
- (f) Medication assistance;
- (g) Disaster preparedness;
- (h) Aging sensitivity;
- (i) Client rights as it relates to caregiving issues in chapter 70.129 RCW;
- (j) Client~~((s))~~ safety; ~~((and))~~
- (k) Abuse and neglect identification and mandatory reporting~~((-))~~; and

(1) Topics where the home care agency, CDE, or department can demonstrate a need for retraining.

(3) Continuing education must be on a topic relevant to the care setting, care needs of clients, or long-term care worker career development. In addition to the topics listed in subsection (2) of this section, topics or courses may include:

- (a) Personal care services;
- (b) Mental illness;
- (c) Dementia;
- (d) Developmental disabilities;
- (e) Depression;
- (f) Communication skills;
- (g) Positive client behavior support;
- (h) Developing or improving client centered activities;
- (i) Dealing with wandering or aggressive client behaviors;

(j) Deescalating challenging behaviors; and

(k) Medical conditions.

~~((2))~~ (4) Nurse delegation core and nurse delegation specialized diabetes training hours when not applied to basic training hours count towards continuing education.

(5) Specialty training, except if completed through a challenge test, may be used to meet continuing education requirements.

(6) When hours from a class approved as specialty training are counted toward basic training requirements, the hours must not be counted toward continuing education.

~~((3))~~ (7) Successful completion of a department of health approved home care aide certified alternative bridge program may be applied for up to ~~((twelve))~~ 12 hours of continuing education in the year it was completed.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0985, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0985, filed 12/20/12, effective 1/20/13.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0990 Who is required to complete continuing education training, how many hours are required each year, and under what circumstances may the long-term care worker not be paid? (1) The following long-term care workers must complete ~~((twelve))~~ 12 hours of continuing education by their birthday each year unless exempt from continuing education as described in WAC 388-71-1001:

(a) ~~((E))~~ A certified home care aide~~((S))~~;

(b) ~~((F))~~ A long-term care worker who is exempt from home care aide certification as described in RCW 18.88B.041~~((, long-term care workers must complete twelve hours of continuing education each year worked unless exempt from continuing education as described in WAC 388-71-1001.))~~;

(c) A certified nursing assistant;

(d) A person with special education training and an endorsement granted by the Washington state office of superintendent of public instruction, as described in RCW 28A.300.010.

(2) The continuing education requirements of this section do not apply to a registered nurse, a licensed practical nurse, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

~~((2))~~ (3) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in this section or in WAC 388-71-0991 must not be paid to provide care after that date and must not be reinstated as a

long-term care worker until the worker has completed the continuing education requirements.

~~((3) One hour of completed classroom instruction or other form of training (such as a video or online course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.))~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0990, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0990, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0991 When must a long-term care worker or certified home care aide complete continuing education? (1) All long-term care workers who are certified home care aides must comply with the continuing education requirements under chapter 246-980 WAC.

(2) Long-term care workers, who are exempt from home care aide certification as described in RCW 18.88B.041, unless exempt from continuing education as described under WAC 388-71-1001 must complete and provide documentation of 12 hours of continuing education within 45 calendar days of being hired or by the long-term care worker's birthday in the calendar year hired, whichever is later; and ~~((the annual continuing education requirements for each calendar year in which they performed any work as a long-term care worker.))~~

(a) Must complete 12 hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(b) If the 45 calendar day time period allows the long-term care worker to complete continuing education in January or February of the following year, the credit hours earned will be applied to the calendar year in which the long-term care worker was hired.

~~((3) Long-term care workers, who are exempt from home care aide certification as described in RCW 18.88B.041, unless exempt from continuing education as described under WAC 388-71-1001 and who have not worked in long-term care for a calendar year or longer, are eligible to return to work as a long-term care worker when the continuing education hours required under this section are completed within the following timeframes:~~

~~(a) On or before their birthday, if their birthday will occur after the date they return to work; or~~

~~(b) Within forty-five calendar days of the date they returned to work, if their birthday occurred took place on or before the day they returned to work.~~

~~(i) If this forty-five calendar day time period allows workers to complete their continuing education in January or February of the following year, the hours of credit earned will be applied to the year in which they were hired.~~

~~(ii) Continuing education requirements for the calendar year after the year they were hired must be completed as required under WAC 388-71-0990, even if the long-term care worker must complete twenty-four hours of classes within a very short time.))~~

~~((4))~~ (3) If the renewal period following initial certification as a home care aide or nursing assistant (NA-C), is less than a full year from the date of certification, no continuing education will be due for the first renewal period. ~~((The long-term care worker must complete continuing education requirement for the second renewal period on or before their birthdays.))~~

~~((5))~~ (4) For long-term care workers who are caring for a biological, step, or adoptive parent, continuing education must be completed on or before ~~((by))~~ their birthday in the year after basic training was completed. If these long-term care workers have not worked in long-term care for a calendar year or longer, the worker ~~((they))~~ can complete ~~((their))~~ the continuing education requirement as provided in subsection ~~((3))~~ (2) of this section.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0991, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0991, filed 12/20/12, effective 1/20/13.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-1001 Which long-term care workers are exempt from the continuing education requirement? ~~((Unless voluntarily certified as a home care aide, e))~~ Continuing education is not required for any of the following:

- (1) Individual providers caring only for their biological, step, or adoptive child;
- (2) Individual providers that:
 - (a) Provide care to only one person and provide no more than ~~((twenty))~~ 20 hours of care in any calendar month; or
 - (b) Individual providers who only provide respite services and work ~~((three hundred))~~ 300 hours or less in any calendar year;
- (3) Before January 1, 2016, a long-term care worker employed by a community residential service business; and
- (4) Registered nurses, ~~((and))~~ licensed practical ~~((nurse))~~ nurses, and advanced registered nurse practitioners licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-1001, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1001, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-1026 What must be submitted to DSHS for curriculum approval? (~~DSHS developed curricula are not required to be submitted to the department for approval unless the curriculum is being modified in any manner by the training entity.~~)

(1) If a training entity modifies a department developed curricula in any manner, the training entity must submit the curriculum to the department for approval.

(2) Training must not be offered before receiving department curriculum and instructor (~~approved~~) approval.

(3) Online classes when applicable, must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the DSHS(~~is~~) website <https://bit.ly/dshs-online-standards>.

(4) **For orientation and(~~or~~) safety training:**

(a) Submit an outline of what will be covered in each training offered including a table of contents that shows where the required introductory topics as listed in WAC 388-71-0846 for orientation and WAC 388-71-0855 for safety training are covered in the training.

(b) Department required orientation and safety training application forms must be submitted to the department at least (~~forty-five~~) 45 days in advance of when the training is expected to be offered.

(c) Training cannot be offered before the department approves the curriculum and instructor.

(5) **For continuing education:**

(a) Continuing education curriculum delivery models must only include instructor led, online instructor led (such as a webinar), or an online interactive self-paced (~~class that provides clear instructions on how students get questions answered during the course~~) learning with access to an instructor.

(b) For continuing education classes, submit on a department developed form, a summary that includes the topic, a brief description of what it will cover, a course outline, (~~and~~) the number of training hours, and a description of how the training is relevant to the care setting, care needs of the clients, or long-term care worker career development.

(c) For online training courses, submit the information requested in (b) of this subsection and submit a description of how the instructor or training entity will assess that the students have (~~completed the materials and~~) integrated the information being taught. The training entity must establish a way for the long-term care worker to ask the instructor questions.

(d) One hour of completed classroom instruction or other form of training (such as an online course) equals one hour of continuing education.

(~~(d)~~) (e) Department required continuing education training application forms must be submitted at least (~~forty-five~~) 45 days in advance of (~~when~~) the training (~~is expected to be offered~~). The department must approve the curriculum and instructor before the training may be offered.

(6) **For (~~seventy~~) the 70-hour (~~long-term care worker~~) home care aide basic training, the (~~thirty~~) 30-hour basic training, and the (~~twelve~~) 7-hour parent provider training:**

(a) If the instructor or training entity uses the DSHS developed fundamentals of caregiving learner's guide or its substitute with en-

hancements, they must submit the DSHS required form with all required information.

(b) If the instructor or training entity does not use ((a)) the DSHS developed ((revised)) fundamentals of caregiving learner's guide or its substitute with enhancements to teach the ((seventy)) 70-hour ((long-term-care-worker)) home care aide basic training, ((thirty)) the 30-hour basic training, and for the ((twelve)) 7-hour parent provider training, they must submit to DSHS the following for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or outline, ~~((of the curriculum))~~ including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-71-0911((-)) (12) (a) and (b), and infection control skills ((+)) such as hand washing and putting on and taking off gloves((+)); and

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) Methods of teaching, including learning activities that incorporate adult learning principles;

(C) Methods ~~((instructors will use))~~ used to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(D) A list of sources or references that were used to develop the curriculum and if the primary source or reference is not a published citation, the instructor must provide detail on how the content ~~((was established as))~~ is evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with either limited English proficiency, learning disabilities, or both; and

(F) Description and proof of how input was obtained from consumers and long-term care worker representatives in the development of the curriculum.

(c) Curricula submitted for the core competency section of the basic training as described in WAC 388-71-0911 must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(d) Entities ~~((submitting))~~ that submit curriculum for population specific component of home care aide basic training must submit ~~((their own))~~ a list of competencies and learning objectives used to develop the population specific basic training curriculum.

(7) For specialty training:

(a) For specialty training that is not DSHS developed curriculum or another department approved specialty training curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts.

(b) To be approved, an alternative curriculum must at a minimum include:

(i) All the DSHS published learning outcomes and competencies for the course;

(ii) Student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(iii) The recommended sequence and delivery of the material; and

(iv) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(A) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(B) Practice of skills to increase competency;

(C) Feedback to the student on knowledge and skills;

(D) An emphasis on facilitation by the teacher; and

(E) An integration of knowledge and skills from previous lessons to build skills;

(v) A list of the sources or references, if any, used to develop the curriculum;

(vi) Methods of teaching and student evaluation for students with either limited-English proficiency, learning disabilities, or both; and

(vii) A plan for updating material.

(8) Substantial changes to a previously approved curriculum must be approved before they are used.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-1026, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1026, filed 12/20/12, effective 1/20/13.]

Reviser's note: The unnecessary START in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1031 What is the curriculum approval process for orientation, safety, ~~((seventy))~~ the 70-hour basic training ~~((core and population specific training))~~ population specific training, the ~~((thirty))~~ 30-hour basic training, the ~~((twelve))~~ 7-hour parent provider training, and continuing education? To obtain the department's approval of the curriculum for the 70-hour basic training, population specific training, the 30-hour basic training, the 7-hour parent provider training, and continuing education:

(1) Submit the required training application forms and any other materials required for specific curricula to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum~~((s))~~.

(3) If the curriculum~~((s) are)~~ is not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.

(4) The submitter ~~((can))~~ may then make the requested changes and resubmit the curriculum(s) for review.

(5) If after working with the department, the reasons why the curriculum is not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and ~~((disability services administration))~~ long-term support administration (AL TSA). The assistant secretary's review decision ~~((shall))~~ will be the final decision of DSHS ~~((; no))~~. No other administrative review is available to the submitter.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1031, filed 12/20/12, effective 1/20/13.]

INSTRUCTOR (~~((QUALIFICATIONS,))~~) APPROVAL (~~((, AND RESPONSIBILITIES))~~)

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1045 What are a training entity's responsibilities?

The training entity is responsible for:

- (1) Coordinating and teaching classes;
- (2) Assuring that the curriculum used is DSHS-approved and taught as designed;
- (3) Selecting ~~((and monitoring))~~ qualified guest speakers, where applicable;
- (4) Establishing a method whereby the long-term care worker can ask the instructor questions;
- ~~((4))~~ (5) Administering or overseeing the administration of the DSHS competency and challenge tests ((for nurse delegation core, specialized diabetes trainings, dementia specialty, mental health specialty and DDD specialty training));
- ~~((5))~~ (6) Maintaining training records electronically or on paper including long-term care worker ((tests)) certificates and attendance records for a minimum of six years;
- ~~((6))~~ (7) Reporting training data to DSHS ((in DSHS-identified timeframes)) when requested by the department; and
- ~~((7))~~ (8) Issuing or reissuing training certificates to long-term care workers.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1045, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1050 Must training entities and their instructors be approved by DSHS? ~~((All training))~~ Training entities and their ~~((instructor(s)))~~ instructors ~~((for orientation, safety, and continuing education must meet the minimum qualifications under WAC 388-71-1060.~~

All instructors for ~~seventy hour basic training (core and population specific training), thirty hour training, twelve hour DDD parent provider training, on-the-job training, nurse delegation core training and nurse delegation specialized diabetes training must meet the minimum qualifications under WAC 388-71-1055.)~~ must be approved by DSHS as follows:

(1) For DSHS contracted training entities:

~~((1))~~ (a) DSHS must approve ~~((and/))~~ or approve and contract with a training entity and ~~((their))~~ its instructor(s) to conduct orientation, safety, ~~((seventy))~~ 70-hour basic training, ~~((core and))~~ population specific training, ~~((+))~~, specialty training, ~~((thirty))~~ 30-hour training, ~~((twelve))~~ 7-hour ~~((DDD))~~ DDA parent provider training, nurse delegation core training, and nurse delegation specialized diabetes training, on-the-job training, and continuing education.

(b) DSHS may ~~((contract with))~~ select training entities ~~((and their instructor(s)))~~ using any applicable contracting procedures. Contractors must meet the minimum qualification for instructors under this chapter and any additional qualifications established through the contracting procedure.

~~((2) The training partnership must ensure that its instructors meet the minimum qualifications under this chapter.)~~

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1050, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1051 Can DSHS deny or terminate a contract ~~((with))~~ or rescind approval of an instructor or training entity? (1) DSHS may ~~((determine not to accept an offer by))~~ deny a person or organization seeking a contract with DSHS to conduct ~~((training programs))~~ orientation, safety, 70-hour basic training, population specific training, specialty training, 30-hour training, 7-hour DDA parent provider training, nurse delegation core training, and nurse delegation specialized diabetes training, on-the-job training, or continuing education. No administrative remedies are available to dispute DSHS' decision not to ~~((accept an offer))~~ contract with or approve a person or organization, except as may be provided through the contracting process.

(2) DSHS may terminate an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies ~~((shall be))~~ are limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or entity to conduct orientation, safety, 70-hour basic training, population specific training, specialty training, 30-hour training, 7-hour DDA parent provider training, nurse delegation core training, and nurse delegation specialized diabetes training, on-the-job training, or continuing education.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1051, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-1055 What are the minimum qualifications for an instructor for basic (including (~~thirty~~) 30-hour and (~~twelve~~) 7-hour DDA parent providers), population specific(~~(+)~~), on-the-job, nurse delegation core, and nurse delegation specialized diabetes trainings?

An instructor for basic (including (~~thirty~~) 30-hour and (~~twelve~~) 7-hour DDA parent providers), population specific(~~(+)~~), on-the-job, nurse delegation core, and nurse delegation specialized diabetes training must meet the following minimum qualifications:

- (1) (~~Twenty-one~~) Be at least 21 years of age;
- (2) Has not had a professional health care, adult family home, enhanced services facility, assisted living facility, or social services license or certification revoked in Washington state; and
- (3) Meets one or more of the following education or work experience requirements upon initial approval or hire:
 - (a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or
 - (b) Has an associate degree or higher degree in the field of health or human services and six months of professional or caregiving experience within the last five years in an adult family home, enhanced services facility, assisted living facility, supported living through DDA, or home care setting; or
 - (c) Has a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, enhanced services facility, assisted living facility, supported living through DDA, or home care setting(~~(+)~~).
- (4) Meets one or more of the following teaching experience requirements:
 - (a) (~~One hundred~~) 100 hours of teaching adults in an appropriate setting on topics directly related to the basic training (~~(for)~~) or basic training topics that may be offered as continuing education; or
 - (b) (~~Forty~~) 40 hours of teaching basic training while being mentored by an instructor who is approved to teach basic training;
- (5) Except for instructors for nurse delegation core and specialized diabetes training, completion of a class on adult education that meets the requirements in WAC 388-71-1066;
- (6) (~~(E)~~) The instructor must be experienced in caregiving practices and demonstrate(~~(S)~~) competency with respect to teaching the course content or units being taught;
- (7) Instructors who will administer tests must have experience or training in assessment and competency testing; and
- (8) Community instructors for nurse delegation core and specialized diabetes trainings must have a current Washington state registered nurse (RN) license in good standing without practice restrictions.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-1055, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1055, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1060 What are the minimum qualifications for an instructor of orientation, safety, and continuing education? (1) An instructor (~~(of)~~) for orientation(~~(,)~~) and safety training(~~(, and continuing education)~~) must be a registered nurse or other person with specific knowledge, training, and work experience (~~(in the provision of direct, personal care or other)~~) relevant (~~(services to the elderly or persons with disabilities requiring long-term care)~~) to the topics required in orientation and safety training.

(2) An instructor for continuing education must be a registered nurse or other person that is proficient in the content they cover in the course or have specific knowledge, training, or experience in the provision of direct, personal care, or other relevant services to the elderly or persons with disabilities requiring long-term care.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1060, filed 12/20/12, effective 1/20/13.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-1064 What are the minimum qualifications for community instructors for adult education training using DSHS curriculum?

(1) The minimum qualifications for community instructors of adult education training using DSHS curriculum, in addition to the general qualifications in WAC 388-71-1055 (1) and (2), include:

(a) The instructor must be experienced in adult education practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Has a bachelor's degree or is a registered nurse with at least one year of education in seminars, conferences, continuing education, or in college classes in subjects directly related to adult education, such as, but not limited to English as a second language (ESL), adult basic education, and adult secondary education (one year of education equals (~~(twenty-four)~~) 24 semester credits in a semester system, (~~(thirty-six)~~) 36 quarter credits in a quarter system, or at least (~~(eighty)~~) 80 hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the DSHS adult education training curriculum prior to beginning to train others;

(c) Meets one or more of the following teaching experience requirements:

(i) Two years of experience teaching long-term care workers; or

(ii) (~~(Two hundred)~~) 200 hours of experience teaching adult education or closely related subjects;

(d) Successful completion of the DSHS instructor qualification/demonstration process; and

(e) Instructor approved and contracted by the department as a community instructor.

(2) Instructors that administer tests must have experience or training in assessment and competency testing.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-1064, filed 8/30/21, effective 10/1/21.]

NEW SECTION

WAC 388-71-1067 What are the minimum qualifications for community instructors for mental health specialty training? (1) The minimum qualifications for community instructors for mental health specialty training, in addition to the general qualifications in WAC 388-71-1055 (1) and (2), include:

(a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to mental health, including, but not limited to, psychology (one year of education equals 24 credits in a semester system, 36 credits in a quarter system, or at least 80 hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the mental health specialty training class before the instructor trains others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have a mental illness; and

(d) Teaching experience:

(i) 200 hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-71-1066;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(2) Five years of full-time equivalent direct work experience with people who have a mental illness may substitute for either:

(a) The credential described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or 80 hours in seminars, conferences, continuing education described in subsection (1)(b)(i) of this section.

(3) If your status is an approved instructor for mental health specialty training, you may instruct a new mental health specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-71-1066.

[]

NEW SECTION

WAC 388-71-1068 What are the minimum qualifications for community instructors for dementia specialty training? (1) The minimum qualifications for community instructors for mental health specialty training, in addition to the general qualifications in chapter 388-71-1055 (1) and (2), include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology (one year of education equals 24 credits in a semester system, 36 credits in a quarter system, or at least 80 hours of seminars, conferences, or continuing education); and

(ii) Successful completion of the dementia specialty training, prior to beginning to train others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have dementia;

(d) Teaching experience:

(i) 200 hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-71-1066;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor; and

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Five years of full-time equivalent direct work experience with people who have dementia may substitute for either:

(a) The credential (bachelor's degree, registered nurse, or mental health specialist) described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or 80 hours in seminars, conferences, continuing education described in subsection (1)(b)(i) of this section.

(3) If your status is an approved instructor for dementia specialty training, you may instruct a new dementia specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-71-1066.

[]

NEW SECTION

WAC 388-71-1069 What are the minimum qualifications for community instructors to teach expanded specialty trainings? (1) The minimum qualifications for community instructors for mental health specialty training, in addition to the general qualifications in WAC 388-71-1055 (1) and (2), include:

(a) The instructor must be experienced in caregiving practices related to the expanded specialty topic and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, paramedic, emergency medical technician (EMT), mental health specialist, or a specialist with nationally recognized credentials in the expanded specialty topic with at least 80 hours of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to expanded specialty topics; and

(ii) Successful completion of the expanded specialty training class before the instructor trains others;

(c) Work experience: Two years full-time equivalent direct work or volunteer experience with people in the specialty topic population; and

(d) Teaching experience:

(i) 200 hours experience teaching;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-71-1066;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(2) Five years of full-time equivalent direct work experience with people in the specialty topic population may substitute for either:

(a) The credential or degree described in subsection (1)(b)(i) of this section; or

(b) The 80 hours in seminars, conferences, continuing education described in subsection (1)(b)(i).

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1076 What is a guest speaker, and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach on a specific topic. A guest speaker:

(a) May only teach a specific subject in which ~~((he or she))~~ the guest speaker has ~~((expertise))~~ knowledge, background, and experience that establishes ~~((his or her))~~ expertise on ~~((that specific))~~ the topic they will teach;

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic ~~((he or she))~~ the guest speaker is teaching.

(2) The approved instructor must:

(a) ~~((Must-e))~~ Ensure the guest speaker meets these minimum qualifications;

(b) Maintain documentation of the guest speaker's qualifications and ~~((background))~~ experience;

(c) Supervise and monitor the guest speaker's performance; and

(d) ~~((Is))~~ Be responsible for ensuring the required content is taught.

(3) DSHS does not approve guest speakers.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1076, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1091 What physical resources are required for classroom training and testing? (1) ~~((Classroom facilities used for classroom training must be accessible))~~ The training entity must provide accessible classroom facilities to students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning, such as white boards and ~~((flip))~~ charts. ((A)) The training entity must maintain appropriate supplies and equipment ~~((must be provided))~~ for teaching and practice of caregiving skills in the class being taught.

(2) ~~((Testing sites for nurse delegation core and specialized diabetes training must provide))~~ The training entity must provide testing sites with adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. ((A)) The training entity must maintain appropriate supplies and equipment necessary for the particular test must be provided.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1091, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1096 What standard training practices must be maintained for classroom training and testing? ~~((The following training standards must be maintained))~~ The training entity must maintain the following training standards for classroom training and testing:

(1) Training must not exceed eight hours within one day;

(2) Training provided in short time segments must include an entire unit, skill, or concept;

(3) Training must include regular breaks; and

(4) Long-term care workers attending classroom training must not be expected to leave the class to attend job duties, except in an emergency.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1096, filed 12/20/12, effective 1/20/13.]

COMPETENCY TESTING (~~(FOR NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING)~~)

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1106 What components must competency testing include?

- (1) Competency testing must include the following components:
- ~~((1))~~ (a) Skills demonstration of ability to perform and ~~((/or))~~ implement specific caregiving approaches, and ~~((/or))~~ activities as appropriate to the training;
 - ~~((2))~~ (b) Written evaluation to show the level of comprehension and knowledge of the training's learning objectives ~~((included in the training))~~; and
 - ~~((3))~~ (c) A scoring guide for the tester with clearly stated ~~((scoring))~~ criteria and minimum proficiency standards.
- (2) Instructors who conduct competency testing must have experience or training in assessing competencies.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1106, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1111 (~~(What experience or training must individuals have to be able to perform competency testing)~~) Which trainings must include the DSHS developed competency test? ~~((Individuals who perform competency testing must have documented experience or training in assessing competencies.))~~ The following trainings must include the DSHS developed competency test:

- (1) Dementia specialty training;
- (2) Mental health specialty training;
- (3) Developmental disabilities specialty training;
- (4) Expanded specialty training;
- (5) Nurse delegation core training; and
- (6) Nurse delegation specialized diabetes training.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1111, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1120 How must competency test administration be standardized? To standardize competency test administration, testing must include the following components:

(1) ~~((An instructor for the course who meets all minimum qualifications for the course he or she teaches must oversee))~~ The person teaching the course must administer or supervise the administration of all testing; and

(2) The tester must follow the DSHS guidelines for:

(a) The maximum length of time allowed for ~~((the))~~ testing;

(b) The amount and nature of instruction given ~~((long-term care workers))~~ to students before beginning a test;

(c) The amount of assistance to ~~((long-term care workers))~~ students allowed during testing;

(d) The accommodation guidelines for ~~((long-term care workers))~~ students with disabilities; and

(e) Accessibility guidelines for ~~((long-term care workers))~~ students with limited English proficiency.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1120, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1125 What form of identification must ~~((long-term care workers))~~ students show before taking a competency or challenge test? ~~((Long-term care workers))~~ Students must ~~((show))~~ provide photo identification before taking a competency or challenge test.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1125, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1130 How many times may a competency or challenge test be taken? ~~((For the trainings under WAC 388-71-0936 and 388-71-0941, competency testing))~~ (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course ((before taking the test for that course again)) before any additional tests are administered.

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1130, filed 12/20/12, effective 1/20/13.]

~~((SECTION I-))~~ DEFINITIONS, PURPOSE, AND APPLICABILITY

AMENDATORY SECTION (Amending WSR 21-11-090, filed 5/18/21, effective 6/18/21)

WAC 388-112A-0105 Who is required to obtain home care aide certification and by when? ~~((Unless exempt under WAC 246-980-025, the following individuals must be certified by the department of health as a home care aide within the required time frames:))~~

(1) All long-term care workers ~~((, within two hundred days of the date of hire;))~~ must obtain home care aide certification as provided in chapter 246-980 WAC.

(2) ~~((If a long-term care worker is limited-English proficient and the department of health has issued a provisional certification, within two hundred sixty days of the date of hire;))~~ The following individuals must obtain home care aide certification as follows:

~~((3))~~ (a) Adult family home applicants, before licensure;

~~((4))~~ (b) Adult family home entity representatives and resident managers, before assuming the duties of the position;

~~((5))~~ (c) Assisted living facility administrators or their designees, within ~~((two hundred))~~ 200 calendar days of the date of hire ~~((;))~~;

~~((6))~~ (d) Enhanced services facility applicants, before licensure; and

~~((7))~~ (e) Enhanced services facility administrators or their designees, within ~~((two hundred))~~ 200 days of the date of hire.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, and 71A.12.030. WSR 21-11-090, § 388-112A-0105, filed 5/18/21, effective 6/18/21; WSR 17-22-036, § 388-112A-0105, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0110 May a home employ a long-term care worker who has not completed the ~~((seventy))~~ 70-hour ~~((long-term care worker basic))~~ home care aide training or certification requirements? (1) If an individual previously worked as a long-term care worker, but did not complete the training or certification requirements under RCW 18.88B.041, 74.39A.074, 74.39A.076, and this chapter, an adult family home, enhanced services facility, or assisted living facility must not employ the individual to work as a long-term care worker until the individual has completed the required training or certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The original date of hire may be reset once for each home care aide applicant after a minimum of one year has passed since the

initial date of hire. If chapter 246-980 WAC provides for additional resets for date of hire, chapter 246-980 shall supersede.

(3) Individuals who meet the criteria in subsection (2) of this section are allowed a new ~~((one hundred twenty))~~ 120 days to complete the orientation, safety, and ~~((seventy))~~ 70-hour ~~((long-term care worker))~~ home care aide basic trainings and a new ~~((two hundred))~~ 200 days to become certified as a home care aide, if required by WAC 246-980-020.

(4) Individuals who meet the criteria in subsection (2) of this section must submit a new application and fee to the department of health.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0110, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0115 How ~~((do we))~~ does DSHS determine a long-term care worker's date of hire? (1) The department determines a long-term care worker's date of hire ~~((under RCW 18.88B.021(1) by one of the following, whichever occurs first:))~~ according to chapter 246-980 WAC.

~~((a) The initial service begin date when hired as an individual provider;~~

~~((b) The date of hire when the individual was paid to provide personal care by a home care agency; or~~

~~((c) The date of hire when the individual was paid to provide personal care by a home licensed by the state.))~~

(2) The date of hire is specific to each long-term care worker. It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-112A-0110.

(3) This section does not apply to background check requirements under this chapter.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0115, filed 10/24/17, effective 11/24/17.]

DOCUMENTATION REQUIREMENTS

NEW SECTION

WAC 388-112A-0118 What documentation is required for completion of each training? (1) Orientation, safety, basic training including core basic, population specific and the 75-hour certificate, continuing education, nurse delegation core and specialized diabetes training, specialty and expanded specialty training, adult education training, and adult family home administrator training must be documented by a certificate, transcript, or proof of successful completion of training issued by a qualified instructor or qualified training entity that includes:

- (a) The name of the student;
- (b) The title of the training as approved by the department;
- (c) For continuing education, the department assigned curriculum approval code;
- (d) The number of hours of the training;
- (e) The name and identification number of the training entity;
- (f) The instructor's name;
- (g) For core basic training, the instructor's name and identification number;
- (h) The instructor's signature or an authorized signature from the training entity the qualified instructor is training on behalf of; and
- (i) The completion date of the training.

(2) The long-term care worker must be given documentation of the proof of completion of the training that the student should retain. The provider and the training entity must keep a copy of the proof of completion as described in WAC 388-76-10198 for adult family homes, chapter 388-107 WAC for enhanced services facilities, and WAC 388-78A-2450 for assisted living facilities.

(3) An instructor who is approved for Core Basic may sign a 75-hour certificate from the same training program.

[]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0120 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of ~~((seventy))~~ the 70-hour ~~((long-term care worker))~~ home care aide basic training, the two hours of orientation, and the three hours of safety training (referred to collectively as the ~~((seventy-five))~~ 75-hours of training) must be documented on a DSHS ~~((seventy-five))~~ 75-hour training certificate by an approved training entity verifying that a total of ~~((seventy-five))~~ 75 hours of approved training have occurred.

(2) An approved training entity issuing and signing a DSHS ~~((seventy-five))~~ 75-hour training certificate must verify that the long-term care worker has the certificates required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and the ~~((seventy))~~ 70-hour long-term care worker basic training, as described in this chapter. When applying to the department of health for home care aide certification, the long-term care

worker may only submit a (~~seventy-five~~) 75-hour training certificate that has been issued by the department or the training partnership.

(3) For annual home care aide recertification, successful completion of (~~twelve~~) 12 hours of DSHS approved continuing education training must be documented on a certificate(s) or transcript(s) issued by a department approved training entity.

(4) The long-term care worker, certified home care aide, and employer must retain any (~~twelve~~) 12-hour continuing education training certificates, (~~or~~) transcripts, or other approved proof of completion for as long as the long-term care worker is employed.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0120, filed 10/24/17, effective 11/24/17.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-0125 Prior to hiring a long-term care worker, what training and certification requirements must be reviewed? Before hiring a long-term care worker, the home must review and verify the following training and certification information. The home must verify the highest level of training or certification achieved by the individual.

(1) When the individual is a home care aide certified under chapter 18.88B RCW, the home must:

(a) Verify that the individual's home care aide certification is current and in good standing;

(b) Confirm and document that the individual is in compliance with continuing education as required under WAC 388-112A-0610, 388-112A-0611, or 388-112A-0612 for the compliance year in which they are hired; and

(c) Confirm that the specialty training (~~is~~) has been or will be completed as required under WAC 388-112A-0495.

(2) When the individual is exempt from the (~~seventy~~) 70-hour (~~long-term care worker~~) home care aide training and certification requirements under WAC 388-112A-0090, the home must obtain, review, and verify the following:

(a) Documents demonstrating that the individual is exempt from training and certification which may include:

(i) Washington state provider credential number, showing that the individual's license or certification is current and in good standing; or

(ii) A letter from a former or current employer documenting work history during the exemption period described in WAC 388-112A-0090; or

(iii) Employment history records from the Washington state employment security department documenting work history information during the exemption period; or

(iv) Federal tax statements documenting work history information during the exemption period; or

(v) Documents showing completion of the basic training as required under WAC 388-112A-0090; and

(b) Compliance with continuing education requirements as required under WAC 388-112A-0610, 388-112A-0611, or 388-112A-0612; and

(c) Compliance with specialty training if required under WAC 388-112A-0495.

(3) The home must comply with continuing education documentation requirements under WAC (~~388-112A-0620~~) 388-112A-0118. When hiring an individual who worked as a long-term care worker during the previous calendar year, an employer must verify documentation of continuing education compliance during the calendar year in which the individual is hired.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0125, filed 6/30/20, effective 7/31/20.]

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-0130 When and how may a long-term care worker be eligible to (~~have their date of hire~~) reset date of hire? An individual who has worked as a long-term care worker in the past, but who did not complete the training or certification that was required at the time, may be eligible to have the date of hire reset in accordance with this section and WAC 388-112A-0110. If chapter 246-980 WAC provides for additional resets for date of hire, chapter 246-980 WAC shall supersede.

(1) An individual who is eligible to reset the date of hire under WAC 388-112A-0110 must submit a new application and fee to the department of health in accordance with WAC 388-112A-0110, and adhere to the training or certification requirements under this chapter.

(2) An individual who is not eligible to reset the date of hire as provided in WAC 388-112A-0110 must not be paid to provide personal care assistance until they complete required training and become certified as a long-term care worker.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0130, filed 6/30/20, effective 7/31/20.]

(~~SECTION II~~) ORIENTATION AND SAFETY TRAINING

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0200 What is orientation training, who should complete it, and when should it be completed? There are two types of orientation training: Facility orientation training and long-term care worker orientation training.

(1) Facility orientation. Individuals who are exempt from certification as described in RCW 18.88B.041 and volunteers are required to complete facility orientation training before having routine interaction with residents. This training provides basic introductory information appropriate to the residential care setting and population served. The department does not approve this specific orientation program, materials, or trainers. No test is required for this orientation.

(2) Long-term care worker orientation. Individuals required to complete the ~~((seventy))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training must complete long-term care worker orientation, which is two hours of training regarding the long-term care worker's role and applicable terms of employment as described in WAC 388-112A-0210.

(a) All long-term care workers who are not exempt from home care aide certification as described in RCW 18.88B.041 hired on or after January 7, 2012, must complete two hours of long-term care worker orientation training before providing care to residents.

(b) Long-term care worker orientation training, unless taken through a department approved online training program, must be provided by qualified instructors that meet the requirements in WAC 388-112A-1260.

(c) The department must approve long-term care worker orientation curricula and instructors.

(d) There is no competency test for long-term care worker orientation.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0200, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0210 What content must be included in facility and long-term care worker orientation? (1) For those individuals identified in WAC 388-112A-0200(1) who must ~~((complete))~~ complete facility orientation training:

(a) Orientation training may include the use of video~~((tape))~~s, audio~~((tapes))~~ recordings, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Facility orientation must include introductory information in the following areas:

(i) The care setting;

(ii) The characteristics and special needs of the population served;

(iii) Fire and life safety, including:

- (A) Emergency communication (including phone system if one exists);
- (B) Evacuation planning (including fire alarms and fire extinguishers where they exist);
- (C) Ways to handle resident injuries and falls or other accidents;
- (D) Potential risks to residents or staff (for instance, (~~aggressive~~) challenging resident behaviors and how to handle them); and
- (E) The location of home policies and procedures;
- (iv) Communication skills and information, including:
 - (A) Methods for supporting effective communication among the resident/guardian, staff, and family members;
 - (B) Use of verbal and nonverbal communication;
 - (C) Review of written communications and documentation required for the job, including the resident's service plan;
 - (D) Expectations about communication with other home staff; and
 - (E) Who to contact about problems and concerns;
 - (v) (~~Universal~~) Standard precautions and infection control, including:
 - (A) Proper hand washing techniques;
 - (B) Protection from exposure to blood and other body fluids;
 - (C) Appropriate disposal of contaminated/hazardous articles;
 - (D) Reporting exposure to contaminated articles, blood, or other body fluids; and
 - (E) What staff should do if they are ill;
 - (vi) Resident rights, including:
 - (A) The resident's right to confidentiality of information about the resident;
 - (B) The resident's right to participate in making decisions about the resident's care and to refuse care;
 - (C) Staff's duty to protect and promote the rights of each resident and assist the resident to exercise (~~his or her~~) these rights;
 - (D) How staff should report concerns they may have about a resident's decision (~~on his or her~~) pertaining to their care and who they should report these concerns to;
 - (E) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;
 - (F) Advocates that are available to help residents (such as long-term care ombudsmen and organizations); and
 - (G) Complaint lines, hot lines, and resident grievance procedures such as, but not limited to:
 - (~~(i)~~) (I) The DSHS complaint hotline at 1-800-562-6078;
 - (~~(ii)~~) (II) The Washington state long-term care ombudsman program;
 - (~~(iii)~~) (III) The Washington state department of health and local public health departments;
 - (~~(iv)~~) (IV) The local police;
 - (~~(v)~~) (V) Facility grievance procedure; and
- (b) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.
- (2) For long-term care worker orientation required of those individuals identified in WAC 388-112A-0200(2), long-term care worker orientation is a two hour training that must include introductory information in the following areas:
 - (a) The care setting and the characteristics and special needs of the population served;
 - (b) Basic job responsibilities and performance expectations;

- (c) The care plan or negotiated service agreement, including what it is and how to use it;
 - (d) The care team;
 - (e) Process, policies, and procedures for observation, documentation, and reporting;
 - (f) Resident rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;
 - (g) Mandatory reporter law and worker responsibilities as required under chapter 74.34 RCW; and
 - (h) Communication methods and techniques that may be used while working with a resident or guardian and other care team members.
- (3) One hour of completed classroom instruction or other form of training (such as a video or online course) in long-term care orientation training equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0210, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0220 What is safety training, who must complete it, and when should it be completed? (1) Safety training is part of the long-term care worker requirements. It is a three hour training that must meet the requirements ~~((of))~~ as described in WAC 388-112A-0230, and include basic safety precautions, emergency procedures, and infection control. Safety training must be completed prior to providing care to a resident.

(2) ~~((The following individuals must complete safety training: (a-))~~ All long-term care workers who are not exempt from home care aide certification as described in RCW 18.88B.041 hired after January 7, 2012, must complete three hours of safety training. This safety training must be provided by qualified instructors ~~((that))~~ who meet the requirements in WAC 388-112A-1260.

(3) The department must approve safety training curricula and instructors.

(4) There is no competency test for safety training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0220, filed 10/24/17, effective 11/24/17.]

~~((SECTION III))~~ BASIC TRAINING

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0310 What topics must be taught in the core competencies of the ~~((seventy)) 70-hour ((long-term care worker basic training for long-term care workers))~~ home care aide basic training?

~~((The core competencies of the seventy-hour long-term care worker))~~

The 70-hour home care aide basic training for long-term care workers must include all of the competencies described in WAC 388-112A-0320 and the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Resident rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation, and mandatory reporting;
- (6) Resident directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, bloodborne pathogens, HIV/AIDS; and
- (16) Grief and loss.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0310, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0320 What are the core competencies and learning objectives for the ~~((seventy)) 70-hour ((long-term care worker basic))~~ home care aide training? The ~~((seventy)) 70-hour ((long-term care worker))~~ home care aide basic training includes core competencies that describe the behavior and skills that a long-term care worker must exhibit when working with residents and the learning objectives associated with each competency as follows:

describe the behavior and skills that a long-term care worker must exhibit when working with residents and the learning objectives associated with each competency as follows:

- (1) ~~((Regarding communication, e))~~ Communicate effectively and in a respectful and appropriate manner with residents, family members, and care team members:

- (a) Recognize how verbal and nonverbal cues impact communication with the resident and care team;
 - (b) Engage and respect the resident through verbal and nonverbal communication;
 - (c) Listen attentively and determine that the resident, when able, understands what has been communicated;
 - (d) Recognize and acknowledge resident's communication including indicators of pain, confusion, or misunderstanding;
 - (e) Utilize communication strategies to deal with difficult situations; and
 - (f) Recognize common barriers to effective communication and identify how to eliminate them.
- (2) Regarding long-term care worker self-care:
- (a) Identify behaviors, practices, and resources to reduce stress and avoid burnout;
 - (b) Recognize common barriers to self-care and ways to overcome them; and
 - (c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout, and the importance of taking action to practice self-care to avoid burnout.
- (3) Regarding the competency of effective problem solving, use effective problem solving skills:
- (a) Explain why it is necessary to understand and utilize a problem solving method;
 - (b) Implement a problem solving process/method; and
 - (c) Identify obstacles to effective problem solving and ways to overcome them.
- (4) Regarding the competency of resident rights and dignity, take appropriate action to promote and protect a resident's legal and human rights as protected by federal and Washington state laws, including:
- (a) Protect a resident's confidentiality including what is considered confidential information, who a long-term care worker is allowed or not allowed to give confidential information to, and how to respond if a (~~non-care~~) non-care team member asks for confidential information;
 - (b) Promote a resident's dignity and privacy and encourage and support a resident's maximum independence when providing care;
 - (c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints and use common, safe alternatives to restraint use; and
 - (d) Protect and promote the resident's right to live free of abuse, neglect, abandonment, and financial exploitation.
- (5) Regarding the competency of recognizing indicators of abuse and understanding the mandatory reporting requirements, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:
- (a) Describe long-term care workers' responsibilities as a mandatory reporter as described in RCW 74.34.020 through 74.34.053; and
 - (b) Identify common indications of abuse, abandonment, neglect, and financial exploitation.
- (6) Regarding the competency of resident directed care, take appropriate action when following a resident's direction regarding (~~his or her~~) care:
- (a) Describe a worker's role in resident directed care including determining, understanding, and supporting a resident's choices;

- (b) Describe the importance and impact of resident directed care on a resident's independence, self-determination, and quality of life;
 - (c) Identify effective problem solving strategies that help balance a resident's choice with personal safety; and
 - (d) Report concerns when a resident refuses care or makes choices that present a possible safety concern.
- (7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:
- (a) Describe how cultural background, lifestyle practices, and traditions can impact care; and
 - (b) Use methods to determine and ensure that these are respected and considered when providing care.
- (8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the ((service)) care plan.
- (9) Regarding the competency of fall prevention:
- (a) Identify fall risk factors and take action to reduce fall risks for a resident; and
 - (b) Take proper steps to assist a resident who is falling or has fallen.
- (10) Regarding the competency of skin and body care, use of personal care practices that promote and maintain skin integrity:
- (a) Explain the importance of observing a resident's skin, when to observe it, and what to look for, including common signs and symptoms of skin breakdown;
 - (b) Identify risk factors of skin breakdown;
 - (c) Observe skin at pressure point locations and report any concerns;
 - (d) Describe what a pressure ulcer is, what it looks like, and what action to take if a resident appears to be developing or develops a pressure ulcer;
 - (e) Describe current best practices that protect and maintain a resident's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;
 - (f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and
 - (g) Identify when to report skin changes and who to report them to.
- (11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:
- (a) Identify when, how, and why to obtain information from appropriate sources about a resident's condition or disease for which they are receiving services and describe how to use this information to provide appropriate, individualized care;
 - (b) Describe a resident's baseline functioning level using information provided in the service plan and explain why it is important to know a resident's baseline;
 - (c) Identify changes in a resident's physical, mental, and emotional state through observation;
 - (d) Report changes from baseline and concerns to the appropriate care team member(s);
 - (e) Identify basic job standards and requirements (such as coming to work on time) and describe how maintaining these standards are critical to a resident's safety and well-being;

- (f) Explain the purpose of a service plan and describe how it is created, used, and modified;
 - (g) Use a resident's service plan to direct a worker's job tasks and any resident directed care tasks;
 - (h) Identify what is required of a long-term care worker, as described in WAC 388-112A-0550, prior to performing a nurse-delegated task;
 - (i) Describe the role of a care team and a long-term care worker's role in the care team;
 - (j) Describe professional boundaries and the importance of maintaining them; and
 - (k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.
- (12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:
- (a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:
 - (i) Helping a resident walk;
 - (ii) Transferring a resident from a bed to a wheelchair;
 - (iii) Turning and repositioning a resident in bed;
 - (iv) Providing oral care;
 - (v) Cleaning and storing dentures;
 - (vi) Shaving a face;
 - (vii) Providing fingernail care;
 - (viii) Providing foot care;
 - (ix) Providing a bed bath;
 - (x) Assisting a resident with a weak arm to dress;
 - (xi) Putting knee-high elastic stockings on a resident;
 - (xii) Providing passive range of motion for one shoulder;
 - (xiii) Providing passive range of motion for one knee and ankle;
 - (xiv) Assisting a resident to eat;
 - (xv) Assisting with peri-care;
 - (xvi) Assisting with the use of a bedpan;
 - (xvii) Assisting with catheter care;
 - (xviii) Assisting with condom catheter care; and
 - (xix) Providing medication assistance;
 - (b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate resident preferences, maintain privacy and dignity, support the resident's level of ability, and assure (~~his or her~~) the resident's comfort and safety;
 - (c) Appropriately utilize assistive device(s) specified on the service plan;
 - (d) Describe any safety concerns related to each task and how to address the concerns;
 - (e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and
 - (f) Identify the importance of knowing a resident's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the core competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food_borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a resident's health;

(b) Plan, shop, and prepare meals for a resident according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and resident preferences;

(c) Describe common signs of poor nutrition and hydration, when to report concerns, and who to report concerns to;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a resident;

(e) Recognize when a resident's food choices vary from specifications on the care plan and describe when to report concerns and who to report them to;

(f) Describe what causes food_borne illness, the risks associated with food borne illness, and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including:

(i) Avoiding cross contamination from one food to another;

(ii) Safe storage requirements for cooling of leftover foods, including:

(A) Depth;

(B) Types of containers and temperatures;

(C) The need to maintain food at proper temperatures to limit bacterial growth; and

(D) What are the safe food storage and holding temperatures for both cold and hot foods;

(iii) Best practices for thawing and reheating food; and

(iv) Using clean gloves (if possible) and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and symptoms must not prepare food.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects, when to report concerns, and who to report them to;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a resident who refuses to take medications, identifying when to report when a resident refuses medication, or there are other medication-related concerns, ((and)) who to report these concerns to, and identifying what is considered a medica-

tion error, when to report a medication error, and who to report it to.

(15) Regarding the competency of infection control and bloodborne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit, and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand_washing and gloves;

(d) Demonstrate proper hand_washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy microorganisms on surfaces;

(h) Describe what bloodborne (BB) pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality, and nondiscrimination; and

(p) Explain the importance of emotional issues and support for residents and long-term care workers.

(16) Regarding the competency on grief and loss, support yourself and the resident in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a resident and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

(17) Long-term care workers who complete a DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(18) Long-term care workers who complete a DSHS approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(19) Regarding the competency on identifying indicators of hearing loss, which may be part of the basic training or population specific hours:

(a) Identify common symptoms associated with hearing loss; and

(b) Identify what to do for hearing loss related concerns, including describing ways to communicate with a resident who is experi-

encing hearing loss and identifying when and to whom to report when a resident's hearing ability changes.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0320, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0330 What is on-the-job training? (1) Effective July 1, 2012, on-the-job training is a method of training where the long-term care worker successfully demonstrates in the ((seventy)) 70-hour ((long-term care worker)) home care aide basic training, the core competencies in personal care and infection control skills while working with a resident on the job, instead of in a practice training setting.

(2) A qualified instructor as defined in WAC 388-112A-1240 provides on-the-job training and directly observes, coaches, and rein((-))forces skills training for up to two long-term care workers at a time. The qualified instructor who provides the on-the-job training:

(a) Need not be the same instructor who taught the core competency training; and

(b) May be the immediate supervisor of the long-term care worker who receives the on-the-job training.

(3) The person who oversees on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training;

(b) Verify on a department approved skills checklist the long-term care worker's successful completion of the demonstrated skills; and

(c) Not relinquish ((his or her)) required duties to trainee caregivers when acting as a trainer.

(4) The department must approve the number of on-the-job hours included in the ((seventy)) 70-hour ((long-term care worker)) home care aide basic training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0330, filed 10/24/17, effective 11/24/17.]

((SECTION IV--)) SPECIALTY TRAINING

~~((SECTION V--))~~ NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0520 Is competency testing required for nurse delegation core or specialized diabetes training? Passing the DSHS competency test is required for successful completion of nurse delegation core or specialized diabetes training, as provided under WAC 388-112A-0900 through 388-112A-0950.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0520, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 21-11-090, filed 5/18/21, effective 6/18/21)

WAC 388-112A-0550 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training and by when? (1) Before performing any delegated nursing task, long-term care workers in adult family homes and assisted living facilities must:

- (a) Successfully complete the DSHS designated nurse delegation core training, "nurse delegation for nursing assistants & home care aides";
- (b) Be one or more of the following:
 - (i) Certified home care aide under chapter 18.88B RCW;
 - (ii) Nursing assistant certified under chapter 18.88A RCW~~((7))~~ .
~~((iii))~~ (2) If the long-term care worker is exempt from the home care aide certification under WAC 246-980-025, the long-term care worker must be a nursing assistant registered and complete the core competencies of basic training, unless they already completed the ~~((twenty-eight))~~ 28 hours of revised fundamentals of care or a department approved alternative;
 - ~~((iv))~~ (3) If nurse delegation is needed to implement a care plan or negotiated service agreement earlier than home care aide certification can be obtained, the long-term care worker must become a nursing assistant registered and complete core competencies (the core basic training) of the ~~((seventy))~~ 70-hour long-term care worker basic training.
 - ~~((2))~~ (4) Before long-term care workers in adult family homes and assisted living facilities may perform the task of insulin injections, the long-term care workers must:
 - (a) Meet the requirements in subsection (1)(a) and (b) of this section; and

(b) Successfully complete the DSHS designated specialized diabetes nurse delegation training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, and 71A.12.030. WSR 21-11-090, § 388-112A-0550, filed 5/18/21, effective 6/18/21; WSR 17-22-036, § 388-112A-0550, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0560 What is ((specialized diabetes)) nurse delegation specialized diabetes training? (1) ((Specialized diabetes n)) Nurse delegation specialized diabetes training is the required training for certified or registered nursing assistants or certified home care aides, who will be delegated the task of insulin injections.

(2) DSHS approves the instructors for ((specialized diabetes)) nurse delegation specialized diabetes training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0560, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0580 Is there a challenge test for ((specialized diabetes nurse delegation training)) nurse delegation core or specialized diabetes training? There is no challenge test for ((specialized diabetes nurse delegation training)) nurse delegation core or specialized diabetes training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0580, filed 10/24/17, effective 11/24/17.]

((SECTION VI--)) CONTINUING EDUCATION

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-0610 Who in an adult family home is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed?

(1) The continuing education training requirements that apply to certain individuals working in adult family homes are described below.

(a) The following long-term care workers must complete ~~((twelve))~~ 12 hours of continuing education by their birthday each year:

(i) A certified home care aide;

(ii) A long-term care worker who is exempt from the ~~((seventy))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training under WAC 388-112A-0090 (1) and (2);

(iii) A certified nursing assistant, and a person with special education training and an endorsement granted by the Washington state office of superintendent of public instruction, as described in RCW 28A.300.010; and

(iv) An adult family home provider, entity representative, and resident manager as provided under WAC 388-112A-0050.

(b) A long-term care worker who is a certified home care aide, must comply with continuing education requirements under chapter 246-980 WAC.

(c) The continuing education requirements of this section do not apply to a registered nurse, a licensed practical nurse, and an advanced registered nurse practitioner licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

(d) If exempt from certification under RCW 18.88B.041, a long-term care worker must complete ~~((twelve))~~ 12 hours of continuing education within ~~((forty-five))~~ 45 calendar days of being hired by the adult family home or by the long-term care worker's birthday in the calendar year hired, whichever is later; and

(i) Must complete ~~((twelve))~~ 12 hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(ii) If the ~~((forty-five))~~ 45 calendar day time period allows the long-term care worker to complete continuing education in January or February of the following year, the hours of credit earned will be applied to the calendar year in which the long-term care worker was hired.

(e) If the birthday following initial certification as a home care aide or nursing assistant (NA-C) is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

~~((f) Continuing education must include one half hour per year on safe food handling in adult family homes as described in RCW 70.128.250 for a long-term care worker who does not maintain a food handler's permit, and completed basic or modified basic caregiver training before June 30, 2005. A long-term* care worker who completed basic or modified basic training after June 30, 2005 is not required to have a food handler's permit.))~~

(2) A long-term care worker who does not complete continuing education as required under this chapter must not provide care until the required continuing education is completed.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0610, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0610, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-0611 Who in an assisted living facility is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed?

(1) The continuing education training requirements that apply to certain individuals working in assisted living facilities are described below.

(a) The following long-term care workers must complete (~~twelve~~) 12 hours of continuing education by their birthday each year:

(i) A certified home care aide;

(ii) A long-term care worker who is exempt from the (~~seventy~~) 70-hour (~~long-term care worker~~) home care aide basic training under WAC 388-112A-0090 (1) and (2);

(iii) A certified nursing assistant;

(iv) A person with special education training and an endorsement granted by the Washington state office of superintendent of public instruction, as described in RCW 28A.300.010; and

(v) An assisted living facility administrator or the administrator designee as provided under WAC 388-112A-0060.

(b) A long-term care worker, who is a certified home care aide must comply with continuing education requirements under chapter 246-980 WAC.

(c) The continuing education requirements of this section do not apply to a registered nurse, a licensed practical nurse, and an advanced registered nurse practitioner licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

(d) If exempt from certification under RCW 18.88B.041, a long-term care worker must complete and provide documentation of (~~twelve~~) 12 hours of continuing education within (~~forty-five~~) 45 calendar days of being hired by the assisted living facility or by the long-term care worker's birthday in the calendar year hired, whichever is later; and

(i) Must complete (~~twelve~~) 12 hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(ii) If the (~~forty-five~~) 45 calendar day time period allows the long-term care worker to complete continuing education in January or February of the following year, the credit hours earned will be applied to the calendar year in which the long-term care worker was hired.

(e) If the birthday following initial certification as a home care aide or nursing assistant (NA-C) is less than a full year from

the date of initial certification, no continuing education will be due for the first renewal period.

(2) A long-term care worker who does not complete continuing education as required under this chapter must not provide care until the required continuing education is completed.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0611, filed 6/30/20, effective 7/31/20.]

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-0612 Who in an enhanced services facility is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed? (1) The continuing education training requirements that apply to certain individuals working in enhanced services facilities are described below.

(a) The following long-term care workers must complete (~~twelve~~) 12 hours of continuing education by their birthday each year:

(i) A certified home care aide;

(ii) A long-term care worker who is exempt from the (~~seventy~~) 70-hour (~~long-term care worker~~) home care aide basic training under WAC 388-112A-0090 (1) and (2);

(iii) A certified nursing assistant, and a person with special education training and an endorsement granted by the Washington state office of superintendent of public instruction, as described in RCW 28A.300.010; and

(iv) An enhanced services facility applicant, facility representative, administrator, or the administrator designee as provided under WAC 388-112A-0070.

(b) A long-term care worker, who is a certified home care aide must comply with continuing education requirements under chapter 246-980 WAC.

(c) The continuing education requirements of this section do not apply to a registered nurse, a licensed practical nurse, and an advanced registered nurse practitioner licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

(d) If exempt from certification under (~~WAC~~) RCW 18.88B.041, a long-term care worker(~~s~~) must complete (~~twelve~~) 12 hours of continuing education within (~~forty-five~~) 45 calendar days of being hired by the enhanced services facility or by the long-term care worker's birthday in the calendar year hired, whichever is later; and

(i) Must complete (~~twelve~~) 12 hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(ii) If the (~~forty-five~~) 45 calendar day time period allows the long-term care worker to complete continuing education in January or February of the following year, the credit hours earned will be applied to the calendar year in which the long-term care worker was hired.

(e) If the birthday following initial certification as a home care aide or nursing assistant (NA-C) is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

(f) Enhanced services facility certified home care aide staff and nursing assistant certified staff must have (~~ten~~) 10 of the (~~twelve~~) 12 hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility as provided in WAC 388-107-0660.

(g) In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of staff education per quarter on topics relevant to the needs of the population served.

(2) A long-term care worker who does not complete continuing education as required in this chapter must not provide care until the required continuing education is completed.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0612, filed 6/30/20, effective 7/31/20.]

(~~SECTION VII~~) CPR AND FIRST-AID TRAINING

(~~SECTION VIII~~) RESIDENTIAL CARE ADMINISTRATOR TRAINING

(~~SECTION IX~~) COMPETENCY TESTING

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0920 (~~(What training)~~) Which trainings must include ((the)) a DSHS developed competency test? The following trainings must include ~~((the))~~ a DSHS developed competency test:

- (1) Dementia specialty training;
- (2) Mental health specialty training;
- (3) Developmental disabilities specialty training;
- (4) Expanded specialty training;
- ~~((4))~~ (5) Nurse delegation core training;
- ~~((5))~~ (6) Nurse delegation specialized diabetes training; and
- ~~((6))~~ (7) Adult family home administrator training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0920, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0940 What form of identification must students provide before they take a competency or challenge test? Students must provide photo identification before they take a competency or challenge test ~~((for basic, specialty, adult family home administrator, and nurse delegation training))~~.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0940, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0950 How many times may a competency or challenge test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must re-take the course before any additional tests are administered.

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0950, filed 10/24/17, effective 11/24/17.]

(~~SECTION X~~) CURRICULUM APPROVAL

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-1010 What is the curriculum approval process for orientation, safety training, basic training, population specific training, specialty training, residential care administrator training, and continuing education? (~~In order to~~) To obtain the department's approval of the curriculum for orientation, safety training, basic training, population specific training, specialty training, residential care administrator training, and continuing education:

(1) Submit the required training application forms and any other materials required for specific curriculum to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum.

(3) If the curriculum is not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review for the curriculum to be approved.

(4) The submitter may then make the requested changes and resubmit the curriculum for review.

(5) If after working with the department, the reasons why the curriculum was not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and long-term support administration (ALTSA). The assistant secretary's review decision will be DSHS's final decision. No other administrative review is available to the submitter.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1010, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-1020 What must be submitted to DSHS for curriculum approval? (1) If a training entity modifies a department developed curriculum in any manner, the training entity must submit the amended curriculum to the department for approval.

(2) Training must not be offered before receiving department approval.

(3) Online classes when applicable must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the DSHS website.

(4) **For orientation and safety training:**

(a) Submit an outline of what will be covered in each training offered, including a table of contents or a class syllabus, that shows where the required introductory topics listed in WAC 388-112A-0210 for orientation and WAC 388-112A-0230 for safety training are covered in the training.

(b) Department required orientation and safety training application forms must be submitted to the department at least ~~((forty-five))~~ 45 days before the training is expected to be offered.

(c) Training cannot be offered before the department approves the curriculum and instructor.

(5) For continuing education:

(a) Continuing education curriculum delivery models must only include instructor led, online instructor led (such as a webinar), or online interactive self-paced learning with access to an instructor.

(b) For continuing education classes, submit on a department developed form a summary of the class that includes the topic, a brief description of what the training will cover, a course outline, the number of training hours, and a description of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development.

(c) For online training courses, submit the information requested in (b) of this subsection and a description of how the instructor or training will assess that the students have integrated the information being taught. The training entity must establish a way for the long-term care worker to ask the instructor questions.

(d) One hour of completed classroom instruction or other form of training (such as online course) equals one hour of continuing education.

(e) Department required continuing education training application forms must be submitted at least ~~((forty-five))~~ 45 days in advance of the training. The department must approve the curriculum and instructor before the training may be offered.

(6) For ~~((core))~~ home care aide basic training:

(a) If the instructor or training entity uses the DSHS developed fundamentals of caregiving learner's guide with enhancements, they must submit the DSHS form with all required information.

(b) If the instructor or training entity does not use a DSHS developed fundamentals of caregiving learner's guide with enhancements to teach the ~~((seventy-hour long-term care worker))~~ 70-hour home care aide basic training, they must submit to DSHS the following for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives described in this chapter are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook, long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or curriculum outline, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112A-0320 (12) (a) and (b) and infection control skills such as hand washing and putting on and taking off gloves; and

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) Method of teaching, including learning activities that incorporate adult learning principles;

(C) Methods used to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum and if the primary source or reference is not a published citation, the instructor must provide detail on how the content is evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with either limited English proficiency, learning disabilities, or both; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(c) Curriculum submitted for the core competency section of basic training, called core basic training, as described in WAC 388-112A-0320, must include how much time students will have to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(d) Entities that submit curriculum for the population specific component of the (~~seventy-hour long-term care worker~~) 70-hour home care aide basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

(7) For specialty training:

(a) For specialty training that is not DSHS developed curriculum or another department approved specialty training curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts.

(b) To be approved, an alternative curriculum must at a minimum include:

(i) All the DSHS published learning outcomes and competencies for the course;

(ii) Student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(iii) The recommended sequence and delivery of the material; and

(iv) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(A) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(B) Practice of skills to increase competency;

(C) Feedback to the student on knowledge and skills;

(D) An emphasis on facilitation by the teacher; and

(E) An integration of knowledge and skills from previous lessons to build skills;

(v) A list of the sources or references, if any, used to develop the curriculum;

(vi) Methods of teaching and student evaluation for students with either limited-English proficiency, learning disabilities, or both; and

(vii) A plan for updating material.

(8) Substantial changes to a previous approved curriculum must be approved before they are used.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-1020, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1020, filed 10/24/17, effective 11/24/17.]

(~~SECTION XI~~) HOME-BASED TRAINING

(~~SECTION XII~~) INSTRUCTOR APPROVAL

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-1230 What is a guest speaker and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) May only teach a specific subject in which ~~((they))~~ the guest speaker has ~~((expertise))~~ knowledge, ~~((and their))~~ background, and experience ~~((demonstrates))~~ that establishes expertise on the topic they will teach~~((-))~~;

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic the guest speaker is teaching.

(2) The approved instructor must:

(a) ~~((Must select a))~~ Ensure the guest speaker ~~((based on his or her knowledge and experience in the specific topic))~~ meets these minimum qualifications;

(b) Maintain documentation of the guest speaker's qualifications and experience;

(c) Supervise and monitor the guest speaker's performance; and

(d) ~~((Is))~~ Be responsible for ~~((insuring))~~ ensuring the required content is taught.

(3) DSHS does not approve guest speakers.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1230, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-1240 What are the minimum qualifications for an instructor for core basic, population specific, on-the-job, residential care administrator, nurse delegation core, and specialized diabetes trainings? An instructor for core basic, population specific, on-the-job, residential care administrator, nurse delegation core, and nurse delegation specialized diabetes trainings must meet the following minimum qualifications:

- (1) (~~Twenty-one~~) Be at least 21 years of age;
- (2) Has not had a professional health care, adult family home, assisted living facility, or social services license or certification revoked in Washington state;
- (3) Meets one or more of the following education or work experience requirements upon initial approval or hire:
 - (a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting;
 - (b) Has an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in a community based setting or an adult family home, enhanced services facility, assisted living facility, supported living through the developmental disabilities administration (DDA), or home care setting; or
 - (c) Has a high school diploma or equivalent and one year of professional or caregiving experience within the last five years in an adult family home, enhanced services facility, assisted living, supported living through DDA, or home care setting;
- (4) Meets one or more of the following teaching experience requirements:
 - (a) (~~One hundred~~) 100 hours of experience teaching adults in an appropriate setting on topics directly related to basic training or basic training topics that may be offered as continuing education;
 - (b) (~~Forty~~) 40 hours of teaching basic training while being mentored by an instructor who is approved to teach basic training; or
 - (c) Instructors with adult family homes, enhanced services facilities, and assisted living facilities who do not have the experience described in (a) or (b) of this subsection, must have and attest to the following experience and plans in their application:
 - (i) (~~Forty~~) 40 hours of informal teaching experiences unrelated to basic training topics such as guest lecturing, team teaching, and volunteer teaching with parks, local high schools, 4-H groups, English as a second language (ESL) groups, senior organizations, or religious organizations;
 - (ii) Three adult learning techniques that the instructor will implement in the long-term care worker training; and
 - (iii) Three ways the instructor plans on improving instructional skills and the method the instructor will use to measure improvement

such as submitting the continuous improvement plan feedback from the DSHS adult education class;

(5) Except for instructors for nurse delegation core and diabetes training, completion of a class on adult education that meets the requirements of WAC 388-112A-1297;

(6) The instructor must be experienced in caregiving practices and demonstrate competency for teaching the course content or units being taught;

(7) Instructors who will administer tests must have experience or training in assessment and competency testing;

(8) Community instructors for nurse delegation core and diabetes training must have a current Washington registered nurse (RN) license in good standing without practice restrictions; and

(9) Facility instructors must be approved and contracted by the department as a community instructor in order to be approved to teach the following classes:

(a) Nurse delegation core;

(b) Nurse delegation specialized diabetes training; or

(c) DSHS adult education training curriculum.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-1240, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1240, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-1250 What are the minimum qualifications for community instructors for adult education training using DSHS curriculum?

(1) The minimum qualifications for community instructors of adult education training using DSHS curriculum, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

(a) The instructor must be experienced in adult education practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Has a bachelor's degree or is a registered nurse with at least one year of education in seminars, conferences, continuing education, or in college classes in subjects directly related to adult education, such as, but not limited to, English as a second language (ESL), adult basic education, and adult secondary education (one year of education equals (~~twenty-four~~) 24 semester credits in a semester system, (~~thirty-six~~) 36 quarter credits in a quarter system, or at least (~~eighty~~) 80 hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the DSHS adult education training curriculum prior to beginning to train others;

(c) Meets one or more of the following teaching experience requirements:

(i) Two years experience teaching long-term care workers; or

- (ii) (~~Two hundred~~) 200 hours experience teaching adult education or closely related subjects;
 - (d) Successful completion of the DSHS instructor qualification/demonstration process; and
 - (e) Instructor approved and contracted by the department as a community instructor.
- (2) Instructors that administer tests must have experience or training in assessment and competency testing.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1250, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-1270 What are the minimum qualifications for community instructors for mental health specialty training? (1) The minimum qualifications for community instructors for mental health specialty training, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

- (a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;
- (b) Education:
 - (i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to mental health, including, but not limited to, psychology (one year of education equals (~~twenty-four~~) 24 credits in a semester system, (~~thirty-six~~) 36 credits in a quarter system, or at least (~~eighty~~) 80 hours of seminars, conferences, and continuing education); and
 - (ii) Successful completion of the mental health specialty training class before the instructor trains others;
- (c) Work experience: Two years full-time equivalent direct work experience with people who have a mental illness; and
- (d) Teaching experience:
 - (i) (~~Two hundred~~) 200 hours experience teaching long-term care related subjects;
 - (ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;
 - (iii) Successful completion of the DSHS instructor qualification/demonstration process; and
 - (iv) The instructor has been approved and contracted by the department as a community instructor;
 - (e) Instructors who will administer tests must have experience or training in assessment and competency testing; and
- (2) Five years of full-time equivalent direct work experience with people who have a mental illness may substitute for either:
 - (a) The credential described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or (~~eighty~~) 80 hours in seminars, conferences, and continuing education described in subsection (1)(b)(i) of this section.

(3) If your status is an approved instructor for mental health specialty training, you may instruct a new mental health specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-1270, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1270, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-1285 What are the minimum qualifications for community instructors for dementia specialty training? (1) The minimum qualifications for instructors for dementia specialty, in addition to the general qualifications defined in WAC 388-112A-1240 (1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology (one year of education equals (~~twenty-four~~) 24 credits in a semester system, (~~thirty-six~~) 36 credits in a quarter system, or at least (~~eighty~~) 80 hours of seminars, conferences, or continuing education); and

(ii) Successful completion of the dementia specialty training, prior to beginning to train others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have dementia;

(d) Teaching experience:

(i) (~~Two hundred~~) 200 hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor; and

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Five years of full-time equivalent direct work experience with people who have dementia may substitute for either:

(a) The credential (bachelor's degree, registered nurse, or mental health specialist) described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or (~~eighty~~) 80 hours in seminars, conferences, or continuing education described in subsection (1)(b)(i) of this section.

(3) If your status is an approved instructor for dementia specialty training, you may instruct a new dementia specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-1285, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1285, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 21-04-057, filed 1/28/21, effective 2/28/21)

WAC 388-112A-1292 What are the minimum qualifications for community instructors to teach expanded specialty trainings? (1) The minimum qualifications for community instructors to teach an expanded specialty training, in addition to the general qualifications in WAC 388-112A-1420 (1) and (2), include:

(a) The instructor must be experienced in caregiving practices related to the expanded specialty topic and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, paramedic, emergency medical technician (EMT), mental health specialist, or a specialist with nationally recognized credentials in the expanded specialty topic with at least (~~eighty~~) 80 hours of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to expanded specialty topics; and

(ii) Successful completion of the expanded specialty training class before the instructor trains others;

(c) Work experience: Two years full-time equivalent direct work or volunteer experience with people in the specialty topic population; and

(d) Teaching experience:

(i) (~~Two hundred~~) 200 hours experience teaching;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(2) Five years of full-time equivalent direct work experience with people in the specialty topic population may substitute for either:

(a) The credential or degree described in subsection (1)(b)(i) of this section; or

(b) The ~~((eighty))~~ 80 hours in seminars, conferences, or continuing education described in subsection (1)(b)(i) of this section.

[Statutory Authority: RCW 74.08.090 and 70.128.060. WSR 21-04-057, § 388-112A-1292, filed 1/28/21, effective 2/28/21.]

~~((SECTION XIII—))~~ PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-1300 What physical resources are required for classroom training and testing? (1) The training entity must provide accessible classroom facilities to students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and ~~((flip))~~ charts. The training entity must maintain appropriate supplies and equipment for teaching and practice of caregiving skills in the class being taught.

(2) The training entity must provide testing sites with adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. The training entity must maintain appropriate supplies and equipment necessary for the particular test.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1300, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-1310 ~~((The training entity must maintain standard training practices))~~ What standard training practices must be maintained for classroom training and testing((-))? The training entity must maintain the following training standards for classroom training and testing:

(1) Training must not exceed eight hours within one day;

- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Long-term care workers attending ((a)) classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-1310, filed 10/24/17, effective 11/24/17.]

REPEALER

The following sections of the Washington Administrative Code ((is)) are repealed:

WAC 388-71-058329	SAFETY TRAINING SUBCAPTION
WAC 388-71-05833	What content must be included in safety training?
WAC 388-71-05834	When does a safety training attestation process need to be completed?
WAC 388-71-0921	What are the population specific competencies?
WAC 388-71-0931	What other methods of training may count towards the seventy hour basic training requirement?
WAC 388-71-0951	Who is required to complete the specialized diabetes nurse delegation training, and when?
WAC 388-71-1006	What kinds of training topics may be covered in continuing education?
WAC 388-71-1021	What trainings must be taught with a curriculum approved by DSHS?
WAC 388-71-1083	Must the department verify that training entities and their community instructors meet the minimum instructor qualifications?
WAC 388-112A-0240	What documentation is required for facility orientation training?
WAC 388-112A-0350	What documentation is required to show completion of the seventy-hour long-term care worker basic training and five hour orientation and safety training?
WAC 388-112A-0480	What documentation is required for successful completion of specialty training?
WAC 388-112A-0530	Is there a challenge test for nurse delegation core training?

- WAC 388-112A-0540 What documentation is required for successful completion of nurse delegation core training?
- WAC 388-112A-0585 What documentation is required for successful completion of specialized diabetes nurse delegation training?
- WAC 388-112A-0620 What are the documentation requirements for continuing education?
- WAC 388-112A-0840 What documentation is required for adult family home administrator training?

WSR 22-18-102

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 7, 2022, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-016.

Title of Rule and Other Identifying Information: Chapter 16-240 WAC, WSDA grain inspection program—Definitions, standards, and fees. The department is proposing to amend this chapter by increasing some of the program fees, revising some of the fee structures to more accurately reflect the scope of services provided, including, but not limited to, adding fees for services that are not specifically identified and clarifying language to ease in the understanding of the rule.

Hearing Location(s): On October 25, 2022, at 1:00 p.m. Microsoft Teams conference line. Join by link [Click here to join the meeting](#) [no URL provided by agency]; join by phone +1 564-999-2000, Phone Conference ID 678 480 531#. Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: November 1, 2022.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., October 25, 2022.

Assistance for Persons with Disabilities: Contact Reanna McNamara, phone 360-902-1931, fax 360-902-2085, TTY 800-833-6388, email rmcnamara@agr.wa.gov, by October 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following amendments:

Increasing the following fees:

- The tonnage rate at tiers one and two for export vessels.
- Submitted United States Grains Standards Act (USGSA) and Washington state department of agriculture (WSDA) samples increase for inspections. The program wants to increase the fee to keep the program whole when conducting these inspections.
- USGSA trucks and containers per unit increase. This increase will ensure the program doesn't lose revenue while conducting these requests. Currently, the fee will not cover labor costs.
- USGSA and Agricultural Marketing Act (AMA) railcar probe sampling per railcar increase. More staff are required for the probing of railcars. This increase will keep the program whole.
- AMA additional factors per sample fee increase. This fee increase will allow the program to recoup the labor cost when conducting additional factors.
- Increase hundredweight fees for both USGSA and AMA. The program has not increased this fee in over a decade and has made the determination that an increase is necessary to keep up with the program's labor costs.
- Submitted AMA per sample increase. This will help the program keep up with the increase in labor costs to conduct these inspections. This fee has not increased in some time and our overhead rate has increased.
- Phytosanitary fee per certificate. This fee increase will bring the program to the current rate within industry. Our current fee does not pay for the time involved to generate certificates.

Adding the following fees:

- An additional fee rate under tier 2 for vessels and local with approved automated weighing systems in WAC 16-240-070 (USGSA Table 1) and WAC 16-240-080 (AMA Table 1). This will offer a reduced rate level at tier 2 and provide a greater benefit for those who have an automated weighing system.
- An official bag fee for any export elevator locations.
- A new fee for class Y weighing in WAC 16-240-070 (USGSA Table 4) because, currently, the program is charging the hourly rate of \$56.00, which is not cost effective. By adding the fee rate per railcar, the program will be accurately charging for the service at a lower rate to stakeholders.
- A fee for warehousemen samples and reinspections in WAC 16-240-070 (adding USGSA Table 10). The program is required under federal regulations to charge for warehousemen samples and reinspections. This fee will provide stakeholders the ability to request this service and receive a reduced rate following the Federal Grain Inspection Service (FGIS) Directive 9180.36.

Clarifying the following language:

- Updating language in WAC 16-240-038(2) to include tier 2 charges into the daily revenue minimum along with tier 1, and leaving only tier 3 as the rate that will need to be in effect for export locations to not be subject to the daily revenue minimum charges.

Reasons Supporting Proposal: RCW 22.09.790 requires the department to fix fees that are sufficient to cover the cost of services it provides. Based on a recent budget review, it was determined that the current fees are not able to sustain program services, resulting in consistent monthly revenue loss. Since the program has been operating with a fund balance that is below a six-month operating reserve, continuing to perform services at the current fee schedule will result in the program not being able to meet the needs of stakeholders. If a fee increase is not initiated, the program will be in a negative fund balance within the next fiscal year and as a fee-for-service program, the grain program is prohibited from operating with a negative fund balance.

Increasing program fees, revising the current fee structure to more accurately reflect the scope of services provided, including, but not limited to, adding fees for services that are not specifically identified, and clarifying language to ease in the understanding of the rule will enable the program to maintain financial stability while continuing to provide services described and provided for in chapter 22.09 RCW and will provide clarity on confusing language already present in the rule.

Statutory Authority for Adoption: RCW 22.09.020 and 22.09.790.

Statute Being Implemented: Chapter 22.09 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Philip Garcia, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1921.

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. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Small Business Economic Impact Statement

Chapter 16-240 WAC, WSDA Grain Inspection Program—Definitions, Standards, and Fees
September 7, 2022

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

Program History and Overview: The grain inspection program was established under chapter 22.09 RCW and provides sampling, weighing, quality testing, grade inspection, and phytosanitary services for grains and commodities following USDA and WSDA regulations. The program provides these services at facilities across Washington, verifying and certifying the condition of Washington and other regional grains and commodities, an essential documentation process for large-scale trade in domestic and international markets. According to the 2020 USDA economic web page, the grain industry generated 9.8 billion dollars in cash receipts.

Proposed Amendment: The department is proposing to increase program fees, revise the fee structure to more accurately reflect the scope of services provided, including, but not limited to, adding fees for services that are not specifically identified, and clarifying language to ease in the understanding of the rule.

History of the Issue: RCW 22.09.790 requires the department to fix fees for the inspection, grading, and weighing of commodities included in the provisions of this chapter so that they are sufficient to cover the cost of such services. Based on a recent budget review, it was determined that the program is operating with a fund balance that is below a six-month operating reserve. If a fee increase is not initiated, the program will be in a negative fund balance within the next fiscal year and as a fee-for-service program, the grain program is prohibited from operating with a negative fund balance. Continuing to perform services at the current fee schedule will result in the program not being able to meet the needs of stakeholders.

Why is the Amendment Needed?: The program has not increased fees since 2012. Since the cost of operating has greatly increased in that time, this has caused a serious decline in the program's fund balance. The necessary increase in fees will allow the department to maintain program operations. The department is also proposing to restructure some of the existing fees in this rule to ensure the cost of providing services is recovered.

A significant factor contributing to the need to increase fees is our agency administrative rate. The program is required to pay a percentage of their salary and benefits cost to help cover the administrative support that the agency provides each program. Since 2017, the percentage has increased 5.7 percent, which is an increase of \$96,871.00 per month. This increase impacts the program significantly and our current fee structure is unable to keep up with the rising cost.

In addition to the increased agency administrative rate for support services such as human resources and IT, the program is also impacted by increased costs for goods and services as well as salary and benefits increases. Both goods and services and staff salaries are expected to continue to increase in the upcoming years.

The program has taken many cost-saving measures to avoid a fee increase over the last 10 years. Some examples are reducing overtime, finding alternative vendors to reduce spending, and taking a full comprehensive look at all inefficient spending throughout the program to reduce costs to the best of our ability.

Probable Compliance Requirements: The only probable compliance requirement will be paying the updated fees for grain program services. The program performed an in-depth analysis to determine the proposed fee structure. A detailed overview of what the cost of compliance will look like is in Section 3. The proposed updated fees are categorized by the following types of services:

- Table 3.1 shows fees for services under USGSA;
- Table 3.2 shows fees for services under AMA of 1946;
- Table 3.3 shows fees for other services performed by WSDA; and
- Table 3.4 shows the estimated cost of compliance for customers based on the proposed fee increases.

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

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = 0.3% of Average Annual Revenue
111130	Dry Pea and Bean Farming	Redacted	Redacted±	Redacted**
111140	Wheat Farming	614	\$596.61±	\$945.89**
111191	Oilseed and Grain Combination Farming	20	\$884.00*	\$1,171.75**
111219	Other Vegetable (except Potato) and Melon Farming	406	\$3,503.04*	\$11,395.89**
111998	All Other Miscellaneous Crop Farming	222	\$11,782.08±	\$3,518.45**
112990	All Other Animal Production	20	\$718.62±	\$462.95**
115114	Postharvest Crop Activities (except Cotton Ginning)	123	\$50,457.84*	\$17,097.19**
311211	Flour Milling	6	\$12,777.53*	\$117,843.75**
311213	Malt Manufacturing	Redacted	Redacted±	\$92,328.39**
311221	Wet Corn Milling	Redacted	Redacted±	Redacted**
311230	Breakfast Cereal Manufacturing	Redacted	\$38,646.00***	\$117,100.22**
311999	All Other Miscellaneous Food Manufacturing	30	\$12,992.65±	\$28,280.31**
325412	Pharmaceutical Preparation Manufacturing	101	\$10,463.92*	\$45,550.97**
424480	Fresh Fruit and Vegetable Merchant Wholesalers	169	\$15,570.97*	\$47,928.58**
424490	Other Grocery and Related Products Merchant Wholesalers	434	\$7,269.70*	\$25,663.43**
424510	Grain and Field Bean Merchant Wholesalers	35	\$10,906.60*	\$53,558.90**
424590	Other Farm Product Raw Material Merchant Wholesalers	27	\$3,948.77*	\$7,750.68**
424910	Farm Supplies Merchant Wholesalers	234	\$10,501.05*	\$35,044.58**
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	238	\$2,136.61±	\$7,559.52**
446191	Food (Health) Supplement Stores	168	\$2,540.74*	\$4,703.76**
484110	General Freight Trucking; Local	279	\$7,544.33*	\$2,184.34**
488210	Support Activities for Rail Transportation	40	\$7,358.09*	\$11,608.97**
488320	Marine Cargo Handling	50	\$72,468.28*	\$57,623.34**
488510	Freight Transportation Arrangement	490	\$11,020.17*	\$18,996.34**
493130	Farm Product Warehousing and Storage	19	\$19,783.78*	\$10,165.12**
523130	Commodity Contracts Dealing	3	\$2,091.46*	\$24,887.08**
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	502	\$4,919.59±	\$2,038.06**

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = 0.3% of Average Annual Revenue
541690	Other Scientific and Technical Consulting Services	1,552	\$2,707.38±	\$2,264.27**
541714	Research and Development in Biotechnology (except Nanobiotechnology)	254	\$66,044.66*	\$21,881.84**

* Data source: 2020 Employment Security Department (ESD)

** Data source: 2020 Department of Revenue (DOR)

*** Data source: 2020 Customs and Border Protection (CBP)

± Data source: 2020 United States Bureau of Labor Statistics (USBLS)

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

The proposed revisions to chapter 16-240 WAC do not result in an across-the-board increase for all fees. An in-depth analysis of the fees collected by the different types of operations allowed the program to develop a new structure that will better recover costs per service. The result of the restructure is an increase in some of the domestic fees, an addition of fees that were not previously listed in rule, as well as an increase and restructure of the tonnage rate tiers, as shown in Tables 3.1 - 3.3.

In addition, the proposed revisions to this rule are not likely to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. Compliance with the proposed rule will not likely cause businesses to lose sales or revenue. However, it will likely increase overall expenses for each business. In contrast, if the program was not able to continue providing the current level of service or had to shut down completely due to lack of funds, the businesses it serves would likely lose sales if they had to find another option for these services.

While the proposed revision aims to restructure the existing fee structure for the services listed in the following tables, it does not impose any additional recordkeeping or administrative costs beyond those currently present in the existing rule.

The proposed rule language also revises the fees for services tables to clarify that the FGIS supervision fee described in WAC 16-240-039 may also be passed through to customers for requested services.

Table 3.1 - Fees for services under USGSA (WAC 16-240-070)

USGSA Table 1 Fees for Combination Inspection and Weighing Services		
Service	Current Fee	Proposed Fee
2. Vessels (export and domestic ocean-going), Tier 1 rate, per metric ton	\$0.250	\$0.300
3. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 1 rate, per metric ton	\$0.230	\$0.280
4. Vessels and local (export and domestic ocean-going), Tier 2 rate, per metric ton	\$0.200	\$0.250
5. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 2 rate, per metric ton	N/A	\$0.230
7. Official Ship Samples	N/A	\$7.00

8. Trucks or containers, per truck or container	\$25.00	\$35.00
USGSA Table 2 Fees for Official Sampling and Inspection Without Weighing Services		
Service	Current Fee	Proposed Fee
1. Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, per truck or container	\$20.00	\$30.00
5. Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	\$30.00	\$40.00
6. Inspection of bagged grain, including tote bags, per hundredweight (cwt)	\$0.100	\$0.140
7. Additional nongrade determining factor analysis, per factor	\$3.00	\$5.00
USGSA Table 3 Fees for Official Class X Weighing Services Without an Inspection of Bulk		
Service	Current Fee	Proposed Fee
4. Class Y weighing per railcar	N/A	\$1.00
USGSA Table 4 Fees for Inspection of Submitted Samples, Fees for Reinspections Based on Official File Samples and Fees for Additional Factors		
Service	Current Fee	Proposed Fee
1. Submitted samples, including factor-only inspections, per inspection	\$12.00	\$15.00
2. Reinspections based on official file sample, including factor-only reinspections, per inspection	\$12.00	\$15.00
3. Warehousemen samples*	N/A	\$15.00
4. Warehousemen Reinspection*	N/A	\$15.00
5. Additional, nongrade determining factor analysis, per factor	\$3.00	\$5.00

* This service is not included in the proposed cost analysis for customers because this service was not previously provided. This is a new option that customers will have if they would like.

Table 3.2 - Fees for services under AMA (WAC 16-240-080)

AMA Table 1 Fees for Combination Sampling, Inspection and Weighing Services, and Additional Factors		
Service	Current Fee	Proposed Fee
2. Vessels (export or domestic), Tier 1 rate, per metric ton	\$0.250	\$0.300
3. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 1 rate, per metric ton	\$0.230	\$0.280
4. Vessels and local (export and domestic ocean-going), Tier 2 rate, per metric ton	\$0.200	\$0.250
5. Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 2 rate, per metric ton	N/A	\$0.230
7. Official Ship Samples	N/A	\$7.00
AMA Table 2 Fees for Official Sampling and Inspection Without Weighing Services, and Additional Factors		
Service	Current Fee	Proposed Fee
4. Railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	\$30.00	\$40.00

5. Inspection of bagged commodities or tote bags, including factor only or sampling only services, per hundredweight (cwt)	\$0.100	\$0.140
6. Additional, nongrade determining factor analysis, per factor	\$3.00	\$5.00
AMA Table 4 Fees for Inspecting Submitted Samples		
Service	Current Fee	Proposed Fee
1. Submitted sample, thresher run or processed, including factor-only inspections, per sample	\$20.00	\$24.00
2. Additional, nongrade determining factor analysis, per factor	\$3.00	\$5.00

Table 3.3 - Fees for services performed by WSDA (WAC 16-240-090)

WSDA Table 1 Fees for Inspecting Miscellaneous Agricultural Commodities under Chapter 16-213 WAC		
Service	Current Fee	Proposed Fee
1. Submitted sample, per sample	\$12.00	\$15.00
3. Railcars, sampled by USDA approved grain probe, per car	\$30.00	\$40.00
4. Trucks or containers, sampled by USDA approved grain probe, per truck or container	\$20.00	\$30.00
WSDA Table 2 Fees for Phytosanitary Certification		
Service	Current Fee	Proposed Fee
1. In conjunction with official inspection, per certificate	\$30.00	\$55.00

Between July 1, 2020, and June 1, 2021, an estimated 79 small businesses and 20 large businesses paid fees to the WSDA grain program. Table 3.4 shows the total fees paid by each business, as well as the estimated cost under the proposed fee increase.

Table 3.4 - Estimated cost for businesses that paid fees between July 1, 2020, and June 1, 2021

Assigned Business Number	Business Size	NAICS Code	Total Cost of Service Fees (current)	Total Cost of Tonnage Fees (current)	Total Cost of Service Fees (proposed)	Total Cost of Tonnage Fees (proposed)	Cost Difference	Percent Change
1	Small	111130	\$38.00	\$0.00	\$54.00	\$0.00	\$16.00	42%
2	Small	111140	\$48.00	\$0.00	\$60.00	\$0.00	\$12.00	25%
3	Small	111140	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
4	Small*	111140	\$7,882.90	\$0.00	\$11,350.46	\$0.00	\$3,467.56	44%
5	Small	111140	\$27.00	\$0.00	\$35.00	\$0.00	\$8.00	30%
6	Small	111140	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
7	Small*	111140	\$36.00	\$0.00	\$45.00	\$0.00	\$9.00	25%
8	Small	111140	\$36.00	\$0.00	\$45.00	\$0.00	\$9.00	25%
9	Small	111140	\$30.00	\$0.00	\$40.00	\$0.00	\$10.00	33%
10	Small	111140	\$244.00	\$0.00	\$300.00	\$0.00	\$56.00	23%
11	Small	111140	\$60.00	\$0.00	\$75.00	\$0.00	\$15.00	25%
12	Small	111140	\$84.00	\$0.00	\$105.00	\$0.00	\$21.00	25%
13	Small	111191	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
14	Large	111219	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
15	Small	111219	\$36.00	\$0.00	\$45.00	\$0.00	\$9.00	25%
16	Small	111998	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
17	Small*	111998	\$48.00	\$0.00	\$60.00	\$0.00	\$12.00	25%
18	Small	111998	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%

Assigned Business Number	Business Size	NAICS Code	Total Cost of Service Fees (current)	Total Cost of Tonnage Fees (current)	Total Cost of Service Fees (proposed)	Total Cost of Tonnage Fees (proposed)	Cost Difference	Percent Change
19	Small	111998	\$51.00	\$0.00	\$65.00	\$0.00	\$14.00	27%
20	Small	111998	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
21	Small	111998	\$27.00	\$0.00	\$35.00	\$0.00	\$8.00	30%
22	Small	111998	\$30.00	\$0.00	\$40.00	\$0.00	\$10.00	33%
23	Small	111998	\$63.00	\$0.00	\$80.00	\$0.00	\$17.00	27%
24	Small	111998	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
25	Small	111998	\$36.00	\$0.00	\$45.00	\$0.00	\$9.00	25%
26	Small	112990	\$36.00	\$0.00	\$45.00	\$0.00	\$9.00	25%
27	Small	112990	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
28	Small	112990	\$96.00	\$0.00	\$120.00	\$0.00	\$24.00	25%
29	Small	115114	\$486.00	\$0.00	\$680.40	\$0.00	\$194.40	40%
30	Small	115114	\$237.00	\$0.00	\$300.00	\$0.00	\$63.00	27%
31	Large	311211	\$42,989.00	\$2,273,998.00	\$129,031.00	\$2,729,812.80	\$541,955.80	23%
32	Small	311211	\$765.00	\$0.00	\$965.00	\$0.00	\$200.00	26%
33	Small	311211	\$2,311.00	\$0.00	\$2,857.00	\$0.00	\$546.00	24%
34	Large	311213	\$150.00	\$0.00	\$275.00	\$0.00	\$125.00	83%
35	Small	311221	\$60.00	\$0.00	\$75.00	\$0.00	\$15.00	25%
36	Small	311230	\$40.00	\$0.00	\$48.00	\$0.00	\$8.00	20%
37	Small	311230	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
38	Small	311999	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
39	Large	325412	\$603.00	\$0.00	\$755.00	\$0.00	\$152.00	25%
40	Small*	424480	\$96.00	\$0.00	\$117.00	\$0.00	\$21.00	22%
41	Large	424490	\$3,108.00	\$0.00	\$3,885.00	\$0.00	\$777.00	25%
42	Small	424510	\$159.00	\$0.00	\$200.00	\$0.00	\$41.00	26%
43	Small	424510	\$60.00	\$0.00	\$90.00	\$0.00	\$30.00	50%
44	Large	424510	\$1,764.00	\$1,300,763.75	\$19,705.00	\$1,561,008.90	\$278,186.15	21%
45	Small	424510	\$3,211.00	\$0.00	\$4,650.00	\$0.00	\$1,439.00	45%
46	Small	424510	\$4,494.00	\$0.00	\$5,875.00	\$0.00	\$1,381.00	31%
47	Small	424510	\$19,936.00	\$0.00	\$27,426.40	\$0.00	\$7,490.40	38%
48	Small	424510	\$2,677.00	\$0.00	\$3,667.00	\$0.00	\$990.00	37%
49	Small	424510	\$840.00	\$0.00	\$1,050.00	\$0.00	\$210.00	25%
50	Small	424510	\$42.00	\$0.00	\$55.00	\$0.00	\$13.00	31%
51	Small	424510	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
52	Small	424510	\$1,149.00	\$0.00	\$1,608.60	\$0.00	\$459.60	40%
53	Large	424510	\$58,217.30	\$0.00	\$82,774.42	\$0.00	\$24,557.12	42%
54	Small	424510	\$30.00	\$0.00	\$55.00	\$0.00	\$25.00	83%
55	Large	424510	\$29,484.00	\$1,774,157.82	\$55,965.00	\$2,179,283.52	\$431,606.70	24%
56	Small	424510	\$48,813.60	\$0.00	\$71,579.04	\$0.00	\$22,765.44	47%
57	Small	424510	\$5,622.00	\$0.00	\$7,055.00	\$0.00	\$1,433.00	25%
58	Small	424510	\$16,456.00	\$0.00	\$26,109.40	\$0.00	\$9,653.40	59%
59	Small	424510	\$60.00	\$0.00	\$110.00	\$0.00	\$50.00	83%
60	Small	424510	\$12,990.00	\$0.00	\$23,815.00	\$0.00	\$10,825.00	83%
61	Small	424510	\$507.00	\$0.00	\$635.00	\$0.00	\$128.00	25%
62	Large	424510	\$30.00	\$0.00	\$55.00	\$0.00	\$25.00	83%
63	Large	424510	\$66,569.00	\$0.00	\$83,857.00	\$0.00	\$17,288.00	26%
64	Small	424510	\$41,588.00	\$0.00	\$57,804.00	\$0.00	\$16,216.00	39%
65	Small	424510	\$20,625.00	\$0.00	\$25,825.00	\$0.00	\$5,200.00	25%
66	Large	424510	\$33,854.00	\$0.00	\$42,603.00	\$0.00	\$8,749.00	26%
67	Large	424510	\$131,306.57	\$0.00	\$188,180.77	\$0.00	\$56,874.20	43%
68	Small	424510	\$3,412.00	\$0.00	\$4,267.00	\$0.00	\$855.00	25%
69	Large	424510	\$60.00	\$0.00	\$110.00	\$0.00	\$50.00	83%
70	Small	424510	\$44,721.00	\$0.00	\$56,165.00	\$0.00	\$11,444.00	26%

Assigned Business Number	Business Size	NAICS Code	Total Cost of Service Fees (current)	Total Cost of Tonnage Fees (current)	Total Cost of Service Fees (proposed)	Total Cost of Tonnage Fees (proposed)	Cost Difference	Percent Change
71	Large	424510	\$37,156.00	\$1,534,349.25	\$65,501.00	\$1,843,004.70	\$337,000.45	21%
72	Large	424510 **	\$32,755.50	\$3,122,985.86	\$49,424.10	\$3,775,312.26	\$668,995.00	21%
73	Small	424510	\$11,831.00	\$0.00	\$16,738.00	\$0.00	\$4,907.00	41%
74	Small	424590	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
75	Small	424590	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
76	Small	424590 **	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
77	Small	424590 **	\$48.00	\$0.00	\$60.00	\$0.00	\$12.00	25%
78	Small	424590 **	\$60.00	\$0.00	\$75.00	\$0.00	\$15.00	25%
79	Small	424910	\$23.00	\$0.00	\$29.00	\$0.00	\$6.00	26%
80	Small	424910	\$2,862.00	\$0.00	\$3,775.00	\$0.00	\$913.00	32%
81	Large	424910	\$90.00	\$0.00	\$165.00	\$0.00	\$75.00	83%
82	Small	424910	\$771.00	\$0.00	\$1,035.00	\$0.00	\$264.00	34%
83	Small	424910	\$573.00	\$0.00	\$770.00	\$0.00	\$197.00	34%
84	Small	424910	\$60.00	\$0.00	\$80.00	\$0.00	\$20.00	33%
85	Small	424910	\$2,892.00	\$0.00	\$3,615.00	\$0.00	\$723.00	25%
86	Large	424990	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
87	Small	424990	\$20,693.90	\$0.00	\$28,911.46	\$0.00	\$8,217.56	40%
88	Small	446191	\$12.00	\$0.00	\$15.00	\$0.00	\$3.00	25%
89	Small	484110	\$60.00	\$0.00	\$75.00	\$0.00	\$15.00	25%
90	Small	488210	\$7,740.00	\$0.00	\$10,840.00	\$0.00	\$3,100.00	40%
91	Small	488320	\$19,619.91	\$0.00	\$27,489.47	\$0.00	\$7,869.56	40%
92	Large	488510	\$21,525.60	\$0.00	\$30,423.24	\$0.00	\$8,897.64	41%
93	Small	488510	\$7,100.00	\$0.00	\$9,940.00	\$0.00	\$2,840.00	40%
94	Large	493130	\$67,578.90	\$0.00	\$98,962.06	\$0.00	\$31,383.16	46%
95	Large	493130	\$77,671.00	\$0.00	\$104,211.00	\$0.00	\$26,540.00	34%
96	Small	523130	\$312.00	\$0.00	\$375.00	\$0.00	\$63.00	20%
97	Small	531120	\$24.00	\$0.00	\$30.00	\$0.00	\$6.00	25%
98	Small	541690	\$24.80	\$0.00	\$34.72	\$0.00	\$9.92	40%
99	Small	541714	\$30.00	\$0.00	\$55.00	\$0.00	\$25.00	83%

* Data on number of employees was unavailable, calculated as one staff employed.

** NAICS code not found, assigned code that was the most accurate description of business conducted.

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

Total fees paid by each business between July 1, 2020, and June 1, 2021, were compared with estimated costs under the proposed fee increase and the minor cost thresholds identified in Section 2. Businesses expected to experience an increase that exceeds the minor cost threshold for their industry are shown in Table 4.1. Businesses that are not expected to experience more-than-minor costs for their industry are shown in Table 4.2.

Table 4.1 - Businesses with estimated cost increases expected to exceed the minor cost threshold

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
4	Small*	111140	\$3,467.56	\$945.89
87	Small	424990	\$8,217.56	\$7,559.52
31	Large	311211	\$541,955.80	\$117,843.75

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
44	Large	424510	\$278,186.15	\$53,558.90
55	Large	424510	\$431,606.70	\$53,558.90
67	Large	424510	\$56,874.20	\$53,558.90
71	Large	424510	\$337,000.45	\$53,558.90
72	Large	424510**	\$668,995.00	\$53,558.90
94	Large	493130	\$31,383.16	\$19,783.78
95	Large	493130	\$26,540.00	\$19,783.78

* Data on number of employees was unavailable, calculated as one staff employed.

** NAICS code not found, assigned code that was the most accurate description of business conducted.

Table 4.1 indicates that of the 99 businesses that were used in the analysis, and paid fees between July 1, 2020, and June 1, 2021, 10 are expected to have costs exceeding the minor cost threshold. Two of these businesses are considered to be small and eight are considered to be large.

However, not all businesses that paid fees between July 1, 2020, and June 1, 2021, are expected to have costs exceeding the minor cost threshold. Table 4.2 shows that 89 businesses are expected to have cost increases **less than** the minor cost threshold. Seventy-seven of these businesses are considered small and 12 are considered to be large.

Table 4.2 - Businesses with estimated cost increases expected to be less than the minor cost threshold

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
1	Small	111130	\$16.00	\$100.00
2	Small	111140	\$12.00	\$945.89
3	Small	111140	\$3.00	\$945.89
5	Small	111140	\$8.00	\$945.89
6	Small	111140	\$6.00	\$945.89
7	Small*	111140	\$9.00	\$945.89
8	Small	111140	\$9.00	\$945.89
9	Small	111140	\$10.00	\$945.89
10	Small	111140	\$56.00	\$945.89
11	Small	111140	\$15.00	\$945.89
12	Small	111140	\$21.00	\$945.89
13	Small	111191	\$6.00	\$1,171.75
15	Small	111219	\$9.00	\$11,395.89
16	Small	111998	\$3.00	\$11,782.08
17	Small*	111998	\$12.00	\$11,782.08
18	Small	111998	\$3.00	\$11,782.08
19	Small	111998	\$14.00	\$11,782.08
20	Small	111998	\$6.00	\$11,782.08
21	Small	111998	\$8.00	\$11,782.08
22	Small	111998	\$10.00	\$11,782.08
23	Small	111998	\$17.00	\$11,782.08

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
24	Small	111998	\$6.00	\$11,782.08
25	Small	111998	\$9.00	\$11,782.08
26	Small	112990	\$9.00	\$718.62
27	Small	112990	\$6.00	\$718.62
28	Small	112990	\$24.00	\$718.62
29	Small	115114	\$194.40	\$50,457.84
30	Small	115114	\$63.00	\$50,457.84
32	Small	311211	\$200.00	\$117,843.75
33	Small	311211	\$546.00	\$117,843.75
35	Small	311221	\$15.00	\$100.00
36	Small	311230	\$8.00	\$117,100.22
37	Small	311230	\$3.00	\$117,100.22
38	Small	311999	\$6.00	\$28,280.31
40	Small*	424480	\$21.00	\$47,928.58
42	Small	424510	\$41.00	\$53,558.90
43	Small	424510	\$30.00	\$53,558.90
45	Small	424510	\$1,439.00	\$53,558.90
46	Small	424510	\$1,381.00	\$53,558.90
47	Small	424510	\$7,490.40	\$53,558.90
48	Small	424510	\$990.00	\$53,558.90
49	Small	424510	\$210.00	\$53,558.90
50	Small	424510	\$13.00	\$53,558.90
51	Small	424510	\$3.00	\$53,558.90
52	Small	424510	\$459.60	\$53,558.90
54	Small	424510	\$25.00	\$53,558.90
56	Small	424510	\$22,765.44	\$53,558.90
57	Small	424510	\$1,433.00	\$53,558.90
58	Small	424510	\$9,653.40	\$53,558.90
59	Small	424510	\$50.00	\$53,558.90
60	Small	424510	\$10,825.00	\$53,558.90
61	Small	424510	\$128.00	\$53,558.90
64	Small	424510	\$16,216.00	\$53,558.90
65	Small	424510	\$5,200.00	\$53,558.90
68	Small	424510	\$855.00	\$53,558.90
70	Small	424510	\$11,444.00	\$53,558.90
73	Small	424510	\$4,907.00	\$53,558.90
74	Small	424590	\$6.00	\$7,750.68
75	Small	424590	\$6.00	\$7,750.68
76	Small	424590**	\$3.00	\$7,750.68
77	Small	424590**	\$12.00	\$7,750.68
78	Small	424590**	\$15.00	\$7,750.68
79	Small	424910	\$6.00	\$35,044.58
80	Small	424910	\$913.00	\$35,044.58
82	Small	424910	\$264.00	\$35,044.58

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase ***	Minor Cost Threshold ****
83	Small	424910	\$197.00	\$35,044.58
84	Small	424910	\$20.00	\$35,044.58
85	Small	424910	\$723.00	\$35,044.58
88	Small	446191	\$3.00	\$4,703.76
89	Small	484110	\$15.00	\$7,544.33
90	Small	488210	\$3,100.00	\$11,608.97
91	Small	488320	\$7,869.56	\$72,468.28
93	Small	488510	\$2,840.00	\$18,996.34
96	Small	523130	\$63.00	\$24,887.08
97	Small	531120	\$6.00	\$4,919.59
98	Small	541690	\$9.92	\$2,707.38
99	Small	541714	\$25.00	\$66,044.66
14	Large	111219	\$3.00	\$11,395.89
34	Large	311213	\$125.00	\$92,328.39
39	Large	325412	\$152.00	\$45,550.97
41	Large	424490	\$777.00	\$25,663.43
53	Large	424510	\$24,557.12	\$53,558.90
62	Large	424510	\$25.00	\$53,558.90
63	Large	424510	\$17,288.00	\$53,558.90
66	Large	424510	\$8,749.00	\$53,558.90
69	Large	424510	\$50.00	\$53,558.90
81	Large	424910	\$75.00	\$35,044.58
86	Large	424990	\$3.00	\$7,559.52
92	Large	488510	\$8,897.64	\$18,996.34

* Data on number of employees was unavailable, calculated as one staff employed.

** NAICS code not found, assigned code that was the most accurate description of business conducted.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

RCW 19.85.040(1) requires the department to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per \$100 of sales.

Costs per employee were analyzed for the top 10 percent of businesses impacted by the proposed changes. This was compared with the cost per employee for all impacted small businesses. Table 5.1 shows the results of the analysis, which indicates that small businesses will be disproportionately impacted by the proposed amendments.

Table 5.1 - Comparison of estimated costs per employee for the top 10 percent of all businesses and all small businesses impacted by the proposed amendments

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase***	Estimated Number of Employees	Cost Per Employee
1	Small	111130	\$16.00	3	\$5.33
2	Small	111140	\$12.00	1	\$12.00
3	Small	111140	\$3.00	6	\$0.50
4	Small*	111140	\$3,467.56	1	\$3,467.56
5	Small	111140	\$8.00	1	\$8.00
6	Small	111140	\$6.00	1	\$6.00
7	Small*	111140	\$9.00	1	\$9.00
8	Small	111140	\$9.00	1	\$9.00
9	Small	111140	\$10.00	2	\$5.00
10	Small	111140	\$56.00	8	\$7.00
11	Small	111140	\$15.00	4	\$3.75
12	Small	111140	\$21.00	10	\$2.10
13	Small	111191	\$6.00	2	\$3.00
15	Small	111219	\$9.00	2	\$4.50
16	Small	111998	\$3.00	7	\$0.43
17	Small*	111998	\$12.00	1	\$12.00
18	Small	111998	\$3.00	1	\$3.00
19	Small	111998	\$14.00	7	\$2.00
20	Small	111998	\$6.00	1	\$6.00
21	Small	111998	\$8.00	28	\$0.29
22	Small	111998	\$10.00	1	\$10.00
23	Small	111998	\$17.00	3	\$5.67
24	Small	111998	\$6.00	1	\$6.00
25	Small	111998	\$9.00	2	\$4.50
26	Small	112990	\$9.00	2	\$4.50
27	Small	112990	\$6.00	7	\$0.86
28	Small	112990	\$24.00	9	\$2.67
29	Small	115114	\$194.40	20	\$9.72
30	Small	115114	\$63.00	50	\$1.26
32	Small	311211	\$200.00	24	\$8.33
33	Small	311211	\$546.00	10	\$54.60
35	Small	311221	\$15.00	5	\$3.00
36	Small	311230	\$8.00	2	\$4.00
37	Small	311230	\$3.00	2	\$1.50
38	Small	311999	\$6.00	4	\$1.50
40	Small*	424480	\$21.00	1	\$21.00
42	Small	424510	\$41.00	27	\$1.52
43	Small	424510	\$30.00	2	\$15.00
45	Small	424510	\$1,439.00	8	\$179.88
46	Small	424510	\$1,381.00	9	\$153.44
47	Small	424510	\$7,490.40	10	\$749.04
48	Small	424510	\$990.00	14	\$70.71
49	Small	424510	\$210.00	10	\$21.00
50	Small	424510	\$13.00	22	\$0.59

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase***	Estimated Number of Employees	Cost Per Employee
51	Small	424510	\$3.00	44	\$0.07
52	Small	424510	\$459.60	48	\$9.58
54	Small	424510	\$25.00	25	\$1.00
56	Small	424510	\$22,765.44	10	\$2,276.54
57	Small	424510	\$1,433.00	7	\$204.71
58	Small	424510	\$9,653.40	12	\$804.45
59	Small	424510	\$50.00	5	\$10.00
60	Small	424510	\$10,825.00	5	\$2,165.00
61	Small	424510	\$128.00	7	\$18.29
64	Small	424510	\$16,216.00	10	\$1,621.60
65	Small	424510	\$5,200.00	10	\$520.00
68	Small	424510	\$855.00	5	\$171.00
70	Small	424510	\$11,444.00	7	\$1,634.86
73	Small	424510	\$4,907.00	6	\$817.83
74	Small	424590	\$6.00	3	\$2.00
75	Small	424590	\$6.00	4	\$1.50
76	Small	424590	\$3.00	2	\$1.50
77	Small	424590	\$12.00	8	\$1.50
78	Small	424590	\$15.00	1	\$15.00
79	Small	424910	\$6.00	24	\$0.25
80	Small	424910	\$913.00	5	\$182.60
82	Small	424910	\$264.00	6	\$44.00
83	Small	424910	\$197.00	5	\$39.40
84	Small	424910	\$20.00	4	\$5.00
85	Small	424910	\$723.00	6	\$120.50
87	Small	424990	\$8,217.56	18	\$456.53
88	Small	446191	\$3.00	5	\$0.60
89	Small	484110	\$15.00	6	\$2.50
90	Small	488210	\$3,100.00	28	\$110.71
91	Small	488320	\$7,869.56	30	\$262.32
93	Small	488510	\$2,840.00	24	\$118.33
96	Small	523130	\$63.00	6	\$10.50
97	Small	531120	\$6.00	4	\$1.50
98	Small	541690	\$9.92	12	\$0.83
99	Small	541714	\$25.00	3	\$8.33
Average cost per employee for all small businesses \$209.33					
31	Large	311211	\$541,955.80	1500	\$361.30
34	Large	311213	\$125.00	150	\$0.83
39	Large	325412	\$152.00	7000	\$0.02
41	Large	424490	\$777.00	786	\$0.99
44	Large	424510	\$278,186.15	1300	\$213.99
53	Large	424510	\$24,557.12	160	\$153.48
62	Large	424510	\$25.00	362	\$0.07
72	Large	424510**	\$668,995.00	10493	\$63.76

Assigned Business Number	Business Size	NAICS Code	Estimated Cost Increase***	Estimated Number of Employees	Cost Per Employee
81	Large	424910	\$75.00	2060	\$0.04
Average cost per employee for the top 10% of businesses \$88.28					

* Data on number of employees was unavailable, calculated as one staff employed.

** NAICS code not found, assigned code that was the most accurate description of business conducted.

The average cost per employee for the top 10 percent of all businesses impacted by the proposed amendments is \$88.28. In comparison, the average cost per employee for all small businesses impacted by the proposed amendments is \$209.33. Despite costs per employee varying widely for both large and small businesses, it is evident that small businesses will be disproportionately impacted by the proposed amendment.

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

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements:* The grain program is entirely funded by fees paid by businesses requesting service, and it does not receive any general fund dollars. RCW 22.09.790 requires the department to fix fees for the inspection, grading and weighing of commodities included in the provisions of this chapter so that they are sufficient to cover the cost of such services. Due to mandated wage increases, cost increases for goods and services, and increased cost for agency administrative rate, the fees currently set in rule are no longer able to cover the costs of providing these services. The agency determined the increase is necessary to maintain the current level of service provided by the program. Reducing, modifying, or eliminating the amount in which the proposed fees are increased would lower the level of service the program is currently providing, potentially to a point that the program would not be operational at all and would be in conflict with the statutory mandate.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* There are no recordkeeping or reporting requirements associated with the proposed rule amendment.

(c) *Reducing the frequency of inspections:* It isn't possible to reduce the frequency of inspections, as they are required by federal regulations for export shipments and a voluntary option for domestic shipments.

(d) *Delaying compliance timetables:* Delaying compliance timetables is not a viable mitigation measure. The proposed rule amendment is necessary to maintain the financial health of the grain program and ensure its continued operation. Delaying compliance timetables would result in a financial deficit, making the program unable to perform required duties. This could negatively impact businesses in the industry.

(e) *Reducing or modifying fine schedules for noncompliance:* The program's fee schedule does not include any fines associated with non-compliance. There are no fine schedules associated with the proposed rule amendment.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* The grain program has

made multiple efforts over the last five years to reduce overall costs to the program, and the fund balance has continued to decline. The efforts made have been:

- Reducing goods and services - delaying preventative maintenance, new equipment purchases, and services such as janitorial.
- Monitoring and maintaining appropriate staffing levels - actively reviewing schedules and reducing staff levels during slower workloads.
- Reducing overtime - implementing new shift structures to provide the same levels of service in such a way as to minimize overtime.
- Implementing lean principals - combining certain tasks to avoid multiple staff members crossing paths to streamline requests.

Further efforts to mitigate the cost of compliance are likely to impair the program's ability to provide services.

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

A combination of both small and large businesses were engaged for each outreach shown in Table 7.1 - Stakeholder Outreach. The need for the program to increase fees was discussed in detail with different businesses as well as the grain program advisory committee, which has been supportive in regards to adjusting the program's fees.

Table 7.1 - Stakeholder Outreach

Business Size	Date	Organization	Person Contacted	Method of Contact	Topics Discussed	Support or Oppose
Large	4/9/2021	Spokane Seed	Andrew Fontaine, Jim Groth	Email	Notice of beginning the Rule Making Process	No Response
Large	4/9/2021	NW Grain Growers	Chris Peha	Email	Notice of beginning the Rule Making Process	No Response
Large	4/9/2021	HighLine Grain	Paul Katovich, Ty Jessup	Email	Notice of beginning the Rule Making Process	No Response
Small	4/9/2021	Blue Mountain Seed	Gary Ferrel	Email	Notice of beginning the Rule Making Process	No Response
Large	4/9/2021	Columbia Grain	Dan Bruce	Email	Notice of beginning the Rule Making Process	No Response
Small	4/9/2021	Inland Empire Milling	Jerry Schauble	Email	Notice of beginning the Rule Making Process	No Response
Small	4/9/2021	Ardent Mills/Hinrichs	Kyle Hinrichs	Email	Notice of beginning the Rule Making Process	No Response
Small	4/9/2021	Palouse Pulse	Loren Wagner	Email	Notice of beginning the Rule Making Process	No Response
Large	4/9/2021	Ritzville Warehouse	Brian Gordon, Stacey Hunt	Email	Notice of beginning the Rule Making Process	No Response
Small	4/9/2021	Pomeroy Grain	Derrick Teal	Email	Notice of beginning the Rule Making Process	No Response
Large	4/9/2021	PNW Coop	Shawn O'Connell, Mac Reynolds	Email	Notice of beginning the Rule Making Process	No Response
Small	4/9/2021	Tri-City Grain	Mark Weber	Email	Notice of beginning the Rule Making Process	No Response
Small	4/9/2021	Palouse Brand	Sara Mader, Joe O'Callahan	Email	Notice of beginning the Rule Making Process	No Response
Large	4/9/2021	WA Grain Commission	Glen Squires	Email	Notice of beginning the Rule Making Process	Support
Small	4/9/2021	US Dry Pea and Lentil	Tim McGreevy	Email	Notice of beginning the Rule Making Process	Support
Large	4/9/2021	Spokane Seed	Andrew Fontaine, Jim Groth	Email	Notice of beginning the Rule Making Process	No Response
Large	4/9/2021	NW Grain Growers	Chris Peha	Email	Notice of beginning the Rule Making Process	No Response
Large	8/19/2021	CHS	Tom Rodman	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support

Business Size	Date	Organization	Person Contacted	Method of Contact	Topics Discussed	Support or Oppose
Large	8/19/2021	UGC	John Lindgren	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support
Large	8/19/2021	HighLine Grain	Paul Katovich	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support
Small	8/19/2021	Tri-State Seed	Dana Herron	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support
Large	8/19/2021	Columbia Grain	Randy Olstad	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support
Large	8/19/2021	Kalama Export	Jerry Kiekow	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support
Small	8/19/2021	Wheat Marketing Center	Jayne Bock	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support
Large	8/19/2021	WA Grain Commission	Brian Cochrane	Meeting	Grain Program Advisory Committee - Full explanation of what Fees	Support
Large	2/3/2022	EGT	Randy Cooper, Matt Kerrigan	In person meeting	Overall discussion of fee increase.	Conversation – wanted to see numbers
Large	2/25/2022	TEMCO Tacoma	Mark Jenson	Phone Call	Overall discussion of fee increase.	Open Conversation - Neutral
Large	3/1/2022	NGFA	Jess McLure	Phone Call	Overall discussion of fee increase.	Acknowledged the Need
Large	4/18/2022	Spokane Seed	Andrew Fontaine, Jim Groth	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/18/2022	HighLine Grain	Paul Katovich, Tyler Greenwood	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Blue Mountain Seed	Gary Ferrel	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/18/2022	Columbia Grain	Dan Bruce, Mary Kay Peters	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Inland Empire Milling	Jerry Schauble, David Schaule	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Ardent Mills/Hinrichs	Kyle Hinrichs	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/18/2022	Ritzville Warehouse	Brian Gordon, Stacey Hunt	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Palouse Pulse	Loren Wagner	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Pomeroy Grain	Derrick Teal	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/18/2022	PNW Coop	Shawn O'Connell, Mac Reynolds	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Tri-City Grain	Mark Weber	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Palouse Brand	Sara Mader, Joe O'Callahan	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/18/2022	WA Grain Commission	Glen Squires	Email	Notification, Overview, Documents and How to Participate	No Response

Business Size	Date	Organization	Person Contacted	Method of Contact	Topics Discussed	Support or Oppose
Small	4/18/2022	US Dry Pea and Lentil	Tim McGreevy	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Maviga NA	Brett Melvin, Aaron Jessen, Derek Schneidmiller	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	McKay Seed Co.	Don Sloan	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Almota Grain	Dan Hart	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	First Intercontinental	Amar Sawla	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Baba Grain	Harry Vanjani	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Tumac	Susan Buchanan	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/18/2022	TYR Food Products	Abraham Bates	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Anderson NW/ 13 Foods	Marty Anderson, Mike Anderson, Jessica Emtman	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/18/2022	ADM Milling	Tom McLaughlin	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Farmer Bean	Lauren Kehl	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	DDS / Druffel and Son	Brett Druffel	Email	Notification, Overview, Documents and How to Participate	No Response
Small	4/18/2022	Maizena and Sunburst	Kent Darling	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/20/2022	UGC	John Lindgren, Earl Dixon	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/20/2022	CHS	Tom Rodman, Mark Jensen	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/20/2022	Kalama Export	Jason Weber	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/20/2022	EGT	Matthew Kerrigan, Randy Cooper	Email	Notification, Overview, Documents and How to Participate	No Response
Large	4/20/2022	LDC	Marcus Dixon	Email	Notification, Overview, Documents and How to Participate	No Response
Large	5/19/2022	WA Grain Commission	Staff and Board	Public Meeting	Notification	Acknowledged Need
Large	5/19/2022	HighLine Grain	Ty Jessup, Mike Carstenson	Public Meeting	Notification	Acknowledged Need
Large	5/19/2022	UGC	Brian Lidel	Public Meeting	Notification	No Response
Small	5/19/2022	WA Grain Growers	Michelle Hennings, Howard McDonald	Public Meeting	Notification	No Response
Combination of Large and Small	7/14/2022	Export Fee Presentation	Earl Dixon, John Lidgren, Tom Rodman, Jason Weber, Matt Kerrigan, Mark Jensen, Randy Cooper, Marcus Dixon	Public Meeting	Proposed fees, program financials, update on rulemaking	Open conversation, minutes available

Business Size	Date	Organization	Person Contacted	Method of Contact	Topics Discussed	Support or Oppose
Combination of Large and Small	7/19/2022	Domestic Fee Presentation	Chris Peha, Dan Bruce, Ray Dionne, Paul Katovich, Tina Imler, Jackie Hodson, Cherise Goude	Public Meeting	Proposed fees, program financials, update on rulemaking	Open conversation, minutes available

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

The Regulatory Fairness Act (RFA) requires an agency to estimate the number of jobs created or lost (due to compliance with the proposed rule making) in their small business economic impact statement, RCW 19.85.040.

The Washington state office of financial management's (OFM) input/output model is the resource the department used to determine estimated jobs created or lost based on the proposed rule making.

The model depicts interindustry relationships within the Washington state economy. The model takes as input the cost to each industry NAICS code (based on the average cost of compliance to the proposed rule) and calculates, among other things, employment change (jobs created or jobs lost). The estimated employment change is measured in full-time employees (FTE) to each business sector.

Table 8.1 below shows the average cost of compliance for each industry affected by the proposed rule making and the estimated employment change to that industry. A negative number indicates a job loss, while a positive number indicates a job created.

NOTE: Employment change calculated into FTEs for each NAICS code is NOT per business, but rather a total over the entire business industry.

Table 8.1 - Jobs created or lost

NAICS Code	Average Cost of Compliance	Estimated Employment Change
111130	\$16.00	0.00
111140	\$328.78	-0.08
111191	\$6.00	0.00
111219	\$6.00	0.00
111998	\$8.80	0.00
112990	\$13.00	-0.01
115114	\$128.70	-0.08
311211	\$180,900.60	-0.17
311213	\$125.00	0.00
311221	\$15.00	0.00
311230	\$5.50	0.00
311999	\$6.00	0.00
325412	\$152.00	0.00
424480	\$21.00	0.00
424490	\$777.00	-0.14
424510	\$59,965.33	-0.89
424590	\$8.40	0.00
424910	\$314.00	-0.03
424990	\$4,110.28	-0.33
446191	\$3.00	-0.08

NAICS Code	Average Cost of Compliance	Estimated Employment Change
484110	\$15.00	-0.02
488210	\$3,100.00	-0.05
488320	\$7,869.56	-0.25
488510	\$5,868.82	-1.14
493130	\$28,961.58	-0.77
523130	\$63.00	-0.06
531120	\$6.00	-0.07
541690	\$9.92	-0.12
541714	\$25.00	-0.04
Total estimated employment change across all industries		-4.33

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

September 7, 2022
 Jessica Allenton
 Assistant Director

OTS-4042.3

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-038 Revenue minimum determination. The circumstances under which the department adjusts rates to meet the revenue minimum are as follows:

(1) When the daily volume of work at a service location at the established fees does not generate revenue at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum, except as provided in subsection (2) of this section.

(2) The daily revenue minimum charge applies only to the Tier 1 and Tier 2 metric tonnage rate shown in WAC 16-240-070 (2)(b) at USGSA Table 1 and in WAC 16-240-080 (2)(b) at AMA Table 1. When (~~either a Tier 2 or~~) the Tier 3 rate is in effect (WAC 16-240-043, 16-240-070, and 16-240-080), export locations will not be subject to daily revenue minimum charges during the (~~Tier 2 or~~) Tier 3 rate period allowed under WAC 16-240-043.

(3) Work volume daily averaging at export locations will be determined as follows:

(a) When the daily volume of work at a service location at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervi-

sory and clerical employee hours, according to the staffing needs at the facility, the department will charge an additional fee, except as provided in subsection (2) of this section.

(b) The straight time hourly rate will be charged per hour, per employee.

(c) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under daily averaging.

(4) Work volume monthly averaging at export locations will be determined as follows:

(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volume of work.

(b) Under this subsection (4), and except for when the work volume monthly averaging for the revenue minimum is determined under (a) of this subsection, when the monthly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, a sufficient additional amount, calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum for each month during which work volume monthly averaging applies. As provided under (f) of this subsection, this revenue minimum adjustment applies only during any month when Tier 1 and Tier 2 rates are in effect.

(c) At export locations, the request for monthly averaging stays in effect until canceled.

(d) An applicant's written request to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.

(e) Service cancellation fees under WAC 16-240-054 are not considered to be revenue under monthly averaging.

(f) The monthly revenue minimum charge applies only to the Tier 1 and Tier 2 rate shown in USGSA Table 1 under WAC 16-240-070 (2) (b) and AMA Table 1 under WAC 16-240-080 (2) (b) of this schedule. When (~~either the Tier 2 or~~) the Tier 3 rate is in effect, export locations will not be subject to daily revenue minimum charges during the (~~Tier 2 or~~) Tier 3 rate period allowed under WAC 16-240-043.

(i) Upon the applicant's written notification to the department, the monthly revenue minimum will not be applied to the month in which an export facility resumes operations after an extended downtime. This exception for maintenance or repair is available once per fiscal year.

(ii) When the department provides services at a nonexport location or a transloading facility, and the hourly, unit, and applicable travel fees do not cover the cost of providing the service, a sufficient additional amount calculated by using the straight time hourly rate per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-038, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-038, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-038, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has over-

sight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-038, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-070 Fees for services under the United States Grain Standards Act. (1) USGSA Tables 1 through (8) in this section contain fees for official sampling, inspection, weighing services, and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the applicant for service to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

**USGSA Table 1
Fees for Combination Inspection and Weighing Services**

1.	In, out, or local, rate for all tiers, per metric ton	\$0.250
2.	Vessels (export and domestic ocean-going), Tier 1 rate, per metric ton	(\$0.250) \$0.300
3.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 1 rate, per metric ton	(\$0.230) \$0.280
Note: For automated weighing systems:		
■	When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060.	
4.	Vessels and local (export and domestic ocean-going), Tier 2 rate, per metric ton	(\$0.200) \$0.250
5.	<u>Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 2 rate, per metric ton</u>	\$0.230
6.	Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100
7.	<u>Official ship samples</u>	\$7.00

Note: For vessels (export and domestic ocean-going):		
■	The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee.	
((■	The metric ton vessel rate includes all official ship samples required by the load order.)	
■	Stress crack analysis in corn is included in the fees in USGSA Table 1.	
■	During vessel loading, fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be charged at the per unit rates included under this chapter.	
((6-) <u>8.</u>	Trucks or containers, per truck or container	((\$25.00)) <u>\$35.00</u>
((7-) <u>9.</u>	Additional nongrade determining factor analysis, per factor	\$3.00

**USGSA Table 2
Fees for Official Sampling and Inspection
Without Weighing Services**

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, per truck or container	((\$20.00)) <u>\$30.00</u>
2.	Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton	\$0.10
3.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, per railcar	\$20.00
4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, per railcar	\$20.00
5.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	((\$30.00)) <u>\$40.00</u>
Note: The following applies to all fees in this table:		
■	For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 2.	
■	Stress crack analysis in corn is included in the fees in USGSA Table 2.	
■	Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter.	

■	The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade.	
■	<u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u>	
6.	Inspection of bagged grain, including tote bags, per hundredweight (cwt)	(\$0.100) \$0.140
7.	Additional nongrade determining factor analysis, per factor	(\$3.00) \$5.00

**USGSA Table 3
Fees for Official Class X Weighing Services
Without an Inspection of Bulk Grain**

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00
4.	<u>Class Y weighing per railcar</u>	\$1.00
■	<u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u>	

**USGSA Table 4
Fees for Inspection of Submitted Samples,
Fees for Reinspections Based on Official
File Samples and Fees for Additional Fac-
tors**

1.	Submitted samples, including factor-only inspections, per inspection	(\$12.00) \$15.00
2.	Reinspections based on official file sample, including factor-only reinspections, per inspection	(\$12.00) \$15.00
3.	<u>Warehousemen samples</u>	\$15.00
4.	<u>Warehousemen reinspection</u>	\$15.00
5.	Additional, nongrade determining factor analysis, per factor	(\$3.00) \$5.00
(4.) 6.	Stress crack only analysis on corn, per sample	\$9.00

Note: The following applies to all fees in this table:

- When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above.
- For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4.
- Stress crack analysis in corn is included in the fees in USGSA Table 4.
- Analysis that requires additional equipment or personnel will be provided at the applicable hourly rate under this chapter.
- FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).

**USGSA Table 5
Fees for Miscellaneous Services**

1. Laboratory analysis, at cost	At cost
2. All other USGSA services not listed in this section, per hour, per employee	\$56.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department. ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 	

**USGSA Table 6
Fees for Official Analysis for Protein, Oil, or Other Official Constituents**

Original or reinspection based on file sample, per test	\$9.00
<p>Note: The following applies to the fee in USGSA Table 6:</p> <ul style="list-style-type: none"> ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be charged. ■ Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately. ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 	

**USGSA Table 7
Fees for Testing for the Presence of Mycotoxins Using USDA Approved Methods**

Original, reinspection based on official file sample, or submitted sample, per test	\$40.00
<p>Note: The following applies to this table:</p> <ul style="list-style-type: none"> ■ When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be charged in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2). ■ <u>FGIS supervision fee will be assessed at current per metric ton rate (WAC 16-240-039).</u> 	

**USGSA Table 8
Fees for Stowage Examination Services on Vessels or Ocean-Going Barges and Fees for Other Stowage Examination Services**

1. Vessels or ocean-going barges stowage examination, original or reinspection, per request	\$500.00
2. Other stowage examinations of railcars, trucks, trailers, or containers, original or reinspection, per inspection	\$9.00

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-070, filed 9/13/17, effective 10/14/17; WSR

16-12-076, § 16-240-070, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-070, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-070, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946. (1) AMA Tables 1 through 5 in this section contain official sampling, inspection, or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies or equipment when requesting a new or special type of analysis.

**AMA Table 1
Fees for Combination Sampling, Inspection
and Weighing Services, and Additional Factors**

1.	In, out, or local, rate for all tiers, per metric ton	\$0.250
2.	Vessels (export or domestic), Tier 1 rate, per metric ton	(\$0.250) \$0.300
3.	Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 1 rate, per metric ton	(\$0.230) \$0.280
Note: For automated weighing systems:		
<ul style="list-style-type: none"> ■ When approved automated weighing systems are not functioning properly, dedicated staff time may be required at the rates established in WAC 16-240-060. 		
4.	Vessels and local (export and domestic ocean-going), Tier 2 rate, per metric ton	(\$0.200) \$0.250
5.	<u>Vessels and local (export and domestic ocean-going) with approved automated weighing systems, Tier 2 rate, per metric ton</u>	\$0.230
6.	Vessels and local (export and domestic ocean-going), Tier 3 rate, per metric ton	\$0.100

7.	Official ship samples	\$7.00
<p>Note: For vessels (export and domestic ocean-going):</p> <ul style="list-style-type: none"> ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. (■ The metric ton vessel rate includes all official ship samples required by the load order.) ■ During vessel loading, fees for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be charged at the per unit rates included under this chapter. 		
((6.)) 8.	Trucks or containers, per truck or container	\$30.00
((7.)) 9.	Additional, nongrade determining factor analysis, per factor	\$3.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, or other applicant requested criteria. ■ Dockage breakdown is included in the basic inspection fee. ■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee. ■ Fees for other tests, such as mycotoxin analysis, provided during vessel loading will be charged at the per unit rates included in this fee schedule. 		

**AMA Table 2
Fees for Official Sampling and Inspection
Without Weighing Services, and Additional
Factors**

1.	Trucks or containers sampled by USDA approved grain probe, including factor only or sampling only services, per truck or container	\$30.00
2.	Barge sampled by USDA approved mechanical sampler, including factor only or sampling only services, per metric ton	\$0.10
3.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, per railcar	\$30.00
4.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, per railcar	(\$30.00) \$40.00
5.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, per hundredweight (cwt)	(\$0.100) \$0.140

6.	Additional, nongrade determining factor analysis, per factor	(\$3.00) \$5.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ Dockage breakdown is included in the basic inspection fee. ■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. ■ The rates shown above also apply to services provided under federal criteria inspection instructions. 		

**AMA Table 3
Fees for Official Weighing Services without Inspections**

1.	In, out, or local, per metric ton	\$0.200
2.	Vessels (export and domestic ocean-going), per metric ton	\$0.200
3.	Trucks or containers, per weight lot	\$20.00

**AMA Table 4
Fees for Inspecting Submitted Samples**

1.	Submitted sample, thresher run or processed, including factor-only inspections, per sample	(\$20.00) \$24.00
2.	Additional, nongrade determining factor analysis, per factor	(\$3.00) \$5.00
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ Dockage breakdown is included in the basic inspection fee. ■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. ■ The rates shown above also apply to inspection services provided under federal criteria inspection instructions. ■ When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant. 		

**AMA Table 5
Fees for Miscellaneous Services**

1.	Falling number determinations, including liquefaction number on request, per determination	\$20.00
2.	Sampling and handling of processed commodities, per hour, per employee	\$56.00
3.	Laboratory analysis, at cost	At cost
<p>Note: The following applies to all fees in this table:</p> <ul style="list-style-type: none"> ■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department. 		

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-080, filed 9/13/17, effective 10/14/17; WSR 16-12-076, § 16-240-080, filed 5/27/16, effective 7/1/16. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-080, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-080, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 17-19-051, filed 9/13/17, effective 10/14/17)

WAC 16-240-090 Fees for other services performed by WSDA. (1)

WSDA Tables 1 through 3 in this section contain fees for other services performed at the request of the applicant when no USGSA or AMA standards exist. Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Applicant-defined analysis may be available from the department.

(a) Hourly fees for sampling or sample preparation may be charged.

(b) The analysis will be provided at the established hourly rate or may be provided at the cost quoted by the laboratory or organization providing the service or analysis.

(c) Applicant may be required to provide supplies and equipment when requesting a new analysis or special service.

(3) Official samples, as defined under 7 C.F.R. 800.75, may be provided upon timely request by an interested party, specifying the number of samples requested. Samples are provided in up to five pound bags and are charged the fee stated in Table 3.

**WSDA Table 1
Fees for Inspecting Miscellaneous
Agricultural Commodities under Chap-
ter 16-213 WAC**

1.	Submitted sample, per sample	(\$12.00) \$15.00
2.	Railcars, sampled by USDA approved diverter-type mechanical samplers, per car	\$20.00
3.	Railcars, sampled by USDA approved grain probe, per car	(\$30.00) \$40.00
4.	Trucks or containers, sampled by USDA approved grain probe, per truck or container	(\$20.00) \$30.00
Note: The following applies to all fees in this table:		
<ul style="list-style-type: none"> ■ These rates also apply to inspection services provided under applicant-specified criteria or standards other than USGSA, AMA or WSDA. For example: Millet may be inspected under state of Montana standards, upon applicant request. 		

WSDA Table 2
Fees for Phytosanitary Certification

1.	In conjunction with official inspection, per certificate	(\$30.00) \$55.00
2.	For phytosanitary certification only, without official inspection, add required sampling time, per hour, per employee	\$56.00

WSDA Table 3
Fees for Miscellaneous Services

1.	Unofficial constituent analysis, per test	\$9.00
2.	Sample pick-up fee, on department established routes, per sample	\$1.25
3.	Laboratory analysis, provided at other than WSDA grain inspection program offices, per analysis	At cost
4.	Official samples, per bag	\$5.00

[Statutory Authority: RCW 22.09.020 and chapter 34.05 RCW. WSR 17-19-051, § 16-240-090, filed 9/13/17, effective 10/14/17. Statutory Authority: RCW 15.17.050, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-21-064, § 16-240-090, filed 10/17/12, effective 11/17/12. Statutory Authority: 2003 1st sp.s. c 25 § 309(2); RCW 22.09.790, chapter 34.05 RCW and The United States Department of Agriculture has oversight of fees charged under the Federal Grain Inspection, Packers and Stockyards Administration. WSR 05-11-058, § 16-240-090, filed 5/17/05, effective 6/17/05.]

WSR 22-19-022
PROPOSED RULES
SEATTLE COLLEGES

[Filed September 12, 2022, 4:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-006.

Title of Rule and Other Identifying Information: Traffic rules and regulations.

Hearing Location(s): On November 8, 2022, at 10:00 to 11:00 a.m., Zoom.

Date of Intended Adoption: December 8, 2022.

Submit Written Comments to: Bella Garrison, 1500 Harvard Avenue, Seattle, WA 98122, email Wacinput@seattlecolleges.edu, by November 3, 2022.

Assistance for Persons with Disabilities: Contact Bella Garrison, phone 206-934-3873, email Bella.Garrison@seattlecolleges.edu, by November 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To protect and control pedestrian and vehicular traffic on district campus sites; ensure access at all times for emergency equipment; minimize traffic disturbances; facilitate the operation of the district by ensuring access to vehicles; allocate limited parking space for the most efficient use; protect state property; and encourage and support travel to district campus sites by means other than single-occupancy vehicle.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Seattle Colleges, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Terence Hsiao, Siegal Center, 425-352-8000.

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. Not significant legislative rules of any of the agencies listed in RCW 34.05.328(5).

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

Is exempt under RCW 34.05.328.

Explanation of exemptions: Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not an agency 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 review committee has not made the section applicable to the adoption of this rule.

Scope of exemption for rule proposal:

Is fully exempt.

September 9, 2022

Richerson Chen

Compliance and Public Records Manager

OTS-2951.3

NEW SECTION

WAC 132F-116-001 Objectives of parking and traffic rules. The objectives of these rules are:

- (1) To protect and control pedestrian and vehicular traffic on district campus sites.
- (2) To ensure access at all times for emergency equipment.
- (3) To minimize traffic disturbances.
- (4) To facilitate the operation of the district by ensuring access to vehicles.
- (5) To allocate limited parking space for the most efficient use.
- (6) To protect state property.
- (7) To encourage and support travel to district campus sites by means other than single occupancy vehicle.

[]

NEW SECTION

WAC 132F-116-002 Knowledge of parking and traffic rules. It is the responsibility of all individuals parking or operating a vehicle on a district campus to comply with these rules. Lack of knowledge of these rules shall not be grounds for the dismissal of any citation for a violation of the parking or traffic rules.

[]

NEW SECTION

WAC 132F-116-003 Definitions. The following definitions apply to this chapter:

- (1) Authorized valid payment: Any payment accepted by the district, including online, mobile application, and pay stations.
- (2) Bicycle: Any device defined as a bicycle in RCW 46.04.071.
- (3) Campus: Any of the campuses of Seattle College District VI to include those lands and leased facilities where parking is managed or controlled by Seattle College District VI.
- (4) Campus safety director: The senior employee responsible for campus safety.
- (5) Campus safety officers: Employees of Seattle College District VI who are responsible for campus security, safety, parking, and traffic control.
- (6) Carpool: A group of two or more employees or students who commute to campus in the same vehicle and complete the campus commuter services carpool registration process.
- (7) Citation: Formal written notice of a parking violation.
- (8) College: A Seattle College District VI college: Central Seattle College, North Seattle College, South Seattle College, and collectively those responsible for their control and operations.
- (9) Commuter services: Any district or college unit that manages and maintains parking facilities, issues parking products, issues citations, processes citation appeals, and collects fees and fines.

- (10) Day: Unless otherwise specified, the term "day" refers to a calendar day.
- (11) Disability parking: See persons with a disability.
- (12) Disability zone/area: A parking zone designated for exclusive use by persons with a disability and identified with a sign bearing the associated international symbol.
- (13) District: Seattle College District VI consisting of Central Seattle College, North Seattle College, South Seattle College, and collectively those responsible for its control and operations.
- (14) Electric-assisted bicycle: As defined under RCW 46.04.169.
- (15) Employee: Any individual hired as or appointed to the faculty, staff, or administration of Seattle College District VI.
- (16) EPAMD: Electric personal assistive mobility device as defined under RCW 46.04.1695.
- (17) Fee: A charge for the use of services provided and facilities managed by commuter services.
- (18) Fine: Monetary penalty for a parking violation.
- (19) Idling: The running of an engine which supplies the motive power for a vehicle, when not for the purpose of moving the vehicle with the normal flow of traffic on a street or roadway. Idling does not include running the vehicle's engine while stopped at a traffic signal or waiting for the passage of other vehicles to permit safe entry into the flow of traffic.
- (20) Immobilization: The attachment of a device to a parked motor vehicle so that the vehicle cannot be moved.
- (21) Impoundment: The removal of the vehicle to a storage facility by an authorized agent of campus safety, commuter services, or an authorized agent of commuter services.
- (22) License plate recognition (LPR): Technology that uses optical character recognition to automatically read license plate characters.
- (23) Meter: A single fixed device that registers and collects payment for the length of time a vehicle occupies a single parking space. A meter does not produce a receipt, physical permit, or virtual permit. A meter is not a permit-issuance machine.
- (24) Moped: As defined under RCW 46.04.304.
- (25) Motor vehicle: As defined under RCW 46.04.320.
- (26) Motorcycle: As defined under RCW 46.04.330.
- (27) Nonmotorized vehicle: A device other than a motor vehicle used to transport persons including, but not limited to, bicycles, skateboards, in-line skates, hoverboards, personal conveyance devices, and roller skates.
- (28) Operator or driver: Every person who drives or is in actual physical control of a motor vehicle or nonmotorized vehicle.
- (29) Overtime parking: The occupation by a vehicle of a time-limited space beyond the posted time limit or time provided on a permit, meter, or permit-issuance machine.
- (30) Parking product: A product issued by commuter services to manage motorized and nonmotorized access to the campus. Parking products include, but are not limited to, visual permits, virtual permits, access to bicycle lockers and other bicycle parking facilities, and parking access cards.
- (31) Parking space: A space for parking one motor vehicle normally designated by lines painted on either side of the space, a wheel stop positioned in the front of the space, a sign or signs, or other markings.

(32) Pay station: A commuter services deployed and managed machine that issues virtual permits.

(33) Permit: A visual permit or virtual permit.

(34) Persons with a disability: For the purpose of this chapter, persons with a disability shall refer to a person or persons with a disability or disabilities who qualify for a state-issued individual with disabilities parking identification and permit.

(35) Registered owner: The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.

(36) Roller skate/in-line skate: A device used to attach wheels to the foot or feet of a person.

(37) Skateboard: Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

(38) Student: A person enrolled in a Seattle College District VI college.

(39) Traffic: The movement of motorized vehicles, nonmotorized vehicles, and pedestrians in an area or along a street as is defined in RCW 46.04.590.

(40) Vehicle: As defined under RCW 46.04.670.

(41) Virtual permit: An authorization to park, issued by commuter services, or an authorized agent, that is associated with a vehicle's license plate.

(42) Visitor: A person who is neither an employee nor a student of Seattle College District VI and who only visits campus on an occasional basis.

(43) Visual permit: A physical permit issued by campus commuter services that when properly filled out and displayed according to instructions, authorizes a vehicle to park on campus.

[]

NEW SECTION

WAC 132F-116-004 Severability, savings clause. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[]

NEW SECTION

WAC 132F-116-005 Delegation of authority. Each college president shall delegate to one department or individual on campus the authority to enforce these traffic and parking rules and regulations. Assignments of parking spaces shall be the responsibility of the commuter services personnel as directed by the president of the college or the district to represent the interests of faculty, staff, and students.

[]

NEW SECTION

WAC 132F-116-006 Enforcement of parking and traffic rules. Duly appointed campus safety officers, designated commuter services employees, or independent contractors hired by the district are authorized to enforce these parking and traffic rules and may conduct traffic control on campus.

[]

NEW SECTION

WAC 132F-116-007 District liability. Except for vehicles that the district owns or operates, the district assumes no liability under any circumstances for vehicles on the campus. No bailment, but only a license, is created by the purchase and/or issuance of a permit.

[]

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

WAC 132F-116-010 Traffic rules and regulations. (1) The motor vehicle and other traffic laws of the state of Washington shall be applicable upon all lands located within the state of Washington.

(2) The traffic code of the city of Seattle shall be applicable upon all lands located within the city of Seattle.

(3) These regulations shall be applicable to all state lands which are or may hereafter be devoted mainly to educational, public service, and other activities sponsored or endorsed by (~~Seattle College District VI~~) the district.

[Statutory Authority: RCW 28B.50.140(13) and 42.56.040. WSR 15-02-072, § 132F-116-010, filed 1/6/15, effective 2/6/15; Order 29, § 132F-116-010, filed 10/10/75; Order 7, § 132F-116-010, filed 1/12/73.]

NEW SECTION

WAC 132F-116-011 General parking regulations. (1) No person may use any vehicle parked on campus as a living unit without specific approval from the campus safety director. Violators may be cited and/or towed.

(2) Vehicles are to be maintained in operating condition at all times while on campus, except those in a garage, research facility, or automotive shop designated for parking such vehicles by the campus safety director or designee.

(3) A vehicle which appears to be abandoned, with or without a current parking product or license plate(s), may be impounded after an attempt is made to locate and notify the owner of the impending action.

(4) Stopped or parked vehicles must do so in line with the flow of traffic where they are located.

(5) Excessive idling while on the Seattle College District VI campuses prohibited.

(6) Idling permitted. To the extent necessary for the specified purpose, idling is permitted in the following cases:

(a) Police, sheriff, or other law enforcement vehicles, including meter patrols, as required for safe and effective performance;

(b) Fire department vehicles, ambulances, and other emergency vehicles when responding to an emergency or when the use of special equipment requires that the engines remain in operation;

(c) Construction or demolition equipment or other machinery when actually employed at the site of such work, and only to the extent necessary for efficient operation;

(d) Trucks, buses, or automobiles equipped with lift gates, winches, or other devices powered by take-offs from their engines, to the extent necessary to allow use of those devices provided; however, that this subsection does not authorize idling solely for the purpose of operating any heating device, radio, power-assisted brakes, steering, seat adjustment, or any luxury device not then required for safe operation of the vehicle;

(e) Buses or other mass transit vehicles while operated on a regular schedule;

(f) Insofar as necessary for diagnosis, adjustment, or testing, vehicles undergoing repair or maintenance; but only when on the premises of the owner or person performing the work;

(g) Any vehicle when required in an emergency for the protection of life, health, or property.

(7) Notices. The security director or transportation coordinator shall cause to be placed such notices as he may deem necessary to inform drivers of the prohibition against excessive vehicle idling; however, actual knowledge of the prohibition is not an element of an offense under this chapter.

[]

NEW SECTION

WAC 132F-116-041 Permits required for all motorized vehicles parked on campus. No person shall park or leave any motor vehicle, whether attended or unattended, upon the campus without a permit issued by the district. Permission to park on campus will be shown by the display of a valid visual permit or registration of a valid virtual permit. Persons wishing to obtain virtual permits are required to complete a registration process established by commuter services and pay the corresponding fee. A vehicle associated with a virtual permit must have a visible license plate.

(1) A valid permit is:

(a) A current unexpired, visual permit issued by commuter services, or an authorized agent designated by commuter services, and displayed in accordance with the instructions given at the time of issuance;

(b) A current unexpired virtual permit issued by commuter services, or an authorized agent, that is associated with a vehicle's license plate.

(i) Vehicles with virtual permits associated with a vehicle's license plate must have the license plate exposed to the lane of travel and be clearly visible, unobstructed, and able to be read by the LPR equipment.

(ii) Parking permits are not transferable.

(2) Commuter services reserve the right to refuse to issue parking products.

(3) The district may allow persons without permits to drive through the campus without parking.

(a) This section does not apply to vehicles that the district owns or operates.

(b) Any vehicle, attended or unattended, must have a valid parking permit when parked on the campus unless the vehicle is:

(i) Parked in a metered parking space with meter payment;

(ii) Parked in a loading zone in compliance with posted limits;

(iii) Parked in a lot that does not require a permit during specified times as posted;

(iv) Parked in a posted short-term parking space in compliance with posted time limits; or

(v) A public safety or emergency vehicle parked while performing emergency services.

[]

NEW SECTION

WAC 132F-116-042 Carpool and disability parking permits. (1)

Carpool permits may be issued to employees and students. One transferable permit will be issued for each carpool. This permit is transferable only among the registered members of the carpool. This permit must be displayed in accordance with the instructions provided with the permit. A carpool permit may be used with only one vehicle per day. Members of the campus carpool program must register their carpool with commuter services.

(2) The district provides parking for persons with disabilities in accordance with the requirements of federal and state law, including parking spots reserved for persons who display a state of Washington disabled driver permit. Commuter services shall make alternative parking available for short-term disabilities.

(3) Use of disability accommodation parking on campus requires payment for parking in the form of a campus parking permit issued by commuter services, payment at a pay station, or payment at a parking meter for the designated space in which the vehicle is parked.

[]

NEW SECTION

WAC 132F-116-043 Transfer of parking products limited. (1) As

provided herein, a permit holder may transfer a permit between motor vehicles when used by that permit holder. Improper transfer of a permit shall include, but is not limited to, the resale, lending, or transfer of a parking product or parking permit other than as provided

herein. Multiple motor vehicles may be associated with a virtual permit, but only one vehicle associated with a specific virtual permit may be parked on campus per calendar day. If more than one vehicle associated with a virtual permit is parked on campus during the course of a day, all additional vehicles are subject to a parking citation unless each additionally parked vehicle has a separate valid permit.

(2) Permits displaying license plate numbers shall be used only in the vehicles whose license number is written on the permit.

[]

NEW SECTION

WAC 132F-116-044 Responsibility of person(s) to whom parking product issued. (1) The person(s) to whom a parking product is issued is responsible for paying for the product until it expires or is returned to commuter services unless stated otherwise in these rules. All associated outstanding commuter services related fees and fines must be satisfactorily settled before a parking product may be issued, reissued, or renewed.

(2) When requested, a parking permit holder shall provide commuter services with the current valid license plate number of any vehicle(s) with which they intend to use a parking permit.

(3) The person(s) to whom a parking product is issued is responsible for any violations of this chapter associated with a vehicle with which the product is used during the time the product is valid and up to the date and time the product expires or is reported lost or stolen.

(4) Commuter services may also require proof of vehicle registration for certain designated parking products.

[]

NEW SECTION

WAC 132F-116-051 Display of permits. (1) Visual permits shall be prominently displayed in accordance with the instructions printed on the permit and shall be fully visible from the exterior of the vehicle. Virtual permits are associated with a vehicle's license plate, and accordingly, a vehicle associated with a virtual permit must have its license plate exposed to the lane of travel and be clearly visible, unobstructed, and able to be read by the LPR equipment.

(2) Instructions relating to the display and assignment of a permit to a vehicle(s) will be provided by commuter services at the time of issuance and are located on the commuter services website.

(3) Motorcycle and scooter permits shall be registered with commuter services.

(4) Commuter services may authorize certain designated virtual permit holders to use a vehicle's license plate as a permit. Certain designated virtual permits may require the completion of a permit registration process. Virtual permit instructions will be provided at the time of permit issuance.

[]

NEW SECTION

WAC 132F-116-052 Allocation of parking spaces. The parking spaces available on campus shall be allocated in a manner that will best attain the objectives of these rules.

During special occasions causing additional or heavy traffic and during emergencies, the district may impose additional traffic and parking policies to achieve the specified objectives of this chapter.

[]

NEW SECTION

WAC 132F-116-053 Overtime parking violations. After a motor vehicle has been cited for parking beyond the time posted, the vehicle may be cited at a frequency of one additional citation for each period of time equal to the maximum time limit posted for the space.

[]

NEW SECTION

WAC 132F-116-061 Parking fees. Seattle College District VI board of trustees shall adopt parking fees, specifying the charge per time period, day, quarter, and year. The fee structure shall be on file at individual college business offices and the district purchasing office.

Commuter services shall sell quarterly and yearly permits to the districts' employees and students. Students who are registered for six or more credits shall purchase parking at the student rate, even if the student is working as an employee of the college or district.

Commuter services may also sell hourly, daily, quarterly, and yearly permits at their discretion to regular visitors. A person who parks a vehicle in a metered parking space must pay for time used during posted times of operation.

Fees collected from the sale of parking permits shall be used to help offset the expenses of the district's commute trip reduction program, to help maintain the parking facilities at each campus, and to assist with funding of the positions necessary to enforce these parking rules and regulations, and other purposes deemed appropriate.

[]

NEW SECTION

WAC 132F-116-062 Parking within designated spaces. (1) No motor vehicle shall be parked on the campus except in areas designated as parking areas, unless expressly authorized by commuter services or campus safety.

(2) No vehicle shall be parked so as to occupy any portion of more than one parking space as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not excuse a violation of this section.

(3) No person shall stop, stand, or park any motor vehicle so as to create a safety hazard, obstruct traffic along or upon any street, parking lot drive aisle, or roadway, or obstruct pedestrian movement along any plaza, path, or sidewalk unless expressly authorized by commuter services or campus safety.

(4) No vehicle shall park in a parking space designated for persons with disabilities without displaying a disabled license plate, card, or decal issued by the Washington state department of licensing (or from equivalent other jurisdictions in other states) that indicates that an occupant of the vehicle is disabled. Such vehicle must be used to transport the person with disabilities.

[]

NEW SECTION**WAC 132F-116-063 Denial or revocation of parking privileges.**

Commuter services reserve the right to deny or revoke parking privileges to anyone who has:

- (1) Had a permit revoked;
- (2) Falsified a parking application or registration;
- (3) Counterfeited or altered a permit;
- (4) Failed to pay outstanding citations;
- (5) Been found to be in possession of or using a lost, refunded, or stolen permit;
- (6) Removed an immobilization device without authorization;
- (7) Been banned from campus;
- (8) Failed to comply with commuter services directions;
- (9) Damaged campus property while driving or parking on campus;
- (10) Verbally abused or assaulted staff, including commuter services staff.

[]

NEW SECTION

WAC 132F-116-064 Parking—Operator's responsibility. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first:

- (1) Stopping the engine, locking the ignition, and removing the key;

(2) Effectively setting the brake and transmission to prevent movement of the vehicle.

[]

NEW SECTION

WAC 132F-116-066 Regulatory signs, markings, barricades, etc.

(1) The district may erect permanent or temporary signs, barricades, and other structures, and paint marks and other directions upon the streets and parking areas within campus. Drivers of vehicles shall obey the signs, barricades, structures, markings, and directions. Drivers of vehicles shall comply with directions given to them by commuter services employees, campus facilities employees, campus safety officers, or authorized contractors in the control and regulation of traffic. Drivers shall also comply with directions given to them by commuter services employees, campus safety officers, or authorized contractors in the assignment of parking space and in the collection of parking fees.

(2) No person without authorization from the district shall move, deface, or in any way change a sign, barricade, structure, marking, or direction that regulates traffic or parking.

[]

NEW SECTION

WAC 132F-116-067 Speed. No vehicle shall be operated on the campus at a speed in excess of posted limits. If no limit is posted, no vehicle shall exceed 20 miles per hour or such lower speed as is reasonable and prudent in the circumstances.

[]

NEW SECTION

WAC 132F-116-069 Pedestrian's right of way. (1) The operator of a vehicle shall yield right of way to any pedestrian. However, no pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impossible or unsafe for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass that vehicle.

(3) Where a sidewalk is provided, pedestrians shall proceed upon the sidewalk.

[]

NEW SECTION**WAC 132F-116-071 Motorcycles, bicycles, EPAMDs, and scooters.**

(1) Motorcycles, bicycles, EPAMDs, and scooters are subject to all traffic rules controlling other motor vehicles.

(2) Motorcycles and motorized scooters must be parked in designated motorcycle parking areas.

(3) Motorcycles and motorized scooters are not permitted on paths, sidewalks, or authorized bicycle or pedestrian areas, or in buildings at any time.

(4) Bicycles shall be parked in designated areas only. Improperly parked bicycles may be impounded and a citation and fine imposed upon the owner.

(5) No bicycles, EPAMDs, or foot-propelled devices shall be operated on campus corridors, hallways, or buildings unless their use is required as part of the educational process in an authorized program, or authorized by campus personnel. A "foot-propelled device" is a wheeled device designed or used for recreation or transportation including, but not limited to, skateboards, roller skates, and roller blades.

[]

NEW SECTION

WAC 132F-116-072 Issuance of parking citations. Upon probable cause that a violation of these rules has occurred, a campus safety officer, commuter services employee, or contractor designated by commuter services may issue a citation setting forth the date, the approximate time, the locality, the nature of the violation, the license plate number, infraction, officer, and the amount of fine(s). The citation shall be served on the person responsible for the violation by: Attaching a copy of the citation to, or placing it prominently within, the vehicle allegedly involved in the violation; mailing a copy of the citation to the person responsible; or serving a copy of the citation personally on the person responsible.

[]

NEW SECTION

WAC 132F-116-073 Fines, immobilization, and impounding. (1) The current schedule of fines shall be published by the district and made available for review online and prominently displayed on campus.

(2) All fines are due upon receipt of the citation and must be paid as designated on the citation within 20 calendar days from the date of the citation. Fines must be delivered in person to a college cashier's office, paid online, or postmarked on or before the due date specified in these rules to avoid additional penalties. If any citation has neither been paid nor appealed after 20 calendar days from the date of the citation, the institution shall impose an additional fine of \$10 per offense and may:

(a) Impound or immobilize the violator's vehicle;

- (b) Deny future parking privileges to the violator;
- (c) Refuse to issue keys to a violator who is an employee or student;
- (d) Refer outstanding balances associated with unpaid fines for collection in accordance with applicable statutes and institutional procedure.

(3) In addition to imposing fines, campus safety officers, commuter services employees, or authorized contractors or agents may immobilize and/or impound any vehicle parked on campus in violation of these rules. Grounds for impounding or immobilizing vehicles shall include, but not be limited to, the following:

- (a) Blocking a roadway so as to impede the flow of traffic;
- (b) Blocking a walkway so as to impede the flow of pedestrian traffic;
- (c) Blocking a fire hydrant or fire lane;
- (d) Creating a safety hazard;
- (e) Blocking another legally parked vehicle;
- (f) Parking in a marked "tow-away" zone;
- (g) Leaving a vehicle unattended on campus for longer than two days, unless the vehicle has a valid student housing resident permit;
- (h) Failing to pay a fine(s) imposed under this chapter;
- (i) Parking a vehicle on campus that has no license plate(s) and no observable vehicle identification number.

(4) Not more than one business day after impoundment or immobilization of any motor vehicle, commuter services shall mail a notice to the registered owner of the vehicle and to any other person who claims the right to possession of the vehicle, if those persons can be identified. Similar notice shall be given to each person who seeks to redeem an immobilized or impounded motor vehicle. If a motor vehicle is redeemed prior to the mailing of the notice, the notice may not be mailed. The notice shall contain the date of immobilization or impoundment, reason for the action, the location of the motor vehicle if impounded, redemption procedures, and an opportunity to contest the immobilization or impoundment. The institutions shall not be liable for loss or damage of any kind resulting from impounding, immobilization, or storage.

All parking fines, fees, the cost of immobilization and/or impoundment (e.g., booting, towing, and storage fees) must be paid prior to the removal of an immobilization device or the release of an impounded motor vehicle. Impounded motor vehicles shall be redeemed only by the registered owner who has a valid driver's license or a person authorized by the registered owner who has a valid driver's license and who produces proof of authorization and signs a receipt for the motor vehicle. Proof of ownership may be required before a vehicle is released from immobilization or impound.

(5) An accumulation of traffic violations by a student may be cause for discipline under the student conduct code of the student's college.

[]

NEW SECTION

WAC 132F-116-074 Appeals of fines, immobilization, and impoundments. (1) Any immobilization, impoundment, or fine under this chap-

ter may be appealed in writing, or when available, appealed through the online parking portal, within 20 calendar days from the date of the citation, the notice of immobilization, or the notice of impoundment. The notice of appeal must be addressed to the location indicated on the citation, notice of immobilization, or notice of impoundment. Commuter services will make appeal forms available at the commuter services office. The notice of appeal must explain the reasons for contesting the citation, immobilization, or impoundment. If the person who files a notice of appeal desires an opportunity to make an oral statement in the appeal, the request to make an oral statement must be included in the notice of appeal. Online appeal instructions can be accessed through each college website.

(2) The hearing on the appeal shall be a brief adjudicative hearing as provided by WAC 132F-108-050. If a request for an oral statement was made, the presiding officer or officers shall provide reasonable notice of the time and place for receiving the oral statement. The presiding officer(s) shall review the notice of appeal and provide a written decision to the person submitting the appeal within 10 calendar days of taking action. If the appeal is denied, the decision shall include a brief statement of its reasons and information about the opportunity for further review. Any fine owed on a written decision that is not further appealed as provided in subsection (3) of this section shall be paid within 21 calendar days after service of the decision.

(3) A person wishing to contest the written decision may request a review by contacting the college issuing the citation in writing within 21 calendar days after service of the decision. The request for review shall explain why the decision was incorrect. The reviewing officer shall, within 20 calendar days of the date of the request, review the matter and render a final written decision, which shall include a brief statement of its reasons and information about the opportunity to appeal the decision to the district court. Any final decision of the reviewing officer not appealed as provided in subsection (4) of this section shall be paid within 10 calendar days after service of the decision.

(4) A person wishing to appeal a final decision of the citation hearing office to the district court may, within 10 calendar days of service of the final decision, file a written notice with the institution. Documents relating to the appeal shall immediately be forwarded to the district court, which shall have jurisdiction to hear the appeal de novo. No appeal to the district court may be taken unless the citation has been contested as provided in subsections (2) and (3) of this section.

[]

NEW SECTION

WAC 132F-116-076 Permit and parking product revocations. Parking products are the property of the district and may be recalled by the issuer for any of the following reasons:

(1) When the purpose for which the parking product was issued changes or no longer exists;

(2) When a parking product is used on an unauthorized vehicle, by an unauthorized individual, or in an unauthorized manner;

- (3) Falsification on a parking product application;
- (4) Multiple or continued violations of parking rules;
- (5) Counterfeiting, altering, or using a lost/stolen parking product;
- (6) Failure to comply with a final decision of the citation review committee, or institutional hearing officer;
- (7) Nonpayment of parking product fees or parking fines.

[]

NEW SECTION

WAC 132F-116-077 Right to appeal revocation. Parking product revocations under this chapter may be appealed pursuant to the procedures in WAC 132F-116-005.

[]

NEW SECTION

WAC 132F-116-079 Motorized vehicles—Responsible parties for illegal parking. (1) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is registered to a permit holder, there shall be a prima facie presumption that the permit holder was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(2) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is not registered to a permit holder, there shall be a prima facie presumption that the registered owner of the motor vehicle was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(3) This section shall not apply to district-operated motor vehicles. The operator of a district-owned motor vehicle is personally liable for any citation issued to the motor vehicle.

(4) A third party other than the permit holder or registered owner can assume responsibility for a citation by either paying the citation within 20 calendar days of the date of the citation or submitting a petition where the third party agrees to take responsibility.

(5) When mitigating circumstances exist, authorized commuter services personnel may reduce or dismiss fines.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132F-116-020 Parking—Permits and restrictions.

WAC 132F-116-045	Ticketing and enforcement of traffic and parking rules and regulations.
WAC 132F-116-055	Permit revocations.
WAC 132F-116-065	Fees and fee payments.
WAC 132F-116-075	Reciprocity of parking privileges.
WAC 132F-116-085	Disabled parking.

WSR 22-19-024
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed September 13, 2022, 8:41 a.m.]

Supplemental Notice to WSR 22-07-071.

Preproposal statement of inquiry was filed as WSR 20-15-127.

Title of Rule and Other Identifying Information: Rule making to implement HB 1841, chapter 170, Laws of 2020, which pertains to the establishment of minimum crew size on certain trains. This rule making is recorded as Docket TR-200536 at the utilities and transportation commission (UTC).

Hearing Location(s): On November 22, 2022, at 1:30 p.m., Zoom <https://utc-wa-gov.zoom.us/j/89372464039?pwd=Vmw1R2pLREZwdlpNM2NKSkE3dHZz09>. Public hearing to consider adoption of the proposed rule.

Date of Intended Adoption: November 22, 2022.

Submit Written Comments to: Amanda Maxwell, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email records@utc.wa.gov, 360-664-1160, by November 7, 2022.

Assistance for Persons with Disabilities: Contact human resources, phone 360-664-1160, TTY 360-586-8203, email human_resources@utc.wa.gov, by November 7, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2020, the legislature enacted chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. The legislation also added new sections to, and repealed specific sections of, chapter 81.40 RCW, necessitating a rule making to define Class I railroads, provide automatic waivers, and establish a process for UTC-ordered crew size increases.

Reasons Supporting Proposal: In 2020, the legislature enacted the chapter 170, Laws of 2020, which provided UTC with revised regulatory authority over train crew size. This rule making enables UTC to implement the new law, establishing rules for UTC to apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160; chapter 81.40 RCW. RCW 81.40.150(1) states that UTC's "paramount obligation" is the furtherance of safety in railroad transportation. RCW 81.40.025 (4)(a) states that UTC "may order railroad carriers to increase the number of railroad employees in areas of increased risk to the public, passengers, railroad employees, or the environment ..."

Statute Being Implemented: RCW 81.40.005 through [81.40].025, [81.40].150.

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

Name of Proponent: UTC, governmental.

Name of Agency Personnel Responsible for Drafting: Betty Young, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-292-5470; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1110.

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 UTC as it is not one of the listed agencies in RCW 34.05.328 (5) (a) (i).

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. UTC is proposing to adopt rules that enable UTC to implement the law, apply specific definitions in the law, require minimum crew sizes on certain trains, grant automatic waivers to certain railroad carriers, order crew size increases when necessary, and assess fines for violations. On May 6, 2021, UTC mailed a notice to all stakeholders interested in the rule making, providing a copy of the draft rules and an opportunity to respond to a small business economic impact statement (SBEIS) questionnaire. The notice requested that entities affected by the proposed rules provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. UTC did not receive any information in response to the questionnaire. On November 15, 2021, UTC sent a supplemental SBEIS questionnaire to affected entities, providing an additional opportunity to respond. UTC received no responses to the supplemental questionnaire. Based on the information available to it, UTC determined that the proposed rules merely implement the statute as required by the legislature.

September 13, 2022

Amanda Maxwell

Executive Director and Secretary

OTS-3674.2

AMENDATORY SECTION (Amending WSR 18-10-001, filed 4/18/18, effective 5/19/18)

WAC 480-62-125 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Class I railroad company" means a railroad company having annual operating revenues of (~~(\$250 million)~~) \$250,000,000 or more;

"Class II railroad company" means a railroad company having annual operating revenue of less than (~~(\$250 million)~~) \$250,000,000, but more than (~~(\$20 million)~~) \$20,000,000; and

"Class III railroad company" means a railroad company having annual operating revenues of (~~(\$20 million)~~) \$20,000,000 or less.

"Commission" means the Washington utilities and transportation commission.

"Contract crew transportation company" means any person, organization, company or other entity that operates one or more contract crew transportation vehicles.

"Contract crew transportation vehicle" means every motor vehicle designed to transport (~~(fifteen)~~) 15 or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers and used primarily to provide railroad crew transportation.

"Department of labor and industries" means the Washington state department of labor and industries.

"Department of transportation" means the Washington state department of transportation.

"On track equipment" means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

"Passenger carrying vehicle" means those buses, vans, trucks, and cars owned, operated, and maintained by a railroad company primarily used to transport railroad employees, other than in the cab of such vehicles, and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

"Railroad" means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

"Railroad company" means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

"Railroad police officer" means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

"Remote-control area" means any place remote-control operations are conducted on a railroad.

"Remote-control operations" means (~~controlling~~) control of the movement of locomotives through the use of radio transmitter and receiver systems by persons not physically located at the controls within the confines of a locomotive cab.

"Remote-control zone" means a designated restricted access area (~~where access is restricted~~) in which remote-control operations may occur under alternative point protection procedures.

"State" means the state of Washington.

[Statutory Authority: RCW 80.01.040, 81.04.160, and 81.61.050. WSR 18-10-001 (Docket TR-170780, General Order R-591), § 480-62-125, filed 4/18/18, effective 5/19/18. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 04-11-023 (Docket No. TR-021465, General Order No. R-514), § 480-62-125, filed 5/11/04, effective 6/11/04. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. WSR 01-04-026 (Docket No. TR-981102, General Order No. R-477), § 480-62-125, filed 1/30/01, effective 3/2/01.]

NEW SECTION

WAC 480-62-255 Minimum crew size on certain trains. (1) For the purpose of this section, unless the language or context indicates that a different meaning is clearly intended, the following definitions apply:

"Class I" means a railroad carrier designated as a class I railroad by the United States surface transportation board and its subsidiaries or is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the United States surface transportation board designation as a class I railroad carrier.

"Class III" means a railroad carrier designated as a class III railroad by the United States surface transportation board.

"Crewmember" has the same meaning as "operating craft employee" as defined in this section.

"Operating craft employee" means a person employed by a railroad carrier and identified as train or yard crew as defined in 49 C.F.R. Part 218.5.

"Other railroad carrier" means a railroad carrier that is not a class I carrier.

"Railroad carrier" means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns. "Railroad carrier" includes any officers and agents of the railroad carrier.

(2) Any person, corporation, company, or officer of the court operating any railroad, railway, or any part of any railroad or railway, in the state as a common carrier of freight or passengers shall operate and manage all trains and switching assignments over its road with no less than two crewmembers.

(3) The minimum crew size requirement of subsection (2) of this section does not apply to:

(a) Class III railroad carriers operating on their roads while at a speed of 25 miles per hour or less; or

(b) Other railroad carriers in possession of an effective automatic waiver issued under subsection (4) of this section.

(4) Other railroad carriers operating in the state on or after June 11, 2020, receive an automatic waiver of the minimum train crew size requirements of subsection (2) of this section that shall remain in effect until the commission terminates the effectiveness of such a waiver by order.

(5) The commission may order railroad carriers to increase the number of railroad employees, to require additional crewmembers, or direct the placement of additional crewmembers if the commission determines that the increase is necessary to protect the safety, health, and welfare of the public, passengers, or railroad employees, to prevent harm to the environment or to address site specific safety or security hazards. In issuing any order to increase the number of railroad employees, the commission may consider, but is not limited to, the factors found in RCW 81.40.025 (4) (b).

(6) Any railroad carrier in violation of this section may be subject to fines of not less than \$1,000 and not more than \$100,000 for each offense, as determined by the commission through order. In the event of a serious injury or fatality the commission may impose fines exceeding \$100,000 per offense.

[]

WSR 22-19-026

PROPOSED RULES

COUNTY ROAD

ADMINISTRATION BOARD

[Filed September 13, 2022, 2:10 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending chapter 136-400 WAC to make changes to the County Ferry capital improvement program.

Hearing Location(s): On October 27, 2022, at 2:00 p.m., at 1800 Continental Place, Mount Vernon, WA 98273. County road administration board (CRAB) meeting will be held in the Skagit County board of county commissioners hearing room.

Date of Intended Adoption: October 27, 2022.

Submit Written Comments to: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, email Drew.Woods@crab.wa.gov, by October 21, 2022.

Assistance for Persons with Disabilities: Contact Drew Woods, phone 360-753-5989, TTY 800-883-6384, email Drew.Woods@crab.wa.gov, by October 21, 2022.

Reasons Supporting Proposal: Clarify how often the county ferry capital investment program may be used to replace a county-owned vehicle ferry.

Statutory Authority for Adoption: RCW 36.78.07[0].

Statute Being Implemented: RCW 47.56.725(4).

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: CRAB, governmental.

Name of Agency Personnel Responsible for Drafting: Derek Pohle, 2402 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989; Implementation: Steve Johnson, 2402 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989; and Enforcement: Drew Woods, 2402 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under chapter 36.78 RCW.

Scope of exemption for rule proposal:

Is fully exempt.

September 13, 2022

Jane Wall

Executive Director

OTS-4092.1

AMENDATORY SECTION (Amending WSR 08-10-026, filed 4/28/08, effective 5/29/08)

WAC 136-400-020 County and project eligibility. (1) Counties eligible to apply for county ferry capital improvement funds are Pierce, Skagit, Wahkiakum, and Whatcom.

(2) For the project to be eligible it must be included in both the county's six-year transportation program and its ferry system (~~(fourteen-year)~~) 14-year long range capital improvement plan as described in WAC 136-400-040.

(3) Any county holding an approved and executed county ferry capital improvement program contract is ineligible to submit a project funding application for additional ferry capital improvement funds until the existing contract is fully performed or has been mutually terminated.

(4) Once a county has received funding for vessel replacement under this program, the county is no longer eligible for future replacement of that vessel as referenced in WAC 136-400-030(1). A county will remain eligible for project types referenced in WAC 136-400-030 (2), (3), (4) and (5).

[Statutory Authority: Chapter 36.79 RCW. WSR 08-10-026, § 136-400-020, filed 4/28/08, effective 5/29/08. Statutory Authority: 1991 c 310 § 1(4). WSR 91-21-138 (Order 85), § 136-400-020, filed 10/23/91, effective 11/23/91.]

AMENDATORY SECTION (Amending WSR 08-10-026, filed 4/28/08, effective 5/29/08)

WAC 136-400-030 Definition of ferry capital improvement projects. County ferry capital improvement projects shall include the following:

(1) Purchase of a new vessel((s)) which replaces an existing vessel;

(2) Major vessel refurbishment (e.g., engines, structural steel, controls) that substantially extends the life of the vessel;

(3) Facility refurbishment/replacement (e.g., complete replacement, major rebuilding or redecking of a dock) that substantially extends the life of the facility;

(4) Installation of items that substantially improve ferry facilities or operations; and/or

(5) Construction of infrastructure that provides new or additional access or increases the capacity of terminal facilities.

[Statutory Authority: Chapter 36.79 RCW. WSR 08-10-026, § 136-400-030, filed 4/28/08, effective 5/29/08. Statutory Authority: 1991 c 310 § 1(4). WSR 91-21-138 (Order 85), § 136-400-030, filed 10/23/91, effective 11/23/91.]

AMENDATORY SECTION (Amending WSR 08-10-026, filed 4/28/08, effective 5/29/08)

WAC 136-400-080 Funding by the legislature. County ferry capital improvement project requests approved by the county road administration board shall be submitted to the legislature for funding out of amounts available under RCW 46.68.090 (2)(h) as part of the biennial or supplemental budget request of the county road administration board.

The county road administration board shall, within (~~ten~~) 10 days of the signing of the transportation budget, notify each county having an approved project of such approval and of the amount of county ferry capital improvement funding (~~allocated~~) appropriated to each approved project. The county road administration board shall offer each county a contract for each approved project setting forth the terms and conditions under which funds will be provided.

[Statutory Authority: Chapter 36.79 RCW. WSR 08-10-026, § 136-400-080, filed 4/28/08, effective 5/29/08; WSR 99-01-021, § 136-400-080, filed 12/7/98, effective 1/7/99. Statutory Authority: 1991 c 310 § 1(4). WSR 91-21-138 (Order 85), § 136-400-080, filed 10/23/91, effective 11/23/91.]

WSR 22-19-028

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed September 13, 2022, 4:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-061.

Title of Rule and Other Identifying Information: Student conduct code, chapter 172-121 WAC.

Hearing Location(s): On November 29, 2022, at 8:00 a.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: December 9, 2022.

Submit Written Comments to: Annika Scharosch, 211 Tawanka [Hall], Cheney, WA 99004, email ascharosch@ewu.edu, website <https://inside.ewu.edu/policies>, by November 30, 2022.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email ascharosch@ewu.edu, by November 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates Eastern Washington University's (EWU) student conduct code to clarify jurisdiction, update types of violations, reorganize sections to make it easier to follow, and provide additional clarification in areas where needed.

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: RCW 28B.10.902.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; Implementation and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

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. Not subject to RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 13, 2022

Annika Scharosch

Associate Vice President for

Civil Rights, Compliance and Enterprise Risk Management

OTS-4068.1

PART I: ADMINISTRATION, APPLICATION, DEFINITIONS

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Brief hearing" refers to a brief conduct review hearing before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level crimes.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, the university may initiate the student conduct process on its own behalf.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a brief hearing or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the (~~dean of student's~~) student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion, involve a Title IX complaint, or that could constitute felony-level crimes.

"Hearing authority" refers to the decision-maker in a conduct review hearing.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on (~~his or her~~) their personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment or sexual assault, as defined in WAC 172-121-200.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person (~~currently~~) who is enrolled or has been enrolled at the university for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX complaint" means a formal signed complaint from a current student, applicant, employee, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity

within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-102, § 172-121-020, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-020, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-020, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-020, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-020, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-020, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-020, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-020, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-040 Jurisdiction. Eastern Washington University shall have jurisdiction over student behavior which occurs on university premises or during a university-sponsored program or activity. The university may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects the university (~~((and/or the pursuit of its objectives and the university determines that a significant university interest is affected))~~) or a university community member. The university has sole discretion in determining what conduct adversely impacts the university (~~((and/or the pursuit of its objectives))~~) or a university community member.

The student conduct code shall apply to conduct without regard to a student's academic status at the time the conduct took place. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods, breaks in enrollment, or outside of normal business hours. The university may continue a student conduct process even after a student withdraws or graduates.

[Statutory Authority: RCW 28B.35.120(12). WSR 13-24-123, § 172-121-040, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-040, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-070 Conduct review officials. (1) **The director of SRR** or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;
- (d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and
- (e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university or university community (~~(and/or the pursuit of its objectives)~~) and whether the conduct process should be initiated.

(2) **Conduct review officer (CRO):** The university president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over brief hearings and full conduct hearings under this chapter. For brief hearings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer, in full hearings the CRO has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
- (j) Take official notice of facts pursuant to RCW 34.05.452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) **Student disciplinary council:** The council serves as the decision maker for full hearings with respect to a finding of responsibility.

ity. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. Appointment of council pool members is as follows:

(i) Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: (~~The dean of students or designee shall serve as the CRO and chair of~~) Designated CRO who chairs council proceedings;

(iii) Vacancies: Council pool (~~vacancies~~) shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a full hearing, the (~~dean of students~~) director or designee, shall (~~select~~) identify available members from the council pool to serve as the session council. Each session council must include three members. The council may consist of students, staff, or faculty members. Full hearings are determined by a majority vote of the council.

(4) **Investigator:** For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the director may assign a complaint to an investigator to conduct an investigation. The investigator will provide a written investigative report to the director.

(5) **Presenter in cases of a full hearing**(~~(r)~~): A person will present a case against the respondent on behalf of the university. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of the university.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-102, § 172-121-070, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-070, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-070, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-070, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-070, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-070, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-070, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-070, filed 5/20/09, effective 6/20/09.]

PART II: COMPLAINTS AND CONDUCT PROCEDURES

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person or the university may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities (~~(†)~~) (www.inside.ewu.edu/srr); or

(ii) Title IX coordinator (~~(†-or~~

~~(iii) The office of the dean of students)~~) (www.inside.ewu.edu/titleix).

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct or interpersonal violence, may lead to suspension or expulsion and/or felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122.

(3) Sexual misconduct and interpersonal violence proceedings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or whether there is a formal Title IX complaint.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within (~~(twenty-four)~~) 24 hours.

(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless (~~(SRR has received)~~) a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process has been received.

The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations include sexual misconduct or interpersonal violence but do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint.

If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be communicated in writing simultaneously to the parties.

SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within (~~nine-~~~~ty~~) 90 days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the (~~ninety~~) 90 days must be based on good cause.

(d) Investigations. The university will investigate (~~all~~) complaints of sexual misconduct and interpersonal violence (~~allegations~~), including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least (~~ten~~) 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least (~~ten~~) 10 days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(e) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate

the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

(f) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct or interpersonal violence that could constitute a crime, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that (~~he or she is~~) they are not required to file a report with local law enforcement. The university will report allegations of sexual misconduct or interpersonal violence to law enforcement or other authorities when it is required to do so under federal, state, and local law.

(4) Supportive measures and interim restrictions. During the complaint review, the director of SRR or Title IX coordinator will review whether any supportive measures or interim restrictions are needed. Supportive measures and interim restrictions are addressed in WAC 172-121-140.

(5) SRR will follow up with the parties as described below.

(a) The director of SRR will contact the respondent, and the complainant in cases of sexual misconduct or interpersonal violence, and provide them with the following information:

(i) The respondent's and complainant's rights under the student conduct code;

(ii) A summary of the allegations the complainant has against the respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct or interpersonal violence, the director of SRR will, in addition to the information specified under (a) of this subsection, provide both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in

notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a prehearing conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, ((he/she)) they may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.

(b) Prehearing conference. If the director of SRR does not dismiss the matter ((he/she)) they will arrange a prehearing conference as described in WAC 172-121-110 unless a respondent is opting to admit responsibility under WAC 172-121-118.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-102, § 172-121-100, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-100, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-100, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-100, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-100, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-100, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-100, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-100, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-110 Notice of allegations and initial scheduling.

(1) Notice of investigation. If the director of SRR refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, de-

scription of the conduct, and the specific sections of this code allegedly violated;

(c) Indicates that the complaint has been assigned to a university investigator and provide the contact information for the investigator;

(d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;

(f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and

(g) Information about supportive measures and resources available to the respondent as well as information about the university's prohibition on retaliation.

(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference. In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must:

(a) Be made in writing;

(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that the university will provide them with an advisor upon requests for the purposes of conducting cross-examination;

(e) Provide information about how to review the evidence gathered prior to the hearing;

(f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process; ((and))

(g) Inform them of the option to admit responsibility under WAC 172-121-118; and

(h) Include a date, time, and location of the prehearing conference.

(3) Follow up with complainant. In all cases alleging sexual misconduct or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the prehearing conference and of their right to attend the conference. The SRR office shall also follow up with the complainant(s) and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the

university will provide an advisor upon request for the purposes of conducting cross-examination.

(4) If additional information is learned during the investigation that may rise to additional allegations, the university must provide the respondent with an updated notice of allegations.

(5) The procedures for the prehearing conference for brief hearings is contained in WAC 172-121-121. The procedures for the prehearing conference for full hearings is contained in WAC 172-121-122.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-110, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-110, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-110, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-110, filed 8/9/17, effective 9/9/17; WSR 13-24-123, § 172-121-110, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-110, filed 5/20/09, effective 6/20/09.]

NEW SECTION

WAC 172-121-118 Admission of responsibility. The university encourages respondents to acknowledge harm and accept responsibility for repairing harm, to the extent possible, experienced as a result of a student's conduct. An investigator, CRO, or presiding officer may offer to the respondent at any time the opportunity to admit responsibility for the alleged misconduct. If the respondent decides to admit responsibility, the respondent will sign a document drafted by SRR taking responsibility. The CRO and/or presiding officer, depending on the type of conduct, will schedule a recorded meeting for the respondent to take responsibility on the record and for the CRO and/or presiding officer to determine the appropriate sanctions under WAC 172-121-400. If the alleged misconduct includes sexual misconduct or interpersonal violence, both parties must consent to this alternative process in writing and the complainant will be notified of the meeting and will have an opportunity to provide a statement about the conduct and its impacts prior to any sanctioning determination.

[]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-121 Brief hearing procedures. (1) Applicability: The conduct review officer (CRO) may hold a brief hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve a Title IX complaint, or felony level criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The respondent, and complainant in cases of sexual misconduct or interpersonal violence, will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In brief hearings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office will schedule a prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the prehearing conference, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate prehearing conferences. The purpose of the prehearing conference is to advise the parties regarding the student conduct process. During the prehearing conference, the CRO will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; (~~and~~)

(g) Review the option for admitting responsibility under WAC 172-121-118; and

(h) Explain possible penalties under the student conduct code.

At the end of the prehearing conference, the CRO will either conduct or schedule a brief hearing with the respondent as set forth in this subsection or arrange for a meeting to take an admission of responsibility under WAC 172-121-118. If proper notice was given of the prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the brief hearing and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A brief hearing may take place immediately following the prehearing conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing. If the brief hearing will be held at a later date or time, the CRO shall schedule the hearing and notify the respondent and, in the case of sexual misconduct or interpersonal violence, the complainant of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the brief hearing, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days.

(a) If the CRO determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO shall dismiss the complaint.

(b) If the CRO determines that the respondent violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(10) Notification. The CRO shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

- (a) The findings shall be based exclusively on the evidence provided at the hearing. The decision must also include:
- (i) Identification of the section of the code alleged to have been violated;
 - (ii) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;
 - (iii) Findings of fact supporting the determination;
 - (iv) Conclusions regarding the application of the code to the facts along with the rationale for each determination;
 - (v) Sanctions and remedies;
 - (vi) Respondent's right to appeal.
- (b) In cases of sexual misconduct or interpersonal violence, the complainant shall be provided with written notice of:
- (i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;
 - (ii) The complainant's right to appeal;
 - (iii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).
- (c) Information regarding the discipline of the respondent will not be released unless:
- (i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or
 - (ii) The misconduct involves a crime of violence or other crime as defined in 42 U.S.C. Sec. 13925(a).
- (11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-121, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-121, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-121, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-121, filed 8/9/17, effective 9/9/17.]

AMENDATORY SECTION (Amending WSR 22-01-090, filed 12/12/21, effective 1/12/22)

WAC 172-121-122 Full hearing procedures. (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime, involve a Title IX complaint, or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference unless the respondent has admitted responsibility under WAC 172-121-118.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. Solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement of that party or witness in reaching a determination regarding responsibility; additionally, the council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office or designee will arrange for a prehearing conference with the parties to advise them about the student conduct process. During the prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and complainant with a copy of the student conduct code and any other relevant university policies;

- (d) Explain the respondent's and complainant's rights and responsibilities under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain possible penalties under the student conduct code;
- (g) Review the option for admitting responsibility under WAC 172-121-118;

(h) Schedule a date for the full hearing; and

~~((h))~~ (i) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the director shall schedule the hearing and notify the respondent and complainant of the date, time, location, participants, and purpose of the hearing. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. ~~((Solely for Title IX complaints, a party or witness's statement made outside of the hearing should not be considered by the board unless: (i) The statement itself is the alleged misconduct (such as a text message, video, or verbal statement); (ii) the party or witness who made the statement appears at the hearing and is willing to answer questions from the parties; or (iii) the statement is adverse to the party who does not appear or is not willing to answer questions (such as a confession of responsibility or admission of providing false information).))~~ The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, or absence of mistake. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing ~~((, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction)).~~ If a respon-

dent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least (~~ten~~) 10 days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under (~~his or her~~) their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena may be served by any suitable person over (~~eighteen~~) 18 years of age, by exhibiting and reading it to the witness, or by giving (~~him or her~~) them a copy thereof, or by leaving such copy at the place of (~~his or her~~) their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(c) The CRO, upon motion by a party or at (~~his or her~~) their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A motion for summary judgment is not permitted for Title IX complaints.

(11) Witnesses.

(a) The complainant, respondent, and the university's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. For Title IX complaints, any decision to exclude a witness shall be explained on the record.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) The complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of any witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does not have an advisor, the complainant and respondent may submit questions in writing to the CRO and the CRO may ask the questions. For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing. The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history (~~solely~~) for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within (~~ten~~) 10 business days from the date of the hearing. The written decision shall also:

- (a) Be correctly captioned identifying EWU and the name of the proceeding;
- (b) Designate all parties and representatives participating in the proceeding;
- (c) Identify the allegations at issue;
- (d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (f) Contain appropriately numbered conclusions regarding the application of university policies and this code to the facts;
- (g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities;
- (h) Contain a statement describing rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

(17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct or interpersonal violence occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(e) Any remedies provided to the complainant. For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.

(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

[Statutory Authority: RCW 28B.35.120(12). WSR 22-01-090, § 172-121-122, filed 12/12/21, effective 1/12/22; WSR 21-01-102, § 172-121-122, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-122, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-122, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-122, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-122, filed 8/9/17, effective 9/9/17.]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-130 Appeals. (1) Basis: Appeals following a brief hearing or full hearing may be filed by the respondent under this section. In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing. Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures that affected the outcome of the matter.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was

sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(f) The Title IX coordinator, investigator, or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a brief hearing, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ~~((ten))~~ 10 business days from service of the council's decision following a full hearing or dismissal of a complaint, or within ~~((twenty-one))~~ 21 calendar days from service of a decision from a brief hearing conducted by the CRO;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.

(3) Stay of sanctions: Sanctions go into effect immediately after the hearing decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed with SRR within five calendar days of the decision. The request for the stay will be reviewed by the CRO or presiding officer who presided over the hearing. The stay may be granted in part or in its entirety, at the discretion of the CRO/presiding officer. The decision will be communicated to the respondent and, for sexual misconduct and interpersonal cases, the complainant. This decision is not subject to appeal.

(4) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students.

(b) For brief hearings, appeals are determined by the dean of students or designee.

(c) For full hearings, appeals are determined by the vice president for student affairs or designee.

~~((4))~~ (5) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

~~((5))~~ (6) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

~~((6))~~ (7) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within ~~((thirty))~~ 30 calendar days of the appeal authority receiving all necessary documentation.

~~((7))~~ (8) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

~~((8))~~ (9) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

~~((9))~~ (10) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the respondent, and, in cases of sexual misconduct or interpersonal violence, notify the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

~~((10))~~ (11) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

~~((11))~~ (12) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-130, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-130, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-130, filed

12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-130, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-130, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-130, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-130, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-210 Sanctions and remedies. If any student or student organization is found to have committed any of the offenses described in WAC (~~(172-121-200)~~) 172-121-300 through 172-121-324, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of the university, the university may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) **Individual student sanctions:**

(a) Admonition: An oral statement to a student that (~~he/she has~~) they have violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of (~~four hundred dollars~~) \$400 against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by the university.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsions may be noted on the student's transcript.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) **Student organizations and/or group sanctions:** Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any

restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by the university;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

(3) **Remedies.** For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-210, filed 9/10/20, effective 10/11/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-06-021, § 172-121-210, filed 2/27/18, effective 3/30/18. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-210, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-210, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-210, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-210, filed 5/20/09, effective 6/20/09.]

PART III: VIOLATIONS

NEW SECTION

WAC 172-121-300 Violations. The university prohibits students from engaging in the conduct described in this section, WAC 172-121-301 through 172-121-324, chapter 172-90 WAC, and relevant university policies. Clubs, organizations, societies, or similarly organized groups in or recognized by the university and/or the associated students of Eastern Washington University are also subject to all of these standards. Violations of these rules and policy may subject a student or student group to disciplinary action by the university. Groups may also be subject to disciplinary action for knowingly failing to exercise preventive measures relative to violations of this code by their members.

[]

NEW SECTION

WAC 172-121-301 Acts of academic dishonesty. Acts violating WAC 172-90-100 are addressed by the academic integrity code, chapter 172-90 WAC, but may also be addressed as violations of this student conduct code.

[]

NEW SECTION

WAC 172-121-302 Abuse, threats, bullying, and harassment. (1) Abuse. Assault and other forms of physical abuse.

(2) Threats. Any conduct or statement that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person.

(3) Bullying. Bullying is behavior that is:

(a) Intentional;

(b) Targeted at an individual or group; and

(c) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

(4) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in subsection (3) (a) or (b) of this section are present:

(a) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(b) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

[]

NEW SECTION

WAC 172-121-303 Domestic violence, dating violence, and stalking. (1) **Domestic violence** means a felony or misdemeanor crime of violence committed by: A current or former spouse or intimate partner of the complainant; a person with whom the complainant shares a child in common; a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; adult persons related by blood or marriage; adult persons who are presently residing together

or who have resided together in the past; and, persons who have a biological or legal parent-child relationship. "Domestic violence" is further defined by 34 U.S.C. Sec. 12291(a)(8).

(2) **Dating violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(a) The length of time the relationship has existed;

(b) The type of relationship; and

(c) The frequency of interaction between the parties involved in the relationship.

(3) **Stalking**. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for their health and/or safety or the health/safety of others; or

(b) Suffer substantial emotional distress.

[]

NEW SECTION

WAC 172-121-304 Sexual misconduct. Sexual misconduct includes, but is not limited to:

(1) **Sexual harassment.** Sexual harassment is conduct that meets one or more of the following:

(a) An EWU employee conditioned the provision of an aid, benefit, or service of the university on the complainant's participation in unwelcome sexual conduct; or

(b) Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the complainant equal access to the university's programs or activities.

In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(2) **Sexual assault.** Any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(a) Rape: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(b) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(d) Statutory rape: Sexual intercourse with a person who is under the age of consent as defined by state law.

(3) **Other forms of inappropriate sexual behavior.** Other forms of inappropriate sexual behavior that do not fall under Title IX or the definition of sexual harassment or interpersonal violence, such as indecent liberties; indecent exposure; sexual exhibitionism; prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

[]

NEW SECTION

WAC 172-121-305 Retaliation. Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this code or because a person has made a report, complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation is prohibited and is a separate violation of this code.

[]

NEW SECTION

WAC 172-121-306 Unauthorized use of electronic or other devices. Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

[]

NEW SECTION

WAC 172-121-307 Property theft or damage. Theft of, damage to, or misuse of another person's or entity's property. This also includes any conduct or statement that, when viewed objectively, threatens to damage another's property.

[]

NEW SECTION

WAC 172-121-308 Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in subsections (1) through (4) of this section. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(1) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(2) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(3) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(4) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

[]

NEW SECTION

WAC 172-121-310 Failure to comply. (1) Failure to comply with lawful and/or reasonable directions of university officials, public health officials, or law enforcement officers;

(2) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(3) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

[]

NEW SECTION

WAC 172-121-311 Trespassing/unauthorized use of access devices.

(1) Trespass. Entering or remaining on university property without authorization.

(2) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

[]

NEW SECTION

WAC 172-121-312 Deception, forgery, fraud, unauthorized representation. (1) Knowingly furnishing false information to the university or a university official.

(2) Forgery, alteration, or misuse of documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose. It also includes situations where a student knowingly obtains, possesses, or uses another person's identification or financial information with the intent to commit a crime.

(3) Forgery, issuing a bad check, or use of another person's access device, such as a debit card, credit card, EBT, or gift card, with intent to defraud.

(4) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

[]

NEW SECTION

WAC 172-121-313 Campus safety. (1) Intentionally activating a false fire alarm.

(2) Making a bomb threat.

(3) Tampering with fire extinguishers, alarms, or safety equipment.

(4) Tampering with elevator controls and/or equipment.

(5) Failure to evacuate during a fire, fire drill, or false alarm.

[]

NEW SECTION

WAC 172-121-314 Alcohol, drugs, and controlled substances. (1) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of 21 consume, possess, distribute, manufacture or sell alcoholic beverages, except as permitted under WAC 172-64-035. Public intoxication is prohibited.

(2) Drugs and paraphernalia.

(a) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(b) Consumption, possession, distribution, manufacture, or sale of marijuana or cannabis is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention). Regardless of age, students and their guests are prohibited from consuming or possessing marijuana (including medical marijuana) or cannabis while on university property or while participating in any university-sponsored activity. Cannabidiol (CBD) is permitted if it contains 0.3 percent tetrahydrocannabinol (THC) or less.

(c) Being under the influence of marijuana or cannabis in public is prohibited. Consumption of marijuana or cannabis by any person under the age of 21 is prohibited.

(d) Being under the influence of any illegal substance, other than marijuana, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

[]

NEW SECTION

WAC 172-121-315 Hazing. (1) Hazing: Is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm to any student at the university.

(2) Examples of hazing include, but are not limited to, causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of the harm identified in subsection (1) of this section, regardless of the person's willingness to participate.

(3) Hazing does not include customary athletic events or other similar contests or competitions.

(4) Students may be held responsible for participating in hazing and/or for conspiring to engage in hazing.

(5) Student organizations, associations, athletic teams, or living groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control violate this rule.

[]

NEW SECTION

WAC 172-121-316 Disruptive conduct. (1) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(2) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

[]

NEW SECTION

WAC 172-121-317 Violations of other laws, regulations, and policies. (1) Any other local, county, state, or federal law that governs a student's behavior that is not specifically included in this code. The decision-maker determines whether or not the violation has occurred based on a preponderance of the evidence. A criminal conviction is not required.

(2) Any other university policies, regulations, contracts, or handbook provisions that are not specifically included in this code.

[]

NEW SECTION

WAC 172-121-318 Public nuisance. In furtherance of the university's interest in maintaining positive relationships with its surrounding communities, the university has the authority to hold students accountable under this code for misconduct within the communities adjacent to a university campus. It is a violation of this code to engage in conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses including, but not limited to, creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.

[]

NEW SECTION

WAC 172-121-319 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to self, another person, or property, regardless of whether or not a person or property is actually harmed. This includes, but is not limited to, operating a motor vehicle or having control over a motor vehicle while under the influence of alcohol, drugs, or both.

[]

NEW SECTION

WAC 172-121-320 Computer abuses. Computer abuses include, but are not limited to:

- (1) Unauthorized use of university computer resources;
- (2) Use of another person's university user name and/or password;
- (3) Use of university computing facilities or resources to interfere with the work of another student, instructor, or university employee;
- (4) Use of university computing facilities or resources to send intimidating, harassing, or threatening messages;
- (5) Use of a computer or software to interfere with normal operations of the university's computing systems;
- (6) Use of the university's computing facilities or resources in violation of any law, including copyright laws; and
- (7) Any violation of the university's computer use policies.

[]

NEW SECTION

WAC 172-121-321 Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

[]

NEW SECTION

WAC 172-121-322 Acts against administration of this code. (1) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(2) Interference with or attempt to interfere with the enforcement of this code including, but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(3) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

[]

NEW SECTION

WAC 172-121-323 Responsibilities for guests. A student, student group, or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

[]

NEW SECTION

WAC 172-121-324 Students studying abroad. Students who participate in any university-sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

- (1) The laws of the host country;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;
- (3) Any other agreements related to the student's study program in the foreign country; and
- (4) The student conduct code.

[]

PART IV: SANCTIONS

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
172-121-210	172-121-400

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-121-200 Violations.

WSR 22-19-059

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 16, 2022, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-008.

Title of Rule and Other Identifying Information: WAC 192-04-145
Brief adjudicative proceedings.

Hearing Location(s): On October 27, 2022, at 9:00 a.m., Microsoft Teams, Meeting ID 285 578 340 328, Passcode EcuvLs, Call-in 564-999-2000, Call-in ID 876 109 274#. Join Teams meeting [https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTcyZTc4Y2YtYmU3MC00MjkzLWFhMmItZDYyNTZmZDgyMjVl%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTcyZTc4Y2YtYmU3MC00MjkzLWFhMmItZDYyNTZmZDgyMjVl%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22f5b90483-feb0-49a0-8e23-8b3e55021c0b%22%7d)

context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22f5b90483-feb0-49a0-8e23-8b3e55021c0b%22%7d.

Date of Intended Adoption: October 31, 2022.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by October 13, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teresa.eckstein@esd.wa.gov, by October 6, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new proceedings create an accelerated path for claims to be adjudicated that will allow the office of administrative hearings (OAH) to resolve a larger number of cases.

Reasons Supporting Proposal: Due to unprecedented unemployment insurance claims during the COVID-19 pandemic, the department and OAH have a backlog of 40,947 pending appeals as of December 31, 2021. For comparison, there were 27,127 pending appeals at the end of 2020, and 2,470 at the end of 2019. This backlog has led to an average wait time of 167.3 days for appeals closed during December of 2021, compared to an average wait time of 31.58 days during December of 2019. The United States Department of Labor's performance metric calls for 60 percent of appeals to be resolved within 30 days and 80 percent of appeals to be resolved within 45 days. In December 2019, the department closed 71 percent of cases within 30 days and 94 percent of cases within 45 days. In December 2021, only two percent of appeals were resolved within 30 days and four percent of appeals within 45 days.

Currently, the department is referring between 400 and 500 cases per day (2,000 to 2,500 per week) to OAH. This trend is expected to continue through the end of the year with continued unemployment insurance claims processing associated with federal pandemic programs, such as the mixed earner unemployment compensation program.

Using the brief adjudicative proceedings authorized by emergency rule filed in WSR 22-08-045, administrative law judges were able to process between 60 and 75 proceedings each week, up from 24 per week for full hearings. From May 16, 2022, through June 24, 2022, OAH processed 1,656 claims.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department (ESD).

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

Name of Proponent: ESD, OAH, governmental.

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, 360-890-3472; Implementation and Enforcement: Brendon Tukey, Spokane Valley, 509-867-7948.

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

A cost-benefit analysis is not required under RCW 34.05.328. This is a procedural rule as defined in RCW 34.05.328 (5)(c)(i)(A) and not a significant legislative rule.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Brief adjudicative proceedings do not expand benefit eligibility. The new proceedings create an accelerated path for claims to be adjudicated. As such, there are no impacts on employers.

September 16, 2022

Dan Zeitlin

Employment System Policy Director

OTS-3641.1

NEW SECTION

WAC 192-04-145 Brief adjudicative proceedings. (1) **Adoption of brief adjudicative proceedings.** Pursuant to RCW 34.05.410 (1)(a), the department hereby adopts the use of brief adjudicative proceedings for use in appeals.

(a) RCW 34.05.488 and 34.05.491 shall not apply to brief adjudicative proceedings under this rule.

(b) Brief adjudicative proceedings will only be used if:

(i) The appeal involves a claim for benefits;

(ii) The appeal is filed by a claimant;

(iii) No employer is an interested party pursuant to WAC 192-04-040; and

(iv) The presiding administrative law judge, in their sole discretion, determines a brief adjudicating proceeding is warranted.

(2) **Procedure for brief adjudicative proceedings.** The following procedural rules will apply to brief adjudicative proceedings:

(a) An administrative law judge with the office of administrative hearings will conduct the brief adjudicative proceeding.

(b) Not less than seven days before the date of the hearing, the office of administrative hearings shall serve notice on the claimant pursuant to WAC 10-08-040 that a brief adjudicative proceeding will occur. The notice of hearing will contain the following:

(i) Notice that the claimant may submit additional relevant documentary evidence and sworn oral statements, if desired, along with a date by which these submissions must be made and instructions for doing so;

(ii) Instructions for how the department or claimant may request that the brief adjudicative proceeding may be converted to a regular

proceeding pursuant to subsection (4) of this section and the date by which such request must be submitted; and

(iii) The date of the brief adjudicative proceeding.

(c) The administrative law judge, in their sole discretion, may send a written request for additional evidence from the claimant or the department. The request will contain instructions for how to submit the additional evidence and the date by which additional evidence must be submitted.

(d) The administrative law judge's review will be limited to the record defined in subsection (3) of this section.

(e) If the claimant fails to provide any additional relevant documentary evidence or sworn oral statements, the administrative law judge will affirm the department's determination unless the evidence provided by the department is sufficient to resolve the matter in the claimant's favor.

(f) The administrative law judge shall issue a written decision consistent with WAC 192-04-150.

(3) **Record for brief adjudicative proceeding.** The record with respect to brief adjudicative proceedings will consist of the following:

(a) The department's determination letter;

(b) The claimant's appeal of the determination letter;

(c) All records relied upon by the department in support of its determination letter;

(d) Any additional records submitted by the department;

(e) Any additional records or sworn oral statements submitted by the claimant; and

(f) Any additional evidence submitted by the parties at the written request of the administrative law judge.

(4) **Conversion of brief adjudicative proceeding to regular proceeding.**

(a) A brief adjudicative proceeding will be converted to a regular proceeding if:

(i) The claimant files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(ii) The department files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(iii) The administrative law judge, at any time prior to issuing a written decision, determines the brief adjudicative proceeding shall be converted to a regular proceeding. Reasons the administrative law judge may convert the brief adjudicative proceeding to a regular proceeding may include, but are not limited to:

(A) The use of the brief adjudicative proceeding procedures violates any provision of law;

(B) The protection of the public interest requires that notice and an opportunity to be heard be given to persons other than the claimant and the department;

(C) A regular proceeding is required to adequately develop the record and decide the issues in the appeal; or

(D) The issues and interests involved otherwise warrant the use of the procedures in a regular proceeding.

(b) When a brief adjudicative proceeding is converted to a regular proceeding, the office of administrative hearings shall issue a new notice of hearing.

(5) **Right to petition for review.** A party aggrieved by a decision issued by an administrative law judge pursuant to a brief adjudicative proceeding shall have the same right to petition for review as contained in WAC 192-04-060. In conducting this review of the brief adjudicative proceeding, prior to rendering a decision, the commissioner shall order the taking of additional evidence by the office of administrative hearings to be made a part of the record in the case.

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WSR 22-19-063
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed September 16, 2022, 1:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-098.

Title of Rule and Other Identifying Information: Amending WAC 415-02-500 Property division in dissolution, 415-02-510 How can a property division dissolution order give my ex-spouse an interest¹ in my Plan 1 or 2 retirement account?, 415-02-520 How can my Plan 1 or 2 retirement account be split by a property division dissolution order?, 415-02-530 How can a property division dissolution order give my ex-spouse an interest¹ in part of my Plan 3 retirement account?, 415-02-540 How can my Plan 3 retirement account be split¹ by a property division dissolution order?; and repealing WAC 415-02-720 What does the department charge for processing split payments?

Hearing Location(s): On October 27, 2022, at 10:30 a.m., Zoom, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Zoom <https://us02web.zoom.us/j/88589294710>, Meeting ID 885 8929 4710, Dial-in number 253-215-8782.

Date of Intended Adoption: October 28, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504, email drs.rules@drs.wa.gov, by October 17, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, TTY 711, email drs.rules@drs.wa.gov, by October 17, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update and clarify the rules related to property division dissolution orders involving the retirement plan. Updates include the elimination of certain fees.

Reasons Supporting Proposal: As most of the agency's payments are currently made electronically, the cost of collection of these additional fees outweighs the benefit of charging the fee.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.50.500, 41.50.600, 41.50.670, 41.50.680, 41.50.710, 41.50.790.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

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 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 16, 2022

Rubi Reaume

OTS-3615.2

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

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

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

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

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

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

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

If you are in this system and plan:	And the following is true:	Use this section:
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-520
PERS Plan 3, SERS Plan 3, and TRS Plan 3	You are drafting a dissolution order that will be entered before you are vested ((; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse)).	415-02-530
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-540
PERS Plan 2, SERS Plan 2, and TRS Plan 2	The department has already accepted your property division order, and you are considering a transfer to Plan 3.	415-02-550

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

The order must:

- (a) Be entered by a court of competent jurisdiction and enforceable in Washington state;
- (b) Be filed with the department within ~~((ninety))~~ 90 days of the court's entry of the order;
- (c) Establish the right of your ex-spouse to a portion of your retirement;
- (d) Provide the name and date of birth of your ex-spouse;
- (e) Incorporate the applicable language in this section and one of the following: WAC 415-02-510, 415-02-520, 415-02-530, or 415-02-540; and
- (f) Indicate which WAC section was used in support of the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Is there a maximum payment amount that the department will pay to my ex-spouse? Yes. A court may not order the department to pay

more than ((seventy-five)) 75 percent of your monthly retirement allowance to your ex-spouse. See RCW 41.50.670(4).

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

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

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

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

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

(a) **Example 1.** Jane Doe, a nonvested member of PERS Plan 2, and her husband, John Doe, decide to divorce. **WAC 415-02-510** governs dissolution orders of nonvested members of PERS Plan 2. Jane and John complete the paragraphs in RCW 41.50.670(2) and WAC 415-02-510(2) as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(b) Dissolution order - RCW 41.50.500.

(c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

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

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

Footnotes for section:

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

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

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

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

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

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

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

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

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

If _____(the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

beneficiary will change your retirement benefit. See WAC 415-02-520(9) for the language that must be used.

((+9)) (3) Terms used:

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

(b) Dissolution order - RCW 41.50.500.

(c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

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

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

Footnote to section:

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

[Statutory Authority: RCW 41.50.050. WSR 22-13-052, § 415-02-510, filed 6/8/22, effective 7/9/22. Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-510, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-510, filed 5/27/03, effective 7/1/03.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Example:

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

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

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

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

Example: You are a member of PERS Plan 2 and retire for disability two years before you are eligible for a service retirement. The

dissolution order awarded your ex-spouse a monthly payment of (~~five hundred dollars~~) \$500.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Example:

Current monthly retirement allowance = \$1679.38

Option factor = 0.9400000

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

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

Example:

Your age at time of the split = 61 years old

Annuity factor for age 61 = 0.0084149

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

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

Example:

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

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

Annuity factor for age 67 = 0.0095028

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

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

Example:

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

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

Your present value = \$107,078.17

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

Example:

Your present value = \$107,078.17

Annuity factor = 0.0084149

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

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

Example:

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

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

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

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

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

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

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

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

(11) May I amend an existing order that awarded an interest in my account to my ex-spouse under WAC 415-02-520, and remove my ex-spouse as my survivor beneficiary? Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court or-

der splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as your survivor beneficiary will change the amount of your monthly retirement allowance. See WAC 415-02-520(9) for the language that must be used.

Example:

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

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

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

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

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

(b) Dissolution order - RCW 41.50.500.

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

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

Footnotes to section:

- ¹ When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account is established, your account and your ex-spouse's account are not tied in any way.
- ² If your ex-spouse was not listed as your survivor beneficiary at retirement, then no postretirement property division dissolution order (or postretirement amendment) may split your retirement account using WAC 415-02-520.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(9)) (3) Can I amend my existing order to remove my ex-spouse as my survivor beneficiary?~~ Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-540 (9) and (14) for the language that must be used.

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

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

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

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

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

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

~~((a)) (i) The amount the dissolution order awards to your ex-spouse will be deducted from your account and set up in a separate ac-~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((h)) (vii) If **your ex-spouse** dies **after** receiving funds from his or her account but before the funds have been exhausted, the re-

maining balance of the funds will be disbursed to your ex-spouse's designated beneficiary.

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

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

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

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

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

Footnote to section:

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

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

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

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

You may use this section if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Your defined benefit before ERF is applied:	\$1,000
ERF (factor for retiring two years early)	0.61

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) **What language must be used in a property division dissolution order to award a portion of my defined contribution account to my ex-spouse?** The order must include the language provided in the following paragraph. The exact dollar amount to transfer to your ex-spouse's defined contribution account must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (~~((15))~~) (14)(b)).

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

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

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

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

Example:

Julio and May were married when Julio retired. Julio chose survivor Option 2 (joint and (~~((one hundred))~~) 100 percent survivorship) when he retired. This meant that if Julio died, May would receive monthly survivor benefits. Two years after Julio's retirement, the couple divorced. The court awarded "~~((one hundred))~~ 100 percent of retirement benefits" to Julio. Julio later learned that this award did not change the survivor option. Julio can return to court and obtain an order stating that May is to receive "\$0" as the dollar amount for her sepa-

rate monthly benefit. The order must use the language in WAC 415-02-540 and be signed by the court no sooner than July 1, 2003.

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

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

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

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

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

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

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

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

Example:

Currently monthly benefit = \$1200

Option factor = 0.865

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

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

Example:

Your age at time of the split = 61 years old

Annuity factor for age 61 = 0.0065448

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

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

Example:

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

Ex-spouse's age at time of the split = 67
 Annuity factor for age 67 = 0.0076715
 Present value of your ex-spouse's monthly benefit = $\$600/0.0076715$
 = \$78,211.56

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

Example:

Present value of single life benefit = \$211,966.75
 Less present value of ex-spouse's benefit = -78,211.56
 Your present value = \$133,755.19

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

Example:

Your present value = \$133,755.19
 Annuity factor = 0.0065448
 Your new monthly benefit amount = $\$133,755.19 \times 0.0065448 =$
 \$875.40

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

Example:

Your percentage of the single life benefit present value:
 $\$133,755.19/\$211,966.75 = .6310$
 Your ex-spouse's percentage of the single life benefit present value:
 $\$78,211.56/\$211,966.75 = .3690$

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

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

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

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

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

(17) **Terms used:**

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

(b) Dissolution order - RCW 41.50.500.

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

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

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

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

(g) TRS - Teachers' retirement system.

Footnotes to section:

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-02-720	What does the department charge for processing split payments?
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WSR 22-19-064
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-03—Filed September 16, 2022, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-063.

Title of Rule and Other Identifying Information: Accessing and receiving health care services and benefits.

Hearing Location(s): On October 25, 2022, at 10:30 a.m., Zoom meeting: Detailed information for attending the Zoom meeting is posted on the office of the insurance commissioner's (OIC) website <https://www.insurance.wa.gov/accessing-and-receiving-health-care-services-and-benefits-r-2022-03>.

Date of Intended Adoption: October 27, 2022.

Submit Written Comments to: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 26, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by October 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend existing rules as needed to be consistent with chapter 213, Laws of 2022, regarding audio-only telehealth.

Reasons Supporting Proposal: In 2022, the legislature enacted ESHB 1821 (chapter 213, Laws of 2022), which relates to accessing and receiving audio-only telehealth. OIC needs to make applicable updates to the existing rules for them to align with the legislation's requirements.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.735.

Statute Being Implemented: ESHB 1821 (chapter 213, Laws of 2022).

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Shari Maier, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7173; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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 Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7138, fax 360-586-3109, email Simon.Casson@oic.wa.gov.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry¹ ..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and

other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... to determine whether the proposed rule will have a disproportionate cost impact on small businesses.²"

¹ RCW 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

² RCW 19.85.040: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

This rule proposal is exempt from requirements of the Regulatory Fairness Act. Based on findings in the cost-benefit analysis, the costs of compliance estimated by OIC are minor costs on businesses as defined by RCW 19.85.020(2).

The proposed rule also amends the definition of "Established relationship" in WAC 284-170-130(13), which broadens the scope to include at least one in-person appointment within the past three years, or at least one real-time interactive appointment using both audio and video technology for health care services included in the essential health benefits category of mental health and substance use disorder services.

The analysis of the impacts of this rule determined that there are no substantive costs for the parties involved. OIC has applied a default cost of compliance (\$100) to determine whether the rule would have a disproportionate effect on small businesses, as defined in RCW 19.85.020(3).

Below are calculations for minor cost thresholds across stakeholders that classify as a small business based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the small business stakeholders.

OIC had determined that the proposed rule could potentially offer increased benefit to the small businesses as this proposed rule provides them the potential for increased patient revenue and some reduced overhead costs by virtue of being able to provide care via audio-only telemedicine.

For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

<i>2019 Industry NAICS Code</i>	<i>Estimated Cost of Compliance</i>	<i>Industry Description</i>	<i>NAICS Code Title</i>	<i>Average number of employees / business</i>	<i>Minor Cost Estimate - 1% of Avg Annual Payroll (0.01*AvgPa y)</i>
621111	\$100.00	Offices of physicians, except mental health	Health care and social assistance	29	\$968.28
621112	\$100.00	Offices of mental health physicians	Health care and social assistance	5	\$482.23
621210	\$100.00	Offices of dentists	Health care and social assistance	9	\$454.52
621320	\$100.00	Offices of optometrists	Health care and social assistance	7	\$375.00
621330	\$100.00	Offices of mental health practitioners	Health care and social assistance	9	\$379.98
621340	\$100.00	Offices of specialty therapists	Health care and social assistance	15	\$472.87
621399	\$100.00	Offices of miscellaneous health practitioners	Health care and social assistance	5	\$329.79

<i>2019 Industry NAICS Code</i>	<i>Estimated Cost of Compliance</i>	<i>Industry Description</i>	<i>NAICS Code Title</i>	<i>Average number of employees / business</i>	<i>Minor Cost Estimate - 1% of Avg Annual Payroll (0.01*AvgPa y)</i>
621410	\$100.00	Family planning centers	Health care and social assistance	37	\$549.48
621420	\$100.00	Outpatient mental health centers	Health care and social assistance	47	\$523.24

OIC has determined that the proposed rule does not impose more-than-minor costs (as defined by RCW 19.85.020(2)) on small businesses.

September 16, 2022
Mike Kreidler
Insurance Commissioner

OTS-4074.2

AMENDATORY SECTION (Amending WSR 21-24-029, filed 11/22/21, effective 12/23/21)

WAC 284-170-130 Definitions. Except as defined in other sub-chapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

- (1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:
- (a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;
- (b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;
- (c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;
- (d) A rescission of coverage determination; or
- (e) A carrier's denial of an application for coverage.
- (2) "Allowed amount" has the meaning set forth in RCW 48.43.005.
- (3) (a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(b) "Audio-only telemedicine" does not include:

(i) The use of facsimile, email, or text messages, unless the use of text-like messaging is necessary to ensure effective communication with individuals who have a hearing, speech, or other disability; or

(ii) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.

(4) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(5) "Clinical review criteria" means the written screens, or screening procedures, decision rules, medical protocols, or clinical practice guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services, including prescription drug benefits, under the auspices of the applicable health plan. Clinical approval criteria has the same meaning as clinical review criteria.

(6) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(7) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

(8) "Disciplining authority" has the meaning set forth in RCW 18.130.020.

(9) "Distant site" has the meaning set forth in RCW 48.43.735.

(10) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain or emotional distress, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical, mental health, or substance use disorder treatment attention, if failure to provide medical, mental health, or substance use disorder treatment attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(11) "Emergency services" has the meaning set forth in RCW 48.43.005.

(12) "Enrollee point-of-service cost-sharing" or "cost-sharing" has the meaning set forth in RCW 48.43.005.

(13) "Established relationship" means the provider providing audio-only telemedicine has access to sufficient health records to ensure safe, effective, and appropriate care services and:

(a) For health care services included in the essential health benefits category of mental health and substance use disorder services, including behavioral health treatment:

(i) The covered person has had, within the past three years, at least one in-person appointment ((within the past year)), or at least one real-time interactive appointment using both audio and video technology, with:

(A) The provider providing audio-only telemedicine((,with));

(B) A provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carri-

er licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine ~~((7))~~; or ~~((with))~~

(C) A locum tenens or other provider who is the designated back up or substitute provider for the provider providing audio-only telemedicine who is on leave and is not associated with an established medical group, clinic, or integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW; or

~~((b))~~ (ii) The covered person was referred to the provider providing audio-only telemedicine by another provider who has:

(A) Had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person ~~((within the past year and has))~~; and

(B) Provided relevant medical information to the provider providing audio-only telemedicine.

(C) A referral includes circumstances in which the provider who has had at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person participates in the audio-only telemedicine encounter with the provider to whom the covered person has been referred.

(b) For any other health care service:

(i) The covered person has had, within the past two years, at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with:

(A) The provider providing audio-only telemedicine; or

(B) A provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or

(C) A locum tenens or other provider who is the designated back up or substitute provider for the provider providing audio-only telemedicine who is on leave and is not associated with an established medical group, clinic, or integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW; or

(ii) The covered person was referred to the provider providing audio-only telemedicine by another provider who has:

(A) Had, within the past two years, at least one in-person appointment or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person; and

(B) Provided relevant medical information to the provider providing audio-only telemedicine.

(C) A referral includes circumstances in which the provider who has had at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person participating in the audio-only telemedicine encounter with the provider to whom the covered person has been referred.

(14) "Facility" means an institution providing health care services including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(15) "Formulary" means a listing of drugs used within a health plan.

(16) "Grievance" has the meaning set forth in RCW 48.43.005.

(17) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(18) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(19) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in The Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(20) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(21) "Hospital" has the meaning set forth in RCW 48.43.735.

(22) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. Sec. 1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. Sec. 450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. Sec. 450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. Sec. 47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. Sec. 1603(29).

(23) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(24) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

(25) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(26) "Mental health services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization, residential treatment, out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize, or ameliorate the effects of a mental disorder listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association, including diagnoses and treatment for substance use disorder.

(27) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(28) "Originating site" means the physical location of a patient receiving health care services through telemedicine, and includes those sites described in WAC 284-170-433.

(29) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in Physicians Current Procedural Terminology, published by the American Medical Association.

(30) "Participating provider" and "participating facility" mean a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(31) "Patient consent" means a voluntary and informed decision by a patient, following an explanation by the provider or auxiliary personnel under the general supervision of the provider presented in a manner understandable to the patient that is free of undue influence, fraud or duress, to consent to a provider billing the patient or the

patient's health plan for an audio-only telemedicine service under RCW 48.43.735 or WAC 284-170-433.

(32) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(33) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(34) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(35) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(36) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(37) "Real time communication" means synchronous and live communication between a provider and a patient. It does not include delayed or recorded messages, such as email, facsimile or voicemail.

(38) "Same amount of compensation" means providers are reimbursed by a carrier using the same allowed amount for telemedicine services as they would if the service had been provided in-person unless negotiation has been undertaken under RCW 48.43.735 or WAC 284-170-433(2). Where consumer cost-sharing applies to telemedicine services, the consumer's payment combined with the carrier's payment must be the same amount of compensation, or allowed amount, as the carrier would pay the provider if the telemedicine service had been provided in person. Where an alternative payment methodology other than fee-for-service payment would apply to an in-person service, "same amount of compensation" means providers are reimbursed by a carrier using the same alternative payment methodology that would be used for the same service if provided in-person, unless negotiation has been undertaken under RCW 48.43.735 or WAC 284-170-433(2).

(39) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(40) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005(34) comprising from one to 50 eligible employees.

(41) "Store and forward technology" has the meaning set forth in RCW 48.43.735.

(42) "Substance use disorder services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization, residential treatment, or out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription

drugs to manage, stabilize, or ameliorate the effects of a substance use disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association, including diagnoses and treatment for substance use disorder.

(43) "Substitute drug" means a prescription medication, drug or therapy that a carrier covers based on an exception request. When the exception request is based on therapeutic equivalence, a substitute drug means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

(44) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

(45) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology or audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this chapter, "telemedicine" does not include facsimile, email, or text messaging, unless the use of text-like messaging is necessary to ensure effective communication with individuals who have a hearing, speech, or other disability.

[Statutory Authority: RCW 48.43.735(9). WSR 21-24-029, § 284-170-130, filed 11/22/21, effective 12/23/21. Statutory Authority: RCW 48.02.060 and 48.43.765. WSR 21-01-094 (Matter No. R 2019-05), § 284-170-130, filed 12/11/20, effective 1/11/21. Statutory Authority: RCW 48.02.060. WSR 16-07-144 (Matter No. R 2016-01), § 284-170-130, filed 3/23/16, effective 4/23/16.]

WSR 22-19-070

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed September 19, 2022, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-045.

Title of Rule and Other Identifying Information: WAC 458-20-23801
Watercraft excise tax—Watercraft depreciation schedule.

Hearing Location(s): On October 25, 2022, at 11:00 a.m., virtual meeting. Contact Sierra Crumbaker at SierraC@dor.wa.gov for dial-in/login information.

Date of Intended Adoption: December 1, 2022.

Submit Written Comments to: Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, email Brentonm@dor.wa.gov, fax 360-534-1606, by November 4, 2022.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.49.040 requires the department of revenue (department) to prepare a depreciation schedule (at minimum annually) for use in the determination of fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The purpose of this rule-making effort is to evaluate the watercraft depreciation table values in WAC 458-20-23801. The department is proposing amendments to the watercraft depreciation schedule for the following reasons: (1) Watercraft valuation, sales, and registration data indicated an adjustment to several values in the table was necessary (as required by RCW 82.49.040), and (2) the department determined the schedule should be reduced to two columns and that watercrafts should be assigned to a particular column within the schedule based upon the length of a vessel, rather than the vessel type. This proposal was based upon the department's own analysis of watercraft valuation, sales, and registration data and feedback received from external stakeholders. The department will solicit additional comments and feedback from external stakeholders regarding the proposed watercraft depreciation schedule.

Reasons Supporting Proposal: RCW 82.49.040 requires the department to engage in rule-making activities in the adoption of the watercraft excise tax depreciation schedule. The rule is intended to clarify the department's policies on a number of watercraft excise tax issues and provide taxpayers with an annually updated schedule that reflects the recent vessel valuation, sales, and registration data.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, 82.49.040.

Statute Being Implemented: RCW 82.49.040.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton M. Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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 Brenton

M. Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606.

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 more-than-minor costs on businesses, as the depreciation rate schedule proposed in the rule is not materially different from the depreciation rate schedule used by the same taxpayers last year. The only changes are depreciation rates, not the method for determining the measure of the watercraft excise tax.

September 19, 2022
Atif Aziz
Rules Coordinator

OTS-3988.3

AMENDATORY SECTION (Amending WSR 21-22-009, filed 10/21/21, effective 1/1/22)

WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule. (1) **Introduction.** This rule addresses the watercraft excise tax, including an overview of the tax, exemptions from the tax, and the watercraft depreciation schedule used to determine a watercraft's fair market value. The rule also addresses administrative issues including payment, interest, and penalties (~~(, and includes examples)~~).

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

(3) **Definitions and terms.** The following definitions and terms apply throughout this rule.

(a) **"Dealer"** means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state. RCW 88.02.310.

(b) **"Fair market value."**

(i) In cases where the most recent purchase price of a vessel is known to the vessel owner, "fair market value" means the purchase price of the vessel in the year it was purchased. For subsequent years, "fair market value" means the purchase price of the vessel depreciated according to the schedule in subsection (6) of this rule. RCW 82.49.040.

(ii) In cases where a vessel has been acquired by lease or gift, or the most recent purchase price of the vessel is not known to the vessel owner, "fair market value" means the appraised value of the vessel determined according to subsection (7) of this rule. RCW 82.49.050(1).

(iii) In cases where the department determines that the purchase price stated by the owner is not a reasonable representation of the true "fair market value" of the vessel, the department must appraise the vessel according to subsection (7) of this rule. RCW 82.49.050(2).

(c) **"Owner"** means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal

action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner. RCW 88.02.310.

~~(d) ("**Powerboat**" means any vessel 16 feet or longer, other than a sailboat, that uses mechanical power as a method of propulsion.~~

~~(e) "**Sailboat**" means any vessel 16 feet or longer that is capable of using sails as a method of propulsion. A vessel is considered a sailboat regardless of whether the vessel is also capable of using mechanical power as a method of propulsion.~~

~~(f))~~ "**Vessel**" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. RCW 88.02.310.

~~((g))~~ (e) "**Waters of this state**" means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. RCW 88.02.310.

(4) **Overview of the watercraft excise tax.**

(a) The watercraft excise tax generally applies to vessels measuring 16 feet or more in overall length. The tax is imposed for the privilege of using a vessel upon the waters of this state, except those vessels which are exempt from the tax under subsection (5) of this rule and under RCW 82.49.020. The tax is imposed on an annual basis and is equal to the greater of five dollars or one-half of one percent of a vessel's fair market value.

(b) Persons required to register a vessel with this state under chapter 88.02 RCW who fail to register their vessel and avoid paying the watercraft excise tax are guilty of a gross misdemeanor and are liable for any unpaid excise tax. The department must also impose the penalties authorized under subsection (9) of this rule and under RCW 82.49.080 and chapter 82.32 RCW.

(c) When a person first registers a vessel in this state, the watercraft excise tax is imposed beginning with the month in which the vessel is registered through the following June 30th. In cases where the initial registration period is less than 12 months, the watercraft excise tax is prorated according to the number of months covered by the registration period. The initial registration is valid from the month of registration through the following June 30th.

(i) The department of licensing may extend or diminish the initial registration period for purposes of staggered renewal periods under RCW 88.02.560.

(ii) A vessel is considered first registered in this state if in the immediately preceding 12 month period the vessel was not registered in this state or was registered in another jurisdiction during the same period.

(iii) **Example 1. Watercraft excise tax computation - Initial vessel registration.**

Facts: Dan Carter purchases a 20 foot powerboat from a Washington dealer in April 2022. The purchase price is \$20,000. Dan is a resident of Washington. Dan registers the vessel with the department of licensing shortly after his purchase, in April 2022.

Result: The department of licensing will issue a registration decal for the vessel covering the registration period of July 2021 through June 2022 and collect the annual watercraft excise tax liability for this registration period in the amount of \$25 (\$20,000 (purchase price) x .005 (watercraft excise tax rate) x .25 (3 month prorated period April - June 2022)).

(5) **Exemptions.** The following types of vessels are exempt from watercraft excise tax:

- (a) Those exempt from vessel registration under RCW 88.02.570;
- (b) Those used exclusively for commercial fishing purposes;
- (c) Those measuring less than 16 feet in overall length, including personal watercraft;
- (d) Those owned and operated by the United States, another state, or any municipality or subdivision thereof;
- (e) Those owned by a nonprofit organization or association engaged in character building of children under 18 years of age and solely used for such purposes;
- (f) Those held for sale by a dealer, but not rented on a regular commercial basis; and
- (g) Those owned by Indian tribes and tribal members, used in the exercise of treaty fishing rights, and exempt under WAC 308-93-720.

(6) **Depreciation schedule.**

(a) RCW 82.49.040 requires the department to prepare a depreciation schedule annually, for use in determining the fair market value of vessels, which is the measure of the watercraft excise tax. The following schedule includes separate depreciation rates for ~~((three))~~ two categories of vessels, including a column for the vessel's year of ownership and columns for the depreciated percentage of the vessel's value by vessel ~~((type))~~ length. First, vessel owners must determine the appropriate column to use, depending on the ~~((type))~~ length of the vessel they own. Second, vessel owners must identify the depreciated percentage of value for their vessel according to the row which corresponds to the number of years they have owned the vessel.

Year of Ownership	((Sailboat))	((Powerboat)) Vessels less than 30 feet	((Powerboat)) Vessels 30 feet or more
1	((1.00))	1.00	1.00
2	((0.90))	((0.84)) <u>0.85</u>	0.83
3	((0.85))	0.76	((0.74)) <u>0.75</u>
4	((0.79))	0.70	((0.67)) <u>0.68</u>
5	((0.74))	0.65	((0.62)) <u>0.63</u>
6	((0.68))	0.61	((0.58)) <u>0.59</u>
7	((0.63))	0.57	0.55
8	((0.60))	0.54	((0.52)) <u>0.53</u>
9	((0.58))	0.51	((0.49)) <u>0.50</u>
10	((0.54))	0.49	((0.47)) <u>0.48</u>
11	((0.51))	0.47	0.46
12	((0.48))	0.45	0.45
13	((0.44))	0.43	((0.44)) <u>0.43</u>
14	((0.44))	((0.39)) <u>0.42</u>	0.42

Year of Ownership	((Sailboat))	((Powerboat)) Vessels less than 30 feet	((Powerboat)) Vessels 30 feet or more
15	((0.44))	((0.39)) <u>0.40</u>	0.42
16	((0.44))	((0.38)) <u>0.39</u>	0.41
<u>17</u>		<u>0.37</u>	<u>0.41</u>
<u>18</u>		<u>0.35</u>	<u>0.40</u>
<u>19</u>		<u>0.34</u>	<u>0.39</u>
<u>20</u>		<u>0.33</u>	<u>0.39</u>
<u>21</u>		<u>0.32</u>	<u>0.38</u>
<u>22</u>		<u>0.31</u>	<u>0.37</u>
<u>23</u>		<u>0.30</u>	<u>0.36</u>
<u>24</u>		<u>0.29</u>	<u>0.35</u>
((17)) <u>25</u> or more	((0.43))	((0.36)) <u>0.28</u>	((0.41)) <u>0.34</u>

(b) **Example 2. Standard ((sailboat)) vessel registration renewal.**

Facts: Deborah Peters purchased a 28-foot sailboat in September 2017. The purchase price of the sailboat was \$40,000. Deborah is a Washington resident and the sailboat is used exclusively upon Washington waters. In June 2022, Deborah renews the vessel's registration for the upcoming annual period of July 2022 through June 2023.

Result: Deborah will use the column titled "((Sailboat)) Vessels less than 30 feet" to determine the fair market value of her sailboat. Since Deborah bought the sailboat within the annual period of July 2017 through June 2018, that period is considered Year 1 for purposes of ownership. Accordingly, the period of July 2022 through June 2023 is considered Year 6 for purposes of ownership. The depreciated value of the sailboat in Year 6 is equal to ((68)) 61 percent of Deborah's initial purchase price of \$40,000, or ((~~\$27,200~~) \$24,400). Deborah is subject to watercraft excise tax in the amount of ((~~\$136~~) \$122) ((~~\$27,200~~) \$24,400 (fair market value) x .005 (watercraft excise tax rate)).

(7) **Vessel appraisal.**

(a) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department must appraise the vessel before it can be registered for use upon the waters of this state.

(b) If the department determines the purchase price of a vessel reported by the vessel's owner at the time of its registration is not representative of its fair market value, the department must appraise the vessel to determine its fair market value. If the appraised value is less than the reported purchase price, the department will issue a refund of the overpaid tax. If the appraised value is greater than the reported purchase price, the department will notify the vessel owner of the additional tax liability, which must be paid within 30 days of the department's notice.

(c) If a vessel is homemade, the vessel's owner must make a notarized declaration of its value. See RCW 82.49.050(3) for more information.

(d) For purposes of this subsection, "appraisal" includes the use of industry pricing guides, other evaluation tools, and independent appraisals in order to ascertain the fair market value of a vessel.

(8) Disputes related to a vessel's (~~(fair market value₇)~~) appraised value(~~(₇)~~) or taxability.

(a) Any vessel owner who disputes a vessel's (~~(computed fair market value under RCW 82.49.040₇)~~) appraised value under RCW 82.49.050, or taxable status, may request a review of a tax assessment by filing a petition with the department as provided in WAC 458-20-100 (Informal administrative reviews).

(b) If the vessel owner's petition is denied, the vessel owner may appeal to the board of tax appeals as provided in RCW 82.03.190. In deciding the case, the board of tax appeals may require an independent appraisal of the vessel, the cost of which must be shared between the vessel owner and the department.

(9) Administration.

(a) **Payment of tax.** The watercraft excise tax is due and payable to the department of licensing, county auditor, or other appointed agent at the time the vessel is registered. A registration will not be issued or renewed until the watercraft excise tax is paid in full. For previously registered vessels, watercraft excise tax is due at the time of the vessel's registration renewal and must be paid prior to the start of the vessel registration period, which covers the period of July 1st through June 30th of the following year.

(b) **Refunds.** Taxpayers who overpay the watercraft excise tax in full or in part at the time of a vessel's registration are eligible for a refund of the overpaid tax. Taxpayers are also entitled to receive interest according to RCW 82.32.060. See RCW 82.49.065 for more information regarding refunds.

(c) **Penalties and interest.** An owner of a vessel that is not registered as required under chapter 88.02 RCW and that avoided payment of the watercraft excise tax is liable for the following penalties and interest:

- (i) One hundred dollars for the owner's first violation;
- (ii) Two hundred dollars for the owner's second violation;
- (iii) Four hundred dollars for the owner's third violation and any successive violations;
- (iv) The penalties prescribed under chapter 82.32 RCW; and
- (v) The interest prescribed under chapter 82.32 RCW.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, and 82.49.040. WSR 21-22-009, § 458-20-23801, filed 10/21/21, effective 1/1/22.]

WSR 22-19-071

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed September 19, 2022, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-026.

Title of Rule and Other Identifying Information: Chapter 212-80 WAC, Fire protection sprinkler system contractors.

Hearing Location(s): On October 25, 2022, at 9:30 a.m., Call in 1-253-215-8782, Meeting ID 936 8503 7858, Passcode 552488. Hearing to be held via Zoom.

Date of Intended Adoption: October 26, 2022.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by October 21, 2022.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by October 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 212-80 WAC currently sets a rule for chapter 18.160 RCW (Fire system sprinkler contractors) and chapter 18.270 RCW (Fire protection sprinkler fitting). Due to differing definitions in RCW, and the fact that RCW applies to separate licenses and certifications within the sprinkler industry; a single WAC has created confusion when interpreting the rule and determining violations with appropriate enforcement.

Industry often tries to apply chapter 18.160 RCW requirements to fitters based on language in chapter 212-80 WAC. Authorities having jurisdiction are often confused and have misapplied the laws and rule when creating local licensing and permitting requirements.

Increase fees for certificate of competency holders, sprinkler filters, and certification exams to continue to adequately support the program and services offered.

Reasons Supporting Proposal: Updates are to ensure consistency and clarity.

Statutory Authority for Adoption: Chapter 18.160 and 18.270 RCW.

Statute Being Implemented: Chapter 18.160 and 18.270 RCW.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Esther Hernandez, Olympia, Washington, 360-596-3913; Enforcement: Washington State Patrol, Olympia, Washington, 360-596-3913.

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 provides that a cost-benefit analysis (CBA) is required before adopting a rule described in subsection (5) of the statute. RCW 34.05.328 (5)(a)(i) makes the requirements applicable to significant legislative rules of certain identified agencies. Washington state patrol is not one of those identified agencies. The requirements also apply to any rule of an agency if the section is voluntarily made applicable to the rule by the agency or by a majority vote of the joint administrative rules review committee. Neither of these conditions have been met; therefore, the requirement of preparing a CBA is not applicable to this rule making. See RCW 34.05.328 (5)(a)(ii).

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 19, 2022

John R. Batiste

Chief

OTS-4051.3

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-001 Purpose. The purpose of this chapter is to adopt rules to a single statewide standard of performance and compliance for the licensing of fire protection sprinkler system contractors, the issuance of certificates of competency, and the issuance of civil fines for violations of any provision of chapter 18.160 (~~(or 18.270)~~) RCW or any provision of this chapter.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-001, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-001, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, § 212-80-001, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-001, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-005 Applicability. This chapter applies to any person performing as a fire protection sprinkler system contractor or certificate of competency holder as defined in chapter ~~((s))~~ 18.160 (~~(and 18.270)~~) RCW.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-005, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-005, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, § 212-80-005, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-005, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-010 Definitions. The following definitions will apply throughout this chapter:

(1) "Authority having jurisdiction (AHJ)" means the organization, office, or individual responsible for issuing permits, approving layout drawings, enforcing the requirements of a code or standard or approving materials, an installation, or a procedure. Usually, the AHJ is the building or fire official of the city or county in which the job site is located. In certain cases, such as health care facilities, transient accommodations, and day care facilities, the AHJ is the city or county building or fire official and the director.

(2) "Certificate" means a certificate of competency granted by the director under chapter (~~18.270-01~~) 18.160 RCW, and is valid within the state and all political subdivisions, and meets all of the requirements for license or certification that may be applied by the political subdivision.

(3) "Citation" means written notification issued by the director pursuant to RCW 18.160.120 (~~or 18.270.020~~) of a civil penalty for a violation of any provision of chapter 18.160 (~~or 18.270~~) RCW or this chapter. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

(4) "Contractor" means any person that offers to contract for the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system or any part of such system under chapter 18.160 RCW.

(5) "Digital signature" means a secure signature in electronic form attached to an electronic record. Examples of electronic signatures include a digitized image of a "wet" signature, a graphical representation of a handwritten signature (constructed using graphics software or special fonts), or other icons or representations adopted by the person with the intent to sign the document. The digital signature must:

(a) Be unique to the certificate of competency holder;

(b) Be capable of independent verification;

(c) Be under the exclusive control of the certificate of competency holder;

(d) Transform the electronic record such that a recipient can determine that the record was signed by the certificate of competency holder; and

(e) Transform the electronic record such that a recipient can determine if the initial record was altered since the transformation was made.

(6) "Direct supervision" means the person providing direction, oversight, inspection, and observation of the work performed on the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system. Supervision requirements are met when the supervisor is on the premises for the duration of the working day.

(7) "Director" means the chief of the Washington state patrol through the director of fire protection or his or her designee.

(8) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that involves similar capabilities.

(9) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

(10) "Fire protection sprinkler system" means an assembly of underground or overhead piping beginning at the connection to the primary water supply, whether public or private, that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire or other products of combustion.

(11) "Formal hearing" means a hearing before a hearing officer where laws, rules, and evidence are presented, considered, and a decision is rendered.

(12) "General contractor" means a contractor whose business operations require the use of more than one building trade or craft for a single job, project, or building permit. A general contractor includes a person who superintends, or consults on, in whole or in part, work that falls within the definition of a contractor.

(13) "Hazard" means a condition which could result in injury or death to a person or damage to property.

(14) "Hearings request" means the written request for a formal hearing to contest a civil penalty.

(15) "Inspection" means a visual examination of a fire protection sprinkler system, or portion of the system, to verify that the system appears to be in operating condition, is free from physical damage, and complies with the applicable statutes and regulations adopted by the state.

(16) "Licensed contractor" means a contractor issued a license to perform fire protection sprinkler system work by the director pursuant to WAC 212-80-053 of this chapter.

(17) "Maintenance" means ~~((an inspection conducted by either a journey level or residential level sprinkler fitter or an inspection and testing technician (ITT) of all the components of an automatic fire protection sprinkler system and the))~~ in water-based fire protection systems, work performed to keep ~~((the system's))~~ equipment operable.

(18) "Mitigation or hearing officer" is the ~~((assistant))~~ state fire marshal or his or her designee who will preside over an informal, mitigation conference to discuss a civil penalty that has been assessed against a person for a violation of this chapter.

(19) ~~((("NFPA" means the National Fire Protection Association. The following national standards adopted by the NFPA apply to fire sprinkler suppression systems:))~~

~~((a))~~ ~~"NFPA 13D" means, in addition to the definition contained in chapter 18.160 RCW, the inclusion of minor accessory uses such as garages normally found in residential occupancies. The following definitions will apply to the common types of sprinkler systems that can be installed in a NFPA 13D:~~

~~((i))~~ "Multipurpose piping sprinkler system((+))" means a piping system intended to serve both domestic needs in excess of a single fixture and fire protection needs from one common piping system throughout the dwelling unit(s).

~~((ii))~~ (20) "Network sprinkler system((+))" means a type of multipurpose system utilizing a common piping system supplying domestic fixtures and fire sprinklers where each sprinkler is supplied by a minimum of three separate paths.

~~((iii))~~ (21) "Passive purge system((+))" means a type of sprinkler system that serves a single toilet in addition to the fire sprinklers.

~~((iv))~~ (22) "Stand-alone sprinkler system~~((+))~~" means a sprinkler system where the above ground piping serves only fire sprinklers.

~~((v))~~ (23) "Antifreeze sprinkler system~~((+))~~" means a wet pipe system using automatic sprinklers that contains a liquid solution to prevent freezing of the system, and is intended to discharge the solution upon sprinkler operation, followed immediately by water from a water supply.

~~((vi))~~ (24) "Dry pipe sprinkler system~~((+))~~" means a sprinkler system employing automatic sprinklers that are attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) permits the water pressure to open a valve known as a dry pipe valve, and the water then flows into the piping system and out the opened sprinkler.

~~((vii))~~ (25) "Preaction sprinkler system~~((+))~~" means a sprinkler system employing automatic sprinklers that are attached to a piping system that contains air with a supplemental detection system installed in the same areas as the sprinklers.

~~((b) "NFPA 13R" means the installation and design of fire suppression sprinkler systems in residential occupancies up to and including four stories in height in buildings not exceeding 60 ft (18 m) in height above grade plane.~~

~~((c) "NFPA 13" means the installation and design of fire suppression sprinkler systems in commercial or high occupancy facilities.~~

~~((d))~~ (26) "NFPA 20" means the selection and installation of pumps, both centrifugal and positive displacement, that supply liquid for a private fire protection system.

~~((e))~~ (27) "NFPA 24" means the installation of the dedicated underground fire service main of a water based fire protection system.

~~((f))~~ (28) "NFPA 25" means the inspection, testing, and maintenance of water based fire protection systems.

~~((20))~~ (29) "NICET" means the National Institute for Certification in Engineering Technologies.

~~((21))~~ (30) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of individuals and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.

~~((22))~~ (31) "Qualified" means an individual who has demonstrated through education, training, examination, or national certifications the competency, skill, and ability necessary to perform any work covered or defined by this chapter and chapter~~((s))~~ 18.160 ~~((and 18.270))~~ RCW to the satisfaction of a relevant jurisdiction. In matters of compliance with the licensing and certification requirements of this chapter and chapter~~((s))~~ 18.160 ~~((and 18.270))~~ RCW, the relevant jurisdiction shall be the director.

~~((23))~~ (32) "Repair" means to restore by replacing a part of or putting together what is torn or broken on the fire protection sprinkler system.

~~((24))~~ (33) "Revoke" means the director will rescind a company's license or an individual's certificate. This action causes the company or individual to cease any work in the fire protection sprinkler system field in Washington state.

~~((25))~~ (34) "Suspend" means the director holds a company's license or individual's certificate inactive until such time as the director determines that the company or individual is in compliance with

the requirements of this chapter and chapter((s)) 18.160 ((and 18.270)) RCW.

~~((26))~~ (35) "Testing" means a procedure used to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as water flow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the appropriate chapter of NFPA 25.

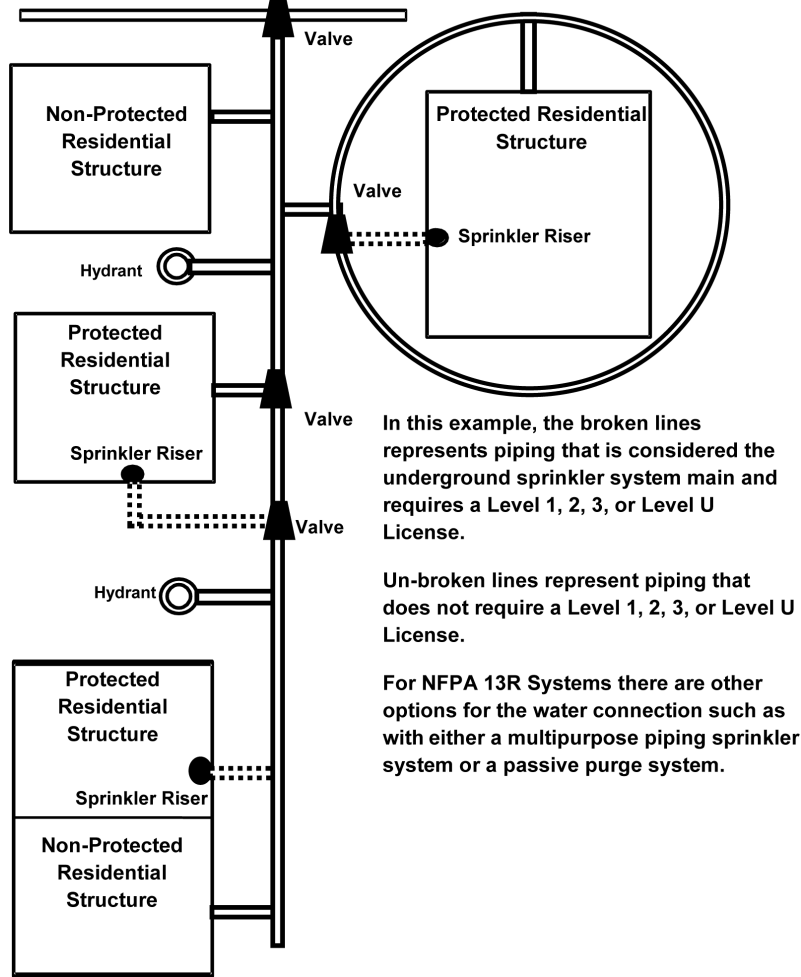
~~((27)) "Trainee" means a person who:~~

~~(a) Has been issued a training certificate by the director; and~~

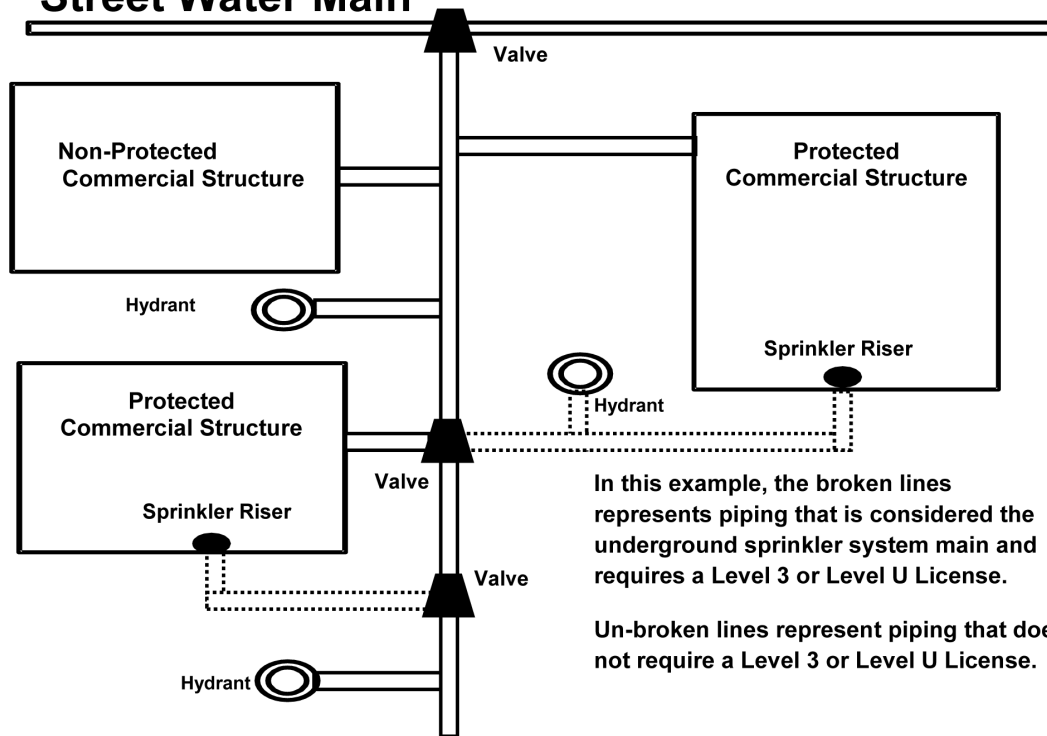
~~(b) Is learning the fire protection sprinkler fitting trade under the supervision of a journey-level sprinkler fitter or residential sprinkler fitter working in his or her specialty.~~

~~(28))~~ (36) "Underground" means the portion of the fire protection sprinkler system that starts at the point where the last nonfire water use is taken from the supply mains. For the purpose of this subsection, "point where the last nonfire water use is taken from the supply mains" means the ~~((point just downstream of the last tap for domestic or processed water, the last water control valve that is required by a city or other authority, or the point where the water can be considered nonflowing and if shut off would shut off only the))~~ last valve, furthest from the riser, where water becomes nonflowing, which if shut off shuts off only the fire protection sprinkler system. This subsection does not apply to residential multipurpose piping fire protection sprinkler systems.

Residential Example Street Water Main



Commercial Example Street Water Main



~~((29))~~ (37) "Violation" means any action, general or specific, inconsistent with the intent and letter of chapter ~~((s))~~ 18.160 ~~((and 18.270))~~ RCW and shall be further defined as:

- (a) "Level 1 violation" means a violation which poses a minimal hazard or threat to life and property in the event of a fire.
- (b) "Level 2 violation" means a violation which poses a significant hazard or threat to life or property in the event of a fire.
- (c) "Level 3 violation" means a violation which poses a substantial hazard or threat to life or property in the event of a fire.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-010, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-010, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-010, filed 8/16/05, effective 9/16/05; WSR 05-05-006, § 212-80-010, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 92-20-070 (Order 92-08), § 212-80-010, filed 10/5/92, effective 11/5/92; WSR 91-14-086 (Order 91-06), § 212-80-010, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-015 Compliance. (1) ~~((Who needs to comply with these rules?))~~ All fire protection sprinkler system contractors, certificate of competency holders, ~~((or trainees,))~~ and persons who design, install, inspect, test, or repair, fire protection sprinkler systems or

any part of such a system will comply with the provisions of this chapter.

(2) (~~Who is exempt from complying with this chapter?~~) Exceptions to subsection (1) of this section:

(a) Federal, state, and local government employees, or insurance inspectors when acting in their official capacities.

(b) A person acting under court order.

(c) A person who sells or supplies products or materials to a licensed contractor.

(d) A registered professional engineer in the state of Washington acting solely in a professional capacity.

(e) A person issued a certificate of competency by the Washington state department of labor and industries, under chapter 18.106 RCW, as a journey-level or residential specialty plumber or supervised plumber trainee installing a residential network fire protection sprinkler system connected to potable water who works for a contractor as defined by WAC 212-80-010(4) of this chapter.

(f) An owner or occupier of a single-family residence performing his or her own installation in that residence. It is the intent of this subsection that builders or contractors will not install their own sprinkler systems in single-family residences under their ownership that they plan to sell, lease, or rent.

(g) Full-time employee, or owner of a facility who is qualified to the satisfaction of the authority having jurisdiction to perform fire protection sprinkler work in said facility.

(h) An employee of a licensed electrical contractor installing or testing only the electronic signaling devices of a fire sprinkler system.

(i) A person who inspects, field tests, maintains, or repairs backflow prevention assemblies installed on potable water supplies to fire sprinkler systems and who is certified as a:

(i) Backflow assembly tester by the Washington state department of health, under chapters 70.119 RCW and 246-292 WAC; or

(ii) Backflow specialty plumber by the Washington state department of labor and industries, under chapters 18.106 RCW and 296-400A WAC, when repairing backflow prevention assemblies within a building.

(j) Work performed by companies or individuals under these exemptions must still comply with all relevant standards, codes, and local ordinances relevant to the work being performed. This includes evidencing any and all necessary competency and experience to the local fire code authority.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-015, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-015, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-015, filed 8/16/05, effective 9/16/05; WSR 05-05-006, § 212-80-015, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-015, filed 12/1/94, effective 1/1/95; WSR 92-20-070 (Order 92-08), § 212-80-015, filed 10/5/92, effective 11/5/92; WSR 91-14-086 (Order 91-06), § 212-80-015, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 17-10-031, filed 4/26/17, effective 5/27/17)

WAC 212-80-018 License and certification requirements. (1) **Fire protection sprinkler contractors**, only a licensed contractor, who has at least one certificate of competency holder on staff certified to license level consistent with the contractor's license, by the director, can bid, offer to bid, contract, or perform the designing, installation, inspection, testing, maintenance, or repair of a NFPA fire protection sprinkler system or any part of such a system based on the level of the contractor license. The following levels will apply to contractor licenses issued by the director:

- (a) **Level 1 contractor license** - Residential structures consistent with the definitions found within NFPA 13D.
- (b) **Level 2 contractor license** - Residential structures consistent with the definitions found within NFPA 13D, NFPA 13R, and NFPA 25. NFPA 24 is applicable only when the water main supplying the fire sprinkler system is equal to or greater than four inches in size.
- (c) **Level 3 contractor license** - Includes work defined by Levels 1 and 2. This license is applicable to structures and fire protection sprinkler systems defined in NFPA 13, NFPA 24, and NFPA 25.
- (d) **Level U contractor license** - Specialized license for underground work (NFPA 24) only.
- (e) **Level I&T (inspection and testing) contractor license** - Specialized license for inspection and testing work (NFPA 25). This license level allows for inspection or testing of a NFPA 13R or NFPA 13, wet and dry pipe fire protection sprinkler system, provided that the:
 - (i) Inspection and testing technician must limit his or her work on the fire protection sprinkler system to the contractor's license level; and
 - (ii) Testing and maintenance of fire protection sprinkler systems such as preaction, deluge, foam or fire pumps, will be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump.

Chart 1: Fire Protection Sprinkler Contractors

Level of Contractor License	Standard Defining Work to be Performed				
	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25
Level 1 Contractor One- and two-family dwellings and manufactured homes	Yes	No	No	No	No
Level 2 Contractor Residential Occupancies Up To and Including Four Stories in Height	Yes	Yes	No	No Only if water main supplying the sprinkler system is equal or greater than 4 inches in size. (See WAC 212-80-018 (1)(b))	Yes (See WAC 212-80-018 (e)(i))
Level 3 Contractor All Types of Structures	Yes	Yes	Yes	Yes	Yes (See WAC 212-80-018 (e)(i))
Level U Contractor Underground	No	No	No	Yes	No

Level of Contractor License	Standard Defining Work to be Performed				
	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25
Level I&T Inspection and Testing Contractor	No	No	No	No	Yes Inspection/testing only (See WAC 212-80-018 (e)(ii))

(2) **Fire protection sprinkler system certification** - Only a certificate of competency holder may prepare layout drawings or install, inspect, test, maintain, or repair a fire protection sprinkler system or any part of such a system based on his or her ((design)) certification level.

(a) **Design certification** - The following levels will apply to design certifications issued by the director:

(i) **Level 1 design certification** - NFPA 13D.

(ii) **Level 2 design certification** - NFPA 13D or NFPA 13R, and underground work (NFPA 24) when the designed and installed underground main is four inches or greater in size ((or inspection, testing, and maintenance (NFPA 25))) for NFPA 13R.

(iii) **Level 3 design certification** - NFPA 13, NFPA 13R, or NFPA 13D, and underground work (NFPA 24) ((, and inspection, testing, and maintenance (NFPA 25))) for NFPA 13D, NFPA 13R, and NFPA 13.

(b) **Specialized certifications** - The following level will apply to specialized certifications issued by the director:

(i) **Level U certification** - NFPA 24; perform and supervise the installation, inspection, maintenance, repair, and testing of the underground fire protection sprinkler underground piping.

(ii) **Level ITT - Inspection and testing technician** - NFPA 25 for inspection or testing of a NFPA 13R or NFPA 13 ((, wet and dry pipe fire protection sprinkler)). The inspection and testing technician must limit his or her work to the ((inspection and testing)) employing contractor's license level ((under subsection (1)(e) of this section.

~~(c) **Sprinkler fitter certifications** - The following levels will apply to specialized certifications issued by the director:~~

~~(i) **Journey-level sprinkler fitter certification** - Installs, dismantles, alters, maintains, repairs, and corrects all types of sprinkler, standpipe, hose, or other hazard systems for fire protection purposes that are an assembly of piping, conduit, tubing, or hose regardless of the material composition beginning at the connection to the primary water supply. Also includes sprinkler tank heater, air lines tanks, pumps, equipment, appurtenances and all other related components attached thereto inside or outside of the building.~~

~~(ii) **Residential-level sprinkler fitter certification** - Limited to installation, maintenance, and repair of the fire protection sprinkler system of residential occupancies as defined by NFPA 13D and NFPA 13R. A residential level sprinkler fitter certification may also perform installation and repair of NFPA 13 fire protection sprinkler systems and components while under the direct supervision of a certified journey-level sprinkler fitter.~~

~~(iii) **Trainee-level sprinkler fitter certification** - Limited to performing sprinkler fitter work under the direct supervision of a journey-level sprinkler fitter or residential sprinkler fitter certified to perform the type of work the trainee-level sprinkler fitter is performing).~~

Chart 2: Fire Protection Sprinkler Certifications

Level of Certificate of Competency Holder – See Note (1)	Standard Defining Work That May Be Performed				
	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25
Level 1 Design Certification	Yes	No	No	No	No
Level 2 Design Certification	Yes	Yes	No	Yes (Restricted to only certain NFPA 13R systems) (see WAC 212-80-018 (1)(b))	((Yes (Restricted to only 13R systems))) <u>No</u>
Level 3 Design Certification	Yes	Yes	Yes	Yes	((Yes)) <u>No</u>
Level U Certification	No	No	No	Yes	No
Level ITT Certification	No	No	No	No	Yes (See subsection (1)(e) of this section for exceptions) (Limited by contractor licensing level)
(Journey-Level Sprinkler Fitter	Yes	Yes	Yes	No	No
Residential-Level Sprinkler Fitter	Yes	Yes	Only if under the direct supervision of a journey-level sprinkler fitter	No	No
Trainee-Level Sprinkler Fitter	Only if under the direct supervision of a residential/ journey-level sprinkler fitter	Only if under the direct supervision of a residential/ journey-level sprinkler fitter	Only if under the direct supervision of a journey-level sprinkler fitter	No	No))

Chart 3: Certificate Level Required for Level of License

Contractor Level	1	2	3	U	I&T
Building Type	One- and two-family dwellings and manufactured homes	Dwellings up to and including four stories in height	All dwellings and commercial or high occupancy facilities	Dedicated underground fire service main of a water based fire protection system	Inspection((;)) and testing((; and maintenance)) of water based fire protection systems
Certificate of Competency Holder Level Needed to Qualify for License	1	2	3	U	ITT

(3) (~~May a person who has two levels of certification as provided by subsection (2) of this section work for two different licensed contractors if the person only uses one type of certification for each licensed contractor? No.~~) RCW 18.160.040(10) prohibits a certificate

of competency holder from working for more than one licensed contractor at any one time.

~~((4) May a contractor obtain a fire protection sprinkler system license if the contractor employs only sprinkler fitters? No. A sprinkler fitter may only install piping from approved plans with a design certification.))~~

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 17-10-031, § 212-80-018, filed 4/26/17, effective 5/27/17; WSR 14-03-019, § 212-80-018, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-018, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-018, filed 8/16/05, effective 9/16/05; WSR 05-05-006, § 212-80-018, filed 2/4/05, effective 3/7/05.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-023 Authority having jurisdiction. (1) ~~((Does a fire protection sprinkler system contractor need to obtain approval from the authority having jurisdiction? Yes.))~~ The fire protection sprinkler systems contractor must obtain approval from the authority having jurisdiction. The authority having jurisdiction must approve plans, specifications, calculations, contractor's materials and test certificates, and final approval. The authority having jurisdiction may conduct an approved flow test of heads as part of the approval for 13D fire protection sprinkler systems.

(2) ~~((Are there circumstances when the authority having jurisdiction is the director? Yes.))~~ In certain types of occupancies the authority having jurisdiction may be the director and the building or fire official of the city or county in which the installation is located. Generally, these dual responsibilities occur in health care facilities, transient accommodations, and day care facilities. In matters concerning compliance with chapter ~~((s))~~ 18.160 ~~((and 18.270))~~ RCW, or this chapter, the director will be considered the authority having jurisdiction.

(3) ~~((Who has the responsibility to determine which agency is the authority having jurisdiction?))~~ It is the responsibility of the licensed contractor or certificate of competency holder to ascertain which agency or agencies have jurisdiction. If there is a question of which agency is the authority having jurisdiction, the licensed contractor or certificate of competency holder should contact the director.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-023, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-023, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-023, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-025, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-033 Posting requirements—License, certificates, and license number. (1) ~~((What are the posting requirements for the fire protection sprinkler system contractor's license and employees' certificate?))~~ All licenses and certificates must be posted as follows:

(a) Each license and certificate issued under chapter 18.160 RCW must be posted in a conspicuous place in the licensed contractor's place of business.

~~(b) ((For certificates issued under chapter 18.270 RCW, the certificate holder must be in possession of his or her wallet card and display it upon request to the authority having jurisdiction.~~

~~(c))~~ All bids, advertisements, proposals, offers, and installation drawings for fire protection sprinkler systems must prominently display the fire protection sprinkler system contractor's license number.

~~((d))~~ (c) All inspection and testing certificates, documentation, or other such records of work must have affixed to them:

(i) The inspection and testing technician certificate number;

(ii) The signature of the inspection and testing technician; and

(iii) The date of signature.

(2) (a) Every certificate of competency holder must be in possession of his or her wallet card and display it upon request to the authority having jurisdiction.

(b) The wallet card must either be on the certificate of competency holder (wallet, lanyard, article of clothing, etc.) or readily accessible.

(3) Failure to comply with this section constitutes a Level 1 violation for each occurrence.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-033, filed 1/7/14, effective 2/7/14. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, recodified as § 212-80-033, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-100, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-038 Municipality, county, or state regulations. (1) ~~((Does chapter 18.160 RCW or this chapter limit the power of a municipality, county, or state to require persons engaged in the sprinkler trade to obtain a permit? No. The municipality, county, or state))~~

Nothing in this chapter or chapter 18.160 RCW limits the power of a municipality, county, or state to regulate((s)) the quality and character of work performed by contractors through a system of permits, fees, and inspections which are designed to assure compliance with and aid in the implementation of state and local building laws or to enforce other local laws for the protection of the public health and safety.

(2) ~~((Does chapter 18.160 RCW or this chapter limit the power of a municipality, county, or state, to require those engaged in the~~

~~sprinkler trade to obtain a permit? No.~~) Nothing in this chapter or chapter 18.160 RCW limits the authority of the municipality, county, or state ((may)) to adopt any system of permits requiring submission to and approval by the municipality, county, or the state of layout drawings and specifications for work to be performed by contractors before commencement of the work.

(3) ~~((Does chapter 18.160 RCW or this chapter limit the power of a municipality, county, or state, to require licensing or certification apart from the requirements provided by chapter 18.160 RCW or this chapter? Yes.))~~ A municipality, county, or state may not enact a regulation or requirement to require any licensing or certification apart from the requirements provided by chapter 18.160 RCW and this chapter unless the program was in place before 1991.

(4) ~~((Are permits or permission from the authority having jurisdiction required before performing sprinkler work? Yes.))~~ Licensed contractors and certificate of competency holders must comply with the authority having jurisdiction's requirements to obtain permits or permission before the installation, repair, alteration, or addition of a fire protection sprinkler system. Failure to comply with this section constitutes a Level 2 violation.

(a) Except as provided by (b) of this subsection, when a licensed contractor ~~((or certificate holder))~~ submits a bid to work on a fire protection sprinkler system, the licensed contractor ~~((or certificate holder))~~ does not need to obtain permits or permission from the authority having jurisdiction.

(b) The licensed contractor or certificate of competency holder must verify whether a permit or permission is required from the authority having jurisdiction before installing, repairing, altering, adding, or removing any fire protection sprinkler system.

(5) ~~((Is an authority having jurisdiction required to verify that the contractor's license and certificate of competency stamp are valid? Yes.))~~ The authority having jurisdiction's official authorized to issue building or other related permits must ascertain that the fire protection sprinkler system contractor is duly licensed by requiring evidence of a valid fire protection sprinkler system contractor's license and a valid certificate of competency stamp consistent with the contractor's license.

(6) ~~((Does this regulation apply to a fire protection sprinkler system contractor performing work for any municipality, county, or state? Yes.))~~ Officials of any municipality, county, or the state are required to determine compliance with this chapter before awarding any contracts for the installation, inspection, testing, maintenance, repair, service, alteration, fabrication, or addition of a fire protection sprinkler system.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-038, filed 1/7/14, effective 2/7/14. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-038, filed 8/16/05, effective 9/16/05; WSR 05-05-006, amended and recodified as § 212-80-038, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-130, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-048 Subcontracting. (1) (~~(When is it not permissible to subcontract fire protection sprinkler system work?~~

~~(a))~~) Subcontracting work on a fire protection sprinkler system is not permitted:

~~((i))~~) (a) If the subcontractor does not have a current fire protection sprinkler system contractor's license consistent with the level of work performed on the fire protection sprinkler system; or

~~((ii))~~) (b) If the inspection and testing work is contracted to a contractor licensed by the department of labor and industries, but not a licensed fire protection sprinkler system contractor.

~~((b))~~) (c) Failure to comply with this section constitutes a Level 3 violation.

(2) (~~(When is subcontracting or contracting of fire sprinkler protection system work permitted?)~~) Subcontracting of any fire sprinkler protection system work is permissible:

(a) When a licensed general contractor bids on a project that involves a fire protection sprinkler system. All subcontracting by a licensed general contractor for fire sprinkler work must be performed by a licensed fire protection sprinkler system contractor; or

(b) When the subcontractor is a licensed fire protection sprinkler system contractor and licensed at a level consistent with the work performed on the fire protection sprinkler system.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-048, filed 1/7/14, effective 2/7/14. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, § 212-80-048, filed 2/4/05, effective 3/7/05.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-053 Application for licensed fire protection sprinkler system contractor. (1) (~~(What are the prerequisites to apply for a fire protection sprinkler system contractor license?)~~) Applicants seeking a fire protection sprinkler system contractor's license must:

(a) Register the company structure with the secretary of state

(www.sos.wa.gov), RCW 23B.01.200;

(b) Submit a master business application with the department of licensing (www.dol.wa.gov) or through the department of labor and industries (www.lni.wa.gov) and receive a unified business identifier number and ~~((twelve))~~ 12 digit contractor number;

(c) Obtain a federal tax number from the Internal Revenue Service (www.irs.gov); and

(d) Register as a general or specialty contractor with the department of labor and industries under chapter 18.27 RCW.

(2) (~~(Once the prerequisites are met, how do you get licensed as a fire protection sprinkler contractor?)~~) To become a licensed contractor under this chapter, a person must:

(a) Be or have in his or her full-time employ a holder of a valid certificate of competency whose level is consistent with the license level the contractor is applying for as provided by WAC 212-80-018. If the certificate of competency holder is not certified when the fire

protection sprinkler system contractor submits an application for licensing, the certificate of competency holder's application must be submitted at the same time.

(b) Submit an application to the director on forms provided for the level of fire protection sprinkler system contractor license. The applicant must complete and provide to the director:

- (i) Initial application;
- (ii) Contractor license background;
- (iii) Affidavit of compliance for licensing; and
- (iv) Bond or assignment of deposit.

(c) Pay the fees required under WAC 212-80-073 for the applicable level of license.

(d) Meet the bonding requirements of WAC 212-80-078.

(e) Provide the business name registered with the department of labor and industries and provide the (~~twelve~~) 12 digit alphanumeric business license number assigned by that agency.

(3) All information submitted for a fire protection sprinkler system contractor license must be true and accurate.

(4) Failure to comply with this section constitutes a Level 3 violation.

(5) If the director finds that information or documents submitted by an applicant is false, misleading or has been altered in an effort to meet the requirements, the director will revoke the license pursuant to WAC 212-80-205.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-053, filed 1/7/14, effective 2/7/14. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-053, filed 8/16/05, effective 9/16/05; WSR 05-05-006, amended and recodified as § 212-80-053, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-090, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-058 Fire protection sprinkler system contractor license not transferable. (1) (~~(Is a fire protection sprinkler system contractor's license transferable between companies? No.)~~) A license issued under this chapter is not transferable.

(2) (~~(If a currently licensed fire protection sprinkler system contractor merges or forms another company, can the license be reissued to a newly formed or incorporated company?)~~) If a currently licensed contractor merges or forms another company, that license can be reissued to the newly formed or incorporated company provided:

(a) The principal officers of the licensed company remain the same;

(b) The company continues, takes over, or otherwise reestablishes the bond required by chapter 18.160 RCW for licensing;

(c) The company continues to perform fire protection sprinkler system contractor work as defined by chapter 18.160 RCW;

(d) The company employs certificate of competency holders of the appropriate levels; and

(e) The company meets the criteria necessary for licensing as a fire protection sprinkler contracting company as defined by chapter 18.160 RCW.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-058, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-058, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-058, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-105, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-063 Contractor responsibilities, certificate of competency holder employment. (1) (~~What are the requirements of the fire protection sprinkler system contractor regarding the employed certificate holder(s)?~~ A Level 1, 2, or 3) Any fire protection sprinkler system contractor must have at least one full-time certificate of competency holder, consistent with the license level as provided by WAC 212-80-018, employed to conduct business.

(2) (~~What happens if the licensed contractor no longer employs a certificate holder?~~) If a certificate of competency holder leaves the employment of the fire protection sprinkler system contractor, the contractor must comply with the following:

(a) From the date of separation of the design-only certificate of competency holder, the contractor will have six months or until the expiration of the current license, whichever occurs last, to (~~submit a new application~~) come into compliance. In order to be issued a new license, the contractor must employ a new person (either as owner or full-time employee) with the appropriate certificate level consistent with the contractor's license level as provided by WAC 212-80-018.

(b) The licensed contractor must notify the director of the loss of the primary design certificate of competency holder within (~~thirty~~) 30 calendar days. For the purposes of this subsection, (~~thirty~~) 30 calendar days commence on the certificate of competency holder's last day of employment for compensation. The licensed contractor's failure to notify the director:

(i) Within (~~thirty~~) 30 calendar days is a Level 1 violation.

(ii) Within (~~sixty~~) 60 calendar days is a Level 2 violation.

(iii) After (~~one hundred eighty~~) 180 calendar days is a Level 3 violation.

(c) A fire protection sprinkler system contractor may renew a license without employing a design certificate of competency holder if the six-month period crosses into a new license year and all appropriate fees are paid at the time of renewal. During the period in which the licensed contractor does not have a design certificate of competency holder, the licensed contractor must limit work on fire protection sprinkler systems to:

(i) Completing the active phase of existing work in progress which has been approved by the authority having jurisdiction, and may not receive new approvals from the authority having jurisdiction with-

out a design certificate of competency holder's number on the documents; or

(ii) Continuing installation on approved design plans, however, the contractor's material and test certificate for the system must be stamped by a certificate of competency holder in the full-time employ of the installing contractor.

(d) If a contractor fails to employ a design certificate of competency holder as required in this chapter, and the director has renewed the license, the director will suspend the contractor's license pursuant to WAC 212-80-205. The suspension will remain in effect until the contractor has a full-time design certificate of competency holder or a hearings officer denies the director's petition to suspend the license.

(e) When a licensed contractor no longer employs a design certificate of competency holder, and the contractor has not hired another design certificate of competency holder, the contractor may not bid on the design, installation, or repair of a fire protection sprinkler system, or any part of such system, that requires work inconsistent with the previously employed design certificate of competency holder's level.

(f) Any contractor that uses a current or former employee's certification stamp on any technical drawings not prepared by the (~~certificate holder~~) design certificate of competency holder is in violation of this chapter.

(g) Failure to comply with (c) through (f) of this subsection constitutes a Level 3 violation.

(3) (~~What happens when a Level U or I&T licensed contractor no longer employs a Level U or ITT certificate holder?~~) If a certificate of competency holder leaves the employment of a Level U or I&T fire protection sprinkler system contractor, the contractor must comply with the following:

(a) The licensed contractor is prohibited from continuing the supervision of underground fire sprinkler pipe installation and inspection, testing, and maintenance, of fire protection sprinkler systems. Failure to comply with this subsection constitutes a Level 3 violation and the director may summarily revoke the contractor's license.

(b) The contractor must immediately cease bidding on or starting any sprinkler work without the appropriate specialty certificate of competency holder.

(c) The contractor must notify the director within (~~thirty~~) 30 days after the specialty certificate of competency holder's last day of employment for compensation. Failure to comply with this subsection constitutes a Level 2 violation and the director may suspend the contractor's license pursuant to WAC 212-80-205.

(4) (~~What are the responsibilities of the fire protection sprinkler system contractor regarding the employed certificate holders?~~) The contractor is responsible for the work and actions of its employees regardless of the contractor's knowledge of any wrongdoing. The director may refuse to issue or renew a license to engage in the fire protection sprinkler system business for any of the reasons listed in WAC 212-80-205. The director may suspend or revoke the license or the certificate of competency holder's certificate to engage in the fire protection sprinkler system business for any of the reasons listed in WAC 212-80-205.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-063, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW

18.270.900. WSR 09-01-114, § 212-80-063, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-063, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-110, filed 12/1/94, effective 1/1/95; WSR 91-14-086 (Order 91-06), § 212-80-110, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-068 License renewals. (1) (~~When are fire protection sprinkler system contractor licenses required to be renewed?~~) All licensed fire protection sprinkler system contractors desiring to continue to be licensed must renew their license before January 1 of each year. The application for renewal must be made upon a form prescribed by the director. Any contractor not wishing to renew their license at the beginning of the year should notify the director of the intention not to renew.

(2) (~~What happens if the contractor does not renew its license by the expiration date?~~) A licensed contractor that fails to secure renewal of the license by the expiration date will:

(a) Not execute contracts for the design, installation, inspection, testing, maintenance or repair of fire protection sprinkler systems or any part of such a system in the state of Washington.

(b) Submit a ((new)) license reinstatement application pursuant to WAC 212-80-053 to obtain a fire sprinkler protection system contractor license.

(3) (~~Are there reasons why the director would not renew a fire protection sprinkler system contractor license? Yes.~~) The director will not renew a license that has been suspended by the director, or if the general or specialty license issued by the department of labor and industries has been suspended or revoked.

(4) (~~When will the director not restore a fire protection sprinkler system contractor's suspended license?~~) In addition to other provisions of this chapter, any of the following will constitute cause for the director, not to restore a license that has been suspended:

(a) Nonreceipt of payment of all delinquent fees;

(b) Nonreceipt of a late charge and/or application fee;

(c) Failure to comply with the bonding requirements of chapter 18.160 RCW; or

(d) Failure to obtain or show evidence of having a full-time employee certified as a certificate of competency holder of the appropriate level as defined by chapter 18.160 RCW.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-068, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-068, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-068, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-115, filed 12/1/94, effective 1/1/95; WSR 92-20-070 (Order 92-08), § 212-80-115, filed 10/5/92, effective 11/5/92; WSR 91-14-086 (Order 91-06), § 212-80-115, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-073 Fire protection sprinkler system contractor license fees. (1) **Initial application fee** is (~~one hundred dollars~~) \$100 only charged once when a person makes the initial application for any fire protection sprinkler system contractor license.

(2) **Annual license fee** is paid by the contractor when:

(a) Submitting the application for a license; or

(b) Renewing the fire sprinkler system license. The annual license fees for each contractor license level are:

Level 1	\$100
Level 2	\$300
Level 3	\$1,500
Level U	\$1,500
Level I&T	\$1,000

(3) Except as provided by (b) of this subsection, the annual license fee as provided by subsection (2) (a) of this section will be prorated based upon the portion of the year such license is in effect, provided that:

(a) The annual license fee is allowed to be prorated only once in the history of the company.

(b) When the director finds that a contractor performed work covered by this chapter and chapter 18.160 RCW, the contractor must pay the full annual licensing fees, in addition to any penalties assessed by the director for unlicensed operation(s).

(c) The prorated fees are as follows:

Fire Sprinkler System Contractor Initial Prorated License Fees					
Month	1	2	3	U	I&T
January	(\$100.00)	\$300.00	\$1,500.00	\$1,500.00	(\$1,000.00)
	<u>Not prorated for January</u>				
February	\$92.00	\$275.00	\$1,375.00	\$1,375.00	\$920.00
March	\$83.00	\$250.00	\$1,250.00	\$1,250.00	\$830.00
April	\$75.00	\$225.00	\$1,125.00	\$1,125.00	\$750.00
May	\$67.00	\$200.00	\$1,000.00	\$1,000.00	\$670.00
June	\$58.00	\$175.00	\$875.00	\$875.00	\$580.00
July	\$50.00	\$150.00	\$750.00	\$750.00	\$500.00
August	\$42.00	\$125.00	\$625.00	\$625.00	\$420.00
September	\$33.00	\$100.00	\$500.00	\$500.00	\$330.00
October	\$25.00	\$75.00	\$375.00	\$375.00	\$250.00
November	\$17.00	\$50.00	\$250.00	\$250.00	\$170.00
December	\$8.00	\$25.00	\$125.00	\$125.00	\$80.00

(4) (~~Certificate~~) License fees are nonrefundable once the director has issued the (~~certificate~~) license.

(5) The director will invoice the annual license and certification fees for renewal to the contractor and the certificate of competency holders. Contractors may receive invoices for the certificate of competency holders they employ.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-073, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW

18.270.900. WSR 09-01-114, § 212-80-073, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-073, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-120, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-078 Contractor surety bonds. (1) (~~(Is the surety bond required by the department of labor and industries acceptable to the director for issuing a fire protection sprinkler system contractor license? No.~~)) A fire protection sprinkler system contractor must have a separate bond conditioned to compensate third-party losses caused by the acts of the contractor's principal or the principal's servant, officer, agent, or employees, in conducting the business registered or licensed under this chapter as follows:

(a) Level 3 or Level "U" fire protection sprinkler system contractor, must file with the director a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of (~~ten thousand dollars~~) \$10,000; or

(b) Level 1 or Level 2 systems or a contractor to be licensed as an inspection and testing contractor, must file with the director a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of (~~six thousand dollars~~) \$6,000.

SURETY BOND REQUIREMENT CHART

Level	1	2	3	U	I&T
Building Type By NFPA Standard	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25
Bond Amount	\$6,000	\$6,000	\$10,000	\$10,000	\$6,000

This is a separate bond from the one obtained to license with L&I.

(2) (~~(Can another type of security bond be used other than the surety bond? Yes.~~)) Upon approval by the director, cash or other security may substitute for a surety bond provided the value matches the appropriate level of bonding required under subsection (1) of this section and the following conditions are met:

(a) The value of property must be determined by an appraiser selected by the director and all appraisal fees will be paid by the fire protection sprinkler system contractor.

(b) The cash or other security substitute will be released one year after the expiration of the fire protection system contractor license issued by the director provided that there are no claims against the bond.

(3) (~~(What notice is required for cancellation of a bond?)~~) A cancellation of a surety bond or insurance policy is effective (~~thirty~~) 30 days after the director receives the cancellation notice or upon the cancellation date as specified by the surety company whichever occurs first. The cancellation notice must be sent to the director by certified or registered mail and contain the following information in this order:

(a) The name of the contractor, exactly as it appears on the contractor's license;

- (b) The contractor's license number (as issued by the department of labor and industries);
- (c) The contractor's business address;
- (d) The number of the bond or insurance policy that is to be canceled; and
- (e) The effective date of the bond that is to be canceled.
- (4) (~~(What happens if the bond is canceled or expires without renewal?)~~) If the surety company cancels or revokes the bond or a withdrawal of the surety company from the bond occurs, the director will suspend both the fire protection sprinkler system contractor license issued to the contractor, and the certifications of employee(s) employed by the contractor pursuant to WAC 212-80-205. The director may rescind the suspension action when the contractor files a new bond or reinstatement notice. The director will provide written notice to both the contractor and certificate of competency holders of the (~~license or certificate~~) suspension action. (~~This subsection does not apply to the certificates of commercial or residential installers under chapter 18.270 RCW.~~)

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-078, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-078, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-078, filed 8/16/05, effective 9/16/05; WSR 05-05-006, amended and recodified as § 212-80-078, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 92-20-070 (Order 92-08), § 212-80-125, filed 10/5/92, effective 11/5/92.]

FIRE SPRINKLER CERTIFICATE OF COMPETENCY HOLDER

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-083 Stamps for NFPA 13D, 13R, and 13 systems certificate of competency holders. Certificate of competency holders for Level 1, Level 2, Level 3, and Level U will obtain a stamp each certification year to affix on all sprinkler related documents as provided by this chapter.

(1) **Will the stamp come with my certification?** When the director issues a certificate, the director will provide a Level 1, Level 2, Level 3, and Level U certificate of competency holder the information necessary to order a stamp. The cost of the stamp and obtaining a stamp will be the responsibility of the certificate of competency holder.

(2) **What is required on the stamp?** The stamp will conform to the following appearance specifications:

(a) The name and certification number of the certificate of competency holder;

(b) The name and license number of the certificate of competency holder's employer;

(c) The expiration date of the current certificate; and

(d) A place for the signature of the design certificate of competency holder and the date of the signature.

(3) **When is the stamp required to be used?** An original stamp and signature must appear in an easily recognizable manner on:

(a) Sprinkler system plans, calculations, and contractors' materials and test certificates submitted to the authority having jurisdiction.

(b) At least one set of approved plans and calculations, containing information as specified in subsection (1) of this section, must be maintained on the job site while the work is being performed.

(c) The cover sheet of hydraulic calculations.

(d) On all test certificates for fire protection sprinkler systems submitted to the authority having jurisdiction.

(4) Plans and calculations for "underground only" portions of fire protection sprinkler systems submitted to the authority having jurisdiction by a Level U licensed fire protection sprinkler contractor must be stamped by both the system designer and the certificate of competency holder for the licensed installing contractor seeking the permit. The Level U certification seal will only address matters of installation while the stamp for design must be either:

(a) A licensed professional engineer registered in the state of Washington; or

(b) A government employee acting in their official capacity; or

(c) The appropriate level certificate of competency holder and the Level U certificate of competency holder employed by the submitting contractor.

(5) **What are the documentation requirements for inspection and testing technicians?** Inspection and testing technicians must affix the certificate number and signature on all bids or documents related to the inspection and testing of a fire protection sprinkler system. The inspection and testing technician may affix the certificate number by handwriting or digital signature.

(6) **Can documentation be provided using an electronic record?**

(a) Yes. Electronic records may be submitted provided that:

(i) The electronic record must meet the applicable requirements of chapter 18.160 RCW and this chapter; and

(ii) The signature is an original "wet" signature, written by hand and applied by the identified registrant or a digital signature.

(b) The following guidelines will be used when submitting electronic records:

(i) An electronic stamp may be embedded in an electronic document as part of a template, drawing border, or cover sheet.

(ii) The certificate of competency holder is responsible for ensuring that the stamp is only affixed to documents personally prepared by or under his or her direct supervision.

(iii) If the stamp is combined with a digital signature into a single graphic entity, then it must:

(A) Be affixed by the certificate of competency holder in conjunction with the certificate of competency holder applying his or her digital signature to the document;

(B) Include a scanned image of a "wet" signature; and

(C) Be affixed only to the final documents.

(iv) A digital signature must be affixed by the certificate of competency holder to final documents that are distributed as an elec-

tronic record to meet the requirements of this section. The certificate of competency holder must maintain exclusive control ((of the passwords, private key, or security device that allows access)) to his or her digital signature.

(7) (~~What are the violations of this section?~~) Violations of this section includes:

(a) A certificate of competency holder altering, forging, or falsifying a certification stamp in order to submit bids or documents related to fire protection sprinkler system plans, calculations, permits, or any other documents that show the stamp being valid, constitutes a Level 3 violation.

(b) A certificate of competency holder using a stamp from previous employment with a licensed contractor while employed by another licensed contractor will constitute a Level 2 violation.

(c) A certificate of competency holder using an issued stamp from previous employment with a licensed contractor while not currently employed by a licensed contractor will constitute a Level 3 violation.

(d) A certificate of competency holder using an expired stamp will constitute a Level 3 violation.

(e) (i) A certificate of competency holder stamping documents that have been forwarded to the authority having jurisdiction for approval that were not prepared by the certificate of competency holder or an individual under his or her direct supervision constitutes a Level 3 violation.

(ii) Stamped documents submitted to the authority having jurisdiction for work other than design that does not clearly bear the seal of the designer shall constitute a Level 2 violation.

(f) A certificate of competency holder failing to affix the certificate stamp or inspection testing technician's number and signature on inspection forms constitutes a Level 1 violation.

(g) A certificate of competency holder obtaining a certification stamp while not holding a current and valid certificate of competency holder constitutes a Level 3 violation.

(h) Anyone who uses a certification seal and/or number that was not issued to them by the direction on any fire protection sprinkler system work for any reason constitutes a Level 3 violation.

(8) (~~May a licensed contractor hired by a person who has obtained a building, structure, or property through a foreclosure process complete the installation using a previous licensed fire protection sprinkler system contractor's design, uncompleted installation, and permit? No.~~) A licensed contractor hired by a person who has obtained a building, structure, or property through a foreclosure process may not use a previous licensed fire protection sprinkler system contractor's design, uncompleted installation, or permit. The licensed contractor must submit new plans with the certificate ((holder's)) of competency stamp affixed and obtain a new permit from the authority having jurisdiction for work that will be done under the licensed contractor's supervision. The decision to remove piping must be made in consultation with the authority having jurisdiction. The licensed contractor must obtain approval from the authority having jurisdiction for any portion of the fire protection sprinkler system that was not previously inspected and approved by the authority having jurisdiction.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-083, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-083, filed 12/19/08, effective

1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-083, filed 8/16/05, effective 9/16/05; WSR 05-05-006, amended and recodified as § 212-80-083, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-035, filed 12/1/94, effective 1/1/95; WSR 92-20-070 (Order 92-08), § 212-80-035, filed 10/5/92, effective 11/5/92; WSR 91-14-086 (Order 91-06), § 212-80-035, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-088 Contractor's materials and test certificates.

(1) The certificate of competency holder must complete the contractor's material and test certificate(s), affix his or her certificate stamp, and forward the certificate(s) to the authority having jurisdiction.

(2) Contractor's material and test certificate forms must be of such form as accepted or approved by the authority having jurisdiction.

(3) The authority having jurisdiction and the building owner must retain copies of the contractor's materials and test certificate for a minimum of five years.

(4) The certificate of competency holder will not allow his or her stamp to be used to complete the contractor's materials and test certificate(s) that were not prepared personally by the certificate of competency holder or under his or her direct supervision. Failure to comply with this subsection constitutes a Level 2 violation.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-088, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-088, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-088, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-040, filed 12/1/94, effective 1/1/95; WSR 91-14-086 (Order 91-06), § 212-80-040, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 19-24-059, filed 11/27/19, effective 12/28/19)

WAC 212-80-093 Certificate of competency holder certification.

(1) (~~(How do I become a certificate holder?)~~) The issuance of a certificate of competency is dependent on employment with a licensed contractor. All applications for a certificate of competency must be submitted with the fire protection sprinkler system contractor's license application or under an existing license. A certificate application will not be processed without the fire protection sprinkler system contractor's license application unless they are currently licensed. All applications must be made on the forms provided by the director and include the required fees provided by WAC 212-80-098 and documen-

tation for the required level of certification as provided by this section.

(a) **For Level 1 design certification**, the applicant must:

(i) Have satisfactorily passed with a final score of ~~((eighty))~~ 80 percent or better an examination administered by the director, or present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved Level 2 certification in the field of water-based fire protection system layout; or

(ii) Be a Washington licensed professional engineer.

(b) **For Level 2 design certification**, the applicant must:

(i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 2 in the field of water-based fire protection systems layout; or

(ii) Be a Washington licensed professional engineer.

(c) **For Level 3 design certification**, the applicant must either:

(i) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved a Level 3 in the field of water-based fire protection systems layout; or

(ii) Be a Washington licensed professional engineer.

(d) **For Level U certification**, the applicant must have satisfactorily passed with a final score of ~~((eighty))~~ 80 percent or better an examination administered by the director.

(e) **For inspection and testing technician certification**, the applicant must:

(i) Possess a National Institute for Certification and Engineering Technologies Inspection, Testing and Maintenance Level 2 or Level 3 certification; or

(ii) Possess the American Society of Sanitary Engineers 15010 Field Technician Certification; and

~~((ii))~~ (iii) Perform work consistent with the employing contractor's licensing level.

~~(f) **For journey-level sprinkler fitter certification**, the applicant must:~~

~~(i) Provide evidence on the forms provided by the director of at least eight thousand hours of trade related fire protection sprinkler system experience in installation and repair;~~

~~(ii) Not have more than three thousand hours of the required eight thousand hours of experience in residential sprinkler fitting; and~~

~~(iii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.~~

~~(g) **For residential sprinkler fitter certification**, the applicant must:~~

~~(i) Provide evidence on the forms provided by the director, of at least four thousand hours of trade related fire protection sprinkler system experience in installation, repair, and maintenance; and~~

~~(ii) Satisfactorily pass an examination provided by the director with a final score of eighty percent.~~

~~(h) **For journey- or residential-level sprinkler fitter training certification**, except as provided by (g) (i) of this subsection, the applicant must:~~

~~(i) Provide evidence to the director, on the forms provided by the director, of trade related employment by a licensed contractor;~~

~~(ii) Remain employed by a licensed contractor to maintain trainee status; and~~

~~(iii) Only engage in the fire protection sprinkler system trade when under the supervision of a certified journey level or residential installer.~~

(i)) **For a professional engineer** to act as a Level 1, 2, or 3 certificate of competency holder and be issued a stamp, the professional engineer must:

(i) Be licensed by the department of licensing;

(ii) Obtain a Level 1, Level 2, or Level 3 certificate;

(iii) Properly register with the department of licensing;

(iv) Complete the application process for certification provided by WAC 212-80-093;

(v) Pay fees provided by WAC 212-80-073;

(vi) Supply the director with proof that he or she holds a current, valid state of Washington registration as a professional engineer; and

(vii) Otherwise the professional engineer is exempt from certification when acting solely in a professional capacity as an engineer.

(2) Proof of competency to the satisfaction of the director is mandatory.

Certificate of Competency Holder Requirements				
Certificate of Competency Level	Application Required	Certification or Exam Required	Stamp Issued	Type of work performed by Certificate of Competency Holder
Level 1	Yes	NICET Level 2 or pass an exam (See WAC 212-80-093 (1)(a))	Yes	Designs NFPA 13D fire sprinkler systems ((or inspection, testing, maintenance)) (NFPA 25) for NFPA 13D
Level 2	Yes	NICET Level 2 (See WAC 212-80-093 (1)(b))	Yes	Designs NFPA 13D, 13R or certain NFPA 24 (Restricted to only certain NFPA 13R systems, see WAC 212-80-018 (1)(b)) fire sprinkler systems ((or inspection, testing, maintenance)) (NFPA 25) for NFPA 13D or 13R
Level 3	Yes	NICET Level 3 or 4 (See WAC 212-80-093 (1)(c))	Yes	Designs NFPA 13, 13D, 13R or 24 fire sprinkler systems ((or inspection, testing, maintenance)) (NFPA 25) for NFPA 13, 13D or 13R
Level "U"	Yes	Pass an exam (See WAC 212-80-093 (1)(d))	Yes	Supervises or performs the underground installation of fire sprinkler system piping

Certificate of Competency Holder Requirements				
Certificate of Competency Level	Application Required	Certification or Exam Required	Stamp Issued	Type of work performed by Certificate of Competency Holder
Inspection, Testing Technician (ITT) Employed by an Inspection & Testing Contractor	Yes	NICET Level 2 or ASSE 15010 (See WAC 212-80-093 (1)(e))	No	Performs inspection or testing on NFPA 13R or 13, wet and dry pipe fire protection systems only
Inspection, Testing Technician (ITT) Employed by a Level 2 Contractor	Yes	NICET Level 2 or ASSE 15010 (See WAC 212-80-093 (1)(e))	No	Performs inspection(,) and testing ((and maintenance)) on NFPA 13R or 13, wet and dry pipe fire protection systems only
Inspection, Testing Technician (ITT) Employed by a Level 3 Contractor	Yes	NICET Level 2 or ASSE 15010 (See WAC 212-80-093 (1)(e))	No	Same as ITT above and includes the testing of other fire protection systems such as preaction, deluge, foam, or fire pump
((Journey Sprinkler Fitter	Yes	Pass an exam (See WAC 212-80-093 (1)(f))	No	Installs and repairs NFPA 13D, 13R, or 13 fire sprinkler systems
Residential Sprinkler Fitter	Yes	Pass an exam (See WAC 212-80-093 (1)(g))	No	Installs, repairs, and performs maintenance on fire sprinkler systems in residential occupancies)
Professional Engineer (P.E.) Licensed in Washington State	Only if acting as a Level 1, 2 or 3 certificate of competency holder	Licensed with department of licensing	By DOL unless acting as a Level 1, 2, or 3 certificate of competency holder	Designs, evaluates or consults on fire protection fire sprinkler systems

(3) All information submitted by an applicant to the director to apply for a certificate must be true and accurate. If the director finds that information or documents submitted by an applicant is false, misleading, or has been altered in an effort to meet the requirements provided by this chapter, the finding will constitute a Level 3 violation.

(4) A violation of this section that involves a contractor allowing an employee to engage in performing fire protection sprinkler system work:

(a) Without a license or certificate, or with a license or certificate that has been expired for one or more years is a Level 3 violation.

(b) With a license or certificate that has been expired for more than ~~((ninety))~~ 90 days and less than one year is a Level 2 violation.

(c) With a license or certificate that has been expired less than ~~((ninety))~~ 90 days is a Level 1 violation.

~~((d) By engaging in the trade of fire sprinkler fitting without having a valid sprinkler fitter certificate of competency issued for the work being conducted is a level 3 violation.~~

~~(e) By a trainee sprinkler fitter engaging in the trade of fire sprinkler fitting without the direct supervision of a certified residential or journey sprinkler fitter is a level 3 violation.~~

~~(f) As a trainee without a trainee certificate but with the direct supervision of a certified residential or journey sprinkler fitter is a level 1 violation.)~~

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 19-24-059, § 212-80-093, filed 11/27/19, effective 12/28/19; WSR 17-10-031, § 212-80-093, filed 4/26/17, effective 5/27/17; WSR 14-03-019, § 212-80-093, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-093, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-093, filed 8/16/05, effective 9/16/05; WSR 05-05-006, amended and recodified as § 212-80-093, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-045, filed 12/1/94, effective 1/1/95; WSR 91-14-086 (Order 91-06), § 212-80-045, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-098 Fees for certificate of competency holder. There are ~~((three))~~ four separate fees that may apply:

(1) **Application fee** is ~~((fifty dollars))~~ \$100 only charged once when a person makes the initial application for any of the certificates specified in this section. As long as the certificate of competency holder maintains continuous certification, the certificate of competency holder is not required to pay a subsequent application fee. Application fees are nonrefundable.

(2) Annual **certification fee** is ~~((fifty dollars))~~ \$100 paid each year the certificate of competency holder applies for certification renewal. The annual renewal fee:

(a) Is in addition to the initial application fee paid for the initial application; and

(b) ~~((Does not apply to journey, residential, or trainee sprinkler fitter certifications.))~~ Is nonrefundable once the certificate has been issued.

(3) **Prorated fee** is the initial certification fee prorated based on the portion of the year the certification is in effect before renewal on January 1st.

(a) Prorated fees are allowed only for the initial certificate.

(b) Renewals or reinstatements will not be prorated.

The prorated fees are as follows:

Annual Certificate Prorated Fees

January	((50))
	<u>Not prorated</u>
February	((44)) <u>\$92</u>
March	((40)) <u>\$83</u>
April	((36)) <u>\$75</u>
May	((32)) <u>\$67</u>
June	((28)) <u>\$58</u>

Annual Certificate Prorated Fees

July	(((\$24)) \$50
August	(((\$20)) \$42
September	(((\$16)) \$33
October	(((\$12)) \$25
November	(((\$8)) \$17
December	(((\$4)) \$8

(4) (~~Certificate fees are nonrefundable once the certificate has been issued~~) **Examination fee** is \$150, charged per examination, including retests.

Examination fees are nonrefundable.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-098, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-098, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-098, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-050, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-108 Certificate not transferable. (1) (~~Is a certificate transferable to another person? No.~~) A certificate issued under this regulation is not transferable to another person.

(2) (~~Is a certificate transferable to another employer? Yes.~~) The certificate can follow a certificate of competency holder to another employer provided that employer is currently licensed at the appropriate level.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-108, filed 1/7/14, effective 2/7/14. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-108, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-060, filed 12/1/94, effective 1/1/95; WSR 91-14-086 (Order 91-06), § 212-80-060, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-113 Certificate of competency holder employment. (1) (~~What are the employment requirements for a certificate holder?~~) All certificate of competency holders must be employed by a licensed fire protection sprinkler system contractor.

(a) In no case will a certificate of competency holder be employed full time by more than one licensed contractor at the same time.

(b) If the certificate of competency holder should leave the employment of the licensed contractor, he or she will notify the director within (~~(thirty)~~) 30 days of his or her last day of employment. Failure to do so constitutes a Level 2 violation.

(2) (~~(Are there any exceptions to the employment requirements for a certificate holder? Yes.)~~) The following exceptions may apply:

(a) Any current certificate of competency holder for the license and certification year who is no longer employed by a licensed contractor will become "INACTIVE (~~(, "unless he or she is a journey, residential or trainee sprinkler fitter.)~~)." An "INACTIVE" certificate will:

(i) Not be issued a physical certificate;

(ii) Not allow the certificate of competency holder to perform any work in the fire protection sprinkler system trade as a certificate of competency holder until the certificate of competency holder is employed by a licensed contractor licensed by the director. When an "INACTIVE" certificate of competency holder is employed by a licensed contractor the director will reissue a certificate to the certificate of competency holder;

(iii) Expire at the end of the current licensing and certification cycle and cannot be renewed as "INACTIVE."

(b) The "QUALIFIED EXEMPT" certification allows persons who are considered exempt from the licensing (~~(or)~~) and certification requirements of chapter 18.160 RCW and this chapter and not currently working for a licensed contractor, to obtain evidence of qualification while working for an employer who requires a knowledge and skill base of fire protection sprinkler systems.

(i) A "QUALIFIED EXEMPT" certificate:

(A) Will not be used for work under contract.

(B) May be issued to:

(I) An employee of the United States, state or local government, building officials, fire marshals, fire inspectors, or insurance inspectors when acting in their official capacities.

(II) A person who performs maintenance or other duties for an employer, and performs work on only his or her employer's fire protection sprinkler system.

(III) A person who works for an industry ancillary to the fire protection sprinkler system contracting trade that is regulated by chapter 18.160 RCW.

(ii) A "QUALIFIED EXEMPT" certificate of competency holder will:

(A) Bear "QUALIFIED EXEMPT" on the certificate and listing post on the internet and the person's level of certification.

(B) Be issued a physical certificate.

(C) Not be issued a stamp.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-113, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-113, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-113, filed 8/16/05, effective 9/16/05; WSR 05-05-006, amended and recodified as § 212-80-113, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-070, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-118 Certificate renewals. (1) ~~((When are certificates required to be renewed?~~

~~(a-))~~ A certificate must be renewed by January 1st of each calendar year.

~~((b) Certificates for journey and residential fitters must be renewed by January 1st of every even-numbered year. A sprinkler fitter certificate holder will be sent a renewal form by the director to renew the certificate.~~

~~(c) Certificates for sprinkler fitter trainees must be renewed by January 1st of every even-numbered year.~~

~~(i) Trainees who have a current certificate will be sent a renewal form by the director to renew their certificate.~~

~~(ii) The certificate will not be renewed if the trainee is not currently employed by a licensed contractor.~~

~~(d) Failure of a trainee, journey, or residential sprinkler fitter to renew his or her certificate will result in him or her:~~

~~(i) Filing a new application with the director on a form provided by the director; and~~

~~(ii) Successfully passing the written examination required by this chapter.~~

~~(2) What happens if the certificate holder does not renew his or her application by the expiration date?)~~ (2) Failure of a certificate of competency holder to renew his or her certificate by the expiration date will constitute a break in certification. For certificates that are expired for:

(a) Less than two consecutive calendar years, the certificate of competency holder may ~~((renew))~~ reinstate by submitting a ~~((renewal))~~ reinstatement application provided by the director and paying applicable fees.

(b) Two or more calendar years, the certificate of competency holder must submit a new application with evidence of qualification, including any required exam, and applicable fees for a new certificate.

Those who were qualified under the grandfathering process will need to ~~((show evidence of qualification meeting))~~ apply for certification as a new applicant and meet the current requirements.

(3) ~~((Are there reasons why the director would not renew a certificate? Yes-))~~ The director will not renew a certificate if:

(a) The certificate of competency holder is employed by a fire protection sprinkler system contractor who has not submitted for a renewal of its license; or

(b) The certificate of competency holder is employed by an unlicensed fire protection sprinkler system contractor or anyone who is not otherwise considered exempt from chapter 18.160 RCW; or

(c) The certificate is in a revoked or suspended status.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-118, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-118, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-118, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-075, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-123 Voluntary relinquishment of certificates. (1) A certificate of competency holder may voluntarily relinquish his or her certificate to the director.

(2) The relinquishment is effective when the certificate is received by the director.

(3) After relinquishing the certificate, he or she will not be known as a certificate of competency holder or trainee and will desist from the practice thereof.

(4) Within two years from the time of relinquishment of the certificate, he or she may again qualify for a certificate, with the approval of the director by submission of a (~~renewal~~) reinstatement application and the payment of (~~the~~) any required fee.

(5) If two or more years have elapsed, he or she will return to the status of a new applicant.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-123, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-123, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, amended and recodified as § 212-80-123, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 91-14-086 (Order 91-06), § 212-80-080, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-165 Certificate of competency holder requirements and limitations. (1) (~~Who is issued a wallet card?~~) The director issues a wallet card to a person issued a certificate of competency. The card will be kept by the certificate of competency holder. The certificate of competency holder must make the card available for review at any time.

(2) (~~Can the authority having jurisdiction or the director inspect the wallet cards? Yes.~~) The authority having jurisdiction or director may request a certificate of competency holder to display his or her wallet card. Failure to display a wallet card upon request constitutes a Level 1 violation.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-165, filed 1/7/14, effective 2/7/14. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-165, filed 8/16/05, effective 9/16/05.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-205 Suspension or revocation of licenses or certificates. (1) (~~Who can suspend or revoke a license or certificate?~~) The director may refuse to issue or renew or may suspend or revoke the

privilege of a certificate of competency holder, or a licensed or unlicensed fire protection sprinkler system contractor to engage in the fire protection sprinkler system business. The director may establish penalties against a person who violates any provision of chapter 18.160 (~~(or 18.270)~~) RCW or any provision of this chapter while he or she is engaged in the design, installation, inspection, testing, maintenance, or repair, of a fire sprinkler system or any part of such system.

(2) (~~(What actions result in suspension, revocation or civil penalties against a fire protection sprinkler system contractor licensee or certificate holder?)~~) The following actions will result in suspension, revocation, or civil penalties against a fire protection sprinkler system contractor or certificate of competency holder:

(a) Gross incompetence - The licensed contractor or certificate of competency holder demonstrated he or she does not have the qualifications or ability to perform at the level of license or certificate required to contract or offer to bid on the design, installation, inspection, testing, maintenance, or repair, of a fire protection sprinkler system or any part of such system. For the purpose of this subsection, qualifications mean that the person did not possess or has not possessed a valid certificate to the level required for the work performed.

(b) Gross negligence - The licensed contractor or certificate of competency holder has demonstrated a habitual failure in the preparation of layout drawings, installation, repair, alteration, testing, maintenance, inspection, or addition to fire protection sprinkler systems in accordance with plans, specifications, building codes, or the publications of the National Fire Protection Association. For the purpose of this subsection, "habitual failure" means that the person has over a period of time committed five violations of chapter 18.160 (~~(or 18.270)~~) RCW, or this chapter in separate offenses, or has failed to design or install sprinkler systems in accordance with plans, specifications, building codes, or the publications of the National Fire Protection Association. Violations for gross negligence identified and enforced by the authority having jurisdiction must:

(i) Show a pattern of performance issues or repetitive violations of chapter 18.160 (~~(or 18.270)~~) RCW, or this chapter to the director;

(ii) Demonstrate that the pattern of performance issues or repetitive violations have occurred in any jurisdiction within the state of Washington beginning no more than five years from the date the authority having jurisdiction's investigation commences; and

(iii) Provide documentation to show the licensed contractor or certificate of competency holder's gross negligence including, but not limited to:

(A) Correspondence between the licensed contractor or certificate of competency holder and the local authority having jurisdiction that identifies violations of work that do not comply with the applicable standards;

(B) Failed permit or work inspections;

(C) Issued stop work order;

(D) Investigations resulting from a complaint;

(E) Violation notices; or

(F) Issued citations or infractions.

(c) Dishonest practices - The licensed contractor or the certificate of competency holder will not engage in dishonest fire protection sprinkler systems business practices that include, but are not limited to:

(i) Charging customers for work not performed. When a licensee is suspended, revoked, or denied, as part of a complaint investigation where the licensed contractor or certificate of competency holder received payment for supplies or work not performed and did not return the funds to the person contracting for the service, the director may upon receipt of a renewal application require that the licensed contractor or certificate of competency holder pay restitution as a condition to renew the license.

(ii) Receiving ~~((down))~~ any payments on work that the licensed contractor or the certificate of competency holder is not licensed or certified to perform.

(iii) Implying either verbally or in writing that either the licensed contractor or the certificate of competency holder possesses the appropriate license or certificate to bid on or complete fire sprinkler work when he or she does not have that fire protection sprinkler system contractor license or certification level.

(iv) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection sprinkler system or equipment contrary to the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

(v) Performing certification, installation, inspection, testing, or maintenance for a water based fire protection sprinkler system or equipment beyond that which the contractor is licensed or certificate of competency holder is certified, regardless of whether or not the work done was in compliance with the National Fire Protection Association codes, National Fire Protection Association standards, or manufacturer's specifications.

(d) Actions showing an indifference to comply with the fire protection sprinkler system business practices that include, but are not limited to a licensed contractor:

(i) Offering to contract for fire protection sprinkler system work without currently employing a certificate of competency holder.

(ii) Requiring or allowing employees to falsify any sprinkler tags, labels, or inspection reports.

(iii) Permitting or requiring a certificate of competency holder to use his or her certificate in connection with the preparation of any technical drawings that have not been prepared personally by the certificate of competency holder or under his or her direct supervision, or in violation of this chapter.

(e) Any violation of this section constitutes a Level 3 violation.

(3) ~~((Will a licensed contractor or certificate holder be notified if action is taken against their license or certification? Yes.))~~ The licensed contractor or certificate of competency holder will be notified in writing of the denial, suspension, or revocation action.

(4) ~~((What is the process for the director to deny, suspend, or revoke a license or certificate?))~~ The director may deny, suspend, or revoke a license or certificate under the following process:

(a) The director must give the licensed contractor or certificate of competency holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW before the denial, suspension, or revocation of the license or certificate.

(b) Upon receiving notice of the denial, suspension, or revocation action, the licensed contractor or certificate of competency holder may, within ~~((thirty))~~ 30 days from the date of the notice of action, request in writing to the director a hearing on the denial,

suspension, or revocation of the license or certificate. An adjudicative proceeding will be commenced within ((ninty)) 90 days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the director may, at the request of the licensed contractor or certificate of competency holder, or on his or her own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in Thurston County at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(d) The director may, without prior notification to the licensed contractor or certificate of competency holder, deny, suspend, or revoke a license or certificate if the director finds that there is a danger to the public health, safety, or welfare that requires immediate action. In every summary suspension of a license or certificate, an order signed by the director or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instated and determined. The director must give notice as is practicable to the licensed contractor or certificate of competency holder.

(5) ~~((What are the penalties associated with performing fire protection sprinkler system work while a license or certificate is denied, suspended, or revoked?))~~ The following penalties are associated with performing fire protection sprinkler system work while a license or certificate is denied, suspended, or revoked:

(a) Any person engaged in the trade of designing, installing, inspecting, testing, maintaining, or repairing a fire protection sprinkler systems or any part of such system while his or her license or certificate is denied, suspended, or revoked, will be issued a Level 3 violation.

(b) Any licensed or unlicensed fire protection sprinkler system contractor that allows an employee or trainee to engage in the trade designing, installing, inspecting, testing, maintaining, or repairing a fire protection sprinkler system or any part of such a system while his or her license or certificate has been denied, suspended, or revoked, will be issued a Level ((three)) 3 violation.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-205, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-205, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-17-099, § 212-80-205, filed 8/16/05, effective 9/16/05; WSR 05-05-006, amended and recodified as § 212-80-205, filed 2/4/05, effective 3/7/05. Statutory Authority: Chapters 43.63A and 18.160 RCW. WSR 94-24-032, § 212-80-065, filed 12/1/94, effective 1/1/95; WSR 92-20-070 (Order 92-08), § 212-80-065, filed 10/5/92, effective 11/5/92; WSR 91-14-086 (Order 91-06), § 212-80-065, filed 7/1/91, effective 8/1/91.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-210 Imposing citations and civil penalties. (1)

~~((Who may issue civil penalties or citations?))~~ The director may impose civil penalties or fines to any licensed contractor or certificate of competency holder that violates any provision of chapter 18.160 ~~((or 18.270))~~ RCW, or this chapter. The director may impose the civil penalties or fines listed herein to any unlicensed contractor or uncertified person who operates in the state of Washington as a licensed fire protection sprinkler system contractor or certificate of competency holder. The director will record all violations.

~~((When may civil penalties or citations be issued?))~~ The director may issue a citation when an investigation verifies that the fire protection sprinkler system contractor or certificate of competency holder was not in compliance with or otherwise in violation of chapter 18.160 ~~((or 18.270))~~ RCW, or this chapter.

~~((What is a violation?))~~ A violation is an action by a person who engages in the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system or any part of such a system, and fails to comply with chapter 18.160 ~~((or 18.270))~~ RCW, or this chapter.

~~((Is there a statute of limitations for a violation?))~~ The director must take action on a license or certificate within five years after the violation is reported to the director.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-210, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-210, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, § 212-80-210, filed 2/4/05, effective 3/7/05.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-215 Citations and penalties. (1) ~~((What citation or penalties may be issued by the director for violations?))~~ The director may at his or her discretion issue either a monetary penalty or take an action against a license or certificate depending on the severity of the violation(s) evidenced in the investigation. Each violation is classified and penalties assessed according to the violation type as provided by the chart below:

Violation Level	Monetary Penalty Issued	Action Taken Against License and/or Certificate
1	Warning to ((200)) \$500	License: No action
		Certificate: No action

Violation Level	Monetary Penalty Issued	Action Taken Against License and/or Certificate
2	(((\$100 to \$500)) \$500 to \$1,000	License: Suspended immediately for remainder of the license year or ((thirty) 30) calendar days, whichever is longer.
		Certificate: Suspended immediately for remainder of the license year or ((thirty) 30) calendar days, whichever is longer.
		Certificate: If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.
3	(((\$500 to \$5,000)) \$1,000 to \$5,000	License: Suspended immediately for remainder of the license year or ((ninety) 90) calendar days, whichever is longer.
		Certificate: Suspended immediately for remainder of the license year or ((ninety) 90) calendar days, whichever is longer.
		Certificate: If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of competency holder has a new employer.

(2) (~~What action can be taken against a licensed contractor or certificate holder for repeat violations?~~) If a licensed contractor or certificate of competency holder has incurred multiple findings of the same violation over a period of time, the director may classify the licensed contractor or certificate of competency holder as a habitual offender and issue either an increased monetary penalty or the action against the license or certificate depending on the severity of the violation(s) evidenced in multiple investigations as provided by the chart below:

Violation Level	Monetary Penalty Issued	Violation Level and Action Taken Against License and/or Certificate
1	(((\$100 to \$500)) \$1,000	Evidence of three or more Level 1 violations without compliance over a period of two calendar years constitutes an increase to a Level 2 violation.

Violation Level	Monetary Penalty Issued	Violation Level and Action Taken Against License and/or Certificate
2	(((\$500)) <u>\$2,500</u> per violation	Evidence of three or more <u>Level 2</u> violations without compliance over a period of two calendar years constitutes an increase to a <u>Level 3</u> violation. License: Suspended immediately for remainder of the license year or ((sixty)) <u>60</u> calendar days, whichever is longer. Certificate: Suspended immediately for remainder of the license year or ((sixty)) <u>60</u> calendar days, whichever is longer. Certificate: If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of <u>competency</u> holder has a new employer.
3	(((\$2,500)) <u>\$5,000</u> per violation	Evidence of two ((to five)) <u>or more</u> violations without compliance over a period of three calendar years constitutes an increase to a <u>Level 3</u> violation. License: Suspended immediately for remainder of the license year or ((one hundred eighty)) <u>180</u> calendar days, whichever is longer. Certificate: Suspended immediately for remainder of the license year or ((one hundred eighty)) <u>180</u> calendar days, whichever is longer. Certificate: If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate of <u>competency</u> holder has a new employer.
	(((\$5,000 per violation	Evidence of six violations without compliance over a period of three calendar years constitutes an increase to a <u>level 3</u> violation. License: Suspended immediately for the remainder of the license year and subsequent license year. Certificate: Suspended immediately for the remainder of the certificate year and subsequent certificate year. Certificate: If individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.))

(3) ((If I receive a violation notice imposing a civil penalty, how do I resolve the civil penalty?)) Level 1 violations include, but are not limited to:

(a) Failing to inform the director of the loss of their primary certificate of competency holder, as required by RCW 18.160.040.

(b) Failing to have the certificate of competency holder stamp plans, calculations, and/or test certificates.

(c) Allowing an employee to certify, install, inspect, maintain, and/or service water-based fire sprinkler systems or equipment contrary to NFPA codes, standards, or manufacturers' specifications without specific written permission from the location authority having jurisdiction.

(d) Working without a permit, or permission to do so, by the local authority having jurisdiction.

(4) Level 2 violations include, but are not limited to:

(a) Performing work on a sprinkler system where the employee's certificate of competency holder under RCW 18.160.040 does not have a current or valid license.

(b) Working without the appropriate level of license or certificate of competency.

(c) Permitting his or her license to be used in connection with the preparation of any technical drawings that have not been prepared by him or her personally, or under their direct supervision.

(d) Working with an expired license or permit (more than 90 days).

(5) Level 3 violations include, but are not limited to:

(a) Demonstrating gross incompetency or gross negligence in the preparation of technical drawings, the installation, inspection, testing, maintenance, repair, alteration, service, and/or addition to a fire sprinkler system.

(b) Allowing an employee to demonstrate gross incompetency or gross negligence in the installation, inspection, testing, maintenance, repair, alteration, service and/or addition to a fire sprinkler system.

(c) Charging a customer for fire sprinkler work not performed.

(d) Offering to contract for fire sprinkler work without a certificate of competency holder, as described in RCW 18.160.040.

(e) Allowing an employee to falsify any fire sprinkler tags, labels, or inspection reports.

(f) Working without a certified full-time certificate of competency holder on staff, or, in the case of an inspection and testing contractor, allowing any employee not certified by the chief of the Washington state patrol, through the director of fire protection, as an inspection and testing technician.

(g) Falsifying an application or document submitted to the chief of the Washington state patrol, through the director of fire protection, to obtain a sprinkler contractor license or certificate of competency.

(h) Committing three or more level II offenses within a three year period either as a company, through an employee of the company, through an employee acting as a certificate of competency holder for the company, and/or any combination thereof.

(i) Permitting his or her license to be used in connection with the stamping of any test certificates for work performed by someone other than his or her full-time employees.

(6) Civil penalties shall be resolved through the following:

(a) **Pay the penalty** by returning the notice and payment to the director at State Fire Marshal's Office, P.O. Box ((42600)) 42642, Olympia, WA 98504-((2600)) 2642 within ((~~thirty~~)) 30 days from the date the penalty was issued. Payments must be made by check or money order payable to the Washington state patrol.

(b) **Request an informal conference** as outlined in WAC 212-80-235.

(c) **Request a formal hearing** as outlined in WAC 212-80-205 or 212-80-240.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-215, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-215, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, § 212-80-215, filed 2/4/05, effective 3/7/05.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-245 Penalty adjustments. (1) (~~Can a penalty be adjusted without an informal or formal hearing?~~) The assessment of adjustment of penalties for amounts other than those set by chapter 18.160 (~~or 18.270~~) RCW will be done only by the director through a hearings process either formally or informally.

(2) (~~What factors are considered for assessing penalties?~~) The assessment of penalties for not being in conformance with chapter 18.160 (~~or 18.270~~) RCW, or this chapter may be made only after considering:

- (a) The gravity and magnitude of the violation.
- (b) The person's previous record.
- (c) Such other considerations as the director may consider appropriate.
- (d) The uniformity and consistency in the application of violations or penalties statewide.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-245, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-245, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, § 212-80-245, filed 2/4/05, effective 3/7/05.]

AMENDATORY SECTION (Amending WSR 14-03-019, filed 1/7/14, effective 2/7/14)

WAC 212-80-250 Payment of civil penalty. (1) (~~How can payments be made?~~) The penalty must be paid to the director within (~~thirty~~) 30 days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) (~~Can payments in installments be made to resolve civil penalties?~~) A request can be made through an informal or formal conference to make installment payments on a civil penalty. If the mitigation officer authorizes installment payments during an informal or formal hearing, the payment plan will be developed and agreed upon at the hearing. Failure to comply with the payment plan will void the payment plan and the remaining balance must be paid by the next business day.

(3) (~~What happens if I fail to pay the civil penalty?~~) If the licensed contractor or certificate of competency holder fails to pay the full penalty or comply with the payment plan as provided by subsection (2) of this section:

(a) The license or certificate of competency will be revoked for the remainder of the current license or certificate year and will not be reinstated or renewed until the penalty is paid in full.

(b) The attorney general may bring an action in the name of the director in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 18.160 (~~or 18.270~~) RCW.

[Statutory Authority: RCW 18.270.900 and 18.160.030. WSR 14-03-019, § 212-80-250, filed 1/7/14, effective 2/7/14. Statutory Authority: RCW 18.270.900. WSR 09-01-114, § 212-80-250, filed 12/19/08, effective 1/19/09. Statutory Authority: Chapters 43.43 and 18.160 RCW. WSR 05-05-006, § 212-80-250, filed 2/4/05, effective 3/7/05.]

OTS-4052.1

**Chapter 212-90 WAC
FIRE PROTECTION SPRINKLER FITTING**

GENERAL PROVISIONS

NEW SECTION

WAC 212-90-001 Purpose. The purpose of this chapter is to adopt rules to a single statewide standard of performance and compliance for the issuance of certificates to sprinkler fitters, and the issuance of civil fines for violations of any provision of chapter 18.270 RCW or any provision of this chapter.

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NEW SECTION

WAC 212-90-005 Applicability. This chapter applies to any person performing as a fire protection sprinkler system contractor or certificate holder as defined in chapter 18.270 RCW.

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NEW SECTION

WAC 212-90-010 Definitions. The following definitions will apply throughout this chapter:

(1) "Authority having jurisdiction (AHJ)" means the organization, office, or individual responsible for issuing permits, approving layout drawings, enforcing the requirements of a code or standard or approving materials, an installation, or a procedure. Usually, the AHJ is the building or fire official of the city or county in which the job site is located. In certain cases, such as health care facilities, transient accommodations, and day care facilities, the AHJ is the city or county building or fire official and the director.

(2) "Certificate" means a certificate granted by the director under chapter 18.270 RCW, and is valid within the state and all political subdivisions, and meets all of the requirements for certification that may be applied by the political subdivision.

(3) "Citation" means written notification issued by the director pursuant to RCW 18.270.020 of a civil penalty for a violation of any provision of chapter 18.270 RCW or this chapter. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

(4) "Contractor" means any person that submits a bid or offers to contract for the design, installation, inspection, testing, maintenance, or repair of a fire protection sprinkler system or any part of such system under chapter 18.160 RCW.

(5) "Direct supervision" means the person providing direction, oversight, inspection, and observation of the work performed on the installation, maintenance, alteration, or repair of a fire protection sprinkler system. Supervision requirements are met when the supervisor is on the premises for the duration of the working day.

(6) "Director" means the chief of the Washington state patrol through the director of fire protection or his or her designee.

(7) "Fire protection sprinkler system" means an assembly of underground or overhead piping beginning at the connection to the primary water supply, whether public or private, that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire or other products of combustion.

(8) "Formal hearing" means a hearing before a hearings officer where laws, rules, and evidence are presented, considered, and a decision is rendered.

(9) "Hazard" means a condition which could result in injury or death to a person or damage to property.

(10) "Hearings request" means the written request for a formal hearing to contest a civil penalty.

(11) "Licensed contractor" means a contractor issued a license to perform fire protection sprinkler system work by the director pursuant to WAC 212-90-053.

(12) "Maintenance" means work performed to keep the equipment operable in water-based fire protection systems.

(13) "Mitigation or hearing officer" is the state fire marshal or his or her designee who will preside over an informal, mitigation conference to discuss a civil penalty that has been assessed against a person for a violation of this chapter.

(14) "NFPA" means the National Fire Protection Association. The following national standards adopted by the NFPA apply to fire sprinkler suppression systems:

- (a) "NFPA 13D" means, in addition to the definition contained in chapter 18.160 RCW, the inclusion of minor accessory uses such as garages normally found in residential occupancies.
- (b) "NFPA 13R" means the installation and design of fire suppression sprinkler systems in residential occupancies up to and including four stories in height in buildings not exceeding 60 ft (18 m) in height above grade plane.
- (c) "NFPA 13" means the installation and design of fire suppression sprinkler systems in commercial or high occupancy facilities.
- (d) "NFPA 14" means the installation of standpipe and hose systems.
- (e) "NFPA 15" means the standard for water spray fixed systems.
- (f) "NFPA 16" means the standard for the installation of foam-water sprinkler and foam-water spray systems.
- (g) "NFPA 20" means the selection and installation of pumps, both centrifugal and positive displacement, that supply liquid for a private fire protection system.
- (h) "NFPA 24" means the installation of the dedicated underground fire service main of a water-based fire protection system.
- (i) "NFPA 25" means the inspection, testing, and maintenance of water-based fire protection systems.
- (15) Multipurpose piping sprinkler system: A piping system intended to serve both domestic needs in excess of a single fixture and fire protection needs from one common piping system throughout the dwelling unit(s).
- (16) Network sprinkler system: A type of multipurpose system utilizing a common piping system supplying domestic fixtures and fire sprinklers where each sprinkler is supplied by a minimum of three separate paths.
- (17) Passive purge system: A type of sprinkler system that serves a single toilet in addition to the fire sprinklers.
- (18) Stand-alone sprinkler system: A sprinkler system where the above ground piping serves only fire sprinklers.
- (19) Antifreeze sprinkler system: A wet pipe system using automatic sprinklers that contains a liquid solution to prevent freezing of the system, and is intended to discharge the solution upon sprinkler operation, followed immediately by water from a water supply.
- (20) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of individuals and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.
- (21) "Qualified" means an individual who has demonstrated through education, training, examination, or national certifications the competency, skill, and ability necessary to perform any work covered or defined by chapter 18.270 RCW to the satisfaction of a relevant jurisdiction. In matters of compliance with the licensing and certification requirements of this chapter and chapter 18.270 RCW, the relevant jurisdiction shall be the director.
- (22) "Repair" means to restore by replacing a part of or putting together what is deficient or broken on the fire protection sprinkler system.
- (23) "Revoke" means the director will rescind a company's license or an individual's certificate. This action causes the company or individual to cease any work in the fire protection sprinkler system field in Washington state.

(24) "Suspend" means the director holds a company's license or individual's certificate inactive until such time as the director determines that the company or individual is in compliance with the requirements of this chapter and chapter 18.270 RCW.

(25) "Trainee" means a person who:

(a) Has been issued a training certificate by the director; and

(b) Is learning the fire protection sprinkler fitting trade under the supervision of a journey-level sprinkler fitter or residential sprinkler fitter working in his or her specialty.

(26) "Violation" means any action, general or specific, inconsistent with the intent and letter of chapter 18.270 RCW and shall be further defined as:

(a) "Level 1 violation" means a violation which poses a minimal hazard or threat to life and property in the event of a fire.

(b) "Level 2 violation" means a violation which poses a significant hazard or threat to life or property in the event of a fire.

(c) "Level 3 violation" means a violation which poses a substantial hazard or threat to life or property in the event of a fire.

[]

NEW SECTION

WAC 212-90-015 Compliance. All fire protection sprinkler system contractors, fitter certificate holders, or trainees, who install, alter, or repair, fire protection sprinkler systems or any part of such a system will comply with the provisions of this chapter.

Exceptions:

(1) A person issued a certificate of competency by the Washington state department of labor and industries, under chapter 18.106 RCW, as a journey-level or residential specialty plumber or supervised plumber trainee installing a residential network fire protection sprinkler system connected to potable water who works for a contractor as defined by WAC 212-90-010(4) of this chapter.

(2) A person who inspects, field tests, maintains, or repairs backflow prevention assemblies installed on potable water supplies to fire sprinkler systems and who is certified as a:

(a) Backflow assembly tester by the Washington state department of health, under chapters 70A.120 RCW and 246-292 WAC; or

(b) Backflow specialty plumber by the Washington state department of labor and industries, under chapters 18.106 RCW and 296-400A WAC, when repairing backflow prevention assemblies within a building.

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NEW SECTION

WAC 212-90-018 Certification requirements. Sprinkler fitter certifications - The following levels will apply to sprinkler fitter certifications issued by the director:

(1) **Journey-level sprinkler fitter certification** - Installs, dismantles, alters, maintains, repairs, and corrects all types of sprinkler, standpipe, hose, or other hazard systems for fire protection

purposes that are an assembly of piping, conduit, tubing, or hose regardless of the material composition beginning at the connection to the primary water supply. Also includes sprinkler tank heater, air lines tanks, pumps, equipment, appurtenances and all other related components attached thereto inside.

(2) **Residential-level sprinkler fitter certification** - Limited to installation, maintenance, and repair of the fire protection sprinkler system of residential occupancies as defined by NFPA 13D and NFPA 13R. A residential level sprinkler fitter certification may also perform installation and repair of NFPA 13 fire protection sprinkler systems and components while under the direct supervision of a certified journey-level sprinkler fitter.

(3) **Trainee-level sprinkler fitter certification** - Limited to performing sprinkler fitter work under the direct supervision of a sprinkler fitter certified to perform the type of work the trainee-level sprinkler fitter is performing.

Chart 1: Sprinkler Fitter Certifications

Level of Certificate Holder – See Note (1)	Standard Defining Work That May Be Performed				
	NFPA 13D	NFPA 13R	NFPA 13	NFPA 24	NFPA 25
Journey-Level Sprinkler Fitter	Yes	Yes	Yes	No	No
Residential-Level Sprinkler Fitter	Yes	Yes	Only if under the direct supervision of a journey-level sprinkler fitter	No	No
Trainee-Level Sprinkler Fitter	Only if under the direct supervision of a residential/ journey-level sprinkler fitter	Only if under the direct supervision of a residential/ journey-level sprinkler fitter	Only if under the direct supervision of a journey-level sprinkler fitter	No	No

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NEW SECTION

WAC 212-90-038 Municipality, county, or state regulations. (1) Licensed contractors and certificate holders must comply with the authority having jurisdiction's requirements to obtain permits or permission before the installation, repair, alteration, or addition of a fire protection sprinkler system. Failure to comply with this section constitutes a Level 2 violation.

(2) The licensed contractor or certificate holder must verify whether a permit or permission is required from the authority having jurisdiction before installing, repairing, altering, adding, or removing any fire protection sprinkler system.

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FIRE SPRINKLER FITTER CERTIFICATE HOLDER

NEW SECTION

WAC 212-90-093 Fitter certificate holder certification. (1) All applications must be made on the forms provided by the director and include the required fees provided by WAC 212-90-098 and documentation for the required level of experience as provided by this section.

(a) **For journey-level sprinkler fitter certification,** the applicant must:

(i) Provide evidence on the forms provided by the director of at least 8,000 hours of trade related fire protection sprinkler system experience in installation, alteration, and repair;

(ii) Not have more than 3,000 hours of the required 8,000 hours of experience in residential sprinkler fitting; and

(iii) Satisfactorily pass an examination provided by the director with a final score of 80 percent.

(b) **For residential sprinkler fitter certification,** the applicant must:

(i) Provide evidence on the forms provided by the director, of at least 4,000 hours of trade related fire protection sprinkler system experience in installation, repair, and maintenance; and

(ii) Satisfactorily pass an examination provided by the director with a final score of 80 percent.

(c) **For trainee sprinkler fitter certification,** the applicant must:

(i) Provide evidence to the director, on the forms provided by the director, of trade related employment by a licensed contractor;

(ii) Remain employed by a licensed contractor to maintain trainee status; and

(iii) Only engage in the fire protection sprinkler system trade when under the supervision of a certified journey level or residential installer.

Certificate Level	Application Required	Exam Required	Type of Work Performed by Certificate Holder
Journey Sprinkler Fitter	Yes	Pass an exam (See WAC 212-90-093)	Installs and repairs NFPA 13D, 13R, or 13 fire sprinkler systems
Residential Sprinkler Fitter	Yes	Pass an exam (See WAC 212-90-093)	Installs, repairs, and performs maintenance on fire sprinkler systems in residential occupancies
Trainee Sprinkler Fitter	Yes	No	Installs, repairs, and performs maintenance on a fire sprinkler system only under the supervision of a properly certified residential/journey level fitter

(2) All information submitted by an applicant to the director to apply for a certificate must be true and accurate. If the director

finds that information or documents submitted by an applicant is false, misleading, or has been altered in an effort to meet the requirements provided by this chapter, the finding will constitute a Level 3 violation.

(3) A violation of this section that involves a contractor allowing an employee to engage in performing fire protection sprinkler fitting work:

(a) By engaging in the trade of fire sprinkler fitting without having a valid sprinkler fitter certificate of competency issued for the work being conducted is a Level 3 violation.

(b) By a trainee sprinkler fitter engaging in the trade of fire sprinkler fitting without the direct supervision of a certified residential or journey sprinkler fitter is a Level 3 violation.

(c) As a trainee without a trainee certificate but with the direct supervision of a certified residential or journey sprinkler fitter is a Level 1 violation.

(d) Any individual using a certification and/or certification number not issued to them by the director.

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NEW SECTION

WAC 212-90-098 Fees for certificate holder. There are three separate fees that may apply:

(1) **Application fee** is \$100 only charged once when a person makes the initial application for any of the certificates specified in this section. As long as the certificate holder maintains continuous certification, the certificate holder is not required to pay a subsequent application fee. Application fees are nonrefundable.

(2) **Biennial certification fee** is \$200 paid each odd calendar year the certificate holder applies for certification renewal. The bi-annual renewal fee:

(a) Is in addition to the initial application fee paid for the initial application;

(b) Is nonrefundable once the certificate has been issued.

(3) **Examination fee** is \$150, charged per examination, including retests. Examination fees are nonrefundable.

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NEW SECTION

WAC 212-90-108 Certificate not transferable. A certificate issued under this regulation is not transferable to another person.

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NEW SECTION

WAC 212-90-113 Certificate holder employment. If the certificate holder should leave the employment of the licensed contractor, he or she will notify the director within 30 days of his or her last day of employment. Failure to do so constitutes a Level 1 violation.

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NEW SECTION

WAC 212-90-118 Certificate renewals. (1) Certificates for journey, residential, and trainee fitters must be renewed by January 1st of every odd-numbered year. A sprinkler fitter certificate holder will be provided a renewal form by the director to renew the certificate.

For trainees, the certificate will not be renewed if the trainee is not currently employed by a licensed contractor.

(2) Failure of any fitter certificate holder to renew his or her certificate by the expiration date will constitute a break in certification.

(a) For residential and journey level fitters expired less than two consecutive calendar years, the certificate holder may reinstate by submitting a reinstatement application provided by the director, passing a certification exam, and pay all applicable fees.

(b) For residential and journey level fitters expired two or more calendar years, the certificate holder must submit a new application with evidence of qualification, pass a certification exam, and pay all applicable fees.

(c) For trainee level fitters expired for any period of time the certificate holder must complete the initial application form and pay the applicable fees.

(d) Those who were qualified under the grandfathering process must complete the applicable initial application process meeting the current requirements.

(3) The director will not renew a certificate if the certificate is in a revoked or suspended status.

[]

NEW SECTION

WAC 212-90-165 Fitter certificate holder requirements and limitations. (1) The director issues a wallet card to a person issued a sprinkler fitter certificate. The card will be kept by the sprinkler fitter certificate holder. The certificate holder must make the card available for review at any time.

(2) The wallet card must either be on the certificate holder (wallet, lanyard, article of clothing, etc.,) or readily accessible.

(3) Failure to comply with this section constitutes a Level 1 violation.

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ENFORCEMENT AND COMPLIANCENEW SECTION

WAC 212-90-205 Suspension or revocation of licenses or certificates. (1) The director may refuse to issue or renew or may suspend or revoke the privilege of a certificate holder, or a licensed or unlicensed fire protection sprinkler system contractor to engage in the fire protection sprinkler system business. The director may establish penalties against a person who violates any provision of chapter 18.270 RCW or any provision of this chapter while he or she is engaged in the trade of sprinkler fitting.

(2) The licensed contractor or certificate holder will be notified in writing of the denial, suspension, or revocation action.

(3) The director may deny, suspend, or revoke a license or certificate under the following process:

(a) The director must give the licensed contractor or certificate holder notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW before the denial, suspension, or revocation of the license or certificate.

(b) Upon receiving notice of the denial, suspension, or revocation action, the licensed contractor or certificate holder may, within 30 days from the date of the notice of action, request in writing to the director a hearing on the denial, suspension, or revocation of the license or certificate. An adjudicative proceeding will be commenced within 90 days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the director may, at the request of the licensed contractor or certificate holder, or on his or her own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in Thurston County at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as outlined in chapter 34.05 RCW.

(d) The director may, without prior notification to the licensed contractor or certificate holder, deny, suspend, or revoke a license or certificate if the director finds that there is a danger to the public health, safety, or welfare that requires immediate action. In every summary suspension of a license or certificate, an order signed by the director or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instated and determined. The director must give notice as is practicable to the licensed contractor or certificate holder.

(4) The following penalties are associated with performing fire protection sprinkler system work while a certificate is denied, suspended, or revoked:

(a) Any person engaged in the trade of sprinkler fitting while his or her license or certificate is denied, suspended, or revoked, will be issued a Level 3 violation.

(b) Any licensed or unlicensed fire protection sprinkler system contractor that allows an employee or trainee to engage in the trade of sprinkler fitting while his or her license or certificate has been denied, suspended, or revoked, will be issued a Level 3 violation.

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NEW SECTION

WAC 212-90-210 Imposing citations and civil penalties. (1) The director may impose civil penalties or fines to any licensed contractor, certificate holder, or individual that violates any provision of chapter 18.270 RCW, or this chapter. The director may impose the civil penalties or fines listed herein to any uncertified person who operates in the state of Washington as certificate holder. The director will record all violations.

(2) A violation is an action by a person who engages in the installation, maintenance, alteration, or repair of a fire protection sprinkler system or any part of such a system, and fails to comply with chapter 18.270 RCW, or this chapter.

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NEW SECTION

WAC 212-90-215 Citations and penalties. (1) The director may at his or her discretion issue either a monetary penalty or take an action against a license or certificate depending on the severity of the violation(s) evidenced in the investigation. Each violation is classified and penalties assessed according to the violation type as provided by the chart below:

Violation Level	Monetary Penalty Issued	Action Taken Against License and/or Certificate
1	Warning to \$200	License: No action.
		Certificate: No action.

Violation Level	Monetary Penalty Issued	Action Taken Against License and/or Certificate
2	\$100 to \$500	License: Suspended immediately for remainder of the license year or 30 calendar days, whichever is longer.
		Certificate: Suspended immediately for remainder of the license year or 30 calendar days, whichever is longer.
		Certificate: If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.
3	\$500 to \$5,000	License: Suspended immediately for remainder of the license year or 90 calendar days, whichever is longer.
		Certificate: Suspended immediately for remainder of the license year or 90 calendar days, whichever is longer.
		Certificate: If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.

(2) If a licensed contractor or certificate holder has incurred multiple findings of the same violation over a period of time, the director may classify the licensed contractor or certificate holder as a habitual offender and issue either an increased monetary penalty or the action against the license or certificate depending on the severity of the violation(s) evidenced in multiple investigations as provided by the chart below:

Violation Level	Monetary Penalty Issued	Violation Level and Action Taken Against License and/or Certificate
1	\$500	Evidence of three or more Level 1 violations without compliance over a period of two calendar years constitutes an increase to a Level 2 violation.

Violation Level	Monetary Penalty Issued	Violation Level and Action Taken Against License and/or Certificate
2	\$1,500 per violation	Evidence of three or more Level 2 violations without compliance over a period of two calendar years constitutes an increase to a Level 3 violation. License: Suspended immediately for remainder of the license year or 60 calendar days, whichever is longer. Certificate: Suspended immediately for remainder of the license year or 60 calendar days, whichever is longer. Certificate: If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.
3	\$5,000 per violation	Evidence of two or more violations without compliance over a period of three calendar years constitutes an increase to a Level 3 violation. License: Suspended immediately for remainder of the license year or 180 calendar days, whichever is longer. Certificate: Suspended immediately for remainder of the license year or 180 calendar days, whichever is longer. Certificate: If the individual is not part of the violation but will be affected by the loss of the employer's contractor license, the certificate will be changed to INACTIVE status until the contractor obtains a valid license or the certificate holder has a new employer.

(3) Civil penalties shall be resolved through the following:

(a) **Pay the penalty** by returning the notice and payment to the director at State Fire Marshal's Office, P.O. Box 42642, Olympia, WA 98504-2642 within 30 days from the date the penalty was issued. Payments must be made by check or money order payable to the Washington state patrol.

(b) **Request an informal conference** as outlined in WAC 212-90-235.

(c) **Request a formal hearing** as outlined in WAC 212-90-205 or 212-90-240.

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NEW SECTION

WAC 212-90-235 Informal conference. (1) The director will provide an opportunity for any person to informally discuss a civil penalty that has been assessed against them.

(2) An informal conference may be requested prior to a request for a formal hearing. However, it will not exceed nor extend the 30-

day timeline allotted for the request of a formal hearing - Regardless of the outcome.

- (3) The request for an informal hearing may be in any form and:
 - (a) Must be addressed to the mitigation officer;
 - (b) Be received by the director no more than 30 days from the issue date of the civil penalty; and
 - (c) Clearly state the subject to be discussed.
- (4) Depending on the availability and time constraints of the person making the request and the hearings officer, the informal conference may be a personal meeting or conference call depending on the availability of the parties and the available technology.
- (5) The director may, for good cause, choose to amend, withdraw, or reduce the civil penalty as a result of an informal conference.

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NEW SECTION

WAC 212-90-240 Formal hearing. (1) Any person may request a formal hearing to appeal a civil penalty issued under this chapter at any time before or after the request of an informal conference, as long as the 30 day period from the date of issue listed on the citation has not elapsed. If requesting a formal hearing by mail, the request must be post marked by midnight on the day the request is due.

(2) The director will arrange for a hearings officer to conduct the formal hearing and will notify by letter the person requesting the hearing (or their designated representative) of the date, time, location, and hearings officer conducting the formal hearing.

(3) The hearings officer will hear the case and, within 90 days of the hearing, render a proposed opinion and order including recommended findings of fact and conclusions of law, according to chapters 34.05 RCW and 10-08 WAC.

(4) The formal hearing will be conducted as follows:

- (a) The hearings officer will act as an impartial third party.
- (b) It is not necessary for the person who requested the hearing to be represented by legal counsel.
- (c) An official record will be made through a scribe.
- (d) Testimony will be taken under oath.
- (e) All evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their serious affairs is admissible.
- (f) Hearsay evidence is admissible if it meets the statutory standards for being reliable and trustworthy.
- (g) A proposed opinion and order will be provided.

(5) The proposed opinion and order shall be reviewed by the director and, if accepted, be finalized and issued as a final order.

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NEW SECTION

WAC 212-90-245 Penalty adjustments. (1) The assessment of adjustment of penalties for amounts other than those set by chapter

18.270 RCW will be done only by the director through a hearings process either formally or informally.

(2) The assessment of penalties for not being in conformance with chapter 18.270 RCW, or this chapter may be made only after considering:

- (a) The gravity and magnitude of the violation.
- (b) The person's previous record.
- (c) Such other considerations as the director may consider appropriate.
- (d) The uniformity and consistency in the application of violations or penalties statewide.

[]

NEW SECTION

WAC 212-90-250 Payment of civil penalty. (1) The penalty must be paid to the director within 30 days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) A request can be made through an informal or formal conference to make installment payments on a civil penalty. If the mitigation officer authorizes installment payments during an informal or formal hearing, the payment plan will be developed and agreed upon at the hearing. Failure to comply with the payment plan will void the payment plan and the remaining balance must be paid by the next business day.

(3) If the licensed contractor or certificate holder fails to pay the full penalty or comply with the payment plan as provided by subsection (2) of this section:

(a) The license or certificate of competency will be revoked for the remainder of the current license or certificate year and will not be reinstated or renewed until the penalty is paid in full.

(b) The attorney general may bring an action in the name of the director in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 18.270 RCW.

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WSR 22-19-072
PROPOSED RULES

LOWER COLUMBIA COLLEGE

[Filed September 19, 2022, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-115.

Title of Rule and Other Identifying Information: Chapter 132M-126 WAC, Code of student conduct, updates to comply with new hazing prevention law.

Hearing Location(s): On November 16, 2022, at 5:00 p.m., at 1600 Maple Street, Administration Building, Room 100, Longview, WA 98632; or join Zoom meeting <https://lowercolumbia.zoom.us/j/81904193936>, Meeting ID 819 0419 3936, one tap mobile +12532158782,,81904193936# US (Tacoma), +13462487799,,81904193936# US (Houston); dial by your location +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston), +1 669 900 6833 US (San Jose), +1 312 626 6799 US (Chicago), +1 646 876 9923 US (New York), +1 301 715 8592 US (Washington DC), Meeting ID 819 0419 3936. Find your local number <https://lowercolumbia.zoom.us/u/kVM6ZSm8w>; join by SIP 81904193936@zoomcrc.com; join by H.323 162.255.37.11 (US West), 162.255.36.11 (US East), 115.114.131.7 (India Mumbai), 115.114.115.7 (India Hyderabad), 213.19.144.110 (Amsterdam Netherlands), 213.244.140.110 (Germany), 103.122.166.55 (Australia Sydney), 103.122.167.55 (Australia Melbourne), 149.137.40.110 (Singapore), 64.211.144.160 (Brazil), 149.137.68.253 (Mexico), 69.174.57.160 (Canada Toronto), 65.39.152.160 (Canada Vancouver), 207.226.132.110 (Japan Tokyo), 149.137.24.110 (Japan Osaka), Meeting ID 819 0419 3936.

Date of Intended Adoption: November 16, 2022.

Submit Written Comments to: Bryanna Smith, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, email rulemaking@lowercolumbia.edu, fax 360-442-2129, by November 10, 2022.

Assistance for Persons with Disabilities: Contact Bryanna Smith, phone 360-442-2100, fax 360-442-2129, TTY 800-833-6388, email rulemaking@lowercolumbia.edu, by November 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sam's Law requires Lower Columbia College to amend its student conduct code to prohibit hazing both on and off campus, and revise the definition of "hazing." To this end, Lower Columbia College must amend its student conduct code, WAC 132M-126-015, 132M-126-020, and 132M-126-030; and must adopt WAC 132M-126-036 in order to meet its obligations under "Sam's Law" 2SHB 1751 (2022) regarding hazing prevention. Sam's Law amends RCW 28B.10.900 and adds new RCW 28B.10.904.

Reasons Supporting Proposal: "Sam's Law" 2SHB 1751 (2022) was signed into law in 2022 amending RCW 28B.10.900 and adding new RCW 28B.10.904, regarding hazing prevention. The changes affect Lower Columbia College's student conduct code regarding the definition of hazing and require the college to prohibit hazing both on and off campus.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 2SHB 1751 (2022) amending RCW 28B.10.900 and adding RCW 28B.10.904.

Statute Being Implemented: RCW 28B.10.900 and 28B.10.904.

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

Name of Proponent: Lower Columbia College, public.

Name of Agency Personnel Responsible for Drafting: Kendra Sprague, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, 360-442-2121; Implementation and Enforcement: Sue Orchard, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, 360-442-2301.

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 that 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 19.85.025(4).

Explanation of exemptions: Since the proposed rules are limited to amending the student conduct code, the proposed rules do not affect small businesses.

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. This change is not anticipated to impose any additional cost on business.

September 19, 2022
Kendra Sprague
Vice President of Foundation
Human Resources, and Legal Affairs

OTS-3965.2

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-015 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) "ASLCC" means the associated students of Lower Columbia College as defined in the constitution of that body.

(2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(3) "Business day" means a weekday, excluding weekends, college holidays, and college closure days.

(4) "College" means Lower Columbia College and any other college centers or premises established within Washington State Community College District No. 13.

(5) "College community" means trustees, students, staff, faculty, and visitors in college facilities and college premises.

(6) "College official" includes any person employed by the college performing assigned duties.

(7) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehi-

cles, equipment, and other property owned, used, or controlled by the college.

(8) A "complainant" is an alleged victim of sexual misconduct.

(9) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(11) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student code of conduct.

(12) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(13) "Faculty member" and "instructor" mean any employee of Washington State Community College District No. 13 who is employed on a full-time or part-time basis as a teacher, instructor, counselor or librarian.

(14) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(15) "The president" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(16) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(17) "Respondent" is the student against whom disciplinary action is initiated.

(18) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(19) "Sexual misconduct" has the meaning ascribed to this term in WAC 132M-126-030(13).

(20) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether

such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(21) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(22) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(23) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-015, filed 12/17/20, effective 1/17/21.]

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-020 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
- (b) At or in connection with college-sponsored activities; or
- (c) Off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of (~~acceptance at~~) admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-020, filed 12/17/20, effective 1/17/21.]

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding(s), or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected

by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) Hazing does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) Alcohol, drug, and tobacco violations.

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. This includes all college sidewalks, parking lots, landscaped areas, sports fields and college buildings. Use of tobacco is also prohibited at events on college premises, or in college-owned, rented or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures in this code. See WAC 132M-126-115 through 132M-126-155.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other

verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) **Nonconsensual sexual contact.** Any actual or attempted sexual touching however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the ages of ((eighteen)) 18.

(iv) **Statutory rape.** Consensual intercourse between a person who is ((eighteen)) 18 years of age or older, and a person who is under the age of ((sixteen)) 16.

(v) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interactions between the persons involved in the relationship.

(vii) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) Fear for their safety or the safety of others; or
- (B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual word or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceedings.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-030, filed 12/17/20, effective 1/17/21.]

NEW SECTION

WAC 132M-126-036 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132M-126-030(9).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for-profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control, shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual

assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

WSR 22-19-075
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 20, 2022, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-146.

Title of Rule and Other Identifying Information: 2023 Industrial insurance premium rates. Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17B WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): On October 26, 2022, at 10:00 a.m., join Zoom meeting at <https://lni-wa-gov.zoom.us/j/4283482697>, Meeting ID 428 348 2697; join by phone 1-253-215-8782 US (Tacoma), Meeting ID 428 348 2697; and on October 27, 2022, at 10:00 a.m., join Zoom meeting at <https://lni-wa-gov.zoom.us/j/4283482697>, Meeting ID 428 348 2697; join by phone 1-253-215-8782 US (Tacoma), Meeting ID 428 348 2697. The hearings will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 30, 2022.

Submit Written Comments to: Jo Anne Attwood, Department of Labor and Industries (L&I), Insurance Services, Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@lni.wa.gov, fax 360-902-4988, by October 28, 2022, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@lni.wa.gov, by October 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends the tables of classification base premium rates, experience rating plan parameters, and experience modification factor calculation limitations for the workers' compensation insurance program for calendar year 2023. Classification base rates were updated to align with expected losses. The department proposes a 4.8 percent overall average premium rate change.

Amending WAC 296-17-855 Experience modification, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89507 Horse racing rates, 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class, 296-17-920 Assessment for supplemental pension fund, 296-17B-540 Determining loss incurred for each claim, and 296-17B-900 Retrospective rating plans standard premium size ranges.

Reasons Supporting Proposal: Washington law provides that rates should be adjusted annually to reflect the hazards of each industry and in accordance with recognized workers' compensation insurance principles.

Washington employers continue to deal with uncertainties associated with the pandemic and the global economy. In light of that, L&I is proposing an overall average rate increase of 4.8 percent to ensure adequate premiums to cover expected costs of 2023 claims. This increase is below the indicated break-even rate and consistent with our

rate-making principle of keeping rates steady and predictable. This rate increase is required to partially account for two consecutive years of higher-than-normal increases in the state's average wage. The department is able to minimize the increase for this upcoming year due to the ongoing efforts to gradually increase the workers' compensation contingency reserve (surplus).

Statutory Authority for Adoption: RCW 51.16.035 (base rates), 51.32.073 (supplemental pension), 51.18.010 (retrospective rating), and 51.04.020(1) (general authority).

Statute Being Implemented: RCW 51.16.035, 51.32.073, and 51.18.010.

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: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, 360-902-4777; Implementation: Brenda Heilman, Tumwater, Washington, 360-902-6369; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules are adjusting rates pursuant to legislative standards.

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; and 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.

Scope of exemption for rule proposal:

Is fully exempt.

September 20, 2022
Joel Sacks
Director

OTS-4077.1

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-855 Experience modification. The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due con-

sideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\begin{aligned} \text{EXPERIENCE MODIFICATION FACTOR} &= \frac{(\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss})}{\text{Expected Loss}} \\ \text{Where} & \\ \text{Credible Actual Primary Loss} &= \text{Actual Primary Loss} \times \text{Primary Credibility} \\ &+ \text{Expected Primary Loss} \times (100\% - \text{Primary Credibility}) \\ \text{Credible Actual Excess Loss} &= \text{Actual Excess Loss} \times \text{Excess Credibility} \\ &+ \text{Expected Excess Loss} \times (100\% - \text{Excess Credibility}) \end{aligned}$$

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of (~~(\$21,280)~~) \$22,670 the actual primary loss shall be determined from the formula:

$$\text{Primary Loss} = \frac{((\del{53,210}) \ 56,670)}{(\text{Total Loss} + ((\del{31,930}) \ 34,000))} \times \text{Total Loss}$$

For each claim, less than (~~(\$21,280)~~) \$22,670 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of (~~(\$3,450)~~) \$3,570 or the total cost of the claim. Here are some examples for these claims:

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
300	Medical Only	0	0	0
4,000	Medical Only	((550)) 430	((550)) 430	0
4,000	Timeloss	4,000	4,000	0
30,000	Medical Only	((26,550)) 26,430	((24,157)) 24,786	((2,393)) 1,644
30,000	Timeloss	30,000	((25,776)) 26,564	((4,224)) 3,436
130,000	PPD	130,000	((42,718)) 44,921	((87,282)) 85,079
500,000	TPD Pension	((341,650)) 382,810	((48,662)) 52,047	((292,988)) 330,763
2,000,000	TPD Pension	((341,650)) 382,810	((48,662)) 52,047	((292,988)) 330,763

Note: The deduction, ~~(((\$3,450))~~ \$3,570, is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about seventy percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 21-24-066, § 296-17-855, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-855, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-855, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-855, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-855, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-855, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-855, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-855, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-855, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-855, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-855, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-855, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-855, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-855, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-855, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-855, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-855, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-855, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-855, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-855, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-855, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-855, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-855, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-855, filed 11/29/99, effective

12/31/99; WSR 98-24-094, § 296-17-855, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-855, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-855, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-855, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-855, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-855, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 93-12-093, § 296-17-855, filed 5/31/93, effective 7/1/93; WSR 92-24-063, § 296-17-855, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-855, filed 11/27/91, effective 1/1/92; WSR 90-24-042, § 296-17-855, filed 11/30/90, effective 1/1/91; WSR 89-24-051 (Order 89-22), § 296-17-855, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-855, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 87-24-060 (Order 87-26), § 296-17-855, filed 12/1/87, effective 1/1/88. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-855, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 85-24-032 (Order 85-33), § 296-17-855, filed 11/27/85, effective 1/1/86; WSR 84-24-016 (Order 84-23), § 296-17-855, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-855, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-855, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-855, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-855, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-855, filed 11/30/79, effective 1/1/80; Order 77-27, § 296-17-855, filed 11/30/77, effective 1/1/78; Order 74-40, § 296-17-855, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-855, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-875 Table I.

**Primary Losses for Selected Claim Values
Effective January 1, ((2022)) 2023**

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
5,000	5,000
10,000	10,000
15,000	15,000
((21,280	21,280
28,297	25,000
41,271	30,000
61,370	35,000
96,684	40,000
175,012	45,000
265,617	47,500
341,650 **	48,662))
<u>22,670</u>	<u>22,670</u>
<u>26,839</u>	<u>25,000</u>

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
<u>38,245</u>	<u>30,000</u>
<u>54,915</u>	<u>35,000</u>
<u>81,584</u>	<u>40,000</u>
<u>131,105</u>	<u>45,000</u>
<u>176,118</u>	<u>47,500</u>
<u>382,810</u> **	<u>52,047</u>

** Maximum claim value

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-875, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-875, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-875, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-875, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-875, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-875, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-875, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-875, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-875, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-875, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-875, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-875, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-875, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-875, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-875, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-875, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-875, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-875, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-875, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-875, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-875, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-875, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-875, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-875, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-875, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-875, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-875, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-875, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-875, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-875, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-875, filed 11/27/91, effective 1/1/92; WSR 90-24-042, § 296-17-875, filed 11/30/90, effective 1/1/91; WSR 89-24-051 (Order 89-22), § 296-17-875, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-875, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 87-24-060 (Order 87-26), § 296-17-875, filed 12/1/87, effective

1/1/88. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-875, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-875, filed 5/30/86, effective 7/1/86; WSR 85-24-032 (Order 85-33), § 296-17-875, filed 11/27/85, effective 1/1/86; WSR 84-24-016 (Order 84-23), § 296-17-875, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-875, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-875, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-875, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-875, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-875, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-875, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-875, filed 11/30/77, effective 1/1/78; Order 76-36, § 296-17-875, filed 11/30/76; Order 75-38, § 296-17-875, filed 11/24/75, effective 1/1/76; Order 74-40, § 296-17-875, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-875, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-880 Table II.

**PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2022)) 2023**

Maximum Claim Value = ((~~\$341,650~~)) \$382,810
Average Death Value = ((~~\$341,650~~)) \$382,810

Expected Losses	Primary Credibility	Excess Credibility
((0 - 5,884	12%	7%
5,885 - 6,282	13%	7%
6,283 - 6,683	14%	7%
6,684 - 7,088	15%	7%
7,089 - 7,500	16%	7%
7,501 - 7,916	17%	7%
7,917 - 8,338	18%	7%
8,339 - 8,765	19%	7%
8,766 - 9,196	20%	7%
9,197 - 9,636	21%	7%
9,637 - 10,080	22%	7%
10,081 - 10,533	23%	7%
10,534 - 10,989	24%	7%
10,990 - 11,455	25%	7%
11,456 - 11,929	26%	7%
11,930 - 12,408	27%	7%
12,409 - 12,898	28%	7%
12,899 - 13,394	29%	7%
13,395 - 13,899	30%	7%
13,900 - 14,417	31%	7%

Expected Losses			Primary Credibility	Excess Credibility
14,418	-	14,940	32%	7%
14,941	-	15,478	33%	7%
15,479	-	16,027	34%	7%
16,028	-	16,587	35%	7%
16,588	-	17,160	36%	7%
17,161	-	17,747	37%	7%
17,748	-	18,354	38%	7%
18,355	-	18,971	39%	7%
18,972	-	19,609	40%	7%
19,610	-	20,265	41%	7%
20,266	-	20,944	42%	7%
20,945	-	21,646	43%	7%
21,647	-	22,373	44%	7%
22,374	-	23,131	45%	7%
23,132	-	23,923	46%	7%
23,924	-	24,751	47%	7%
24,752	-	25,626	48%	7%
25,627	-	26,554	49%	7%
26,555	-	27,541	50%	7%
27,542	-	28,610	51%	7%
28,611	-	29,780	52%	7%
29,781	-	31,083	53%	7%
31,084	-	31,217	54%	7%
31,218	-	32,586	54%	8%
32,587	-	34,421	55%	8%
34,422	-	52,096	56%	8%
52,097	-	57,418	57%	8%
57,419	-	82,015	57%	9%
82,016	-	84,473	57%	10%
84,474	-	106,762	58%	10%
106,763	-	116,850	58%	11%
116,851	-	131,664	59%	11%
131,665	-	149,230	59%	12%
149,231	-	156,715	60%	12%
156,716	-	181,609	60%	13%
181,610	-	181,926	61%	13%
181,927	-	207,293	61%	14%
207,294	-	213,986	61%	15%
213,987	-	232,818	62%	15%
232,819	-	246,364	62%	16%
246,365	-	258,504	63%	16%
258,505	-	278,743	63%	17%
278,744	-	284,353	64%	17%
284,354	-	310,363	64%	18%
310,364	-	311,119	64%	19%
311,120	-	336,542	65%	19%
336,543	-	343,498	65%	20%

Expected Losses	Primary Credibility	Excess Credibility
343,499 - 362,881	66%	20%
362,882 - 375,878	66%	21%
375,879 - 389,390	67%	21%
389,391 - 408,257	67%	22%
408,258 - 416,070	68%	22%
416,071 - 440,631	68%	23%
440,632 - 442,921	69%	23%
442,922 - 469,943	69%	24%
469,944 - 473,010	69%	25%
473,011 - 497,140	70%	25%
497,141 - 505,391	70%	26%
505,392 - 524,514	71%	26%
524,515 - 537,769	71%	27%
537,770 - 552,066	72%	27%
552,067 - 570,147	72%	28%
570,148 - 579,796	73%	28%
579,797 - 602,526	73%	29%
602,527 - 607,708	74%	29%
607,709 - 634,904	74%	30%
634,905 - 635,805	75%	30%
635,806 - 664,085	75%	31%
664,086 - 667,282	75%	32%
667,283 - 692,553	76%	32%
692,554 - 699,661	76%	33%
699,662 - 721,206	77%	33%
721,207 - 732,039	77%	34%
732,040 - 750,055	78%	34%
750,056 - 764,417	78%	35%
764,418 - 779,092	79%	35%
779,093 - 796,796	79%	36%
796,797 - 808,325	80%	36%
808,326 - 829,172	80%	37%
829,173 - 837,756	81%	37%
837,757 - 861,551	81%	38%
861,552 - 867,384	82%	38%
867,385 - 893,931	82%	39%
893,932 - 897,212	83%	39%
897,213 - 926,309	83%	40%
926,310 - 927,241	84%	40%
927,242 - 957,477	84%	41%
957,478 - 958,685	84%	42%
958,686 - 987,915	85%	42%
987,916 - 991,063	85%	43%
991,064 - 1,018,567	86%	43%
1,018,568 - 1,023,443	86%	44%
1,023,444 - 1,049,427	87%	44%
1,049,428 - 1,055,822	87%	45%

Expected Losses		Primary Credibility	Excess Credibility
1,055,823	- 1,080,501	88%	45%
1,080,502	- 1,088,200	88%	46%
1,088,201	- 1,111,790	89%	46%
1,111,791	- 1,120,577	89%	47%
1,120,578	- 1,143,298	90%	47%
1,143,299	- 1,152,957	90%	48%
1,152,958	- 1,175,023	91%	48%
1,175,024	- 1,185,333	91%	49%
1,185,334	- 1,206,970	92%	49%
1,206,971	- 1,217,714	92%	50%
1,217,715	- 1,239,142	93%	50%
1,239,143	- 1,250,092	93%	51%
1,250,093	- 1,271,542	94%	51%
1,271,543	- 1,282,469	94%	52%
1,282,470	- 1,304,171	95%	52%
1,304,172	- 1,314,847	95%	53%
1,314,848	- 1,337,030	96%	53%
1,337,031	- 1,347,226	96%	54%
1,347,227	- 1,370,123	97%	54%
1,370,124	- 1,379,604	97%	55%
1,379,605	- 1,403,453	98%	55%
1,403,454	- 1,411,983	98%	56%
1,411,984	- 1,437,022	99%	56%
1,437,023	- 1,444,360	99%	57%
1,444,361	- 1,470,832	100%	57%
1,470,833	- 1,504,888	100%	58%
1,504,889	- 1,539,191	100%	59%
1,539,192	- 1,573,742	100%	60%
1,573,743	- 1,608,546	100%	61%
1,608,547	- 1,643,605	100%	62%
1,643,606	- 1,678,923	100%	63%
1,678,924	- 1,714,500	100%	64%
1,714,501	- 1,750,342	100%	65%
1,750,343	- 1,786,449	100%	66%
1,786,450	- 1,822,829	100%	67%
1,822,830	- 1,859,478	100%	68%
1,859,479	- 1,896,404	100%	69%
1,896,405	- 1,933,610	100%	70%
1,933,611	- 1,971,098	100%	71%
1,971,099	- 2,008,871	100%	72%
2,008,872	- 2,046,932	100%	73%
2,046,933	- 2,085,286	100%	74%
2,085,287	- 2,123,932	100%	75%
2,123,933	- 2,162,880	100%	76%
2,162,881	- 2,202,127	100%	77%
2,202,128	- 2,241,682	100%	78%
2,241,683	- 2,281,545	100%	79%

Expected Losses		Primary Credibility	Excess Credibility
2,281,546	- 2,321,722	100%	80%
2,321,723	- 2,362,218	100%	81%
2,362,219	- 2,403,029	100%	82%
2,403,030	- 2,444,168	100%	83%
2,444,169	- 2,485,631	100%	84%
2,485,632	- 2,527,430	100%	85%
2,527,431	and higher	100%	86%))
<u>0</u>	= <u>5,913</u>	<u>12%</u>	<u>7%</u>
<u>5,914</u>	= <u>6,313</u>	<u>13%</u>	<u>7%</u>
<u>6,314</u>	= <u>6,716</u>	<u>14%</u>	<u>7%</u>
<u>6,717</u>	= <u>7,123</u>	<u>15%</u>	<u>7%</u>
<u>7,124</u>	= <u>7,538</u>	<u>16%</u>	<u>7%</u>
<u>7,539</u>	= <u>7,956</u>	<u>17%</u>	<u>7%</u>
<u>7,957</u>	= <u>8,380</u>	<u>18%</u>	<u>7%</u>
<u>8,381</u>	= <u>8,809</u>	<u>19%</u>	<u>7%</u>
<u>8,810</u>	= <u>9,242</u>	<u>20%</u>	<u>7%</u>
<u>9,243</u>	= <u>9,684</u>	<u>21%</u>	<u>7%</u>
<u>9,685</u>	= <u>10,130</u>	<u>22%</u>	<u>7%</u>
<u>10,131</u>	= <u>10,586</u>	<u>23%</u>	<u>7%</u>
<u>10,587</u>	= <u>11,044</u>	<u>24%</u>	<u>7%</u>
<u>11,045</u>	= <u>11,512</u>	<u>25%</u>	<u>7%</u>
<u>11,513</u>	= <u>11,989</u>	<u>26%</u>	<u>7%</u>
<u>11,990</u>	= <u>12,470</u>	<u>27%</u>	<u>7%</u>
<u>12,471</u>	= <u>12,962</u>	<u>28%</u>	<u>7%</u>
<u>12,963</u>	= <u>13,461</u>	<u>29%</u>	<u>7%</u>
<u>13,462</u>	= <u>13,969</u>	<u>30%</u>	<u>7%</u>
<u>13,970</u>	= <u>14,489</u>	<u>31%</u>	<u>7%</u>
<u>14,490</u>	= <u>15,015</u>	<u>32%</u>	<u>7%</u>
<u>15,016</u>	= <u>15,555</u>	<u>33%</u>	<u>7%</u>
<u>15,556</u>	= <u>16,107</u>	<u>34%</u>	<u>7%</u>
<u>16,108</u>	= <u>16,670</u>	<u>35%</u>	<u>7%</u>
<u>16,671</u>	= <u>17,246</u>	<u>36%</u>	<u>7%</u>
<u>17,247</u>	= <u>17,836</u>	<u>37%</u>	<u>7%</u>
<u>17,837</u>	= <u>18,446</u>	<u>38%</u>	<u>7%</u>
<u>18,447</u>	= <u>19,066</u>	<u>39%</u>	<u>7%</u>
<u>19,067</u>	= <u>19,707</u>	<u>40%</u>	<u>7%</u>
<u>19,708</u>	= <u>20,366</u>	<u>41%</u>	<u>7%</u>
<u>20,367</u>	= <u>21,049</u>	<u>42%</u>	<u>7%</u>
<u>21,050</u>	= <u>21,754</u>	<u>43%</u>	<u>7%</u>
<u>21,755</u>	= <u>22,485</u>	<u>44%</u>	<u>7%</u>
<u>22,486</u>	= <u>23,247</u>	<u>45%</u>	<u>7%</u>
<u>23,248</u>	= <u>24,043</u>	<u>46%</u>	<u>7%</u>
<u>24,044</u>	= <u>24,875</u>	<u>47%</u>	<u>7%</u>
<u>24,876</u>	= <u>25,754</u>	<u>48%</u>	<u>7%</u>
<u>25,755</u>	= <u>26,687</u>	<u>49%</u>	<u>7%</u>
<u>26,688</u>	= <u>27,679</u>	<u>50%</u>	<u>7%</u>
<u>27,680</u>	= <u>28,753</u>	<u>51%</u>	<u>7%</u>

Expected Losses		Primary Credibility	Excess Credibility	
<u>28,754</u>	=	<u>29,929</u>	<u>52%</u>	<u>7%</u>
<u>29,930</u>	=	<u>31,238</u>	<u>53%</u>	<u>7%</u>
<u>31,239</u>	=	<u>31,373</u>	<u>54%</u>	<u>7%</u>
<u>31,374</u>	=	<u>32,749</u>	<u>54%</u>	<u>8%</u>
<u>32,750</u>	=	<u>34,593</u>	<u>55%</u>	<u>8%</u>
<u>34,594</u>	=	<u>52,356</u>	<u>56%</u>	<u>8%</u>
<u>52,357</u>	=	<u>57,705</u>	<u>57%</u>	<u>8%</u>
<u>57,706</u>	=	<u>82,425</u>	<u>57%</u>	<u>9%</u>
<u>82,426</u>	=	<u>84,895</u>	<u>57%</u>	<u>10%</u>
<u>84,896</u>	=	<u>107,296</u>	<u>58%</u>	<u>10%</u>
<u>107,297</u>	=	<u>117,434</u>	<u>58%</u>	<u>11%</u>
<u>117,435</u>	=	<u>132,322</u>	<u>59%</u>	<u>11%</u>
<u>132,323</u>	=	<u>149,976</u>	<u>59%</u>	<u>12%</u>
<u>149,977</u>	=	<u>157,499</u>	<u>60%</u>	<u>12%</u>
<u>157,500</u>	=	<u>182,517</u>	<u>60%</u>	<u>13%</u>
<u>182,518</u>	=	<u>182,836</u>	<u>61%</u>	<u>13%</u>
<u>182,837</u>	=	<u>208,329</u>	<u>61%</u>	<u>14%</u>
<u>208,330</u>	=	<u>215,056</u>	<u>61%</u>	<u>15%</u>
<u>215,057</u>	=	<u>233,982</u>	<u>62%</u>	<u>15%</u>
<u>233,983</u>	=	<u>247,596</u>	<u>62%</u>	<u>16%</u>
<u>247,597</u>	=	<u>259,797</u>	<u>63%</u>	<u>16%</u>
<u>259,798</u>	=	<u>280,137</u>	<u>63%</u>	<u>17%</u>
<u>280,138</u>	=	<u>285,775</u>	<u>64%</u>	<u>17%</u>
<u>285,776</u>	=	<u>311,915</u>	<u>64%</u>	<u>18%</u>
<u>311,916</u>	=	<u>312,675</u>	<u>64%</u>	<u>19%</u>
<u>312,676</u>	=	<u>338,225</u>	<u>65%</u>	<u>19%</u>
<u>338,226</u>	=	<u>345,215</u>	<u>65%</u>	<u>20%</u>
<u>345,216</u>	=	<u>364,695</u>	<u>66%</u>	<u>20%</u>
<u>364,696</u>	=	<u>377,757</u>	<u>66%</u>	<u>21%</u>
<u>377,758</u>	=	<u>391,337</u>	<u>67%</u>	<u>21%</u>
<u>391,338</u>	=	<u>410,298</u>	<u>67%</u>	<u>22%</u>
<u>410,299</u>	=	<u>418,150</u>	<u>68%</u>	<u>22%</u>
<u>418,151</u>	=	<u>442,834</u>	<u>68%</u>	<u>23%</u>
<u>442,835</u>	=	<u>445,136</u>	<u>69%</u>	<u>23%</u>
<u>445,137</u>	=	<u>472,293</u>	<u>69%</u>	<u>24%</u>
<u>472,294</u>	=	<u>475,375</u>	<u>69%</u>	<u>25%</u>
<u>475,376</u>	=	<u>499,626</u>	<u>70%</u>	<u>25%</u>
<u>499,627</u>	=	<u>507,918</u>	<u>70%</u>	<u>26%</u>
<u>507,919</u>	=	<u>527,137</u>	<u>71%</u>	<u>26%</u>
<u>527,138</u>	=	<u>540,458</u>	<u>71%</u>	<u>27%</u>
<u>540,459</u>	=	<u>554,826</u>	<u>72%</u>	<u>27%</u>
<u>554,827</u>	=	<u>572,998</u>	<u>72%</u>	<u>28%</u>
<u>572,999</u>	=	<u>582,695</u>	<u>73%</u>	<u>28%</u>
<u>582,696</u>	=	<u>605,539</u>	<u>73%</u>	<u>29%</u>
<u>605,540</u>	=	<u>610,747</u>	<u>74%</u>	<u>29%</u>
<u>610,748</u>	=	<u>638,079</u>	<u>74%</u>	<u>30%</u>
<u>638,080</u>	=	<u>638,984</u>	<u>75%</u>	<u>30%</u>

Expected Losses		Primary Credibility	Excess Credibility	
<u>638,985</u>	=	<u>667,405</u>	<u>75%</u>	<u>31%</u>
<u>667,406</u>	=	<u>670,618</u>	<u>75%</u>	<u>32%</u>
<u>670,619</u>	=	<u>696,016</u>	<u>76%</u>	<u>32%</u>
<u>696,017</u>	=	<u>703,159</u>	<u>76%</u>	<u>33%</u>
<u>703,160</u>	=	<u>724,812</u>	<u>77%</u>	<u>33%</u>
<u>724,813</u>	=	<u>735,699</u>	<u>77%</u>	<u>34%</u>
<u>735,700</u>	=	<u>753,805</u>	<u>78%</u>	<u>34%</u>
<u>753,806</u>	=	<u>768,239</u>	<u>78%</u>	<u>35%</u>
<u>768,240</u>	=	<u>782,987</u>	<u>79%</u>	<u>35%</u>
<u>782,988</u>	=	<u>800,780</u>	<u>79%</u>	<u>36%</u>
<u>800,781</u>	=	<u>812,367</u>	<u>80%</u>	<u>36%</u>
<u>812,368</u>	=	<u>833,318</u>	<u>80%</u>	<u>37%</u>
<u>833,319</u>	=	<u>841,945</u>	<u>81%</u>	<u>37%</u>
<u>841,946</u>	=	<u>865,859</u>	<u>81%</u>	<u>38%</u>
<u>865,860</u>	=	<u>871,721</u>	<u>82%</u>	<u>38%</u>
<u>871,722</u>	=	<u>898,401</u>	<u>82%</u>	<u>39%</u>
<u>898,402</u>	=	<u>901,698</u>	<u>83%</u>	<u>39%</u>
<u>901,699</u>	=	<u>930,941</u>	<u>83%</u>	<u>40%</u>
<u>930,942</u>	=	<u>931,877</u>	<u>84%</u>	<u>40%</u>
<u>931,878</u>	=	<u>962,264</u>	<u>84%</u>	<u>41%</u>
<u>962,265</u>	=	<u>963,478</u>	<u>84%</u>	<u>42%</u>
<u>963,479</u>	=	<u>992,855</u>	<u>85%</u>	<u>42%</u>
<u>992,856</u>	=	<u>996,018</u>	<u>85%</u>	<u>43%</u>
<u>996,019</u>	=	<u>1,023,660</u>	<u>86%</u>	<u>43%</u>
<u>1,023,661</u>	=	<u>1,028,560</u>	<u>86%</u>	<u>44%</u>
<u>1,028,561</u>	=	<u>1,054,674</u>	<u>87%</u>	<u>44%</u>
<u>1,054,675</u>	=	<u>1,061,101</u>	<u>87%</u>	<u>45%</u>
<u>1,061,102</u>	=	<u>1,085,904</u>	<u>88%</u>	<u>45%</u>
<u>1,085,905</u>	=	<u>1,093,641</u>	<u>88%</u>	<u>46%</u>
<u>1,093,642</u>	=	<u>1,117,349</u>	<u>89%</u>	<u>46%</u>
<u>1,117,350</u>	=	<u>1,126,180</u>	<u>89%</u>	<u>47%</u>
<u>1,126,181</u>	=	<u>1,149,014</u>	<u>90%</u>	<u>47%</u>
<u>1,149,015</u>	=	<u>1,158,722</u>	<u>90%</u>	<u>48%</u>
<u>1,158,723</u>	=	<u>1,180,898</u>	<u>91%</u>	<u>48%</u>
<u>1,180,899</u>	=	<u>1,191,260</u>	<u>91%</u>	<u>49%</u>
<u>1,191,261</u>	=	<u>1,213,005</u>	<u>92%</u>	<u>49%</u>
<u>1,213,006</u>	=	<u>1,223,803</u>	<u>92%</u>	<u>50%</u>
<u>1,223,804</u>	=	<u>1,245,338</u>	<u>93%</u>	<u>50%</u>
<u>1,245,339</u>	=	<u>1,256,342</u>	<u>93%</u>	<u>51%</u>
<u>1,256,343</u>	=	<u>1,277,900</u>	<u>94%</u>	<u>51%</u>
<u>1,277,901</u>	=	<u>1,288,881</u>	<u>94%</u>	<u>52%</u>
<u>1,288,882</u>	=	<u>1,310,692</u>	<u>95%</u>	<u>52%</u>
<u>1,310,693</u>	=	<u>1,321,421</u>	<u>95%</u>	<u>53%</u>
<u>1,321,422</u>	=	<u>1,343,715</u>	<u>96%</u>	<u>53%</u>
<u>1,343,716</u>	=	<u>1,353,962</u>	<u>96%</u>	<u>54%</u>
<u>1,353,963</u>	=	<u>1,376,974</u>	<u>97%</u>	<u>54%</u>
<u>1,376,975</u>	=	<u>1,386,502</u>	<u>97%</u>	<u>55%</u>

Expected Losses	Primary Credibility	Excess Credibility	
<u>1,386,503</u>	= <u>1,410,470</u>	<u>98%</u>	<u>55%</u>
<u>1,410,471</u>	= <u>1,419,043</u>	<u>98%</u>	<u>56%</u>
<u>1,419,044</u>	= <u>1,444,207</u>	<u>99%</u>	<u>56%</u>
<u>1,444,208</u>	= <u>1,451,582</u>	<u>99%</u>	<u>57%</u>
<u>1,451,583</u>	= <u>1,478,186</u>	<u>100%</u>	<u>57%</u>
<u>1,478,187</u>	= <u>1,512,412</u>	<u>100%</u>	<u>58%</u>
<u>1,512,413</u>	= <u>1,546,887</u>	<u>100%</u>	<u>59%</u>
<u>1,546,888</u>	= <u>1,581,611</u>	<u>100%</u>	<u>60%</u>
<u>1,581,612</u>	= <u>1,616,589</u>	<u>100%</u>	<u>61%</u>
<u>1,616,590</u>	= <u>1,651,823</u>	<u>100%</u>	<u>62%</u>
<u>1,651,824</u>	= <u>1,687,318</u>	<u>100%</u>	<u>63%</u>
<u>1,687,319</u>	= <u>1,723,073</u>	<u>100%</u>	<u>64%</u>
<u>1,723,074</u>	= <u>1,759,094</u>	<u>100%</u>	<u>65%</u>
<u>1,759,095</u>	= <u>1,795,381</u>	<u>100%</u>	<u>66%</u>
<u>1,795,382</u>	= <u>1,831,943</u>	<u>100%</u>	<u>67%</u>
<u>1,831,944</u>	= <u>1,868,775</u>	<u>100%</u>	<u>68%</u>
<u>1,868,776</u>	= <u>1,905,886</u>	<u>100%</u>	<u>69%</u>
<u>1,905,887</u>	= <u>1,943,278</u>	<u>100%</u>	<u>70%</u>
<u>1,943,279</u>	= <u>1,980,953</u>	<u>100%</u>	<u>71%</u>
<u>1,980,954</u>	= <u>2,018,915</u>	<u>100%</u>	<u>72%</u>
<u>2,018,916</u>	= <u>2,057,167</u>	<u>100%</u>	<u>73%</u>
<u>2,057,168</u>	= <u>2,095,712</u>	<u>100%</u>	<u>74%</u>
<u>2,095,713</u>	= <u>2,134,552</u>	<u>100%</u>	<u>75%</u>
<u>2,134,553</u>	= <u>2,173,694</u>	<u>100%</u>	<u>76%</u>
<u>2,173,695</u>	= <u>2,213,138</u>	<u>100%</u>	<u>77%</u>
<u>2,213,139</u>	= <u>2,252,890</u>	<u>100%</u>	<u>78%</u>
<u>2,252,891</u>	= <u>2,292,953</u>	<u>100%</u>	<u>79%</u>
<u>2,292,954</u>	= <u>2,333,331</u>	<u>100%</u>	<u>80%</u>
<u>2,333,332</u>	= <u>2,374,029</u>	<u>100%</u>	<u>81%</u>
<u>2,374,030</u>	= <u>2,415,044</u>	<u>100%</u>	<u>82%</u>
<u>2,415,045</u>	= <u>2,456,389</u>	<u>100%</u>	<u>83%</u>
<u>2,456,390</u>	= <u>2,498,059</u>	<u>100%</u>	<u>84%</u>
<u>2,498,060</u>	= <u>2,540,067</u>	<u>100%</u>	<u>85%</u>
<u>2,540,068</u>	= <u>and higher</u>	<u>100%</u>	<u>86%</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020 (1). WSR 21-24-066, § 296-17-880, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-880, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-880, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-880, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-880, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-880, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-880, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-880, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-880, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020 (1). WSR 12-24-048, § 296-17-880, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-880, filed 12/1/11, effective

1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-880, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-880, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-880, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-880, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-880, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-880, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-880, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-880, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-880, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-880, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-880, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-880, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-880, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-880, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-880, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-880, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-880, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-880, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-880, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-880, filed 11/27/91, effective 1/1/92; WSR 90-24-042, § 296-17-880, filed 11/30/90, effective 1/1/91; WSR 89-24-051 (Order 89-22), § 296-17-880, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-880, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 87-24-060 (Order 87-26), § 296-17-880, filed 12/1/87, effective 1/1/88. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-880, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 85-24-032 (Order 85-33), § 296-17-880, filed 11/27/85, effective 1/1/86; WSR 84-24-016 (Order 84-23), § 296-17-880, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-880, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-880, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-880, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-880, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-880, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-880, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-880, filed 11/30/77, effective 1/1/78; Order 76-36, § 296-17-880, filed 11/30/76; Order 75-38, § 296-17-880, filed 11/24/75, effective 1/1/76; Order 74-40, § 296-17-880, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-880, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-885 Table III.

**Expected Loss Rates and Primary Ratios
by Risk Classification and Fiscal Year
Expected Loss Rates in Dollars Per Worker Hour
Effective January 1, ((2022)) 2023**

((Clas s	2018	2019	2020	Primary Ratio
101	0.7342	0.6551	0.5303	0.415
103	0.9369	0.8429	0.6940	0.417
104	0.6350	0.5660	0.4572	0.412
105	0.7935	0.7098	0.5777	0.491
106	1.7238	1.5562	1.2904	0.452
107	0.6721	0.5994	0.4846	0.420
108	0.6350	0.5660	0.4572	0.412
112	0.5180	0.4658	0.3830	0.411
201	1.5008	1.3380	1.0811	0.372
202	1.3704	1.2204	0.9840	0.397
210	0.6178	0.5529	0.4504	0.396
212	0.6096	0.5454	0.4439	0.439
214	1.1725	1.0412	0.8341	0.418
217	0.8085	0.7216	0.5843	0.444
219	0.5662	0.5028	0.4029	0.464
301	0.7059	0.6338	0.5195	0.478
302	1.4900	1.3247	1.0645	0.402
303	1.3056	1.1681	0.9508	0.411
306	0.5356	0.4778	0.3866	0.441
307	0.6141	0.5479	0.4431	0.474
308	0.4604	0.4138	0.3399	0.513
403	1.2552	1.1165	0.8979	0.478
502	0.6672	0.5910	0.4711	0.475
504	1.4020	1.2601	1.0353	0.406
507	2.1128	1.9125	1.5942	0.389
508	0.9382	0.8346	0.6715	0.367
509	0.6220	0.5525	0.4430	0.357
510	1.6857	1.5183	1.2529	0.413
511	0.9550	0.8496	0.6832	0.470
512	0.8808	0.7898	0.6458	0.447
513	0.6414	0.5720	0.4626	0.452
514	0.8519	0.7641	0.6251	0.459
516	1.0671	0.9538	0.7749	0.443
517	1.2373	1.1119	0.9135	0.381
518	0.8355	0.7440	0.5995	0.427
519	1.0390	0.9261	0.7482	0.439
521	0.4779	0.4294	0.3525	0.450
601	0.3761	0.3349	0.2697	0.443
602	0.4930	0.4353	0.3447	0.408
603	0.5801	0.5152	0.4130	0.407
604	0.7987	0.7165	0.5865	0.444
606	0.4228	0.3754	0.3006	0.541

Classes	2018	2019	2020	Primary Ratio
607	0.5720	0.5075	0.4063	0.495
608	0.3170	0.2804	0.2228	0.461
701	1.3057	1.1640	0.9405	0.372
803	0.4693	0.4166	0.3335	0.522
901	0.8355	0.7440	0.5995	0.427
1002	0.5999	0.5364	0.4359	0.430
1003	0.5061	0.4504	0.3627	0.485
1004	0.3205	0.2832	0.2246	0.468
1005	6.3853	5.6789	4.5694	0.418
1006	0.1721	0.1529	0.1228	0.531
1007	0.2395	0.2135	0.1726	0.457
1101	0.9395	0.8343	0.6688	0.497
1102	1.2456	1.1092	0.8943	0.398
1103	0.8256	0.7327	0.5865	0.479
1104	0.4933	0.4422	0.3612	0.489
1105	0.6563	0.5822	0.4654	0.502
1106	0.2968	0.2660	0.2171	0.538
1108	0.3555	0.3192	0.2618	0.503
1109	1.3799	1.2349	1.0059	0.429
1301	0.4819	0.4287	0.3445	0.470
1303	0.3049	0.2697	0.2142	0.528
1304	0.0152	0.0135	0.0109	0.505
1305	0.3958	0.3512	0.2811	0.478
1401	0.2477	0.2244	0.1874	0.495
1404	0.6067	0.5414	0.4384	0.518
1405	0.5591	0.4972	0.3997	0.523
1407	0.5350	0.4761	0.3832	0.522
1501	0.6846	0.6063	0.4832	0.497
1507	0.3850	0.3434	0.2777	0.523
1701	0.6107	0.5463	0.4446	0.425
1702	0.9116	0.8119	0.6549	0.318
1703	0.6565	0.5832	0.4677	0.410
1704	0.6107	0.5463	0.4446	0.425
1801	0.3489	0.3110	0.2512	0.416
1802	0.5583	0.4976	0.4019	0.416
2002	0.5917	0.5297	0.4319	0.470
2004	0.4557	0.4058	0.3267	0.560
2007	0.5430	0.4891	0.4035	0.443
2008	0.3050	0.2735	0.2238	0.519
2009	0.3033	0.2727	0.2242	0.519
2101	0.4918	0.4430	0.3654	0.487
2102	0.5322	0.4778	0.3914	0.472
2103	1.1392	1.0046	0.7931	0.580
2104	0.3381	0.3062	0.2553	0.552
2105	0.5348	0.4734	0.3769	0.533
2106	0.4704	0.4206	0.3418	0.508
2201	0.2956	0.2660	0.2188	0.526

Classes	2018	2019	2020	Primary Ratio
2202	0.5297	0.4728	0.3829	0.499
2203	0.4639	0.4149	0.3375	0.550
2204	0.2956	0.2660	0.2188	0.526
2401	0.3679	0.3275	0.2638	0.459
2903	0.5488	0.4943	0.4079	0.507
2904	0.5550	0.4986	0.4090	0.410
2905	0.4326	0.3870	0.3150	0.533
2906	0.4342	0.3927	0.3265	0.472
2907	0.3781	0.3382	0.2749	0.544
2908	0.7723	0.6912	0.5628	0.530
2909	0.3413	0.3096	0.2592	0.461
3101	0.6281	0.5605	0.4537	0.489
3102	0.2215	0.1973	0.1591	0.467
3103	0.2876	0.2583	0.2119	0.433
3104	0.5421	0.4858	0.3965	0.526
3105	0.6890	0.6227	0.5174	0.481
3303	0.3122	0.2792	0.2268	0.522
3304	0.5898	0.5301	0.4354	0.507
3309	0.3425	0.3061	0.2484	0.507
3402	0.3721	0.3329	0.2709	0.507
3403	0.1081	0.0965	0.0781	0.487
3404	0.3765	0.3362	0.2722	0.517
3405	0.2346	0.2094	0.1696	0.492
3406	0.2418	0.2153	0.1737	0.557
3407	0.6066	0.5409	0.4373	0.468
3408	0.2258	0.1993	0.1576	0.546
3409	0.1610	0.1436	0.1162	0.560
3410	0.1610	0.1436	0.1162	0.560
3411	0.4146	0.3684	0.2957	0.479
3412	0.5234	0.4649	0.3729	0.425
3414	0.6803	0.6034	0.4822	0.500
3415	0.9122	0.8114	0.6527	0.509
3501	0.3583	0.3239	0.2691	0.481
3503	0.2639	0.2356	0.1908	0.522
3506	0.6322	0.5640	0.4564	0.441
3509	0.3773	0.3357	0.2701	0.548
3510	0.2981	0.2685	0.2214	0.502
3511	0.6492	0.5837	0.4798	0.470
3512	0.2975	0.2665	0.2172	0.555
3513	0.3638	0.3264	0.2672	0.508
3602	0.0844	0.0754	0.0612	0.526
3603	0.3859	0.3465	0.2841	0.477
3604	0.6209	0.5571	0.4560	0.479
3605	0.3721	0.3329	0.2709	0.507
3701	0.2215	0.1973	0.1591	0.467
3702	0.3118	0.2786	0.2261	0.520
3708	0.4981	0.4481	0.3688	0.458

Class	2018	2019	2020	Primary Ratio
3802	0.1754	0.1576	0.1294	0.494
3808	0.3284	0.2942	0.2400	0.487
3901	0.1300	0.1164	0.0949	0.585
3902	0.3975	0.3563	0.2910	0.552
3903	0.4171	0.3739	0.3053	0.552
3905	0.1157	0.1042	0.0857	0.565
3906	0.4089	0.3678	0.3026	0.529
3909	0.2230	0.1998	0.1631	0.560
4101	0.2011	0.1797	0.1459	0.529
4103	0.4597	0.4134	0.3401	0.489
4107	0.1643	0.1463	0.1180	0.491
4108	0.1443	0.1290	0.1046	0.544
4109	0.1713	0.1547	0.1284	0.501
4201	0.6313	0.5576	0.4418	0.438
4301	0.7524	0.6777	0.5588	0.525
4302	0.6013	0.5383	0.4385	0.486
4304	0.8882	0.8058	0.6743	0.502
4305	0.8491	0.7527	0.6011	0.493
4401	0.3122	0.2792	0.2268	0.522
4402	0.5433	0.4824	0.3864	0.515
4404	0.3651	0.3272	0.2672	0.489
4501	0.1496	0.1329	0.1067	0.578
4502	0.0526	0.0471	0.0383	0.484
4504	0.0998	0.0890	0.0718	0.590
4802	0.3676	0.3309	0.2726	0.500
4803	0.3682	0.3319	0.2741	0.550
4804	0.5020	0.4527	0.3742	0.524
4805	0.3295	0.2972	0.2457	0.536
4806	0.1123	0.1008	0.0825	0.597
4808	0.4090	0.3675	0.3018	0.470
4809	0.2124	0.1913	0.1579	0.488
4810	0.2150	0.1937	0.1596	0.553
4811	0.4383	0.3966	0.3301	0.519
4812	0.3781	0.3396	0.2783	0.493
4813	0.2159	0.1950	0.1615	0.562
4814	0.1103	0.1004	0.0843	0.558
4815	0.2271	0.2070	0.1745	0.572
4816	0.3093	0.2823	0.2389	0.514
4900	0.0974	0.0867	0.0700	0.460
4901	0.0334	0.0297	0.0237	0.478
4902	0.0748	0.0669	0.0542	0.504
4903	0.1407	0.1248	0.0995	0.528
4904	0.0132	0.0118	0.0095	0.550
4905	0.3166	0.2848	0.2344	0.559
4906	0.0906	0.0803	0.0641	0.547
4907	0.0509	0.0459	0.0379	0.610
4908	0.0815	0.0733	0.0604	0.592

Classes	2018	2019	2020	Primary Ratio
4909	0.0326	0.0294	0.0241	0.592
4910	0.3870	0.3451	0.2791	0.495
4911	0.0458	0.0409	0.0334	0.443
5001	6.1433	5.5201	4.5355	0.362
5002	0.4844	0.4301	0.3444	0.522
5003	1.8231	1.6282	1.3211	0.392
5004	0.8090	0.7364	0.6205	0.405
5005	0.7622	0.6794	0.5489	0.397
5006	0.9158	0.8174	0.6625	0.374
5101	0.7685	0.6813	0.5442	0.453
5103	0.7160	0.6418	0.5242	0.507
5106	0.7160	0.6418	0.5242	0.507
5108	0.7019	0.6218	0.4959	0.538
5109	0.4000	0.3551	0.2844	0.494
5201	0.2587	0.2303	0.1852	0.553
5204	0.7832	0.6948	0.5558	0.431
5206	0.3450	0.3101	0.2549	0.417
5207	0.1250	0.1123	0.0920	0.540
5208	0.5222	0.4679	0.3819	0.476
5209	0.5156	0.4598	0.3718	0.487
5300	0.0831	0.0738	0.0592	0.550
5301	0.0271	0.0242	0.0198	0.488
5302	0.0070	0.0062	0.0049	0.524
5305	0.0347	0.0310	0.0251	0.536
5306	0.0369	0.0329	0.0265	0.591
5307	0.5863	0.5186	0.4124	0.505
5308	0.0757	0.0679	0.0555	0.559
6103	0.0814	0.0731	0.0598	0.588
6104	0.3237	0.2890	0.2341	0.540
6105	0.4460	0.3956	0.3161	0.486
6107	0.1315	0.1182	0.0969	0.644
6108	0.2292	0.2056	0.1681	0.582
6109	0.0912	0.0809	0.0648	0.504
6110	0.3560	0.3155	0.2515	0.527
6120	0.2746	0.2436	0.1947	0.522
6121	0.3803	0.3353	0.2646	0.532
6201	0.4261	0.3785	0.3036	0.511
6202	0.6491	0.5795	0.4696	0.519
6203	0.0935	0.0845	0.0701	0.623
6204	0.1240	0.1110	0.0905	0.562
6205	0.1575	0.1408	0.1144	0.525
6206	0.1766	0.1576	0.1276	0.565
6207	0.8400	0.7537	0.6173	0.484
6208	0.2143	0.1927	0.1584	0.589
6209	0.2500	0.2256	0.1866	0.547
6301	0.1087	0.0970	0.0786	0.446
6303	0.0435	0.0387	0.0313	0.520

Classes	2018	2019	2020	Primary Ratio
6305	0.0816	0.0729	0.0592	0.574
6306	0.2879	0.2561	0.2060	0.552
6308	0.0501	0.0448	0.0362	0.493
6309	0.1834	0.1640	0.1334	0.527
6402	0.2241	0.2009	0.1640	0.571
6403	0.1263	0.1127	0.0912	0.582
6404	0.2533	0.2282	0.1885	0.519
6405	0.5279	0.4695	0.3775	0.506
6406	0.1301	0.1160	0.0936	0.577
6407	0.2470	0.2205	0.1786	0.538
6408	0.5097	0.4565	0.3724	0.479
6409	0.5314	0.4737	0.3826	0.484
6410	0.2675	0.2378	0.1909	0.539
6411	0.0370	0.0334	0.0276	0.526
6501	0.0914	0.0809	0.0643	0.562
6502	0.0231	0.0206	0.0165	0.509
6503	0.0700	0.0616	0.0484	0.537
6504	0.2478	0.2236	0.1848	0.593
6505	0.1447	0.1294	0.1050	0.640
6506	0.1093	0.0975	0.0789	0.547
6509	0.2165	0.1943	0.1589	0.578
6510	0.3130	0.2784	0.2240	0.401
6511	0.2467	0.2210	0.1802	0.554
6512	0.0763	0.0682	0.0555	0.455
6601	0.1666	0.1495	0.1222	0.519
6602	0.4985	0.4487	0.3698	0.499
6603	0.2451	0.2193	0.1783	0.552
6604	0.0636	0.0569	0.0461	0.549
6605	0.2469	0.2193	0.1758	0.564
6607	0.0880	0.0791	0.0650	0.538
6608	0.3956	0.3501	0.2787	0.392
6620	2.8352	2.4937	1.9578	0.579
6704	0.1135	0.1010	0.0813	0.583
6705	0.6226	0.5623	0.4659	0.579
6706	0.2172	0.1961	0.1624	0.519
6707	11.2987	10.0420	8.0498	0.667
6708	8.0379	7.3520	6.2503	0.485
6709	0.2369	0.2114	0.1712	0.560
6801	0.5865	0.5102	0.3911	0.552
6802	0.6889	0.6097	0.4851	0.547
6803	0.4158	0.3678	0.2923	0.393
6804	0.2394	0.2132	0.1718	0.558
6809	3.2949	2.9642	2.4384	0.556
6901	0.0192	0.0185	0.0171	0.808
6902	0.6662	0.5977	0.4893	0.420
6903	3.6438	3.2724	2.6842	0.331
6904	0.8938	0.7881	0.6223	0.482

((Clas s	2018	2019	2020	Primary Ratio
6905	0.6427	0.5683	0.4511	0.499
6906	0.2491	0.2355	0.2121	0.618
6907	0.7274	0.6488	0.5245	0.545
6908	0.2951	0.2638	0.2141	0.481
6909	0.0954	0.0853	0.0693	0.523
7100	0.0165	0.0145	0.0115	0.532
7101	0.0186	0.0165	0.0134	0.450
7103	0.8743	0.7711	0.6091	0.490
7104	0.0205	0.0183	0.0148	0.503
7105	0.0139	0.0124	0.0102	0.504
7106	0.2612	0.2324	0.1867	0.580
7107	0.3621	0.3218	0.2583	0.571
7108	0.2432	0.2163	0.1739	0.610
7109	0.0828	0.0740	0.0600	0.506
7110	0.3681	0.3304	0.2708	0.429
7111	0.2544	0.2244	0.1773	0.469
7112	0.5812	0.5225	0.4293	0.522
7113	0.3892	0.3469	0.2799	0.552
7114	0.7032	0.6273	0.5070	0.586
7115	0.5064	0.4550	0.3732	0.560
7116	0.4160	0.3712	0.3007	0.478
7117	0.9334	0.8380	0.6870	0.498
7118	1.4329	1.2780	1.0335	0.497
7119	1.4906	1.3254	1.0655	0.482
7120	4.2459	3.7638	3.0058	0.493
7121	6.1170	5.4953	4.5123	0.350
7122	0.3219	0.2907	0.2410	0.511
7200	1.7445	1.5337	1.2035	0.476
7201	1.3706	1.2088	0.9551	0.502
7202	0.0211	0.0188	0.0149	0.527
7203	0.0852	0.0771	0.0640	0.583
7204	0.0000	0.0000	0.0000	0.500
7205	0.0000	0.0000	0.0000	0.500
7301	0.5811	0.5280	0.4434	0.473
7302	0.6820	0.6189	0.5182	0.456
7307	0.4573	0.4084	0.3310	0.551
7308	0.2248	0.2023	0.1665	0.580
7309	0.2223	0.1997	0.1638	0.587
7400	2.0062	1.7638	1.3840	0.476))
Class	2019	2020	2021	Primary Ratio
101	0.6962	0.6462	0.5405	0.401
103	0.8755	0.8212	0.7009	0.412
104	0.6069	0.5634	0.4706	0.415
105	0.7505	0.7045	0.5883	0.484
106	1.8780	1.7702	1.5198	0.448
107	0.6123	0.5693	0.4754	0.429

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>108</u>	<u>0.6069</u>	<u>0.5634</u>	<u>0.4706</u>	<u>0.415</u>
<u>112</u>	<u>0.5147</u>	<u>0.4809</u>	<u>0.4064</u>	<u>0.423</u>
<u>201</u>	<u>1.4181</u>	<u>1.3098</u>	<u>1.0974</u>	<u>0.355</u>
<u>202</u>	<u>1.2796</u>	<u>1.1855</u>	<u>0.9853</u>	<u>0.409</u>
<u>210</u>	<u>0.6587</u>	<u>0.6119</u>	<u>0.5157</u>	<u>0.395</u>
<u>212</u>	<u>0.6190</u>	<u>0.5779</u>	<u>0.4832</u>	<u>0.432</u>
<u>214</u>	<u>1.1322</u>	<u>1.0460</u>	<u>0.8618</u>	<u>0.418</u>
<u>217</u>	<u>0.7426</u>	<u>0.6926</u>	<u>0.5794</u>	<u>0.438</u>
<u>219</u>	<u>0.5157</u>	<u>0.4801</u>	<u>0.3979</u>	<u>0.457</u>
<u>301</u>	<u>0.7180</u>	<u>0.6742</u>	<u>0.5690</u>	<u>0.471</u>
<u>302</u>	<u>1.3363</u>	<u>1.2407</u>	<u>1.0374</u>	<u>0.396</u>
<u>303</u>	<u>1.2046</u>	<u>1.1223</u>	<u>0.9387</u>	<u>0.416</u>
<u>306</u>	<u>0.5270</u>	<u>0.4903</u>	<u>0.4085</u>	<u>0.439</u>
<u>307</u>	<u>0.5605</u>	<u>0.5238</u>	<u>0.4354</u>	<u>0.477</u>
<u>308</u>	<u>0.4481</u>	<u>0.4225</u>	<u>0.3581</u>	<u>0.509</u>
<u>403</u>	<u>1.1279</u>	<u>1.0514</u>	<u>0.8683</u>	<u>0.467</u>
<u>502</u>	<u>0.6063</u>	<u>0.5635</u>	<u>0.4598</u>	<u>0.473</u>
<u>504</u>	<u>1.2843</u>	<u>1.1981</u>	<u>1.0141</u>	<u>0.401</u>
<u>507</u>	<u>2.0470</u>	<u>1.9210</u>	<u>1.6578</u>	<u>0.394</u>
<u>508</u>	<u>1.0124</u>	<u>0.9339</u>	<u>0.7744</u>	<u>0.367</u>
<u>509</u>	<u>0.5847</u>	<u>0.5383</u>	<u>0.4487</u>	<u>0.352</u>
<u>510</u>	<u>1.6072</u>	<u>1.5043</u>	<u>1.2807</u>	<u>0.412</u>
<u>511</u>	<u>0.9023</u>	<u>0.8410</u>	<u>0.6957</u>	<u>0.473</u>
<u>512</u>	<u>0.8150</u>	<u>0.7622</u>	<u>0.6441</u>	<u>0.445</u>
<u>513</u>	<u>0.5963</u>	<u>0.5562</u>	<u>0.4646</u>	<u>0.447</u>
<u>514</u>	<u>0.8380</u>	<u>0.7849</u>	<u>0.6629</u>	<u>0.464</u>
<u>516</u>	<u>1.0530</u>	<u>0.9826</u>	<u>0.8214</u>	<u>0.442</u>
<u>517</u>	<u>1.1401</u>	<u>1.0619</u>	<u>0.9013</u>	<u>0.376</u>
<u>518</u>	<u>0.8006</u>	<u>0.7429</u>	<u>0.6198</u>	<u>0.417</u>
<u>519</u>	<u>1.0676</u>	<u>0.9937</u>	<u>0.8295</u>	<u>0.424</u>
<u>521</u>	<u>0.4823</u>	<u>0.4515</u>	<u>0.3817</u>	<u>0.449</u>
<u>601</u>	<u>0.3471</u>	<u>0.3225</u>	<u>0.2666</u>	<u>0.453</u>
<u>602</u>	<u>0.4750</u>	<u>0.4372</u>	<u>0.3564</u>	<u>0.408</u>
<u>603</u>	<u>0.5569</u>	<u>0.5157</u>	<u>0.4275</u>	<u>0.402</u>
<u>604</u>	<u>0.7619</u>	<u>0.7138</u>	<u>0.6020</u>	<u>0.454</u>
<u>606</u>	<u>0.4161</u>	<u>0.3896</u>	<u>0.3173</u>	<u>0.543</u>
<u>607</u>	<u>0.5658</u>	<u>0.5279</u>	<u>0.4312</u>	<u>0.500</u>
<u>608</u>	<u>0.2973</u>	<u>0.2757</u>	<u>0.2252</u>	<u>0.460</u>
<u>701</u>	<u>1.0495</u>	<u>0.9693</u>	<u>0.8120</u>	<u>0.355</u>
<u>803</u>	<u>0.4643</u>	<u>0.4333</u>	<u>0.3541</u>	<u>0.516</u>
<u>901</u>	<u>0.8006</u>	<u>0.7429</u>	<u>0.6198</u>	<u>0.417</u>
<u>1002</u>	<u>0.5730</u>	<u>0.5332</u>	<u>0.4451</u>	<u>0.430</u>
<u>1003</u>	<u>0.4591</u>	<u>0.4288</u>	<u>0.3546</u>	<u>0.479</u>
<u>1004</u>	<u>0.3153</u>	<u>0.2925</u>	<u>0.2381</u>	<u>0.455</u>
<u>1005</u>	<u>6.1984</u>	<u>5.7597</u>	<u>4.7437</u>	<u>0.415</u>
<u>1006</u>	<u>0.1786</u>	<u>0.1671</u>	<u>0.1361</u>	<u>0.534</u>
<u>1007</u>	<u>0.2432</u>	<u>0.2274</u>	<u>0.1890</u>	<u>0.472</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>1101</u>	<u>0.8724</u>	<u>0.8146</u>	<u>0.6665</u>	<u>0.501</u>
<u>1102</u>	<u>1.1854</u>	<u>1.0979</u>	<u>0.9098</u>	<u>0.400</u>
<u>1103</u>	<u>0.7932</u>	<u>0.7396</u>	<u>0.6016</u>	<u>0.490</u>
<u>1104</u>	<u>0.4655</u>	<u>0.4373</u>	<u>0.3666</u>	<u>0.492</u>
<u>1105</u>	<u>0.6010</u>	<u>0.5603</u>	<u>0.4578</u>	<u>0.496</u>
<u>1106</u>	<u>0.2993</u>	<u>0.2820</u>	<u>0.2348</u>	<u>0.546</u>
<u>1108</u>	<u>0.3695</u>	<u>0.3480</u>	<u>0.2926</u>	<u>0.501</u>
<u>1109</u>	<u>1.4619</u>	<u>1.3625</u>	<u>1.1344</u>	<u>0.433</u>
<u>1301</u>	<u>0.4917</u>	<u>0.4579</u>	<u>0.3777</u>	<u>0.466</u>
<u>1303</u>	<u>0.2939</u>	<u>0.2739</u>	<u>0.2222</u>	<u>0.523</u>
<u>1304</u>	<u>0.0141</u>	<u>0.0132</u>	<u>0.0109</u>	<u>0.497</u>
<u>1305</u>	<u>0.3659</u>	<u>0.3407</u>	<u>0.2789</u>	<u>0.470</u>
<u>1401</u>	<u>0.2517</u>	<u>0.2382</u>	<u>0.2034</u>	<u>0.497</u>
<u>1404</u>	<u>0.5941</u>	<u>0.5587</u>	<u>0.4652</u>	<u>0.515</u>
<u>1405</u>	<u>0.5736</u>	<u>0.5375</u>	<u>0.4421</u>	<u>0.528</u>
<u>1407</u>	<u>0.5046</u>	<u>0.4719</u>	<u>0.3870</u>	<u>0.515</u>
<u>1501</u>	<u>0.6423</u>	<u>0.5979</u>	<u>0.4880</u>	<u>0.486</u>
<u>1507</u>	<u>0.3411</u>	<u>0.3201</u>	<u>0.2663</u>	<u>0.516</u>
<u>1701</u>	<u>0.6024</u>	<u>0.5621</u>	<u>0.4707</u>	<u>0.422</u>
<u>1702</u>	<u>0.8383</u>	<u>0.7701</u>	<u>0.6447</u>	<u>0.315</u>
<u>1703</u>	<u>0.6391</u>	<u>0.5919</u>	<u>0.4883</u>	<u>0.407</u>
<u>1704</u>	<u>0.6024</u>	<u>0.5621</u>	<u>0.4707</u>	<u>0.422</u>
<u>1801</u>	<u>0.3559</u>	<u>0.3304</u>	<u>0.2752</u>	<u>0.406</u>
<u>1802</u>	<u>0.5695</u>	<u>0.5286</u>	<u>0.4404</u>	<u>0.406</u>
<u>2002</u>	<u>0.5572</u>	<u>0.5212</u>	<u>0.4368</u>	<u>0.465</u>
<u>2004</u>	<u>0.4613</u>	<u>0.4336</u>	<u>0.3579</u>	<u>0.558</u>
<u>2007</u>	<u>0.5300</u>	<u>0.4975</u>	<u>0.4236</u>	<u>0.439</u>
<u>2008</u>	<u>0.2541</u>	<u>0.2394</u>	<u>0.2002</u>	<u>0.507</u>
<u>2009</u>	<u>0.2997</u>	<u>0.2826</u>	<u>0.2397</u>	<u>0.507</u>
<u>2101</u>	<u>0.4832</u>	<u>0.4551</u>	<u>0.3863</u>	<u>0.492</u>
<u>2102</u>	<u>0.5361</u>	<u>0.5040</u>	<u>0.4251</u>	<u>0.480</u>
<u>2103</u>	<u>1.2790</u>	<u>1.1957</u>	<u>0.9545</u>	<u>0.574</u>
<u>2104</u>	<u>0.3193</u>	<u>0.3040</u>	<u>0.2617</u>	<u>0.555</u>
<u>2105</u>	<u>0.5497</u>	<u>0.5138</u>	<u>0.4179</u>	<u>0.531</u>
<u>2106</u>	<u>0.4499</u>	<u>0.4227</u>	<u>0.3536</u>	<u>0.511</u>
<u>2201</u>	<u>0.2807</u>	<u>0.2653</u>	<u>0.2258</u>	<u>0.511</u>
<u>2202</u>	<u>0.5566</u>	<u>0.5207</u>	<u>0.4309</u>	<u>0.503</u>
<u>2203</u>	<u>0.4128</u>	<u>0.3890</u>	<u>0.3255</u>	<u>0.540</u>
<u>2204</u>	<u>0.2807</u>	<u>0.2653</u>	<u>0.2258</u>	<u>0.511</u>
<u>2401</u>	<u>0.3513</u>	<u>0.3278</u>	<u>0.2732</u>	<u>0.453</u>
<u>2903</u>	<u>0.5090</u>	<u>0.4802</u>	<u>0.4072</u>	<u>0.502</u>
<u>2904</u>	<u>0.5117</u>	<u>0.4778</u>	<u>0.4075</u>	<u>0.401</u>
<u>2905</u>	<u>0.4265</u>	<u>0.4016</u>	<u>0.3367</u>	<u>0.524</u>
<u>2906</u>	<u>0.4269</u>	<u>0.4024</u>	<u>0.3458</u>	<u>0.463</u>
<u>2907</u>	<u>0.3635</u>	<u>0.3428</u>	<u>0.2858</u>	<u>0.552</u>
<u>2908</u>	<u>0.6991</u>	<u>0.6589</u>	<u>0.5536</u>	<u>0.524</u>
<u>2909</u>	<u>0.3309</u>	<u>0.3133</u>	<u>0.2695</u>	<u>0.461</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>3101</u>	<u>0.5761</u>	<u>0.5388</u>	<u>0.4493</u>	<u>0.484</u>
<u>3102</u>	<u>0.2057</u>	<u>0.1919</u>	<u>0.1596</u>	<u>0.469</u>
<u>3103</u>	<u>0.2688</u>	<u>0.2517</u>	<u>0.2131</u>	<u>0.426</u>
<u>3104</u>	<u>0.5826</u>	<u>0.5481</u>	<u>0.4593</u>	<u>0.529</u>
<u>3105</u>	<u>0.6675</u>	<u>0.6300</u>	<u>0.5405</u>	<u>0.475</u>
<u>3303</u>	<u>0.3048</u>	<u>0.2861</u>	<u>0.2377</u>	<u>0.517</u>
<u>3304</u>	<u>0.5735</u>	<u>0.5399</u>	<u>0.4580</u>	<u>0.495</u>
<u>3309</u>	<u>0.3212</u>	<u>0.3010</u>	<u>0.2497</u>	<u>0.504</u>
<u>3402</u>	<u>0.3407</u>	<u>0.3199</u>	<u>0.2687</u>	<u>0.498</u>
<u>3403</u>	<u>0.1016</u>	<u>0.0950</u>	<u>0.0793</u>	<u>0.484</u>
<u>3404</u>	<u>0.4011</u>	<u>0.3759</u>	<u>0.3131</u>	<u>0.504</u>
<u>3405</u>	<u>0.2136</u>	<u>0.2001</u>	<u>0.1670</u>	<u>0.497</u>
<u>3406</u>	<u>0.2233</u>	<u>0.2098</u>	<u>0.1734</u>	<u>0.537</u>
<u>3407</u>	<u>0.5848</u>	<u>0.5448</u>	<u>0.4531</u>	<u>0.440</u>
<u>3408</u>	<u>0.2229</u>	<u>0.2084</u>	<u>0.1678</u>	<u>0.544</u>
<u>3409</u>	<u>0.1446</u>	<u>0.1362</u>	<u>0.1128</u>	<u>0.546</u>
<u>3410</u>	<u>0.1446</u>	<u>0.1362</u>	<u>0.1128</u>	<u>0.546</u>
<u>3411</u>	<u>0.3818</u>	<u>0.3558</u>	<u>0.2942</u>	<u>0.473</u>
<u>3412</u>	<u>0.5146</u>	<u>0.4770</u>	<u>0.3953</u>	<u>0.411</u>
<u>3414</u>	<u>0.6431</u>	<u>0.5999</u>	<u>0.4925</u>	<u>0.493</u>
<u>3415</u>	<u>0.9964</u>	<u>0.9324</u>	<u>0.7641</u>	<u>0.520</u>
<u>3501</u>	<u>0.3471</u>	<u>0.3276</u>	<u>0.2810</u>	<u>0.475</u>
<u>3503</u>	<u>0.2743</u>	<u>0.2577</u>	<u>0.2135</u>	<u>0.527</u>
<u>3506</u>	<u>0.6054</u>	<u>0.5633</u>	<u>0.4703</u>	<u>0.428</u>
<u>3509</u>	<u>0.3912</u>	<u>0.3670</u>	<u>0.2991</u>	<u>0.550</u>
<u>3510</u>	<u>0.2989</u>	<u>0.2819</u>	<u>0.2410</u>	<u>0.493</u>
<u>3511</u>	<u>0.6438</u>	<u>0.6052</u>	<u>0.5113</u>	<u>0.476</u>
<u>3512</u>	<u>0.3016</u>	<u>0.2845</u>	<u>0.2390</u>	<u>0.537</u>
<u>3513</u>	<u>0.3410</u>	<u>0.3206</u>	<u>0.2700</u>	<u>0.488</u>
<u>3602</u>	<u>0.0802</u>	<u>0.0753</u>	<u>0.0632</u>	<u>0.507</u>
<u>3603</u>	<u>0.3738</u>	<u>0.3512</u>	<u>0.2955</u>	<u>0.480</u>
<u>3604</u>	<u>0.6175</u>	<u>0.5796</u>	<u>0.4890</u>	<u>0.470</u>
<u>3605</u>	<u>0.3407</u>	<u>0.3199</u>	<u>0.2687</u>	<u>0.498</u>
<u>3701</u>	<u>0.2057</u>	<u>0.1919</u>	<u>0.1596</u>	<u>0.469</u>
<u>3702</u>	<u>0.3015</u>	<u>0.2835</u>	<u>0.2360</u>	<u>0.528</u>
<u>3708</u>	<u>0.5060</u>	<u>0.4742</u>	<u>0.4012</u>	<u>0.454</u>
<u>3802</u>	<u>0.1663</u>	<u>0.1565</u>	<u>0.1325</u>	<u>0.497</u>
<u>3808</u>	<u>0.3153</u>	<u>0.2956</u>	<u>0.2481</u>	<u>0.484</u>
<u>3901</u>	<u>0.1266</u>	<u>0.1197</u>	<u>0.1000</u>	<u>0.579</u>
<u>3902</u>	<u>0.4038</u>	<u>0.3806</u>	<u>0.3179</u>	<u>0.549</u>
<u>3903</u>	<u>0.5269</u>	<u>0.4967</u>	<u>0.4150</u>	<u>0.549</u>
<u>3905</u>	<u>0.1119</u>	<u>0.1061</u>	<u>0.0901</u>	<u>0.558</u>
<u>3906</u>	<u>0.3971</u>	<u>0.3749</u>	<u>0.3180</u>	<u>0.521</u>
<u>3909</u>	<u>0.2227</u>	<u>0.2102</u>	<u>0.1755</u>	<u>0.565</u>
<u>4101</u>	<u>0.1825</u>	<u>0.1716</u>	<u>0.1435</u>	<u>0.531</u>
<u>4103</u>	<u>0.4414</u>	<u>0.4154</u>	<u>0.3521</u>	<u>0.485</u>
<u>4107</u>	<u>0.1529</u>	<u>0.1429</u>	<u>0.1185</u>	<u>0.486</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>4108</u>	<u>0.1379</u>	<u>0.1295</u>	<u>0.1081</u>	<u>0.534</u>
<u>4109</u>	<u>0.1693</u>	<u>0.1599</u>	<u>0.1362</u>	<u>0.499</u>
<u>4201</u>	<u>0.6293</u>	<u>0.5809</u>	<u>0.4695</u>	<u>0.438</u>
<u>4301</u>	<u>0.7010</u>	<u>0.6625</u>	<u>0.5645</u>	<u>0.515</u>
<u>4302</u>	<u>0.5853</u>	<u>0.5482</u>	<u>0.4587</u>	<u>0.478</u>
<u>4304</u>	<u>0.7809</u>	<u>0.7399</u>	<u>0.6387</u>	<u>0.489</u>
<u>4305</u>	<u>0.8480</u>	<u>0.7900</u>	<u>0.6430</u>	<u>0.489</u>
<u>4401</u>	<u>0.3048</u>	<u>0.2861</u>	<u>0.2377</u>	<u>0.517</u>
<u>4402</u>	<u>0.5118</u>	<u>0.4781</u>	<u>0.3929</u>	<u>0.508</u>
<u>4404</u>	<u>0.3762</u>	<u>0.3529</u>	<u>0.2985</u>	<u>0.467</u>
<u>4501</u>	<u>0.1419</u>	<u>0.1335</u>	<u>0.1093</u>	<u>0.571</u>
<u>4502</u>	<u>0.0492</u>	<u>0.0461</u>	<u>0.0385</u>	<u>0.480</u>
<u>4504</u>	<u>0.0998</u>	<u>0.0942</u>	<u>0.0786</u>	<u>0.580</u>
<u>4802</u>	<u>0.3634</u>	<u>0.3422</u>	<u>0.2906</u>	<u>0.493</u>
<u>4803</u>	<u>0.3750</u>	<u>0.3551</u>	<u>0.3018</u>	<u>0.549</u>
<u>4804</u>	<u>0.4516</u>	<u>0.4272</u>	<u>0.3651</u>	<u>0.516</u>
<u>4805</u>	<u>0.3090</u>	<u>0.2928</u>	<u>0.2499</u>	<u>0.540</u>
<u>4806</u>	<u>0.1193</u>	<u>0.1130</u>	<u>0.0941</u>	<u>0.595</u>
<u>4808</u>	<u>0.4068</u>	<u>0.3819</u>	<u>0.3238</u>	<u>0.456</u>
<u>4809</u>	<u>0.2045</u>	<u>0.1927</u>	<u>0.1633</u>	<u>0.503</u>
<u>4810</u>	<u>0.2281</u>	<u>0.2154</u>	<u>0.1806</u>	<u>0.547</u>
<u>4811</u>	<u>0.3992</u>	<u>0.3783</u>	<u>0.3253</u>	<u>0.508</u>
<u>4812</u>	<u>0.3535</u>	<u>0.3319</u>	<u>0.2812</u>	<u>0.482</u>
<u>4813</u>	<u>0.2405</u>	<u>0.2281</u>	<u>0.1939</u>	<u>0.564</u>
<u>4814</u>	<u>0.1052</u>	<u>0.1003</u>	<u>0.0872</u>	<u>0.552</u>
<u>4815</u>	<u>0.2167</u>	<u>0.2070</u>	<u>0.1807</u>	<u>0.565</u>
<u>4816</u>	<u>0.2960</u>	<u>0.2820</u>	<u>0.2473</u>	<u>0.509</u>
<u>4900</u>	<u>0.0949</u>	<u>0.0885</u>	<u>0.0739</u>	<u>0.460</u>
<u>4901</u>	<u>0.0315</u>	<u>0.0293</u>	<u>0.0241</u>	<u>0.468</u>
<u>4902</u>	<u>0.0669</u>	<u>0.0626</u>	<u>0.0516</u>	<u>0.510</u>
<u>4903</u>	<u>0.1422</u>	<u>0.1327</u>	<u>0.1078</u>	<u>0.522</u>
<u>4904</u>	<u>0.0116</u>	<u>0.0109</u>	<u>0.0091</u>	<u>0.546</u>
<u>4905</u>	<u>0.3153</u>	<u>0.2981</u>	<u>0.2518</u>	<u>0.546</u>
<u>4906</u>	<u>0.0899</u>	<u>0.0841</u>	<u>0.0686</u>	<u>0.536</u>
<u>4907</u>	<u>0.0462</u>	<u>0.0442</u>	<u>0.0380</u>	<u>0.607</u>
<u>4908</u>	<u>0.0792</u>	<u>0.0756</u>	<u>0.0645</u>	<u>0.594</u>
<u>4909</u>	<u>0.0317</u>	<u>0.0303</u>	<u>0.0258</u>	<u>0.594</u>
<u>4910</u>	<u>0.3781</u>	<u>0.3537</u>	<u>0.2935</u>	<u>0.489</u>
<u>4911</u>	<u>0.0472</u>	<u>0.0441</u>	<u>0.0372</u>	<u>0.447</u>
<u>5001</u>	<u>5.8422</u>	<u>5.4258</u>	<u>4.6022</u>	<u>0.348</u>
<u>5002</u>	<u>0.4629</u>	<u>0.4329</u>	<u>0.3546</u>	<u>0.518</u>
<u>5003</u>	<u>1.7799</u>	<u>1.6533</u>	<u>1.3800</u>	<u>0.386</u>
<u>5004</u>	<u>0.8005</u>	<u>0.7565</u>	<u>0.6631</u>	<u>0.397</u>
<u>5005</u>	<u>0.7327</u>	<u>0.6803</u>	<u>0.5695</u>	<u>0.391</u>
<u>5006</u>	<u>0.9072</u>	<u>0.8407</u>	<u>0.6998</u>	<u>0.382</u>
<u>5101</u>	<u>0.7280</u>	<u>0.6765</u>	<u>0.5541</u>	<u>0.450</u>
<u>5103</u>	<u>0.7002</u>	<u>0.6585</u>	<u>0.5531</u>	<u>0.509</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>5106</u>	<u>0.7002</u>	<u>0.6585</u>	<u>0.5531</u>	<u>0.509</u>
<u>5108</u>	<u>0.6725</u>	<u>0.6290</u>	<u>0.5112</u>	<u>0.532</u>
<u>5109</u>	<u>0.3735</u>	<u>0.3481</u>	<u>0.2873</u>	<u>0.489</u>
<u>5201</u>	<u>0.2402</u>	<u>0.2256</u>	<u>0.1865</u>	<u>0.549</u>
<u>5204</u>	<u>0.7898</u>	<u>0.7314</u>	<u>0.5957</u>	<u>0.437</u>
<u>5206</u>	<u>0.3158</u>	<u>0.2954</u>	<u>0.2508</u>	<u>0.421</u>
<u>5207</u>	<u>0.1212</u>	<u>0.1145</u>	<u>0.0968</u>	<u>0.538</u>
<u>5208</u>	<u>0.4809</u>	<u>0.4498</u>	<u>0.3779</u>	<u>0.471</u>
<u>5209</u>	<u>0.4923</u>	<u>0.4611</u>	<u>0.3860</u>	<u>0.486</u>
<u>5300</u>	<u>0.0770</u>	<u>0.0721</u>	<u>0.0594</u>	<u>0.527</u>
<u>5301</u>	<u>0.0246</u>	<u>0.0231</u>	<u>0.0193</u>	<u>0.493</u>
<u>5302</u>	<u>0.0058</u>	<u>0.0054</u>	<u>0.0045</u>	<u>0.505</u>
<u>5305</u>	<u>0.0349</u>	<u>0.0328</u>	<u>0.0272</u>	<u>0.541</u>
<u>5306</u>	<u>0.0333</u>	<u>0.0313</u>	<u>0.0259</u>	<u>0.571</u>
<u>5307</u>	<u>0.5632</u>	<u>0.5243</u>	<u>0.4276</u>	<u>0.491</u>
<u>5308</u>	<u>0.0687</u>	<u>0.0649</u>	<u>0.0550</u>	<u>0.531</u>
<u>6103</u>	<u>0.0779</u>	<u>0.0738</u>	<u>0.0621</u>	<u>0.583</u>
<u>6104</u>	<u>0.3124</u>	<u>0.2936</u>	<u>0.2441</u>	<u>0.534</u>
<u>6105</u>	<u>0.4184</u>	<u>0.3901</u>	<u>0.3205</u>	<u>0.494</u>
<u>6107</u>	<u>0.1403</u>	<u>0.1338</u>	<u>0.1128</u>	<u>0.639</u>
<u>6108</u>	<u>0.2133</u>	<u>0.2022</u>	<u>0.1709</u>	<u>0.583</u>
<u>6109</u>	<u>0.0938</u>	<u>0.0875</u>	<u>0.0718</u>	<u>0.495</u>
<u>6110</u>	<u>0.3357</u>	<u>0.3137</u>	<u>0.2560</u>	<u>0.528</u>
<u>6120</u>	<u>0.2662</u>	<u>0.2487</u>	<u>0.2036</u>	<u>0.520</u>
<u>6121</u>	<u>0.3777</u>	<u>0.3518</u>	<u>0.2835</u>	<u>0.522</u>
<u>6201</u>	<u>0.4189</u>	<u>0.3917</u>	<u>0.3199</u>	<u>0.514</u>
<u>6202</u>	<u>0.6827</u>	<u>0.6406</u>	<u>0.5282</u>	<u>0.525</u>
<u>6203</u>	<u>0.0851</u>	<u>0.0813</u>	<u>0.0702</u>	<u>0.614</u>
<u>6204</u>	<u>0.1100</u>	<u>0.1039</u>	<u>0.0878</u>	<u>0.541</u>
<u>6205</u>	<u>0.1433</u>	<u>0.1349</u>	<u>0.1130</u>	<u>0.521</u>
<u>6206</u>	<u>0.1650</u>	<u>0.1554</u>	<u>0.1292</u>	<u>0.552</u>
<u>6207</u>	<u>0.7937</u>	<u>0.7464</u>	<u>0.6264</u>	<u>0.475</u>
<u>6208</u>	<u>0.1964</u>	<u>0.1867</u>	<u>0.1589</u>	<u>0.580</u>
<u>6209</u>	<u>0.2299</u>	<u>0.2179</u>	<u>0.1864</u>	<u>0.534</u>
<u>6301</u>	<u>0.1090</u>	<u>0.1017</u>	<u>0.0850</u>	<u>0.435</u>
<u>6303</u>	<u>0.0395</u>	<u>0.0370</u>	<u>0.0307</u>	<u>0.501</u>
<u>6305</u>	<u>0.0852</u>	<u>0.0804</u>	<u>0.0671</u>	<u>0.574</u>
<u>6306</u>	<u>0.3118</u>	<u>0.2928</u>	<u>0.2403</u>	<u>0.556</u>
<u>6308</u>	<u>0.0550</u>	<u>0.0515</u>	<u>0.0426</u>	<u>0.503</u>
<u>6309</u>	<u>0.1814</u>	<u>0.1707</u>	<u>0.1425</u>	<u>0.533</u>
<u>6402</u>	<u>0.2129</u>	<u>0.2012</u>	<u>0.1688</u>	<u>0.567</u>
<u>6403</u>	<u>0.1245</u>	<u>0.1174</u>	<u>0.0972</u>	<u>0.574</u>
<u>6404</u>	<u>0.2526</u>	<u>0.2383</u>	<u>0.2020</u>	<u>0.522</u>
<u>6405</u>	<u>0.5233</u>	<u>0.4894</u>	<u>0.4022</u>	<u>0.509</u>
<u>6406</u>	<u>0.1315</u>	<u>0.1238</u>	<u>0.1023</u>	<u>0.574</u>
<u>6407</u>	<u>0.2335</u>	<u>0.2196</u>	<u>0.1834</u>	<u>0.531</u>
<u>6408</u>	<u>0.5262</u>	<u>0.4938</u>	<u>0.4143</u>	<u>0.483</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>6409</u>	<u>0.5728</u>	<u>0.5345</u>	<u>0.4417</u>	<u>0.479</u>
<u>6410</u>	<u>0.2509</u>	<u>0.2352</u>	<u>0.1940</u>	<u>0.534</u>
<u>6411</u>	<u>0.0350</u>	<u>0.0331</u>	<u>0.0284</u>	<u>0.517</u>
<u>6501</u>	<u>0.0859</u>	<u>0.0804</u>	<u>0.0652</u>	<u>0.558</u>
<u>6502</u>	<u>0.0181</u>	<u>0.0169</u>	<u>0.0141</u>	<u>0.491</u>
<u>6503</u>	<u>0.0681</u>	<u>0.0633</u>	<u>0.0506</u>	<u>0.528</u>
<u>6504</u>	<u>0.2364</u>	<u>0.2248</u>	<u>0.1912</u>	<u>0.590</u>
<u>6505</u>	<u>0.1353</u>	<u>0.1284</u>	<u>0.1076</u>	<u>0.631</u>
<u>6506</u>	<u>0.1019</u>	<u>0.0957</u>	<u>0.0793</u>	<u>0.533</u>
<u>6509</u>	<u>0.1985</u>	<u>0.1881</u>	<u>0.1586</u>	<u>0.573</u>
<u>6510</u>	<u>0.3155</u>	<u>0.2920</u>	<u>0.2402</u>	<u>0.404</u>
<u>6511</u>	<u>0.2332</u>	<u>0.2199</u>	<u>0.1828</u>	<u>0.561</u>
<u>6512</u>	<u>0.0755</u>	<u>0.0707</u>	<u>0.0591</u>	<u>0.455</u>
<u>6601</u>	<u>0.1671</u>	<u>0.1575</u>	<u>0.1316</u>	<u>0.507</u>
<u>6602</u>	<u>0.5013</u>	<u>0.4725</u>	<u>0.4011</u>	<u>0.488</u>
<u>6603</u>	<u>0.2437</u>	<u>0.2298</u>	<u>0.1925</u>	<u>0.549</u>
<u>6604</u>	<u>0.0569</u>	<u>0.0535</u>	<u>0.0448</u>	<u>0.538</u>
<u>6605</u>	<u>0.2478</u>	<u>0.2326</u>	<u>0.1895</u>	<u>0.565</u>
<u>6607</u>	<u>0.0878</u>	<u>0.0830</u>	<u>0.0702</u>	<u>0.536</u>
<u>6608</u>	<u>0.3748</u>	<u>0.3452</u>	<u>0.2833</u>	<u>0.384</u>
<u>6620</u>	<u>2.8489</u>	<u>2.6600</u>	<u>2.1135</u>	<u>0.576</u>
<u>6704</u>	<u>0.1057</u>	<u>0.0995</u>	<u>0.0822</u>	<u>0.569</u>
<u>6705</u>	<u>0.6447</u>	<u>0.6138</u>	<u>0.5278</u>	<u>0.577</u>
<u>6706</u>	<u>0.2064</u>	<u>0.1951</u>	<u>0.1674</u>	<u>0.516</u>
<u>6707</u>	<u>9.5297</u>	<u>9.0489</u>	<u>7.4637</u>	<u>0.658</u>
<u>6708</u>	<u>7.6928</u>	<u>7.3306</u>	<u>6.4654</u>	<u>0.480</u>
<u>6709</u>	<u>0.2253</u>	<u>0.2120</u>	<u>0.1759</u>	<u>0.552</u>
<u>6801</u>	<u>0.5454</u>	<u>0.5052</u>	<u>0.3922</u>	<u>0.539</u>
<u>6802</u>	<u>0.7268</u>	<u>0.6793</u>	<u>0.5496</u>	<u>0.538</u>
<u>6803</u>	<u>0.4017</u>	<u>0.3698</u>	<u>0.3022</u>	<u>0.403</u>
<u>6804</u>	<u>0.2168</u>	<u>0.2037</u>	<u>0.1683</u>	<u>0.549</u>
<u>6809</u>	<u>3.0048</u>	<u>2.8437</u>	<u>2.4114</u>	<u>0.545</u>
<u>6901</u>	<u>0.0193</u>	<u>0.0199</u>	<u>0.0201</u>	<u>0.817</u>
<u>6902</u>	<u>0.6118</u>	<u>0.5712</u>	<u>0.4816</u>	<u>0.419</u>
<u>6903</u>	<u>3.1754</u>	<u>2.9366</u>	<u>2.5040</u>	<u>0.321</u>
<u>6904</u>	<u>0.9100</u>	<u>0.8433</u>	<u>0.6807</u>	<u>0.465</u>
<u>6905</u>	<u>0.6772</u>	<u>0.6280</u>	<u>0.5090</u>	<u>0.486</u>
<u>6906</u>	<u>0.2484</u>	<u>0.2440</u>	<u>0.2321</u>	<u>0.602</u>
<u>6907</u>	<u>0.6695</u>	<u>0.6298</u>	<u>0.5242</u>	<u>0.537</u>
<u>6908</u>	<u>0.3105</u>	<u>0.2911</u>	<u>0.2429</u>	<u>0.496</u>
<u>6909</u>	<u>0.0878</u>	<u>0.0824</u>	<u>0.0693</u>	<u>0.504</u>
<u>7100</u>	<u>0.0146</u>	<u>0.0136</u>	<u>0.0110</u>	<u>0.530</u>
<u>7101</u>	<u>0.0184</u>	<u>0.0172</u>	<u>0.0143</u>	<u>0.437</u>
<u>7103</u>	<u>0.8369</u>	<u>0.7765</u>	<u>0.6287</u>	<u>0.470</u>
<u>7104</u>	<u>0.0204</u>	<u>0.0191</u>	<u>0.0158</u>	<u>0.497</u>
<u>7105</u>	<u>0.0140</u>	<u>0.0132</u>	<u>0.0109</u>	<u>0.506</u>
<u>7106</u>	<u>0.2410</u>	<u>0.2267</u>	<u>0.1868</u>	<u>0.564</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>7107</u>	<u>0.3598</u>	<u>0.3376</u>	<u>0.2750</u>	<u>0.559</u>
<u>7108</u>	<u>0.2563</u>	<u>0.2415</u>	<u>0.1980</u>	<u>0.602</u>
<u>7109</u>	<u>0.0774</u>	<u>0.0726</u>	<u>0.0607</u>	<u>0.494</u>
<u>7110</u>	<u>0.3693</u>	<u>0.3452</u>	<u>0.2902</u>	<u>0.435</u>
<u>7111</u>	<u>0.2574</u>	<u>0.2384</u>	<u>0.1917</u>	<u>0.476</u>
<u>7112</u>	<u>0.5450</u>	<u>0.5139</u>	<u>0.4356</u>	<u>0.516</u>
<u>7113</u>	<u>0.3382</u>	<u>0.3177</u>	<u>0.2631</u>	<u>0.533</u>
<u>7114</u>	<u>0.7048</u>	<u>0.6648</u>	<u>0.5483</u>	<u>0.585</u>
<u>7115</u>	<u>0.5672</u>	<u>0.5357</u>	<u>0.4483</u>	<u>0.560</u>
<u>7116</u>	<u>0.4462</u>	<u>0.4175</u>	<u>0.3452</u>	<u>0.489</u>
<u>7117</u>	<u>0.8490</u>	<u>0.7991</u>	<u>0.6728</u>	<u>0.498</u>
<u>7118</u>	<u>1.3691</u>	<u>1.2806</u>	<u>1.0646</u>	<u>0.481</u>
<u>7119</u>	<u>1.4079</u>	<u>1.3146</u>	<u>1.0812</u>	<u>0.476</u>
<u>7120</u>	<u>4.2400</u>	<u>3.9500</u>	<u>3.2151</u>	<u>0.489</u>
<u>7121</u>	<u>5.6360</u>	<u>5.2264</u>	<u>4.4413</u>	<u>0.338</u>
<u>7122</u>	<u>0.3025</u>	<u>0.2867</u>	<u>0.2455</u>	<u>0.506</u>
<u>7200</u>	<u>1.8404</u>	<u>1.7007</u>	<u>1.3626</u>	<u>0.464</u>
<u>7201</u>	<u>1.4176</u>	<u>1.3157</u>	<u>1.0526</u>	<u>0.500</u>
<u>7202</u>	<u>0.0185</u>	<u>0.0173</u>	<u>0.0142</u>	<u>0.516</u>
<u>7203</u>	<u>0.0812</u>	<u>0.0773</u>	<u>0.0667</u>	<u>0.575</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>
<u>7301</u>	<u>0.5655</u>	<u>0.5357</u>	<u>0.4685</u>	<u>0.444</u>
<u>7302</u>	<u>0.6549</u>	<u>0.6196</u>	<u>0.5384</u>	<u>0.447</u>
<u>7307</u>	<u>0.4114</u>	<u>0.3872</u>	<u>0.3229</u>	<u>0.538</u>
<u>7308</u>	<u>0.2174</u>	<u>0.2063</u>	<u>0.1749</u>	<u>0.574</u>
<u>7309</u>	<u>0.2041</u>	<u>0.1937</u>	<u>0.1643</u>	<u>0.580</u>
<u>7400</u>	<u>2.1165</u>	<u>1.9559</u>	<u>1.5669</u>	<u>0.464</u>

Expected Loss Rates in Dollars Per Sq. Ft. of Wallboard Installed

<u>Class</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Primary Ratio</u>
<u>540</u>	<u>0.0145</u>	<u>0.0130</u>	<u>0.0105</u>	<u>0.459</u>
<u>541</u>	<u>0.0069</u>	<u>0.0062</u>	<u>0.0050</u>	<u>0.428</u>
<u>550</u>	<u>0.0267</u>	<u>0.0240</u>	<u>0.0197</u>	<u>0.367</u>
<u>551</u>	<u>0.0097</u>	<u>0.0087</u>	<u>0.0072</u>	<u>0.407</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>540</u>	<u>0.0130</u>	<u>0.0121</u>	<u>0.0102</u>	<u>0.464</u>
<u>541</u>	<u>0.0065</u>	<u>0.0061</u>	<u>0.0051</u>	<u>0.426</u>
<u>550</u>	<u>0.0258</u>	<u>0.0239</u>	<u>0.0204</u>	<u>0.338</u>
<u>551</u>	<u>0.0091</u>	<u>0.0085</u>	<u>0.0072</u>	<u>0.402</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020 (1). WSR 21-24-066, § 296-17-885, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-885, filed

11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-885, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-885, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-885, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-885, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-885, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-885, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-885, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-885, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-885, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-885, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-885, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-885, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-885, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-885, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-885, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-885, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-885, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-885, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-885, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-885, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-885, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-885, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-885, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-885, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-885, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.16.035. WSR 96-12-039, § 296-17-885, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-885, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-885, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-885, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-885, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-885, filed 11/27/91, effective 1/1/92; WSR 91-12-014, § 296-17-885, filed 5/31/91, effective 7/1/91; WSR 90-24-042, § 296-17-885, filed 11/30/90, effective 1/1/91; WSR 90-13-018, § 296-17-885, filed 6/8/90, effective 7/9/90; WSR 89-24-051 (Order 89-22), § 296-17-885, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.04.020(1). WSR 89-16-001 (Order 89-07), § 296-17-885, filed 7/20/89, effective 8/20/89. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-885, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 88-12-065 (Order 88-05), § 296-17-885, filed 5/31/88; WSR 88-12-050 (Order 88-06), § 296-17-885, filed 5/31/88, effective 7/1/88; WSR 88-06-047 (Order 87-33), § 296-17-885, filed 3/1/88; WSR 87-24-060 (Order 87-26), § 296-17-885, filed 12/1/87, effective 1/1/88; WSR 87-12-032 (Order 87-12), § 296-17-885, filed 5/29/87, effective 7/1/87. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-885, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-885, filed 5/30/86, effective 7/1/86; WSR 85-24-032 (Order 85-33), §

296-17-885, filed 11/27/85, effective 1/1/86; WSR 85-06-026 (Order 85-7), § 296-17-885, filed 2/28/85, effective 4/1/85; WSR 84-24-016 (Order 84-23), § 296-17-885, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-885, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-885, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-885, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-885, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-885, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-885, filed 11/27/78, effective 1/1/79, effective 1/1/80. Order 77-27, § 296-17-885, filed 11/30/77, effective 1/1/78; Emergency Order 77-25, § 296-17-885, filed 12/1/77; Order 77-10, § 296-17-885, filed 5/31/77; Order 76-36, § 296-17-885, filed 11/30/76; Order 76-18, § 296-17-885, filed 5/28/76, effective 7/1/76; Order 75-38, § 296-17-885, filed 11/24/75, effective 1/1/76; Order 74-40, § 296-17-885, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-885, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-890 Table IV.

**Maximum Experience Modifications
For Firms with No Compensable Accidents:
Effective January 1, ((2022)) 2023**

Expected Loss Range	Maximum Experience Modification
((1 - 5,329	0.90
5,330 - 6,506	0.89
6,507 - 7,177	0.88
7,178 - 7,847	0.87
7,848 - 8,517	0.86
8,518 - 9,187	0.85
9,188 - 9,857	0.84
9,858 - 10,528	0.83
10,529 - 11,198	0.82
11,199 - 11,893	0.81
11,894 - 12,617	0.80
12,618 - 13,369	0.79
13,370 - 14,150	0.78
14,151 - 14,959	0.77
14,960 - 15,797	0.76
15,798 - 16,664	0.75
16,665 - 17,559	0.74
17,560 - 18,483	0.73
18,484 - 19,436	0.72
19,437 - 20,417	0.71
20,418 - 21,426	0.70

Expected Loss Range	Maximum Experience Modification
21,427 - 22,464	0.69
22,465 - 23,531	0.68
23,532 - 24,626	0.67
24,627 - 25,750	0.66
25,751 - 26,903	0.65
26,904 - 28,632	0.64
28,633 - 31,225	0.63
31,226 - 35,115	0.62
35,116 - 40,950	0.61
40,951 and higher	0.60))
<u>1</u> = <u>5,356</u>	<u>0.90</u>
<u>5,357</u> = <u>6,539</u>	<u>0.89</u>
<u>6,540</u> = <u>7,212</u>	<u>0.88</u>
<u>7,213</u> = <u>7,885</u>	<u>0.87</u>
<u>7,886</u> = <u>8,559</u>	<u>0.86</u>
<u>8,560</u> = <u>9,232</u>	<u>0.85</u>
<u>9,233</u> = <u>9,905</u>	<u>0.84</u>
<u>9,906</u> = <u>10,579</u>	<u>0.83</u>
<u>10,580</u> = <u>11,252</u>	<u>0.82</u>
<u>11,253</u> = <u>11,951</u>	<u>0.81</u>
<u>11,952</u> = <u>12,679</u>	<u>0.80</u>
<u>12,680</u> = <u>13,436</u>	<u>0.79</u>
<u>13,437</u> = <u>14,221</u>	<u>0.78</u>
<u>14,222</u> = <u>15,035</u>	<u>0.77</u>
<u>15,036</u> = <u>15,877</u>	<u>0.76</u>
<u>15,878</u> = <u>16,749</u>	<u>0.75</u>
<u>16,750</u> = <u>17,649</u>	<u>0.74</u>
<u>17,650</u> = <u>18,577</u>	<u>0.73</u>
<u>18,578</u> = <u>19,534</u>	<u>0.72</u>
<u>19,535</u> = <u>20,520</u>	<u>0.71</u>
<u>20,521</u> = <u>21,535</u>	<u>0.70</u>
<u>21,536</u> = <u>22,578</u>	<u>0.69</u>
<u>22,579</u> = <u>23,650</u>	<u>0.68</u>
<u>23,651</u> = <u>24,751</u>	<u>0.67</u>
<u>24,752</u> = <u>25,880</u>	<u>0.66</u>
<u>25,881</u> = <u>27,038</u>	<u>0.65</u>
<u>27,039</u> = <u>28,775</u>	<u>0.64</u>
<u>28,776</u> = <u>31,381</u>	<u>0.63</u>
<u>31,382</u> = <u>35,289</u>	<u>0.62</u>
<u>35,290</u> = <u>41,152</u>	<u>0.61</u>
<u>41,153</u> and higher	<u>0.60</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020 (1). WSR 21-24-066, § 296-17-890, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-890, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-890, filed

11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-890, filed
11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-890, filed
11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-890, filed
11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-890, filed
12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-890, filed 12/1/14,
effective 1/1/15; WSR 13-24-073, § 296-17-890, filed 11/30/13, effec-
tive 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010,
and 51.04.020(1). WSR 12-24-048, § 296-17-890, filed 11/30/12, effec-
tive 1/1/13; WSR 11-24-026, § 296-17-890, filed 12/1/11, effective
1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and
51.04.020(1). WSR 11-04-069, § 296-17-890, filed 1/28/11, effective
2/28/11; WSR 09-24-086, § 296-17-890, filed 11/30/09, effective
1/1/10; WSR 08-24-074, § 296-17-890, filed 12/1/08, effective 1/1/09;
WSR 07-24-046, § 296-17-890, filed 12/1/07, effective 1/1/08; WSR
06-24-054, § 296-17-890, filed 12/1/06, effective 1/1/07. Statutory
Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, §
296-17-890, filed 11/22/05, effective 1/1/06; WSR 04-24-025, §
296-17-890, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW
51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, §
296-17-890, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW
51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, §
296-17-890, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW
51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, §
296-17-890, filed 11/20/01, effective 1/1/02; WSR 00-23-101, §
296-17-890, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW
51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-890, filed
11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-890, filed
12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-890, filed 12/1/97,
effective 1/1/98; WSR 96-24-063, § 296-17-890, filed 11/29/96, effec-
tive 1/1/97. Statutory Authority: RCW 51.04.020. WSR 95-23-080, §
296-17-890, filed 11/20/95, effective 1/1/96; WSR 94-24-007, §
296-17-890, filed 11/28/94, effective 1/1/95; WSR 93-24-114, §
296-17-890, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW
51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-890, filed
11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-890, filed
11/27/91, effective 1/1/92; WSR 90-24-042, § 296-17-890, filed
11/30/90, effective 1/1/91; WSR 89-24-051 (Order 89-22), § 296-17-890,
filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035
and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-890, filed
12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR
87-24-060 (Order 87-26), § 296-17-890, filed 12/1/87, effective
1/1/88. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR
86-24-042 (Order 86-41), § 296-17-890, filed 11/26/86. Statutory Au-
thority: RCW 51.16.035. WSR 85-24-032 (Order 85-33), § 296-17-890,
filed 11/27/85, effective 1/1/86; WSR 84-24-016 (Order 84-23), §
296-17-890, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order
83-36), § 296-17-890, filed 11/30/83, effective 1/1/84; WSR 82-24-047
(Order 82-38), § 296-17-890, filed 11/29/82, effective 1/1/83; WSR
81-24-042 (Order 81-30), § 296-17-890, filed 11/30/81, effective
1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-890, filed 11/13/80, ef-
fective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR
79-12-086 (Order 79-18), § 296-17-890, filed 11/30/79, effective
1/1/80.]

OTS-4079.1

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry. Industrial insurance accident fund, stay at work and medical aid fund base rates by class of industry shall be as set forth below.

Class	Base Rates Effective		
	Accident Fund	Stay at Work	Medical Aid Fund
101	1.3687	0.0234	0.5372
103	1.5726	0.0266	0.8086
104	1.2083	0.0207	0.4562
105	1.2229	0.0206	0.7000
106	2.5426	0.0425	1.6376
107	1.2607	0.0216	0.4925
108	1.2083	0.0207	0.4562
112	0.9012	0.0153	0.4396
201	3.0533	0.0526	0.9878
202	2.6980	0.0464	0.9298
210	1.1763	0.0201	0.4728
212	1.0529	0.0179	0.4957
214	2.3037	0.0396	0.7653
217	1.4242	0.0243	0.6252
219	1.0152	0.0173	0.4151
301	1.0640	0.0179	0.6227
302	2.9267	0.0503	0.9897
303	2.3404	0.0399	0.9860
306	0.9661	0.0165	0.4163
307	1.0332	0.0175	0.4973
308	0.6385	0.0106	0.4389
403	2.1251	0.0362	0.9576
502	1.1778	0.0202	0.4612
504	2.4361	0.0414	1.1460
507	3.5520	0.0599	1.9418
508	1.9483	0.0336	0.5921
509	1.3605	0.0235	0.3814
510	2.8124	0.0476	1.4515
511	1.6717	0.0285	0.7327
512	1.4782	0.0250	0.7512
513	1.1139	0.0190	0.4956
514	1.4276	0.0241	0.7717
516	1.8299	0.0311	0.8383
517	2.2504	0.0384	0.9738
518	1.5866	0.0272	0.6103
519	1.8512	0.0316	0.7692

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Class	Accident Fund	Stay at Work	Medical Aid Fund
521	0.7663	0.0129	0.4170
601	0.6988	0.0119	0.2855
602	1.0324	0.0179	0.2841
603	1.1585	0.0199	0.3871
604	1.3315	0.0225	0.6895
606	0.6331	0.0107	0.3385
607	0.9385	0.0160	0.4170
608	0.5936	0.0102	0.2107
701	2.6563	0.0458	0.8594
803	0.7404	0.0126	0.3609
901	1.5866	0.0272	0.6103
1002	1.0671	0.0182	0.4660
1003	0.8288	0.0141	0.3910
1004	0.5966	0.0102	0.2197
1005	11.8281	0.2028	4.4298
1006	0.2633	0.0044	0.1432
1007	0.4088	0.0070	0.1861
1101	1.5114	0.0257	0.6953
1102	2.4043	0.0413	0.8363
1103	1.3918	0.0237	0.5976
1104	0.7645	0.0128	0.4528
1105	1.0830	0.0184	0.4853
1106	0.4082	0.0068	0.2833
1108	0.5222	0.0087	0.3446
1109	2.3828	0.0406	1.0706
1301	0.8315	0.0142	0.3581
1303	0.4939	0.0084	0.2207
1304	0.0246	0.0004	0.0125
1305	0.6693	0.0114	0.2816
1401	0.3107	0.0051	0.2577
1404	0.8773	0.0147	0.5100
1405	0.8605	0.0145	0.4576
1407	0.7993	0.0135	0.4208
1501	1.1438	0.0195	0.4791
1507	0.5760	0.0097	0.3296
1701	1.0681	0.0182	0.4726
1702	2.0528	0.0356	0.5429
1703	1.2774	0.0220	0.4333
1704	1.0681	0.0182	0.4726
1801	0.6549	0.0112	0.2520
1802	1.0478	0.0179	0.4032
2002	0.9499	0.0160	0.5033
2004	0.6560	0.0110	0.4091
2007	0.8575	0.0144	0.4934
2008	0.4153	0.0069	0.2828

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Class	Accident Fund	Stay at Work	Medical Aid Fund
2009	0.4270	0.0071	0.3065
2101	0.7141	0.0119	0.4754
2102	0.8211	0.0138	0.4721
2103	1.6013	0.0271	0.7920
2104	0.3944	0.0064	0.3874
2105	0.8452	0.0143	0.4061
2106	0.6974	0.0117	0.4051
2201	0.3847	0.0064	0.2828
2202	0.8244	0.0139	0.4374
2203	0.6285	0.0105	0.4343
2204	0.3847	0.0064	0.2828
2401	0.6387	0.0109	0.2772
2903	0.7505	0.0124	0.5485
2904	0.9972	0.0169	0.4724
2905	0.6050	0.0101	0.3953
2906	0.6541	0.0109	0.4626
2907	0.5275	0.0088	0.3570
2908	1.1101	0.0185	0.7335
2909	0.4734	0.0078	0.3680
3101	1.0147	0.0172	0.5145
3102	0.3895	0.0066	0.1749
3103	0.4793	0.0081	0.2486
3104	0.7637	0.0127	0.4975
3105	0.9866	0.0163	0.7169
3303	0.4493	0.0075	0.2720
3304	0.8206	0.0137	0.5491
3309	0.5129	0.0086	0.2899
3402	0.5645	0.0095	0.3329
3403	0.1832	0.0031	0.0942
3404	0.5773	0.0097	0.3316
3405	0.3805	0.0064	0.2015
3406	0.3325	0.0056	0.2064
3407	1.0079	0.0171	0.4720
3408	0.3502	0.0060	0.1624
3409	0.2123	0.0035	0.1417
3410	0.2123	0.0035	0.1417
3411	0.7057	0.0120	0.3080
3412	0.9971	0.0171	0.3562
3414	1.1101	0.0189	0.4892
3415	1.3994	0.0237	0.6965
3501	0.5130	0.0085	0.3728
3503	0.3901	0.0065	0.2313
3506	1.1278	0.0192	0.4874
3509	0.5334	0.0090	0.3137
3510	0.4263	0.0071	0.2970

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Class	Accident Fund	Stay at Work	Medical Aid Fund
3511	0.9928	0.0167	0.5979
3512	0.4053	0.0067	0.2936
3513	0.5337	0.0089	0.3507
3602	0.1255	0.0021	0.0751
3603	0.5952	0.0100	0.3555
3604	0.9721	0.0163	0.5709
3605	0.5645	0.0095	0.3329
3701	0.3895	0.0066	0.1749
3702	0.4622	0.0077	0.2801
3708	0.7837	0.0132	0.4476
3802	0.2582	0.0043	0.1638
3808	0.5111	0.0086	0.2885
3901	0.1586	0.0026	0.1295
3902	0.5202	0.0086	0.3815
3903	0.5458	0.0090	0.4003
3905	0.1424	0.0023	0.1236
3906	0.5416	0.0090	0.4020
3909	0.2915	0.0048	0.2185
4101	0.2904	0.0049	0.1773
4103	0.6650	0.0111	0.4276
4107	0.2676	0.0045	0.1294
4108	0.1960	0.0033	0.1241
4109	0.2408	0.0040	0.1870
4201	1.2331	0.0213	0.3762
4301	0.9764	0.0161	0.7381
4302	0.9390	0.0158	0.5248
4304	1.0833	0.0177	0.9319
4305	1.4213	0.0242	0.6144
4401	0.4493	0.0075	0.2720
4402	0.8645	0.0147	0.4159
4404	0.5706	0.0096	0.3311
4501	0.2050	0.0034	0.1311
4502	0.0837	0.0014	0.0459
4504	0.1333	0.0022	0.0990
4802	0.5135	0.0086	0.3482
4803	0.4561	0.0075	0.3874
4804	0.6450	0.0106	0.5074
4805	0.4198	0.0069	0.3454
4806	0.1292	0.0021	0.1170
4808	0.6290	0.0106	0.3694
4809	0.3111	0.0052	0.2065
4810	0.2624	0.0043	0.2190
4811	0.5506	0.0090	0.4709
4812	0.5639	0.0095	0.3418
4813	0.2564	0.0042	0.2380

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Class	Accident Fund	Stay at Work	Medical Aid Fund
4900	0.1710	0.0029	0.0756
4901	0.0594	0.0010	0.0256
4902	0.1158	0.0020	0.0625
4903	0.2251	0.0038	0.1095
4904	0.0188	0.0003	0.0120
4905	0.3846	0.0063	0.3222
4906	0.1357	0.0023	0.0709
4907	0.0630	0.0010	0.0660
4908	0.1047	0.0017	0.1022
4909	0.0419	0.0007	0.0408
4910	0.6088	0.0103	0.3147
4911	0.0810	0.0014	0.0388
5001	11.5021	0.1965	4.7005
5002	0.7612	0.0129	0.3837
5003	3.4014	0.0583	1.2767
5004	1.2040	0.0201	0.8106
5005	1.4580	0.0250	0.5189
5006	1.7929	0.0308	0.6201
5101	1.3850	0.0237	0.5192
5103	1.0668	0.0179	0.6669
5106	1.0668	0.0179	0.6669
5108	1.0694	0.0181	0.5377
5109	0.6970	0.0119	0.3169
5201	0.3866	0.0065	0.2317
5204	1.4608	0.0251	0.5037
5206	0.5986	0.0101	0.2974
5207	0.1670	0.0028	0.1244
5208	0.8503	0.0143	0.4640
5209	0.8527	0.0144	0.4270
5300	0.1222	0.0021	0.0684
5301	0.0424	0.0007	0.0239
5302	0.0108	0.0002	0.0058
5305	0.0528	0.0009	0.0325
5306	0.0477	0.0008	0.0343
5307	0.9725	0.0166	0.4025
5308	0.1040	0.0017	0.0790
6103	0.0973	0.0016	0.0849
6104	0.4609	0.0077	0.2876
6105	0.7730	0.0132	0.3255
6107	0.1504	0.0024	0.1663
6108	0.3019	0.0049	0.2545
6109	0.1532	0.0026	0.0715
6110	0.5664	0.0096	0.2721
6120	0.4423	0.0075	0.2135
6121	0.6271	0.0107	0.2653

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Class	Accident Fund	Stay at Work	Medical Aid Fund
6201	0.6791	0.0115	0.3381
6202	0.9753	0.0164	0.5739
6203	0.0985	0.0016	0.1170
6204	0.1602	0.0027	0.1165
6205	0.2298	0.0038	0.1428
6206	0.2424	0.0040	0.1658
6207	1.2195	0.0204	0.7399
6208	0.2468	0.0040	0.2304
6209	0.3080	0.0050	0.2675
6301	0.1886	0.0032	0.0837
6303	0.0678	0.0011	0.0365
6305	0.1060	0.0018	0.0783
6306	0.4144	0.0070	0.2445
6308	0.0791	0.0013	0.0413
6309	0.2634	0.0044	0.1662
6402	0.2893	0.0048	0.2264
6403	0.1611	0.0027	0.1167
6404	0.3365	0.0056	0.2533
6405	0.8387	0.0142	0.4162
6406	0.1710	0.0028	0.1165
6407	0.3541	0.0059	0.2179
6408	0.7968	0.0134	0.4419
6409	0.8619	0.0146	0.4190
6410	0.4017	0.0068	0.2217
6411	0.0485	0.0008	0.0385
6501	0.1335	0.0023	0.0695
6502	0.0363	0.0006	0.0189
6503	0.1192	0.0020	0.0489
6504	0.2851	0.0046	0.2889
6505	0.1603	0.0026	0.1528
6506	0.1533	0.0026	0.0963
6509	0.2792	0.0046	0.2321
6510	0.6030	0.0104	0.2058
6511	0.3210	0.0053	0.2331
6512	0.1253	0.0021	0.0617
6601	0.2270	0.0038	0.1545
6602	0.6798	0.0113	0.4650
6603	0.3406	0.0057	0.2367
6604	0.0891	0.0015	0.0594
6605	0.3725	0.0062	0.2269
6607	0.1185	0.0020	0.0912
6608	0.8288	0.0143	0.2324
6620	4.4416	0.0754	2.1299
6704	0.1530	0.0025	0.1027
6705	0.7044	0.0114	0.7009

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Class	Accident Fund	Stay at Work	Medical Aid Fund
6706	0.2880	0.0047	0.2248
6707	11.9160	0.1944	10.5239
6708	9.6752	0.1558	9.8167
6709	0.3220	0.0054	0.2143
6801	1.0296	0.0178	0.3030
6802	1.0340	0.0175	0.5129
6803	0.8745	0.0151	0.2339
6804	0.3417	0.0057	0.2141
6809	4.4187	0.0725	3.6843
6901	0.0000	0.0000	0.0670
6902	1.1296	0.0192	0.5239
6903	7.3824	0.1269	2.5581
6904	1.8754	0.0322	0.6760
6905	1.3846	0.0238	0.4990
6906	0.0000	0.0000	0.4513
6907	1.0289	0.0172	0.6362
6908	0.4864	0.0082	0.2549
6909	0.1454	0.0024	0.0895
7100	0.0277	0.0005	0.0119
7101	0.0331	0.0006	0.0157
7103	1.5366	0.0264	0.5442
7104	0.0317	0.0005	0.0180
7105	0.0207	0.0003	0.0131
7106	0.3382	0.0056	0.2177
7107	0.4918	0.0082	0.3060
7108	0.2963	0.0049	0.2175
7109	0.1278	0.0022	0.0726
7110	0.6091	0.0103	0.3004
7111	0.4726	0.0081	0.1602
7112	0.7800	0.0130	0.5501
7113	0.5321	0.0089	0.3292
7114	0.8828	0.0146	0.6422
7115	0.6127	0.0101	0.4934
7116	0.6595	0.0112	0.3312
7117	1.3602	0.0227	0.8744
7118	2.2303	0.0377	1.1628
7119	2.4177	0.0411	1.1075
7120	7.1065	0.1212	3.0718
7121	11.8028	0.2021	4.5366
7122	0.4190	0.0069	0.3307
7200	3.2292	0.0557	0.9720
7201	2.3223	0.0398	0.8636
7202	0.0327	0.0006	0.0162
7203	0.1058	0.0017	0.1100
7204	0.0000	0.0000	0.0000

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Class	Accident Fund	Stay at Work	Medical Aid Fund
7205	0.0000	0.0000	0.0000
7301	0.7736	0.0127	0.6313
7302	0.9579	0.0159	0.7061
7307	0.6028	0.0101	0.3922
7308	0.2704	0.0044	0.2498
7309	0.2665	0.0043	0.2377
7400	3.7135	0.0641	1.1178))
<u>101</u>	<u>1.4355</u>	<u>0.0234</u>	<u>0.5240</u>
<u>103</u>	<u>1.5658</u>	<u>0.0251</u>	<u>0.8182</u>
<u>104</u>	<u>1.2396</u>	<u>0.0202</u>	<u>0.4606</u>
<u>105</u>	<u>1.2645</u>	<u>0.0202</u>	<u>0.6855</u>
<u>106</u>	<u>2.9430</u>	<u>0.0466</u>	<u>1.8831</u>
<u>107</u>	<u>1.2170</u>	<u>0.0197</u>	<u>0.4776</u>
<u>108</u>	<u>1.2396</u>	<u>0.0202</u>	<u>0.4606</u>
<u>112</u>	<u>0.9580</u>	<u>0.0154</u>	<u>0.4448</u>
<u>201</u>	<u>3.1875</u>	<u>0.0522</u>	<u>0.9727</u>
<u>202</u>	<u>2.6725</u>	<u>0.0436</u>	<u>0.9114</u>
<u>210</u>	<u>1.3632</u>	<u>0.0221</u>	<u>0.5211</u>
<u>212</u>	<u>1.1705</u>	<u>0.0189</u>	<u>0.5169</u>
<u>214</u>	<u>2.4333</u>	<u>0.0398</u>	<u>0.7488</u>
<u>217</u>	<u>1.4027</u>	<u>0.0227</u>	<u>0.6107</u>
<u>219</u>	<u>0.9948</u>	<u>0.0161</u>	<u>0.4080</u>
<u>301</u>	<u>1.1791</u>	<u>0.0188</u>	<u>0.6610</u>
<u>302</u>	<u>2.7434</u>	<u>0.0446</u>	<u>1.0005</u>
<u>303</u>	<u>2.3240</u>	<u>0.0376</u>	<u>0.9498</u>
<u>306</u>	<u>1.0399</u>	<u>0.0169</u>	<u>0.4191</u>
<u>307</u>	<u>1.0218</u>	<u>0.0165</u>	<u>0.4798</u>
<u>308</u>	<u>0.6698</u>	<u>0.0106</u>	<u>0.4502</u>
<u>403</u>	<u>2.1140</u>	<u>0.0342</u>	<u>0.8931</u>
<u>502</u>	<u>1.1690</u>	<u>0.0190</u>	<u>0.4360</u>
<u>504</u>	<u>2.4599</u>	<u>0.0397</u>	<u>1.0714</u>
<u>507</u>	<u>3.6696</u>	<u>0.0587</u>	<u>1.9822</u>
<u>508</u>	<u>2.2812</u>	<u>0.0374</u>	<u>0.6474</u>
<u>509</u>	<u>1.3855</u>	<u>0.0227</u>	<u>0.3819</u>
<u>510</u>	<u>2.9145</u>	<u>0.0468</u>	<u>1.4344</u>
<u>511</u>	<u>1.7012</u>	<u>0.0275</u>	<u>0.7322</u>
<u>512</u>	<u>1.4801</u>	<u>0.0238</u>	<u>0.7252</u>
<u>513</u>	<u>1.1159</u>	<u>0.0180</u>	<u>0.4893</u>
<u>514</u>	<u>1.4943</u>	<u>0.0239</u>	<u>0.7772</u>
<u>516</u>	<u>1.9538</u>	<u>0.0315</u>	<u>0.8606</u>
<u>517</u>	<u>2.2573</u>	<u>0.0366</u>	<u>0.9251</u>
<u>518</u>	<u>1.6616</u>	<u>0.0270</u>	<u>0.6106</u>
<u>519</u>	<u>2.0796</u>	<u>0.0337</u>	<u>0.8328</u>
<u>521</u>	<u>0.8495</u>	<u>0.0136</u>	<u>0.4286</u>
<u>601</u>	<u>0.7015</u>	<u>0.0114</u>	<u>0.2693</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>602</u>	<u>1.0776</u>	<u>0.0177</u>	<u>0.2826</u>
<u>603</u>	<u>1.1826</u>	<u>0.0193</u>	<u>0.3902</u>
<u>604</u>	<u>1.3520</u>	<u>0.0217</u>	<u>0.6950</u>
<u>606</u>	<u>0.6786</u>	<u>0.0109</u>	<u>0.3413</u>
<u>607</u>	<u>0.9974</u>	<u>0.0161</u>	<u>0.4308</u>
<u>608</u>	<u>0.5994</u>	<u>0.0098</u>	<u>0.2109</u>
<u>701</u>	<u>2.3587</u>	<u>0.0386</u>	<u>0.7199</u>
<u>803</u>	<u>0.8124</u>	<u>0.0131</u>	<u>0.3627</u>
<u>901</u>	<u>1.6616</u>	<u>0.0270</u>	<u>0.6106</u>
<u>1002</u>	<u>1.1206</u>	<u>0.0182</u>	<u>0.4512</u>
<u>1003</u>	<u>0.8210</u>	<u>0.0132</u>	<u>0.3726</u>
<u>1004</u>	<u>0.6458</u>	<u>0.0105</u>	<u>0.2226</u>
<u>1005</u>	<u>12.4814</u>	<u>0.2032</u>	<u>4.4519</u>
<u>1006</u>	<u>0.3028</u>	<u>0.0049</u>	<u>0.1482</u>
<u>1007</u>	<u>0.4355</u>	<u>0.0070</u>	<u>0.2054</u>
<u>1101</u>	<u>1.5212</u>	<u>0.0246</u>	<u>0.6742</u>
<u>1102</u>	<u>2.4883</u>	<u>0.0406</u>	<u>0.8153</u>
<u>1103</u>	<u>1.4402</u>	<u>0.0233</u>	<u>0.5914</u>
<u>1104</u>	<u>0.7953</u>	<u>0.0127</u>	<u>0.4488</u>
<u>1105</u>	<u>1.0969</u>	<u>0.0177</u>	<u>0.4625</u>
<u>1106</u>	<u>0.4441</u>	<u>0.0070</u>	<u>0.2903</u>
<u>1108</u>	<u>0.5887</u>	<u>0.0093</u>	<u>0.3671</u>
<u>1109</u>	<u>2.7517</u>	<u>0.0446</u>	<u>1.1376</u>
<u>1301</u>	<u>0.9224</u>	<u>0.0149</u>	<u>0.3778</u>
<u>1303</u>	<u>0.5236</u>	<u>0.0085</u>	<u>0.2196</u>
<u>1304</u>	<u>0.0253</u>	<u>0.0004</u>	<u>0.0119</u>
<u>1305</u>	<u>0.6803</u>	<u>0.0110</u>	<u>0.2691</u>
<u>1401</u>	<u>0.3508</u>	<u>0.0055</u>	<u>0.2668</u>
<u>1404</u>	<u>0.9080</u>	<u>0.0144</u>	<u>0.5397</u>
<u>1405</u>	<u>0.9461</u>	<u>0.0152</u>	<u>0.4921</u>
<u>1407</u>	<u>0.8403</u>	<u>0.0135</u>	<u>0.4035</u>
<u>1501</u>	<u>1.1870</u>	<u>0.0193</u>	<u>0.4697</u>
<u>1507</u>	<u>0.5570</u>	<u>0.0089</u>	<u>0.3109</u>
<u>1701</u>	<u>1.1388</u>	<u>0.0184</u>	<u>0.4894</u>
<u>1702</u>	<u>2.0459</u>	<u>0.0337</u>	<u>0.5147</u>
<u>1703</u>	<u>1.3503</u>	<u>0.0221</u>	<u>0.4382</u>
<u>1704</u>	<u>1.1388</u>	<u>0.0184</u>	<u>0.4894</u>
<u>1801</u>	<u>0.7347</u>	<u>0.0120</u>	<u>0.2654</u>
<u>1802</u>	<u>1.1756</u>	<u>0.0191</u>	<u>0.4247</u>
<u>2002</u>	<u>0.9922</u>	<u>0.0159</u>	<u>0.4866</u>
<u>2004</u>	<u>0.7153</u>	<u>0.0114</u>	<u>0.4301</u>
<u>2007</u>	<u>0.9063</u>	<u>0.0145</u>	<u>0.4990</u>
<u>2008</u>	<u>0.3840</u>	<u>0.0061</u>	<u>0.2403</u>
<u>2009</u>	<u>0.4689</u>	<u>0.0074</u>	<u>0.3141</u>
<u>2101</u>	<u>0.7510</u>	<u>0.0119</u>	<u>0.4809</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>2102</u>	<u>0.8699</u>	<u>0.0138</u>	<u>0.5072</u>
<u>2103</u>	<u>1.9870</u>	<u>0.0320</u>	<u>0.9149</u>
<u>2104</u>	<u>0.3998</u>	<u>0.0061</u>	<u>0.3889</u>
<u>2105</u>	<u>0.9380</u>	<u>0.0151</u>	<u>0.4400</u>
<u>2106</u>	<u>0.7094</u>	<u>0.0113</u>	<u>0.4134</u>
<u>2201</u>	<u>0.3945</u>	<u>0.0062</u>	<u>0.2893</u>
<u>2202</u>	<u>0.9423</u>	<u>0.0151</u>	<u>0.4659</u>
<u>2203</u>	<u>0.6215</u>	<u>0.0098</u>	<u>0.4090</u>
<u>2204</u>	<u>0.3945</u>	<u>0.0062</u>	<u>0.2893</u>
<u>2401</u>	<u>0.6566</u>	<u>0.0106</u>	<u>0.2895</u>
<u>2903</u>	<u>0.7765</u>	<u>0.0122</u>	<u>0.5221</u>
<u>2904</u>	<u>1.0000</u>	<u>0.0161</u>	<u>0.4615</u>
<u>2905</u>	<u>0.6490</u>	<u>0.0103</u>	<u>0.4111</u>
<u>2906</u>	<u>0.7160</u>	<u>0.0113</u>	<u>0.4597</u>
<u>2907</u>	<u>0.5414</u>	<u>0.0085</u>	<u>0.3654</u>
<u>2908</u>	<u>1.0914</u>	<u>0.0172</u>	<u>0.7109</u>
<u>2909</u>	<u>0.5012</u>	<u>0.0079</u>	<u>0.3670</u>
<u>3101</u>	<u>1.0199</u>	<u>0.0164</u>	<u>0.4998</u>
<u>3102</u>	<u>0.3876</u>	<u>0.0063</u>	<u>0.1713</u>
<u>3103</u>	<u>0.4891</u>	<u>0.0079</u>	<u>0.2409</u>
<u>3104</u>	<u>0.8821</u>	<u>0.0140</u>	<u>0.5531</u>
<u>3105</u>	<u>1.0513</u>	<u>0.0166</u>	<u>0.7134</u>
<u>3303</u>	<u>0.4879</u>	<u>0.0078</u>	<u>0.2711</u>
<u>3304</u>	<u>0.8750</u>	<u>0.0138</u>	<u>0.5574</u>
<u>3309</u>	<u>0.5323</u>	<u>0.0085</u>	<u>0.2772</u>
<u>3402</u>	<u>0.5639</u>	<u>0.0090</u>	<u>0.3231</u>
<u>3403</u>	<u>0.1883</u>	<u>0.0030</u>	<u>0.0924</u>
<u>3404</u>	<u>0.6827</u>	<u>0.0109</u>	<u>0.3609</u>
<u>3405</u>	<u>0.3674</u>	<u>0.0059</u>	<u>0.1947</u>
<u>3406</u>	<u>0.3455</u>	<u>0.0055</u>	<u>0.1995</u>
<u>3407</u>	<u>1.1144</u>	<u>0.0180</u>	<u>0.4601</u>
<u>3408</u>	<u>0.3721</u>	<u>0.0060</u>	<u>0.1695</u>
<u>3409</u>	<u>0.2113</u>	<u>0.0033</u>	<u>0.1337</u>
<u>3410</u>	<u>0.2113</u>	<u>0.0033</u>	<u>0.1337</u>
<u>3411</u>	<u>0.7077</u>	<u>0.0114</u>	<u>0.3014</u>
<u>3412</u>	<u>1.0731</u>	<u>0.0175</u>	<u>0.3677</u>
<u>3414</u>	<u>1.1398</u>	<u>0.0184</u>	<u>0.4952</u>
<u>3415</u>	<u>1.6180</u>	<u>0.0260</u>	<u>0.7871</u>
<u>3501</u>	<u>0.5467</u>	<u>0.0086</u>	<u>0.3710</u>
<u>3503</u>	<u>0.4392</u>	<u>0.0070</u>	<u>0.2503</u>
<u>3506</u>	<u>1.2007</u>	<u>0.0195</u>	<u>0.4803</u>
<u>3509</u>	<u>0.6088</u>	<u>0.0097</u>	<u>0.3265</u>
<u>3510</u>	<u>0.4614</u>	<u>0.0073</u>	<u>0.3156</u>
<u>3511</u>	<u>1.0584</u>	<u>0.0168</u>	<u>0.6174</u>
<u>3512</u>	<u>0.4515</u>	<u>0.0071</u>	<u>0.3063</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>3513</u>	<u>0.5636</u>	<u>0.0090</u>	<u>0.3307</u>
<u>3602</u>	<u>0.1330</u>	<u>0.0021</u>	<u>0.0751</u>
<u>3603</u>	<u>0.6200</u>	<u>0.0099</u>	<u>0.3530</u>
<u>3604</u>	<u>1.0620</u>	<u>0.0170</u>	<u>0.5859</u>
<u>3605</u>	<u>0.5639</u>	<u>0.0090</u>	<u>0.3231</u>
<u>3701</u>	<u>0.3876</u>	<u>0.0063</u>	<u>0.1713</u>
<u>3702</u>	<u>0.4712</u>	<u>0.0075</u>	<u>0.2832</u>
<u>3708</u>	<u>0.8790</u>	<u>0.0141</u>	<u>0.4591</u>
<u>3802</u>	<u>0.2659</u>	<u>0.0042</u>	<u>0.1648</u>
<u>3808</u>	<u>0.5347</u>	<u>0.0086</u>	<u>0.2856</u>
<u>3901</u>	<u>0.1692</u>	<u>0.0026</u>	<u>0.1308</u>
<u>3902</u>	<u>0.5841</u>	<u>0.0092</u>	<u>0.3943</u>
<u>3903</u>	<u>0.7621</u>	<u>0.0120</u>	<u>0.5146</u>
<u>3905</u>	<u>0.1494</u>	<u>0.0023</u>	<u>0.1255</u>
<u>3906</u>	<u>0.5744</u>	<u>0.0090</u>	<u>0.4079</u>
<u>3909</u>	<u>0.3140</u>	<u>0.0049</u>	<u>0.2242</u>
<u>4101</u>	<u>0.2826</u>	<u>0.0045</u>	<u>0.1733</u>
<u>4103</u>	<u>0.6950</u>	<u>0.0110</u>	<u>0.4295</u>
<u>4107</u>	<u>0.2742</u>	<u>0.0044</u>	<u>0.1292</u>
<u>4108</u>	<u>0.2035</u>	<u>0.0032</u>	<u>0.1246</u>
<u>4109</u>	<u>0.2627</u>	<u>0.0041</u>	<u>0.1833</u>
<u>4201</u>	<u>1.3468</u>	<u>0.0221</u>	<u>0.3764</u>
<u>4301</u>	<u>0.9912</u>	<u>0.0155</u>	<u>0.7316</u>
<u>4302</u>	<u>1.0189</u>	<u>0.0163</u>	<u>0.5216</u>
<u>4304</u>	<u>1.0641</u>	<u>0.0166</u>	<u>0.8518</u>
<u>4305</u>	<u>1.5664</u>	<u>0.0254</u>	<u>0.6292</u>
<u>4401</u>	<u>0.4879</u>	<u>0.0078</u>	<u>0.2711</u>
<u>4402</u>	<u>0.8963</u>	<u>0.0144</u>	<u>0.4163</u>
<u>4404</u>	<u>0.6449</u>	<u>0.0103</u>	<u>0.3544</u>
<u>4501</u>	<u>0.2142</u>	<u>0.0034</u>	<u>0.1287</u>
<u>4502</u>	<u>0.0863</u>	<u>0.0014</u>	<u>0.0440</u>
<u>4504</u>	<u>0.1425</u>	<u>0.0022</u>	<u>0.1056</u>
<u>4802</u>	<u>0.5612</u>	<u>0.0089</u>	<u>0.3580</u>
<u>4803</u>	<u>0.5040</u>	<u>0.0078</u>	<u>0.4083</u>
<u>4804</u>	<u>0.6330</u>	<u>0.0099</u>	<u>0.4849</u>
<u>4805</u>	<u>0.4214</u>	<u>0.0065</u>	<u>0.3454</u>
<u>4806</u>	<u>0.1525</u>	<u>0.0024</u>	<u>0.1236</u>
<u>4808</u>	<u>0.6863</u>	<u>0.0110</u>	<u>0.3820</u>
<u>4809</u>	<u>0.3211</u>	<u>0.0051</u>	<u>0.2068</u>
<u>4810</u>	<u>0.3188</u>	<u>0.0050</u>	<u>0.2277</u>
<u>4811</u>	<u>0.5554</u>	<u>0.0086</u>	<u>0.4494</u>
<u>4812</u>	<u>0.5829</u>	<u>0.0093</u>	<u>0.3338</u>
<u>4813</u>	<u>0.3073</u>	<u>0.0047</u>	<u>0.2679</u>
<u>4900</u>	<u>0.1777</u>	<u>0.0029</u>	<u>0.0792</u>
<u>4901</u>	<u>0.0628</u>	<u>0.0010</u>	<u>0.0249</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>4902</u>	<u>0.1145</u>	<u>0.0018</u>	<u>0.0560</u>
<u>4903</u>	<u>0.2539</u>	<u>0.0041</u>	<u>0.1112</u>
<u>4904</u>	<u>0.0181</u>	<u>0.0003</u>	<u>0.0111</u>
<u>4905</u>	<u>0.4317</u>	<u>0.0067</u>	<u>0.3268</u>
<u>4906</u>	<u>0.1497</u>	<u>0.0024</u>	<u>0.0716</u>
<u>4907</u>	<u>0.0635</u>	<u>0.0010</u>	<u>0.0659</u>
<u>4908</u>	<u>0.1099</u>	<u>0.0017</u>	<u>0.1077</u>
<u>4909</u>	<u>0.0440</u>	<u>0.0007</u>	<u>0.0430</u>
<u>4910</u>	<u>0.6523</u>	<u>0.0105</u>	<u>0.3177</u>
<u>4911</u>	<u>0.0888</u>	<u>0.0014</u>	<u>0.0418</u>
<u>5001</u>	<u>12.2119</u>	<u>0.1986</u>	<u>4.4736</u>
<u>5002</u>	<u>0.7949</u>	<u>0.0128</u>	<u>0.3816</u>
<u>5003</u>	<u>3.6063</u>	<u>0.0587</u>	<u>1.2922</u>
<u>5004</u>	<u>1.2489</u>	<u>0.0197</u>	<u>0.8567</u>
<u>5005</u>	<u>1.5000</u>	<u>0.0244</u>	<u>0.5433</u>
<u>5006</u>	<u>1.9028</u>	<u>0.0311</u>	<u>0.6321</u>
<u>5101</u>	<u>1.4197</u>	<u>0.0231</u>	<u>0.5173</u>
<u>5103</u>	<u>1.1324</u>	<u>0.0180</u>	<u>0.6845</u>
<u>5106</u>	<u>1.1324</u>	<u>0.0180</u>	<u>0.6845</u>
<u>5108</u>	<u>1.1242</u>	<u>0.0181</u>	<u>0.5329</u>
<u>5109</u>	<u>0.7102</u>	<u>0.0115</u>	<u>0.3092</u>
<u>5201</u>	<u>0.3914</u>	<u>0.0062</u>	<u>0.2269</u>
<u>5204</u>	<u>1.6089</u>	<u>0.0263</u>	<u>0.5075</u>
<u>5206</u>	<u>0.5906</u>	<u>0.0095</u>	<u>0.2845</u>
<u>5207</u>	<u>0.1733</u>	<u>0.0027</u>	<u>0.1270</u>
<u>5208</u>	<u>0.8737</u>	<u>0.0140</u>	<u>0.4353</u>
<u>5209</u>	<u>0.8582</u>	<u>0.0137</u>	<u>0.4461</u>
<u>5300</u>	<u>0.1277</u>	<u>0.0020</u>	<u>0.0652</u>
<u>5301</u>	<u>0.0419</u>	<u>0.0007</u>	<u>0.0221</u>
<u>5302</u>	<u>0.0103</u>	<u>0.0002</u>	<u>0.0049</u>
<u>5305</u>	<u>0.0573</u>	<u>0.0009</u>	<u>0.0328</u>
<u>5306</u>	<u>0.0493</u>	<u>0.0008</u>	<u>0.0313</u>
<u>5307</u>	<u>1.0288</u>	<u>0.0167</u>	<u>0.4087</u>
<u>5308</u>	<u>0.1068</u>	<u>0.0017</u>	<u>0.0749</u>
<u>6103</u>	<u>0.1022</u>	<u>0.0016</u>	<u>0.0842</u>
<u>6104</u>	<u>0.4848</u>	<u>0.0077</u>	<u>0.2882</u>
<u>6105</u>	<u>0.7673</u>	<u>0.0124</u>	<u>0.3322</u>
<u>6107</u>	<u>0.1754</u>	<u>0.0027</u>	<u>0.1810</u>
<u>6108</u>	<u>0.3003</u>	<u>0.0047</u>	<u>0.2504</u>
<u>6109</u>	<u>0.1749</u>	<u>0.0028</u>	<u>0.0754</u>
<u>6110</u>	<u>0.5747</u>	<u>0.0092</u>	<u>0.2715</u>
<u>6120</u>	<u>0.4665</u>	<u>0.0075</u>	<u>0.2157</u>
<u>6121</u>	<u>0.6743</u>	<u>0.0109</u>	<u>0.2716</u>
<u>6201</u>	<u>0.7242</u>	<u>0.0117</u>	<u>0.3397</u>
<u>6202</u>	<u>1.1183</u>	<u>0.0179</u>	<u>0.6068</u>

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<u>6203</u>	<u>0.0979</u>	<u>0.0015</u>	<u>0.1133</u>
<u>6204</u>	<u>0.1557</u>	<u>0.0024</u>	<u>0.1133</u>
<u>6205</u>	<u>0.2242</u>	<u>0.0036</u>	<u>0.1401</u>
<u>6206</u>	<u>0.2503</u>	<u>0.0040</u>	<u>0.1607</u>
<u>6207</u>	<u>1.2645</u>	<u>0.0201</u>	<u>0.7255</u>
<u>6208</u>	<u>0.2431</u>	<u>0.0037</u>	<u>0.2296</u>
<u>6209</u>	<u>0.3127</u>	<u>0.0049</u>	<u>0.2583</u>
<u>6301</u>	<u>0.2043</u>	<u>0.0033</u>	<u>0.0888</u>
<u>6303</u>	<u>0.0694</u>	<u>0.0011</u>	<u>0.0339</u>
<u>6305</u>	<u>0.1181</u>	<u>0.0019</u>	<u>0.0855</u>
<u>6306</u>	<u>0.4843</u>	<u>0.0077</u>	<u>0.2755</u>
<u>6308</u>	<u>0.0924</u>	<u>0.0015</u>	<u>0.0461</u>
<u>6309</u>	<u>0.2775</u>	<u>0.0044</u>	<u>0.1722</u>
<u>6402</u>	<u>0.3001</u>	<u>0.0047</u>	<u>0.2254</u>
<u>6403</u>	<u>0.1738</u>	<u>0.0027</u>	<u>0.1181</u>
<u>6404</u>	<u>0.3661</u>	<u>0.0058</u>	<u>0.2576</u>
<u>6405</u>	<u>0.8973</u>	<u>0.0144</u>	<u>0.4281</u>
<u>6406</u>	<u>0.1883</u>	<u>0.0030</u>	<u>0.1230</u>
<u>6407</u>	<u>0.3588</u>	<u>0.0057</u>	<u>0.2206</u>
<u>6408</u>	<u>0.8774</u>	<u>0.0140</u>	<u>0.4795</u>
<u>6409</u>	<u>1.0273</u>	<u>0.0166</u>	<u>0.4536</u>
<u>6410</u>	<u>0.4090</u>	<u>0.0065</u>	<u>0.2220</u>
<u>6411</u>	<u>0.0494</u>	<u>0.0008</u>	<u>0.0385</u>
<u>6501</u>	<u>0.1361</u>	<u>0.0022</u>	<u>0.0686</u>
<u>6502</u>	<u>0.0316</u>	<u>0.0005</u>	<u>0.0160</u>
<u>6503</u>	<u>0.1276</u>	<u>0.0021</u>	<u>0.0474</u>
<u>6504</u>	<u>0.2983</u>	<u>0.0046</u>	<u>0.2835</u>
<u>6505</u>	<u>0.1617</u>	<u>0.0025</u>	<u>0.1552</u>
<u>6506</u>	<u>0.1595</u>	<u>0.0025</u>	<u>0.0918</u>
<u>6509</u>	<u>0.2773</u>	<u>0.0043</u>	<u>0.2240</u>
<u>6510</u>	<u>0.6657</u>	<u>0.0109</u>	<u>0.2072</u>
<u>6511</u>	<u>0.3309</u>	<u>0.0052</u>	<u>0.2263</u>
<u>6512</u>	<u>0.1331</u>	<u>0.0021</u>	<u>0.0634</u>
<u>6601</u>	<u>0.2526</u>	<u>0.0040</u>	<u>0.1581</u>
<u>6602</u>	<u>0.7505</u>	<u>0.0119</u>	<u>0.4893</u>
<u>6603</u>	<u>0.3639</u>	<u>0.0057</u>	<u>0.2463</u>
<u>6604</u>	<u>0.0880</u>	<u>0.0014</u>	<u>0.0564</u>
<u>6605</u>	<u>0.4142</u>	<u>0.0066</u>	<u>0.2308</u>
<u>6607</u>	<u>0.1297</u>	<u>0.0020</u>	<u>0.0958</u>
<u>6608</u>	<u>0.8589</u>	<u>0.0141</u>	<u>0.2279</u>
<u>6620</u>	<u>4.9072</u>	<u>0.0792</u>	<u>2.1672</u>
<u>6704</u>	<u>0.1555</u>	<u>0.0025</u>	<u>0.0998</u>
<u>6705</u>	<u>0.7603</u>	<u>0.0116</u>	<u>0.7794</u>
<u>6706</u>	<u>0.2943</u>	<u>0.0046</u>	<u>0.2225</u>
<u>6707</u>	<u>10.7450</u>	<u>0.1644</u>	<u>10.3227</u>

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>6708</u>	<u>10.0959</u>	<u>0.1545</u>	<u>9.7385</u>
<u>6709</u>	<u>0.3399</u>	<u>0.0054</u>	<u>0.2124</u>
<u>6801</u>	<u>1.0422</u>	<u>0.0171</u>	<u>0.3036</u>
<u>6802</u>	<u>1.2009</u>	<u>0.0194</u>	<u>0.5510</u>
<u>6803</u>	<u>0.9011</u>	<u>0.0148</u>	<u>0.2340</u>
<u>6804</u>	<u>0.3376</u>	<u>0.0054</u>	<u>0.2007</u>
<u>6809</u>	<u>4.4435</u>	<u>0.0694</u>	<u>3.3972</u>
<u>6901</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0730</u>
<u>6902</u>	<u>1.1239</u>	<u>0.0181</u>	<u>0.5000</u>
<u>6903</u>	<u>7.0300</u>	<u>0.1148</u>	<u>2.2825</u>
<u>6904</u>	<u>2.1247</u>	<u>0.0347</u>	<u>0.6933</u>
<u>6905</u>	<u>1.6436</u>	<u>0.0269</u>	<u>0.5200</u>
<u>6906</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.4692</u>
<u>6907</u>	<u>1.0370</u>	<u>0.0165</u>	<u>0.6361</u>
<u>6908</u>	<u>0.5278</u>	<u>0.0084</u>	<u>0.2812</u>
<u>6909</u>	<u>0.1501</u>	<u>0.0024</u>	<u>0.0864</u>
<u>7100</u>	<u>0.0266</u>	<u>0.0004</u>	<u>0.0111</u>
<u>7101</u>	<u>0.0369</u>	<u>0.0006</u>	<u>0.0155</u>
<u>7103</u>	<u>1.6253</u>	<u>0.0265</u>	<u>0.5475</u>
<u>7104</u>	<u>0.0350</u>	<u>0.0006</u>	<u>0.0179</u>
<u>7105</u>	<u>0.0235</u>	<u>0.0004</u>	<u>0.0129</u>
<u>7106</u>	<u>0.3432</u>	<u>0.0054</u>	<u>0.2127</u>
<u>7107</u>	<u>0.5524</u>	<u>0.0088</u>	<u>0.3024</u>
<u>7108</u>	<u>0.3425</u>	<u>0.0054</u>	<u>0.2370</u>
<u>7109</u>	<u>0.1327</u>	<u>0.0021</u>	<u>0.0705</u>
<u>7110</u>	<u>0.6587</u>	<u>0.0106</u>	<u>0.3070</u>
<u>7111</u>	<u>0.5157</u>	<u>0.0084</u>	<u>0.1658</u>
<u>7112</u>	<u>0.7911</u>	<u>0.0125</u>	<u>0.5382</u>
<u>7113</u>	<u>0.5187</u>	<u>0.0083</u>	<u>0.3019</u>
<u>7114</u>	<u>0.9638</u>	<u>0.0152</u>	<u>0.6707</u>
<u>7115</u>	<u>0.7473</u>	<u>0.0117</u>	<u>0.5529</u>
<u>7116</u>	<u>0.7556</u>	<u>0.0121</u>	<u>0.3658</u>
<u>7117</u>	<u>1.3440</u>	<u>0.0213</u>	<u>0.8243</u>
<u>7118</u>	<u>2.3717</u>	<u>0.0381</u>	<u>1.1455</u>
<u>7119</u>	<u>2.4925</u>	<u>0.0403</u>	<u>1.0894</u>
<u>7120</u>	<u>7.8320</u>	<u>0.1269</u>	<u>3.1459</u>
<u>7121</u>	<u>12.0262</u>	<u>0.1959</u>	<u>4.2225</u>
<u>7122</u>	<u>0.4200</u>	<u>0.0065</u>	<u>0.3327</u>
<u>7200</u>	<u>3.7539</u>	<u>0.0616</u>	<u>1.0589</u>
<u>7201</u>	<u>2.6641</u>	<u>0.0435</u>	<u>0.8917</u>
<u>7202</u>	<u>0.0309</u>	<u>0.0005</u>	<u>0.0153</u>
<u>7203</u>	<u>0.1098</u>	<u>0.0017</u>	<u>0.1067</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7301</u>	<u>0.8438</u>	<u>0.0132</u>	<u>0.6478</u>

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>7302</u>	<u>0.9909</u>	<u>0.0155</u>	<u>0.7219</u>
<u>7307</u>	<u>0.5920</u>	<u>0.0094</u>	<u>0.3765</u>
<u>7308</u>	<u>0.2906</u>	<u>0.0045</u>	<u>0.2528</u>
<u>7309</u>	<u>0.2659</u>	<u>0.0041</u>	<u>0.2356</u>
<u>7400</u>	<u>4.3170</u>	<u>0.0708</u>	<u>1.2178</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-895, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-895, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-895, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-895, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-895, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-895, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-895, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-895, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-895, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035 and 51.04.020(1). WSR 13-10-080, § 296-17-895, filed 5/1/13, effective 7/1/13. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-895, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-895, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-895, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-895, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-895, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-895, filed 12/1/07, effective 1/1/08. Statutory Authority: RCW 51.06.035, 51.08.010, 51.04.020. WSR 07-12-045, § 296-17-895, filed 5/31/07, effective 7/1/07; WSR 07-07-032 and 07-07-129, § 296-17-895, filed 3/12/07 and 3/21/07, effective 7/1/07. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 06-24-054, § 296-17-895, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-895, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-895, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 04-13-017, § 296-17-895, filed 6/4/04, effective 7/5/04. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-895, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-895, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-895, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-895, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-895, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-895, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-895, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-895, filed 8/28/98, effective 10/1/98. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 97-24-062, § 296-17-895, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-895, filed 11/29/96, effective 1/1/97.

Statutory Authority: RCW 51.16.035. WSR 96-12-039, § 296-17-895, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 51.16.035 and 51.32.073. WSR 96-06-025, § 296-17-895, filed 2/28/96, effective 4/1/96. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-895, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-895, filed 11/28/94, effective 1/1/95. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 94-12-051, § 296-17-895, filed 5/27/94, effective 7/1/94. Statutory Authority: RCW 51.04.020. WSR 93-24-114, § 296-17-895, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 93-12-093, § 296-17-895, filed 5/31/93, effective 7/1/93; WSR 92-24-063, § 296-17-895, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-895, filed 11/27/91, effective 1/1/92; WSR 91-12-014, § 296-17-895, filed 5/31/91, effective 7/1/91; WSR 90-24-042, § 296-17-895, filed 11/30/90, effective 1/1/91; WSR 90-13-018, § 296-17-895, filed 6/8/90, effective 7/9/90; WSR 89-24-051 (Order 89-22), § 296-17-895, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.04.020(1). WSR 89-16-001 (Order 89-07), § 296-17-895, filed 7/20/89, effective 8/20/89. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-895, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 88-12-065 (Order 88-05), § 296-17-895, filed 5/31/88; WSR 88-12-050 (Order 88-06), § 296-17-895, filed 5/31/88, effective 7/1/88; WSR 88-06-047 (Order 87-33), § 296-17-895, filed 3/1/88; WSR 87-24-060 (Order 87-26), § 296-17-895, filed 12/1/87, effective 1/1/88; WSR 87-12-032 (Order 87-12), § 296-17-895, filed 5/29/87, effective 7/1/87. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-895, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-895, filed 5/30/86, effective 7/1/86; WSR 85-24-032 (Order 85-33), § 296-17-895, filed 11/27/85, effective 1/1/86; WSR 85-13-046 (Order 85-13), § 296-17-895, filed 6/17/85; WSR 85-06-026 (Order 85-7), § 296-17-895, filed 2/28/85, effective 4/1/85; WSR 84-24-016 (Order 84-23), § 296-17-895, filed 11/28/84, effective 1/1/85. Statutory Authority: RCW 51.04.020(1). WSR 84-12-048 (Order 84-12), § 296-17-895, filed 6/1/84. Statutory Authority: RCW 51.16.035. WSR 83-24-017 (Order 83-36), § 296-17-895, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-895, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-895, filed 11/30/81, effective 1/1/82; WSR 81-04-024 (Order 81-02), § 296-17-895, filed 1/30/81; WSR 80-17-016 (Order 80-23), § 296-17-895, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-895, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-895, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-895, filed 11/30/77, effective 1/1/78; Emergency Order 77-25, § 296-17-895, filed 12/1/77; Order 77-10, § 296-17-895, filed 5/31/77; Order 76-36, § 296-17-895, filed 11/30/76; Order 76-18, § 296-17-895, filed 5/28/76, effective 7/1/76; Order 75-38, § 296-17-895, filed 11/24/75, effective 1/1/76; Order 75-28, § 296-17-895, filed 8/29/75, effective 10/1/75; Order 74-40, § 296-17-895, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-895, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
((540	0.0248	0.0004	0.0116	0.0013
541	0.0118	0.0002	0.0057	0.0013
550	0.0510	0.0009	0.0199	0.0013
551	0.0171	0.0003	0.0076	0.0013))
<u>540</u>	<u>0.0234</u>	<u>0.0004</u>	<u>0.0111</u>	<u>0.0013</u>
<u>541</u>	<u>0.0124</u>	<u>0.0002</u>	<u>0.0057</u>	<u>0.0013</u>
<u>550</u>	<u>0.0548</u>	<u>0.0009</u>	<u>0.0197</u>	<u>0.0013</u>
<u>551</u>	<u>0.0175</u>	<u>0.0003</u>	<u>0.0074</u>	<u>0.0013</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-89502, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-89502, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-89502, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-89502, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-89502, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-89502, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-89502, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-89502, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-89502, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-89502, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-89502, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-89502, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-89502, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-89502, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-89502, filed 12/1/07, effective 1/1/08. Statutory Authority: RCW 51.06.035, 51.08.010, 51.04.020. WSR 07-12-045, § 296-17-89502, filed 5/31/07, effective 7/1/07; WSR 07-07-032 and 07-07-129, § 296-17-89502, filed 3/12/07 and 3/21/07, effective 7/1/07. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 06-24-054, § 296-17-89502, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-89502, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-89502, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-89502, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-89502, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010; WSR 01-23-061, § 296-17-89502, filed 11/20/01, effective 1/1/02; WSR 00-23-101, §

296-17-89502, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-89502, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-89502, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-89502, filed 12/1/97, effective 1/1/98; WSR 97-12-011, § 296-17-89502, filed 5/27/97, effective 7/1/97; WSR 97-06-007, § 296-17-89502, filed 2/24/97, effective 4/1/97.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-89507 Horse racing rates. Horse racing industry industrial insurance accident fund, stay at work fund, medical aid fund, supplemental pension fund and composite rate by class.

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
((6618	74.00*	1.00*	74.00*	1.00*	150.00*
6625	76.67**	1.48**	74.66**	15.64**	168.45**
6626	0.6102***	0.0118***	0.6316***	0.1564***	1.4100***
6627	11.0140****	0.2130****	8.7400****	1.1730****	21.1400****))
<u>6618</u>	<u>74.00*</u>	<u>1.00*</u>	<u>74.00*</u>	<u>1.00*</u>	<u>150.00*</u>
<u>6625</u>	<u>83.87**</u>	<u>1.55**</u>	<u>79.38**</u>	<u>16.74**</u>	<u>181.54**</u>
<u>6626</u>	<u>0.6561***</u>	<u>0.0121***</u>	<u>0.6444***</u>	<u>0.1674***</u>	<u>1.4800***</u>
<u>6627</u>	<u>11.9010****</u>	<u>0.2190****</u>	<u>8.9540****</u>	<u>1.2560****</u>	<u>22.3300****</u>

*This rate is calculated on a percentage of ownership in a horse or horses.

**This rate is calculated per month.

***This rate is calculated per horse per day.

****This rate is calculated per day.

Note: These rates are not subject to experience rating or retrospective rating.

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-89507, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-89507, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-89507, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-89507, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-89507, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-89507, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-89507, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-89507, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-89507, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.16.210. WSR 12-24-067, § 296-17-89507, filed 12/4/12, effective 1/4/13.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class.

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund	Supplemental Pension Fund
((4814	0.1163	0.0019	0.1309	0.1564
4815	0.2157	0.0034	0.2739	0.1564
4816	0.3480	0.0056	0.3676	0.1564))
<u>4814</u>	<u>0.1214</u>	<u>0.0018</u>	<u>0.1300</u>	<u>0.1674</u>
<u>4815</u>	<u>0.2253</u>	<u>0.0034</u>	<u>0.2722</u>	<u>0.1674</u>
<u>4816</u>	<u>0.3633</u>	<u>0.0055</u>	<u>0.3658</u>	<u>0.1674</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-89508, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-89508, filed 11/30/20, effective 1/1/21. Statutory Authority: RCW 51.16.035, 51.04.020(1), and 2020 c 212. WSR 20-12-086, § 296-17-89508, filed 6/2/20, effective 7/3/20.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-920 Assessment for supplemental pension fund. The amount of ((78.2)) 83.7 mils (((\$0.0782)) \$0.0837) shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July, and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-229. All such moneys shall be deposited in the supplemental pension fund.

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-920, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-920, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-920, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-920, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-920, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-920, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-920, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-920, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-920, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-920, filed 11/30/12, effective 1/1/13. Statutory Authority: RCW 51.04.020, 51.16.035, and

51.16.100. WSR 12-11-109, § 296-17-920, filed 5/22/12, effective 7/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, and 51.04.020(1). WSR 11-24-057, § 296-17-920, filed 12/5/11, effective 1/5/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-920, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-920, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-920, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-920, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-920, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-920, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-920, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-920, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-920, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-920, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-920, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-920, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-920, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-920, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-920, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.16.035 and 51.32.073. WSR 96-06-025, § 296-17-920, filed 2/28/96, effective 4/1/96. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-920, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-920, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-920, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-920, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-920, filed 11/27/91, effective 1/1/92; WSR 89-24-051 (Order 89-22), § 296-17-920, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.04.020 and 51.32.073. WSR 87-04-006 (Order 86-49), § 296-17-920, filed 1/23/87. Statutory Authority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-920, filed 5/30/86, effective 7/1/86; WSR 83-24-017 (Order 83-36), § 296-17-920, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-920, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-920, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-920, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-920, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-920, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-920, filed 11/30/77, effective 1/1/78; Order 77-10, § 296-17-920, filed 5/31/77; Order 76-36, § 296-17-920, filed 11/30/76; Order 75-38, § 296-17-920, filed 11/24/75, effective 1/1/76; Order 75-28, § 296-17-920, filed 8/29/75, effective 10/1/75; Order 74-40, § 296-17-920, filed 11/27/74, effective 1/1/75; Order 74-6, § 296-17-920, filed 1/23/74.]

OTS-4080.1

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17B-540 Determining loss incurred for each claim. (1)

Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate discounted loss development factors to determine the initial loss incurred.

If you have a fatality, we will use ((~~\$474,400~~)) \$521,600 as the claim's initial incurred loss for the claim, with ((~~\$440,900~~)) \$486,600 for accident fund incurred loss and \$33,500 for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is greater than your selected single loss occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident fund and medical aid fund portions of each claim will have separate expected loss ratio factors applied.

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17B-540, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17B-540, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17B-540, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17B-540, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17B-540, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17B-540, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17B-540, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17B-540, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17B-540, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17B-540, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17B-540, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.16.100, 51.04.020(1), and 51.18.010. WSR 10-21-086, § 296-17B-540, filed 10/19/10, effective 11/19/10.]

AMENDATORY SECTION (Amending WSR 20-24-094, filed 11/30/20, effective 1/1/21)

WAC 296-17B-900 Retrospective rating plans standard premium size ranges.

**RETROSPECTIVE RATING STANDARD PREMIUM SIZE RANGES
Effective January 1, ((2021)) 2023**

Size Group Number	Standard Premium Range	
	From:	To:
((1	5,120 -	5,979

Size Group Number	Standard Premium Range	
	From:	To:
2	5,980 -	6,759
3	6,760 -	7,609
4	7,610 -	8,529
5	8,530 -	9,499
6	9,500 -	10,539
7	10,540 -	11,659
8	11,660 -	12,839
9	12,840 -	14,099
10	14,100 -	15,419
11	15,420 -	16,819
12	16,820 -	18,329
13	18,330 -	19,919
14	19,920 -	21,609
15	21,610 -	23,389
16	23,390 -	25,279
17	25,280 -	27,279
18	27,280 -	29,399
19	29,400 -	31,639
20	31,640 -	33,999
21	34,000 -	36,539
22	36,540 -	39,209
23	39,210 -	42,049
24	42,050 -	45,069
25	45,070 -	48,279
26	48,280 -	51,699
27	51,700 -	55,339
28	55,340 -	59,189
29	59,190 -	63,319
30	63,320 -	67,729
31	67,730 -	72,439
32	72,440 -	77,489
33	77,490 -	82,889
34	82,890 -	88,699
35	88,700 -	94,949
36	94,950 -	101,699
37	101,700 -	108,999
38	109,000 -	116,799
39	116,800 -	125,199
40	125,200 -	134,299
41	134,300 -	144,099
42	144,100 -	154,599
43	154,600 -	165,899
44	165,900 -	178,299
45	178,300 -	191,699
46	191,700 -	206,099
47	206,100 -	221,799

Size Group Number	Standard Premium Range	
	From:	To:
48	221,800	239,299
49	239,300	258,099
50	258,100	278,699
51	278,700	301,599
52	301,600	326,999
53	327,000	355,599
54	355,600	387,199
55	387,200	422,799
56	422,800	463,299
57	463,300	509,099
58	509,100	561,799
59	561,800	622,699
60	622,700	693,899
61	693,900	777,399
62	777,400	876,499
63	876,500	996,999
64	997,000	1,145,999
65	1,146,000	1,330,999
66	1,331,000	1,570,999
67	1,571,000	1,886,999
68	1,887,000	2,327,999
69	2,328,000	2,977,999
70	2,978,000	4,049,999
71	4,050,000	6,070,999
72	6,071,000	11,109,999
73	11,110,000	28,419,999
74	28,420,000	and over))
<u>1</u>	<u>5,340</u>	<u>6,229</u>
<u>2</u>	<u>6,230</u>	<u>7,039</u>
<u>3</u>	<u>7,040</u>	<u>7,929</u>
<u>4</u>	<u>7,930</u>	<u>8,889</u>
<u>5</u>	<u>8,890</u>	<u>9,899</u>
<u>6</u>	<u>9,900</u>	<u>10,979</u>
<u>7</u>	<u>10,980</u>	<u>12,149</u>
<u>8</u>	<u>12,150</u>	<u>13,379</u>
<u>9</u>	<u>13,380</u>	<u>14,689</u>
<u>10</u>	<u>14,690</u>	<u>16,069</u>
<u>11</u>	<u>16,070</u>	<u>17,529</u>
<u>12</u>	<u>17,530</u>	<u>19,099</u>
<u>13</u>	<u>19,100</u>	<u>20,759</u>
<u>14</u>	<u>20,760</u>	<u>22,519</u>
<u>15</u>	<u>22,520</u>	<u>24,369</u>
<u>16</u>	<u>24,370</u>	<u>26,339</u>
<u>17</u>	<u>26,340</u>	<u>28,429</u>
<u>18</u>	<u>28,430</u>	<u>30,629</u>
<u>19</u>	<u>30,630</u>	<u>32,969</u>

Size Group Number	Standard Premium Range	
	From:	To:
<u>20</u>	<u>32,970</u>	<u>35,429</u>
<u>21</u>	<u>35,430</u>	<u>38,069</u>
<u>22</u>	<u>38,070</u>	<u>40,859</u>
<u>23</u>	<u>40,860</u>	<u>43,819</u>
<u>24</u>	<u>43,820</u>	<u>46,959</u>
<u>25</u>	<u>46,960</u>	<u>50,309</u>
<u>26</u>	<u>50,310</u>	<u>53,869</u>
<u>27</u>	<u>53,870</u>	<u>57,659</u>
<u>28</u>	<u>57,660</u>	<u>61,679</u>
<u>29</u>	<u>61,680</u>	<u>65,979</u>
<u>30</u>	<u>65,980</u>	<u>70,569</u>
<u>31</u>	<u>70,570</u>	<u>75,479</u>
<u>32</u>	<u>75,480</u>	<u>80,739</u>
<u>33</u>	<u>80,740</u>	<u>86,369</u>
<u>34</u>	<u>86,370</u>	<u>92,429</u>
<u>35</u>	<u>92,430</u>	<u>98,939</u>
<u>36</u>	<u>98,940</u>	<u>105,999</u>
<u>37</u>	<u>106,000</u>	<u>113,599</u>
<u>38</u>	<u>113,600</u>	<u>121,699</u>
<u>39</u>	<u>121,700</u>	<u>130,499</u>
<u>40</u>	<u>130,500</u>	<u>139,899</u>
<u>41</u>	<u>139,900</u>	<u>150,199</u>
<u>42</u>	<u>150,200</u>	<u>161,099</u>
<u>43</u>	<u>161,100</u>	<u>172,899</u>
<u>44</u>	<u>172,900</u>	<u>185,799</u>
<u>45</u>	<u>185,800</u>	<u>199,799</u>
<u>46</u>	<u>199,800</u>	<u>214,799</u>
<u>47</u>	<u>214,800</u>	<u>231,099</u>
<u>48</u>	<u>231,100</u>	<u>249,399</u>
<u>49</u>	<u>249,400</u>	<u>268,899</u>
<u>50</u>	<u>268,900</u>	<u>290,399</u>
<u>51</u>	<u>290,400</u>	<u>314,299</u>
<u>52</u>	<u>314,300</u>	<u>340,699</u>
<u>53</u>	<u>340,700</u>	<u>370,499</u>
<u>54</u>	<u>370,500</u>	<u>403,499</u>
<u>55</u>	<u>403,500</u>	<u>440,599</u>
<u>56</u>	<u>440,600</u>	<u>482,799</u>
<u>57</u>	<u>482,800</u>	<u>530,499</u>
<u>58</u>	<u>530,500</u>	<u>585,399</u>
<u>59</u>	<u>585,400</u>	<u>648,899</u>
<u>60</u>	<u>648,900</u>	<u>722,999</u>
<u>61</u>	<u>723,000</u>	<u>810,099</u>
<u>62</u>	<u>810,100</u>	<u>913,299</u>
<u>63</u>	<u>913,300</u>	<u>1,038,999</u>
<u>64</u>	<u>1,039,000</u>	<u>1,193,999</u>
<u>65</u>	<u>1,194,000</u>	<u>1,386,999</u>

Size Group Number	Standard Premium Range	
	From:	To:
<u>66</u>	<u>1,387,000</u>	= <u>1,636,999</u>
<u>67</u>	<u>1,637,000</u>	= <u>1,965,999</u>
<u>68</u>	<u>1,966,000</u>	= <u>2,425,999</u>
<u>69</u>	<u>2,426,000</u>	= <u>3,102,999</u>
<u>70</u>	<u>3,103,000</u>	= <u>4,219,999</u>
<u>71</u>	<u>4,220,000</u>	= <u>6,325,999</u>
<u>72</u>	<u>6,326,000</u>	= <u>11,579,999</u>
<u>73</u>	<u>11,580,000</u>	= <u>29,609,999</u>
<u>74</u>	<u>29,610,000</u>	= <u>and over</u>

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 20-24-094, § 296-17B-900, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17B-900, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17B-900, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17B-900, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17B-900, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17B-900, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17B-900, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17B-900, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17B-900, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17B-900, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17B-900, filed 1/28/11, effective 2/28/11.]

WSR 22-19-080
PROPOSED RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed September 20, 2022, 10:46 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: SWCAA 400-025 Adoption of Federal Rules. Existing rule section establishing an adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions. Existing rule section containing definitions for words and phrases used throughout SWCAA 400.

SWCAA 400-040 General Standards for Maximum Emissions. Existing rule section containing a minimum set of air emission standards applicable to all sources.

SWCAA 400-045 Permit Application for Nonroad Engines. Existing rule section identifying requirements for nonroad engine permit applications.

SWCAA 400-070 General Requirements for Certain Source Categories. Existing rule section containing minimum air emission standards and work practices for selected source categories.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. Existing rule section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of New Source Review for selected small source categories.

SWCAA 400-100 Registration Requirements. Existing rule section identifying requirements for registration and inspection of air contaminant sources.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. Existing rule section describing air contaminant sources exempt from registration requirements.

SWCAA 400-105 Records, Monitoring and Reporting. Existing rule section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. Existing rule section that establishes minimum standards for emission testing and monitoring at air contaminant sources.

SWCAA 400-109 Air Discharge Permit Applications. Existing rule section identifying requirements for the submission and content of Air Discharge Permit applications.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). Existing rule section identifying requirements for the processing and approval of Air Discharge Permit applications.

SWCAA 400-115 Standards of Performance for New Sources. Existing rule section adopting by reference federal standards for new sources contained in 40 C.F.R. Part 60.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. Existing rule section identifying presumptive requirements for new exhaust stack installations and describing the procedure by which the maximum creditable stack height is to be determined.

SWCAA 400-290 Severability. Existing rule section addressing severability of provisions in SWCAA 400.

SWCAA 400, Appendix C - Federal Standards Adopted by Reference. Existing rule section containing informational lists of all federal

regulations adopted by reference pursuant to SWCAA 400-075 and 400-115.

Hearing Location(s): On November 30, 2022, at 6:00 p.m., virtual online hearing. Contact agency to register for online hearing.

Date of Intended Adoption: January 5, 2023.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email wess@swcleanair.org, fax 360-576-0925, by November 30, 2022.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 ext. 110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by December 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-025 Adoption of Federal Rules. The proposed rule changes update the adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions. The proposed rule change updates the definition for volatile organic compound.

SWCAA 400-040 General Standards for Maximum Emissions. The proposed rule changes make administrative edits and remove "A" reference in section (1)(f).

SWCAA 400-045 Permit Application for Nonroad Engines. The proposed rule changes revise the explanation of application fees.

SWCAA 400-070 General Requirements for Certain Source Categories. The proposed rule changes remove affirmative New Source Review applicability citations from section (12), add a pool heater exemption in section (13)(b), adopt the federal plan found in 40 C.F.R. 62, Subpart 000, and make administrative edits.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. The proposed rule changes add an Environmental Protection Agency test method citation for small boilers/heaters, add gasoline to list of allowable fuels for emergency service engines, add a 40 C.F.R. 60, Subpart JJJJ citation for emergency service engines, and make administrative edits.

SWCAA 400-100 Registration Requirements. The proposed rule changes revise the description of registration fees and make administrative edits.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. The proposed rule changes add registration exemptions for gas-fired rooftop comfort heating units and gas-fired freeze protection units and make administrative edits.

SWCAA 400-105 Records, Monitoring and Reporting. The proposed rule changes change term "source" to "stationary source" in selected sections to improve clarity.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. The proposed rule changes revise emission test report submission requirements and make administrative edits.

SWCAA 400-109 Air Discharge Permit Applications. The proposed rule changes add a section specifying equipment subject to mandatory permitting, add exemptions for gas-fired rooftop comfort heating units and gas-fired freeze protection units, and make administrative edits.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). The proposed rule changes revise application completeness criteria to include applicable fees and make administrative edits.

SWCAA 400-115 Standards of Performance for New Sources. The proposed rule changes remove the adoption exemption for 40 C.F.R. 60,

Subpart JJJJ, revise the adoption exemption for 40 C.F.R. 60, Subparts TTTT and UUUUa, and make administrative edits.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. The proposed rule changes make administrative edits.

SWCAA 400-290 Severability. The proposed rule changes revise existing language for greater consistency with similar language in other statutes.

SWCAA 400, Appendix C - FEDERAL STANDARDS ADOPTED BY REFERENCE. The proposed rule changes update the lists of adopted federal regulations.

Reasons Supporting Proposal: The proposed changes are necessary to support the agency's implementation of the Washington state Clean Air Act and associated federal standards.

Statutory Authority for Adoption: RCW 70A.15.2040(1).

Statute Being Implemented: RCW 70A.15.2040(1).

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

Name of Proponent: Southwest Clean Air Agency (SWCAA), governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 ext. 126; Implementation: Clint Lamoreaux, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 ext. 131; and Enforcement: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 ext. 122.

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 70A.15.2040(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

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

Is exempt under RCW 70A.15.2040(1).

Explanation of exemptions: Pursuant to RCW 70A.15.2040(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

September 20, 2022

Uri Papish

Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [22-21](#) issue of the Register.

WSR 22-19-081
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed September 20, 2022, 12:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-094.

Title of Rule and Other Identifying Information: 2022 Hydraulic project approval (HPA) marine shoreline stabilization rule amendment. The rule will amend WAC 220-660-370.

Hearing Location(s): On October 28-29, 2022, at 8:00 a.m., in-person at Spokane Community College, 985 South Elm Street, Colville, WA 99114; and webinar/teleconference. Visit our website at <https://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 (email commission@dfw.wa.gov) for instructions on how to join the meeting.

Date of Intended Adoption: On or after November 18, 2022.

Submit Written Comments to: Theresa Nation, P.O. Box 43200, Olympia, WA 98504-3200, email ShorelineStabilizationRule@PublicInput.com, fax 360-902-2946 Attn: Theresa Nation, submit comments online at <https://publicinput.com/ShorelineStabilizationRule> or by phone at 855-925-2802, project code 2265, by October 31, 2022.

Assistance for Persons with Disabilities: Contact Washington department of fish and wildlife (WDFW) ADA coordinator, phone 360-902-2349, fax 360-902-2946 Attn: Theresa Nation, TTY 360-902-2207, email ADAProgram@dfw.wa.gov, by October 31, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WDFW proposes to amend WAC 220-660-370 Bank protection. The agency's purpose for this rule amendment is to implement SSB 5273, passed by the legislature in 2021. Rule changes will:

- Specify that replacement of residential marine shoreline stabilization must utilize the least impacting technically feasible alternative for the protection of fish life;
- Identify alternatives from most to least preferred;
- Specify that a site assessment and alternatives analysis report prepared by a qualified professional is required as part of an application for an HPA permit for this type of project;
- Identify mandatory report elements; and
- Establish procedures for emergency and expedited shoreline stabilization permits.

Hydraulic code rules in chapter 220-660 WAC, implementing chapter 77.55 RCW, are significant legislative rules under RCW 34.05.328.

Reasons Supporting Proposal: WDFW is proposing rule amendments implementing SSB 5273 (chapter 279, Laws of 2021). SSB 5273 added new requirements for HPA permitting. Many of the proposed changes directly incorporate language or requirements from SSB 5273. The new requirements are similar to those already in WAC 220-660-370 that apply to new shoreline stabilization and waterward replacement or rehabilitation of existing shoreline stabilization. SSB 5273 specifically applies those requirements to replacement of residential shoreline stabilization. In addition, WDFW has developed procedural language regarding how emergency and expedited projects are handled in order to achieve the least impacting technically feasible alternative, as al-

ready required in statute and in rule. This new language will help provide clarity for both HPA applicants and agency staff.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.55.021, 77.55.231, 34.05.328; and SSB 5273 (chapter 279, Laws of 2021).

Statute Being Implemented: Chapter 77.55 RCW, Construction projects in state waters.

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

Name of Proponent: WDFW, habitat program, protection division, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Theresa Nation, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2562; Enforcement: Kelly Still, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2605.

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 Theresa Nation, 1111 Washington Street S.E., Olympia, WA 98501, phone 360-902-2562, fax 360-902-2946 Attn: Theresa Nation, email HPArules@dfw.wa.gov. The preliminary cost-benefit analysis can be found at <https://wdfw.wa.gov/about/regulations/development/shoreline-stabilization-hpa-rule>.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: Some aspects of the rule proposal that correct or clarify language without changing its effect are exempt. Other aspects are dictated by statute or related to process requirements for applying for an HPA permit.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: This rule proposal amends only one section of WAC. Aspects of the proposal that incorporate requirements dictated by RCW 77.55.231 are exempt under RCW 34.05.310 (4)(e). Aspects that modify terms or wording for consistency without changing the effect of the rule are exempt under RCW 34.05.310 (4)(d). Aspects that specify the process for applying for an emergency or expedited HPA are exempt under RCW 34.05.310 (4)(g). The portion of the rule that is not exempt is the requirement that a qualified professional must prepare a site assessment, alternatives analysis and design rationale report when applying for an HPA permit for replacement or rehabilitation of residential marine shoreline stabilization.

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

Small Business Economic Impact Statement (SBEIS)

CHAPTER 1 INTRODUCTION: This report evaluates the potential costs to businesses of compliance with a WDFW proposed rule that updates Washington state's hydraulic code to clarify how residential shoreline property owners should comply with recent legislation regarding residential marine shoreline stabilization.¹ This SBEIS was developed in accordance with the Regulatory Fairness Act (RFA), 19.85 RCW to determine whether the proposed rule would result in more-than-minor and disproportionate cost impacts on small businesses. The primary sources of information for this analysis include the following:

1 This report uses the term "shoreline stabilization" to refer broadly to the various shoreline interventions that are used to prevent or reduce erosion of the shoreline and protect upland property and structures, including passive or nature-based techniques, soft shore techniques, and hard structures such as bulkheads.

- Information gathered through outreach to county and municipal planners, businesses providing the services required by the proposed rule, and residential property owners who have experience with marine shoreline stabilization replacement;
- County and municipal Shoreline Master Program (SMP) documents;
- Tax parcel data identifying land use types along marine shorelines;
- Data identifying location of existing shoreline stabilization along the marine shoreline; and
- HPA permit data provided by WDFW.

1.1 BACKGROUND: Washington state's hydraulic code (WAC 220-660-370) outlines requirements for shoreline bank protection in saltwater (i.e., marine) waters of the state in order to protect fish life from the habitat alteration that can result from certain types of shoreline protection. The existing requirements specify that a person wishing to place *new* shoreline protection, or replace existing protection with *protection that extends waterward of the existing protection*, utilize the least impacting technically feasible protection technique, and include a site assessment, alternatives analysis, and design rationale completed by a qualified professional in their permit application. In 2021, the state legislature passed SSB 5273, which amends RCW 77.55.231 to extend these requirements to the *replacement* of existing shoreline stabilization on residential properties. WDFW is now updating WAC 220-660-370 to be consistent with RCW 77.55.231, and to provide additional clarification with respect to the requirements.

1.2 SCOPE OF PROPOSED RULE: The proposed rule affects activities occurring on residential properties along Washington's marine shorelines, including the shorelines of Puget Sound, the Strait of Juan de Fuca, the outer coast, and along coastal estuaries. It does not change existing requirements with respect to commercial or other types of properties, nor does it affect activities occurring on residential properties along nonmarine shorelines (e.g., rivers, ponds, or inland lakes). The proposed rule specifically addresses the requirements related to the *replacement or rehabilitation* of existing shoreline stabilization, and does not change the requirements for installation of new structures or replacement of existing structures where the replacement occurs waterward of the existing structure.

1.3 BASELINE FOR THE SBEIS: RCW 77.55.231 requires that residential property owners on all marine shorelines of Washington state that wish to replace existing shoreline stabilization use the least impacting technically feasible alternative and submit a site assessment and alternatives analysis as part of their permit application package. In certain

jurisdictions, county and municipal SMPs already specify that a qualified professional must be used to develop those reports. Although the requirement to use a qualified professional is not specified for all jurisdictions, interviews with county and municipal planners conducted in July and August 2022 suggest that it would be impossible or very challenging for an individual without the relevant professional background to fulfill the necessary requirements.² Therefore, residential applicants looking to replace their shoreline stabilization in the counties where SMPs do not describe that a qualified professional must be hired for the analyses are still likely to hire qualified professionals for this purpose.

² Personal and email communication with representatives of county and municipal planning departments conducted in July and August 2022.

1.4 PROPOSED RULE REQUIREMENTS: The proposed rule would update WAC 220-660-370 to implement the RCW 77.55.231 requirement for HPA permit applicants for residential marine shoreline stabilization or armoring replacement or rehabilitation projects. Specifically, the proposed rule includes the following:

- Revises existing language in WAC 220-660-370 to require HPA applicants to use the least impacting technically feasible bank protection alternatives for *replacement or rehabilitation* of residential bank protection projects, and specifies preferences for available alternatives;³
- Specifies the reporting elements that must be included in an HPA application for residential replacement projects (outlined in Section 1.2.1 of this SBEIS);
- Requires that HPA permit applicants for replacement or rehabilitation of residential bank protection provide a site assessment, alternatives analysis and design rationale for the proposed method *that is prepared by a qualified professional*; and
- Specifies procedures for how expedited or emergency shoreline stabilization permit applications will be processed.

³ WAC 220-660-370 (3)(b) provides common alternatives for (1) new bank protection and (2) replacement or rehabilitation of bank protection that extends waterward of existing bank protection structure projects. The proposed rule would modify WAC 220-660-370 to include common alternatives for replacement or rehabilitation of residential bank protection projects, adapted from RCW 77.55.231.

As previously described, RCW 77.55.231 constitutes a preexisting requirement regarding replacement of residential shoreline stabilizations; that is, the requirements of RCW 77.55.231 are part of the baseline of this analysis. Thus, any costs resulting from the requirements specified in RCW 77.55.231, which include the requirement that any person wishing to replace residential marine shoreline stabilization "use the least impacting technically feasible bank protection alternative for the protection of fish life" and "must conduct a site assessment to consider the least impactful alternatives ... and should propose a hard armor technique only after considering site characteristics such as the threat to major improvements, wave energy, and other factors in an analysis of alternatives," are baseline costs of compliance with these preexisting requirements. The procedural language on the processing of emergency and expedited permits is exempt from RFA analysis in RCW 34.05.210 (4)(g). The focus of this analysis is on the incremental costs of the proposed rule that are above and beyond the baseline costs.

The proposed rule is focused specifically on replacement or rehabilitation projects for protecting residential shoreline properties. Accordingly, the rule making applies only to residential property shoreline owners with existing shoreline stabilization in place. The

new requirement specified in the proposed rule is that, when existing stabilization requires replacement or rehabilitation, the permit applicants must hire a qualified professional to complete the site assessment and alternatives analysis. Importantly, the requirement to conduct a site assessment and alternatives analysis is a baseline requirement for these sites; however, RCW 77.55.231 does not specify the need to rely on a qualified professional for the analysis and reporting. Thus, the requirement in the proposed rule to employ a qualified professional may generate incremental compliance costs.

CHAPTER 2 SMALL BUSINESS IMPACTS: 2.1 POTENTIALLY AFFECTED SMALL BUSINESSES: Absent detailed data on businesses that own residential properties along marine shorelines of Washington, we rely upon the best available information regarding the potential extent of businesses affected by the rule. We begin by describing the extent of shoreline properties that may be affected by the proposed rule, and then describe the universe of businesses that could incur costs as a result of the rule.

Owners of marine shoreline property in Washington, whether individuals or businesses, are only affected by the proposed rule under the following circumstances:

- The property is identified as residential;
- The property already has existing shoreline stabilization in place; and
- Existing requirements with respect to the local jurisdictions' SMPs do not already require the use of a qualified professional to develop the requisite site assessment and alternatives analysis.

Available data suggest 64.3 percent of Washington's marine shoreline parcels (31,823 tax parcels) are affirmatively identified as residential tax parcels, most of which are single-family residential.^{4,5} Exhibit ES-1 identifies the tax parcels along the marine shoreline identified as residential. For residential property owners, costs are only incurred when and if there is shoreline stabilization on their property that needs to be repaired or replaced. Of the 31,823 residential tax parcels along the Washington's marine shorelines, 8,260 (26 percent) are identified as being 100 percent modified by some type of anthropogenic intervention, while another 20,683 are identified as having some "non-zero" extent of modification.⁶ Finally, even in cases where residential property has existing shoreline stabilization that may require replacement, a substantial portion of Washington's marine shoreline is already subject to the requirements that are being clarified in the proposed rule (i.e., the requirement for use of a qualified professional to develop the site assessment and alternatives analysis). Specifically, five counties and 13 municipalities require that a qualified professional be used to develop the requisite analyses. Residential property owners located in these jurisdictions are not expected to incur costs due to the rule.

⁴ For this analysis, we identify the marine shoreline as including the extent of Washington's marine shoreline where marine shoreline protection has been identified in existing data. This includes the coastlines of Puget Sound, the Strait of Juan de Fuca, the Pacific Coast, and major coastal estuaries.

⁵ Private geospatial data identifying existing marine shoreline parcels provided via secure server to IEC by WDFW on May 23, 2022. Residential parcels are identified using the property type code included in the data. Of the parcels within the area of focus, four percent do not include a property type code, and may also be residential.

⁶ Publicly accessible geospatial data from the Washington State Shorezone Inventory. Developed by the Nearshore Habitat Program between 1994 and 2000. Downloaded July 2022. Available at <https://www.dnr.wa.gov/programs-and-services/aquatics/aquatic-science/nearshore-habitat-inventory>.

While nine counties and 33 municipalities do not specify this requirement, interviews with county and municipal planners conducted in July and August 2022 suggest that it would be impossible or very challenging for an individual without the relevant professional background to fulfill the necessary requirements. Therefore, residential applicants looking to replace their shoreline stabilization in the counties where SMPs do not describe that a qualified professional must be hired for the analyses are still likely to hire qualified professionals for this purpose. Residential property owners (potentially including small businesses) within these jurisdictions needing to repair or rehabilitate shoreline stabilization are unlikely to, but could potentially, incur costs as a result of the rule.

Costs of residential shoreline stabilization projects are generally borne by the property owners, which are frequently residents (i.e., households) and not businesses. However, in some cases, businesses may own residential properties or otherwise bear costs for replacing or rehabilitating residential shoreline stabilizations. Specifically, businesses that may incur costs as a result of the proposed rule may include those within the following North American Industry Classification System (NAICS) codes defining economic sectors:

- 813990 - *Business, Professional, Labor, Political, and Similar Organizations/Other Similar Organizations* (except business, professional, labor, and political organizations): Includes (but is not limited to) property owners' associations, condominium and homeowners' associations (HOAs), and tenants' associations.⁷
- 531110 - *Lessors of Residential Buildings and Dwellings*.

⁷ Homeowners' associations, tenants' associations, and property owners' associations would only be considered businesses to the extent they are incorporated. RCW 64.38.010 (Definitions) defines HOAs as a "corporation, *unincorporated association*, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member." The inclusion of "unincorporated association" within the definition suggests that not all HOAs are considered businesses in Washington.

Additionally, businesses that are run out of an individual's residence may be affected by the rule. There are a wide range of business types that may fit this description and data are not available identifying the numbers and types of businesses associated with residential shoreline properties.

Data limitations do not allow for a specific enumeration and identification of the potentially affected businesses. Specific limitations include:

- NAICS code 813990 (*Other Similar Organizations*) includes a substantially greater universe of businesses than the property owners' associations that are of interest to this analysis;
- Businesses in NAICS code 53110 (*Lessors of Residential Building and Dwellings*) do not comprehensively pay business and occupation (B&O) tax to the department of revenue, and thus are not comprehensively tracked by the agency;⁸
- It is not possible to isolate businesses that are located on marine shorelines (which are the only ones potentially affected by the rule), so any counts of these businesses would grossly overstate the number of potentially affected businesses; and finally
- Data are not available to identify businesses being operated out of residential homes.

⁸ Specifically, businesses offering long-term rentals are exempted from paying B&O tax (personal communication with the department of revenue on July 8, 2022).

As described previously, most residential property owners with existing shoreline stabilization are likely already using qualified professionals to develop site assessments and alternatives analyses and are unlikely to incur costs as a result of the proposed rule. Nonetheless, there is some potential that individual property owners outside of areas where qualified professionals are required may incur the costs of utilizing a professional as a result of the proposed rule, and these property owners may include businesses.

Data limitations preclude the specific identification of businesses that have the potential to incur costs as a result of the rule. Within the counties with marine shorelines, including those where use of a qualified professional for site assessment and alternatives analysis is explicitly already required, there are 12,279 businesses representing NAICS 813990 (organizations including HOAs) and 4,547 representing NAICS 531110 (lessors of residential properties).⁹ Of this universe of businesses in counties with marine shorelines, over 99 percent of those businesses are small (i.e., employ fewer than 50 people). Importantly, these businesses may be located anywhere within the county, are not specifically located on the marine shoreline, and are not specifically located on residential property. Data on home-based businesses are not available. This analysis conservatively assumes that all home-based businesses employ fewer than 50 individuals and are small.

⁹ Business records for businesses within each identified NAICS code within Washington counties with marine shorelines obtained from the D&B Hoovers database on August 2, 2022, <https://www.dnb.com/products/marketing-sales/dnb-hoovers.html>.

"Minor cost" is defined in RCW 19.85.020 as "a cost per business that is less than 0.3 percent of annual revenue or income or one hundred dollars, whichever is greater, or one percent of annual payroll." Data limitations prevent identification of the average annual revenues for the potentially affected businesses. As such, this analysis conservatively assumes a minor cost threshold of \$100, which is more likely to underestimate than overestimate the minor cost threshold for a given business.

EXHIBIT 1. NUMBER OF BUSINESSES, AVERAGE ANNUAL REVENUES, AND MINOR COST THRESHOLD FOR RELEVANT INDUSTRIES - PUGET SOUND AND PACIFIC OCEAN-ADJACENT COUNTIES

TYPE OF BUSINESS (NAICS CODE) ¹	NUMBER OF BUSINESSES ON RESIDENTIAL MARINE-FRONTING PROPERTY	NUMBER OF BUSINESSES IN MARINE-ADJACENT COUNTIES ²	PERCENTAGE OF BUSINESSES CONSIDERED SMALL ³	AVERAGE ANNUAL REVENUES (2021\$)	MINOR COST THRESHOLD
813990 - Other similar organizations, including homeowners' and property owners' associations ⁴	Unknown	12,279	>99 percent	Unknown	\$100
531110 - Lessors of Residential Buildings and Dwellings	Unknown	4,547	>99 percent	Unknown	\$100
Home-based business	Unknown	Unknown	Assume 100 percent	Unknown	\$100

TYPE OF BUSINESS (NAICS CODE) ¹	NUMBER OF BUSINESSES ON RESIDENTIAL MARINE-FRONTING PROPERTY	NUMBER OF BUSINESSES IN MARINE-ADJACENT COUNTIES ²	PERCENTAGE OF BUSINESSES CONSIDERED SMALL ³	AVERAGE ANNUAL REVENUES (2021\$)	MINOR COST THRESHOLD
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Notes:

1. Type of business as identified by primary NAICS code. Relevant business types identified through interviews with county and municipal planners conducted in July and August 2022.
2. Represents the total number of businesses within each identified NAICS code within Washington counties with marine shorelines. Count is not limited to businesses actually located along marine shorelines, or to businesses located on residential tax parcels.
3. Percent of businesses with <50 employees based on employment data obtained from the D&B Hoovers database for businesses within each NAICS code within Washington counties with marine shorelines. Count is not limited to businesses actually located along marine shorelines or to businesses located on residential tax parcels.
4. NAICS code includes a variety of other business/organization types that are not associated with residential property, including athletic associations.

Source: Business records for businesses within each identified NAICS code within Washington counties with marine shorelines obtained from the D&B Hoovers database on August 2, 2022, <https://www.dnb.com/products/marketing-sales/dnb-hoovers.html>.

2.2 COST OF COMPLIANCE: Consistent with RCW 77.55.040, this analysis evaluates the relevance of the following potential categories of costs to comply with the proposed rule:

- **Reporting, recordkeeping, and other compliance requirements:** The proposed rule does not include any new reporting or recordkeeping requirements beyond what is already required by RCW 77.55.231. The sole compliance requirement that is incremental to existing regulation is the need for use of a qualified professional to conduct the site assessment and alternatives analysis.
- **Professional services that a small business is likely to need in order to comply with such requirements:** The rule requires residential shoreline property owners (which, in some cases, may be small businesses) to acquire professional services to support HPA applications for replacing shoreline stabilizations. The rule requires that applicants use qualified professionals, which may be permitting facilitators, geotechnical engineers, coastal engineers, or shoreline stabilization design and construction firms, to provide site assessment and alternatives analysis support.
- **Costs required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs:** As previously described, the costs of professional services are relevant to the rule making and described in detail below.
- **Based on input received, determine whether compliance with the rule will cause businesses to lose sales or revenue:** The proposed rule making does not restrict the regulated business' economic activities or projects. Additionally, the costs of professional services, as described below, are relatively low and only incurred at a time when shoreline stabilizations need replacement. Thus, the rule making is not anticipated to affect sales or revenues of regulated businesses.

The proposed rule would only generate additional costs to residential shoreline property owners, including businesses, if, absent the rule, they would comply with existing requirements without the use of a qualified professional (e.g., by having a construction firm submit a report to document slope instability). Most residential property owners with existing shoreline stabilization are likely already using qualified professionals to develop site assessments and alternatives

analyses and are unlikely to incur costs as a result of the proposed rule. To the extent that a residential shoreline property owner's use of a qualified professional results specifically from the proposed rule, this analysis identifies the costs associated with having a qualified professional complete this report.

The cost of employing a qualified professional to complete the site assessment and alternatives analysis ranges from \$3,000 to \$10,000.¹⁰ This range of costs represents estimates from industry representative interviews and email communications. This range of costs is relevant to multiple project types (new armoring structure project, rehabilitation or replacement shoreline stabilization project), proposed armoring types (e.g., hard armoring, hybrid armoring, soft-shore armoring), number of considered alternatives, and residential property shoreline length. This is because the base level of geotechnical analysis and reporting is unchanged across these metrics. For the same reasons, costs are also similar whether a residential applicant is applying for a general HPA, emergency, or expedited permit.¹¹ The range of costs is also unlikely to differ between residential property owners who operate their property as a business and property owners who simply reside within their property.

¹⁰ Before RCW 77.55.231 was codified, permit applicants for residential rehabilitation and replacement bank protection projects in select areas spent as low as \$1,000 to provide proof of slope instability to necessitate the proposed work. However, since RCW 77.55.231 changed the reporting requirements for these applicants, we assume that the costs to prepare these deliverables are, on average, no lower than \$3,000.

¹¹ Personal and email communication with representatives of firms providing shoreline stabilization-related services conducted in July 2022.

2.3 ASSESSMENT OF MINOR COST: Given data limitations, the minor cost threshold for businesses potentially incurring costs due to the proposed rule (i.e., located on a residential, marine-facing parcel, having existing shoreline stabilization that requires replacement, and not already required to engage a qualified professional to develop a site assessment and alternatives analysis due to local ordinances) is assumed to be \$100. Because the minor cost threshold is the greater of \$100 or 0.3 percent of average annual revenues, this assumption is more likely to understate than overstate the minor cost threshold for these businesses.¹² As noted above, the cost of engaging a qualified professional to develop the requisite report could range, on average, from \$3,000 to \$10,000. As described previously, it is unlikely that businesses will experience new costs as a result of this rule. To the extent that a business will incur costs as a result of the proposed rule, those costs are likely to be more than minor.

¹² For businesses whose true minor cost threshold is greater than \$100, this analysis would identify that the minor cost threshold has been exceeded at cost point that is lower than the true minor cost threshold. For businesses whose true minor costs are lower than \$100, \$100 is the appropriate minor cost threshold to use.

2.4 DISPROPORTIONATE ECONOMIC IMPACT ANALYSIS: When proposed rule changes cause more-than-minor costs to small businesses, RFA (RCW 19.85.040) requires an analysis that compares the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules to determine whether the costs are considered disproportionate. As described in section 2.1, over 99 percent of the businesses operating within the counties with marine shorelines in the relevant NAICS code categories are small, and the analysis assumes that most home-based businesses are also small. As such, this analysis finds that, to the extent that businesses will incur costs associated with the rule, the proposed rule is likely to disproportionately impact small businesses. Accordingly, this SBEIS identifies and documents cost mitigation strategies.¹³

¹³ RFA provides several options for comparing costs, including: (a) Cost per employee; (b) cost per hour of labor; (c) cost per \$100 of sales (RCW 19.85.040(1)). In the absence of sufficient data to calculate disproportionate impacts, an agency whose rule imposes more-than-minor costs must mitigate the costs to small businesses, where legal and feasible, as defined in this chapter (RCW 19.85.030(4)).

2.5 COST MITIGATION STRATEGIES: RCW 19.85.030 requires that, when a rule is expected to disproportionately impact small businesses, the agency consider several methods for reducing the impact of the rule on small businesses. These methods may include decisions that were made in determining the provisions of the rule itself or opportunities to reduce the costs of implementing the rule as written. WDFW has considered the following opportunities to limit the costs of the rule to businesses.

WDFW acknowledges that the pool of qualified professionals who possess the skills to prepare site assessments and alternatives analysis reports is limited. WDFW has partnered with sea grant and the shore friendly program to develop the *Alternatives to Bulkheads* training series. The series is geared toward shoreline planners, consultants, and marine contractors. It is WDFW's hope that training more practitioners will increase industry capacity and minimize costs by reducing the potential for project delays and/or increased costs that may result from high demand and low supply of qualified professionals. The first two units of the series were launched through the coastal training program in the spring of 2022.

WDFW has chosen to apply new rule requirements only to residential shoreline stabilization replacement, mirroring the legislative changes in SSB 5273. However, the ecological impacts of replacing shoreline stabilization are accrued for all such projects, including commercial and industrial properties, and not just residential projects. Commercial and industrial shorelines are much more likely to have small business landowners than residential sites. By not expanding the rule to include commercial and industrial shorelines at this time, WDFW is taking the potential effects on small businesses into consideration.

RCW 19.85.030(2) specifies particular options that the agency must consider in mitigating rule costs. Exhibit 2 identifies each type of cost mitigation opportunity and how WDFW has considered them during this rule-making process.

EXHIBIT 2. WDFW ASSESSMENT OF COST MITIGATION OPPORTUNITIES OUTLINED IN RCW 19.85.030

RCW 19.85.030(2) REQUIREMENTS	WDFW RESPONSE
(a) Reducing, modifying, or eliminating substantive regulatory requirements	WDFW considered reducing, modifying, or eliminating substantive regulatory requirements in the proposal. The resulting requirements are limited to those necessary to align chapter 220-660 WAC with SSB 1382 (chapter 279, Laws of 2021) and clarify the intent of WAC.
(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements	The proposed rule does not create any new recordkeeping or reporting requirements.
(c) Reducing the frequency of inspections	The proposed rule does not generate any new inspection requirements.
(d) Delaying compliance timetables	The new requirement of the proposed rule is intended to reduce regulatory uncertainty for the regulated community. Thus, delaying compliance timetables in this case may have the effect of increasing the time it takes for HPA approvals if applicants produce site assessments and reports that require additional work and iteration in order to comply with the existing requirements of RCW 77.55.231.
(e) Reducing or modifying fine schedules for noncompliance	The proposed rule does not introduce fines for noncompliance.
(f) Any other mitigation techniques, including those suggested by small businesses or small business advocates.	WDFW has been and will continue working with the regulated community to identify and implement actions to lessen impacts.

2.6 INVOLVEMENT OF SMALL BUSINESSES IN RULE-MAKING PROCESS: The proposed rule targets shoreline stabilization activities on residential properties and does not directly regulate a specific industry or group of businesses. While residential property owners may be businesses, this is generally not the case. In order to ensure due consideration of potential effects on small businesses, WDFW is taking a broad approach to outreach, communicating the objectives of the rule making and capturing input from diverse stakeholders. This provided opportunities for potentially affected small businesses to be involved in the rule-making process. The outreach activities and events as of September 1, 2022, are summarized in Exhibit 3.

EXHIBIT 3. WDFW OUTREACH ACTIVITIES FOR PROPOSED RULE

DATE	PERSON(S)	ACTIVITY
12/16/2021	Hydraulic code implementation advisory group (HCIAG)	Presentation and discussion on implementation of SSB 5273
1/27/2022	Consultant and contractor businesses; sea grant shoreline and coastal planners listserv	Information regarding implementation of SSB 5273
3/10/2022	Sea grant shoreline local government working group	Presentation and discussion on SSB 5273 and rule making
5/12/2022	Sea grant shoreline local government working group	Further discussion on rule making to implement SSB 5273
5/24/2022	Tribes	Email notification of rule-making initiation and overview
6/22/2022	Stakeholders and agencies; sea grant shoreline and coastal planners listserv	Email notification regarding publication of CR-101
8/3/2022	Tribes	Rule proposal distributed for review
8/4/2022	Fish and wildlife commission habitat committee	Introduction to rule making in response to SSB 5273
8/12/2022	Tribes	Webinar to review the rule proposal and take comments
8/18/2022	Selected stakeholders	Rule proposal distributed for preliminary review
<p>Note: Information was not available to directly identify businesses operating on residential properties along marine shorelines that may be affected by the proposed rule. Instead, WDFW focused outreach on entities that communicate and provide assistance directly to residential shoreline property owners with respect to the hydraulic code, some of whom would presumably be the small businesses potentially affected by the proposed rule.</p>		

2.7 JOBS CREATED OR LOST: Through the requirement that residential property owners wishing to replace or rehabilitate existing marine shoreline stabilization utilize a qualified professional to develop a site assessment and alternatives analysis, the rule has the potential to impose costs on small businesses operating on residential marine parcels. These costs would only be incremental costs of the proposed rule if the requirement to use a qualified professional to develop a site assessment and alternatives analysis is not already in place through the local government's SMP and would only be incurred in the event that existing shoreline stabilization requires replacement or rehabilitation. As repair and replacement for a given shoreline stabilization project occurs infrequently, these costs are generally anticipated to be incurred one time, or infrequently (rather than being ongoing costs). Although the costs are more-than-minor, they are relatively low and would occur only infrequently, and it is thus unlikely that the costs incurred would result in job loss.

A requirement that a qualified professional be used to develop a site assessment and alternatives analysis may result in an increased demand for those services. Several individuals interviewed identified

that a relatively limited pool of qualified individuals exists to perform these services in the region. To the extent that increased demand for these services results in qualified professional firms hiring additional staff, creation of jobs could be considered an indirect effect of the rule. However, whether this would occur, and the number of businesses or jobs affected, is uncertain.

2.8 SUMMARY CONCLUSIONS: This rule making applies specifically to residential shoreline property owners who need to replace existing shoreline stabilization. The rule making requires this population, which may include small businesses, to employ a qualified professional in developing site assessments and alternatives analyses. It is unlikely that this rule will generate costs, and if it does, the costs to small businesses are likely to be very limited for the following reasons:

- Residential shoreline property owners include, but are not limited to, businesses. However, it is likely that businesses that do own residential shoreline properties are small.
- Shoreline property owners are required to comply with existing requirements under RCW 77.55.231, including the need to develop a compliant site assessment and alternatives analysis. The new rule making does not generate requirements for new reports.
- Many existing SMPs for counties and municipalities require the use of a qualified professional to develop these reports. In these cases, the new rule making does not impose any new requirements.
- While some property owners may attempt to accomplish the analysis and reporting requirements without the use of a qualified professional, outreach and interviews conducted in the context of this SBEIS identify that most of the time, property owners recognize a need to rely upon the expertise of a qualified professional, even absent the requirement being written into regulation.
- The rule making may reduce the costs of HPA permits for the subset of residential property owner that would attempt to comply with reporting requirements without the use of a qualified professional absent this rule making. This is because not using a qualified professional may result in noncompliant reports and analyses that result in comments from WDFW and require reanalysis and revision. Use of a qualified professional reduces the risk of submitting noncompliant reports the first time.

Available data do not allow for a specific identification of the number of small businesses operating on marine shoreline residential properties that may experience costs as a result of the rule, or the extent to which those businesses are small. Employment data for businesses potentially operating on residential parcels within the affected counties suggest 99 percent of these businesses are small. It is unlikely that residential property owners, including small businesses, will incur costs as a result of this rule. However, to the extent that businesses do incur these costs, the costs would be borne disproportionately by small businesses, and are likely to be more-than-minor.

A copy of the statement may be obtained by contacting Theresa Nation, 1111 Washington Street S.E. Olympia, WA 98501, phone 360-902-2562, fax 360-902-2946 Attn: Theresa Nation, email HPArules@dfw.wa.gov. Please refer to the full SBEIS document with appendices found at <https://wdfw.wa.gov/about/regulations/development/shoreline-stabilization-hpa-rule>.

September 20, 2022

OTS-4064.2

AMENDATORY SECTION (Amending WSR 20-11-019, filed 5/12/20, effective 6/12/20)

WAC 220-660-370 ((Bank protection)) Shoreline stabilization in saltwater areas. Appropriate methods to assess the need for marine ((bank protection)) shoreline stabilization and, if needed, to design marine ((bank protection)) shoreline stabilization are available in the department's *Marine Shoreline Design Guidelines*, as well as other published manuals and guidelines.

(1) **Description:** A broad spectrum of ((bank protection)) shoreline stabilization techniques can be applied to protect property. These range from ((natural)) passive techniques that require minimal or no engineering ((to)), engineered soft shore protection ((to)), and hard ((shore)) shoreline armor. ((Natural)) Passive techniques include planting native vegetation, improving drainage, and relocating ((structures. Natural)) buildings, roads, and improvements (e.g., wells, utilities, septic fields, and the like). Passive techniques typically preserve the natural condition of the shore and have few to no negative impacts on fish life. Soft shore techniques ((include)) such as log placement, beach nourishment, resloping the bank, and re-vegetation can provide erosion protection using strategically placed natural materials while allowing beach processes and fish habitat to remain intact. Conventional hard techniques include bulkheads, sea-walls, revetments and ((retaining walls)) related structures, which are designed to preclude shoreline migration and bank erosion. Each type of approach has varying degrees of impact. In general, ((natural)) passive techniques result in the fewest impacts to fish life and hard ((armor)) techniques have the most impacts.

(2) **Fish life concerns:** Conventional hard techniques as well as some soft shore techniques can physically alter the beach and disrupt beach processes. This alteration can cause a loss of the beach spawning habitat for Pacific sand lance and surf smelt. These forage fish species are a primary food source for some adult salmon species. This alteration can also reduce beach complexity, the presence of marine riparian vegetation including overhanging vegetation alongshore that produces terrestrial insects that are eaten by juvenile salmon. To protect fish life, the department protects both beaches where saltwater habitats of special concern occur and the beach processes that form and maintain this habitat.

(3) ((Bank protection)) **Alternative selection:**

(a) To ensure the protection of fish life, a person must use the least impacting technically feasible shoreline stabilization alternative. For the purpose of this section, "feasible" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. A person should propose a hard armor technique only after considering site characteristics such as the threat to major improvements, wave energy, and other factors in an alternatives analysis.

(b) Common alternatives for both new shoreline stabilization and the replacement or rehabilitation of shoreline stabilization that extends waterward of an existing shoreline stabilization structure are, from most preferred to least preferred:

(i) Remove any existing shoreline stabilization structure and restore the beach;

(ii) Control upland drainage;

(iii) Protect, enhance, and replace native vegetation;

(iv) Relocate buildings and improvements;

(v) Construct a soft structure;

(vi) Construct upland retaining walls;

(vii) Construct a hard structure landward of the ordinary high water line; and

(viii) Construct a hard structure at the ordinary high water line.

(c) Common alternatives for replacement or rehabilitation of residential shoreline stabilization are, from most preferred to least preferred:

(i) Remove the existing shoreline stabilization structure and restore the beach;

(ii) Remove the existing shoreline stabilization structure and install native vegetation;

(iii) Remove the existing shoreline stabilization structure and control upland drainage;

(iv) Remove the existing shoreline stabilization structure and replace it with a soft structure constructed of natural materials, including bioengineering;

(v) Remove the existing hard structure and construct upland retaining walls;

(vi) Remove the existing hard structure and replace it landward with another hard structure, preferably at or above the ordinary high water line; or

(vii) Remove the existing hard structure and replace it in the same footprint with another hard structure.

(d) Except as provided in (f) of this subsection, HPA applications for the following types of projects must include a site assessment, alternatives analysis and design rationale for the proposed method(s) prepared by a qualified professional (Qualified Professional's Report):

(i) New shoreline stabilization;

(ii) Replacement or rehabilitation of shoreline stabilization that extends waterward of an existing shoreline stabilization structure; and

(iii) Replacement or rehabilitation of residential shoreline stabilization.

(e) The applicant must submit the Qualified Professional's Report to the department as part of a complete application for an HPA that includes:

(i) An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;

(ii) Evidence of erosion and/or slope instability to warrant the stabilization work;

(iii) Alternatives considered and the technical rationale specific to the shoreline stabilization technique proposed;

(iv) An analysis of the benefits and impacts associated with the chosen protection method; and

(v) An explanation of the method chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.

(f) The department may grant an exemption to the Qualified Professional's Report required under (d) and (e) of this subsection based on the scale and nature of the project for the following:

(i) Projects for the removal of an existing shoreline stabilization structure and restoration of the beach.

(ii) Projects employing passive techniques such as controlling upland drainage or planting native vegetation.

(iii) Other projects as assessed by the department.

(g) Emergency or expedited applications submitted under RCW 77.55.021 (12), (14), or (16) that do not include a site assessment and alternatives analysis report should identify the work necessary to address the immediate situation authorized under RCW 77.55.021. A site assessment and alternatives analysis report must be submitted within 90 days from the permit issuance unless the department issues an exemption. After consideration of the assessment and analysis report, if the department determines that shoreline stabilization work conducted under the emergency or expedited permit is not the least impactful technically feasible alternative, the applicant may be required to replace the structure with one that is the least impactful technically feasible alternative.

(4) Shoreline stabilization design:

(a) If the ordinary high water line (OHWL) has changed since an existing hard ((bank protection)) shoreline stabilization structure was built, and OHWL reestablishes landward of the structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If an HPA application is submitted for repairs within three years of the breach, the ((bank protection structure may be repaired or replaced in the original footprint)) prior OHWL may be considered for permitting purposes.

(b) ((A person must use the least impacting technically feasible bank protection alternative. A person should propose a hard armor technique only after considering site characteristics such as the threat to major improvements, wave energy, and other factors in an alternatives analysis. The common alternatives below are in order from most preferred to least preferred:

(i) Remove the bank protection structure;

(ii) Control upland drainage;

(iii) Protect, enhance, and replace native vegetation;

(iv) Relocate improvements or structures;

(v) Construct a soft structure;

(vi) Construct upland retaining walls;

(vii) Construct hard structure landward of the OHWL; and

(viii) Construct hard structure at the OHWL.

(e)) The construction of all ((bank protection)) shoreline stabilization must not result in a permanent loss of surf smelt or Pacific sand lance spawning beds.

((d) An HPA application for new bank protection, or the replacement or rehabilitation of bank protection that extends waterward of an existing bank protection structure must include a site assessment, alternatives analysis and design rationale for the proposed method prepared by a qualified professional. The department may grant an exemption depending on the scale and nature of the project. The applicant must submit the qualified professional's report to the department as part of a complete application for an HPA that includes:

- ~~(i) An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;~~
- ~~(ii) Evidence of erosion and/or slope instability to warrant the stabilization work;~~
- ~~(iii) Alternatives considered and the technical rationale specific to the bank protection technique proposed;~~
- ~~(iv) An analysis of the benefits and impacts associated with the chosen protection method; and~~
- ~~(v) An explanation of the method chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.~~

~~(e))~~ (c) The department may require the design of hard ((bank protection)) shoreline stabilization structures to incorporate beach nourishment, large woody material or native vegetation as mitigation.

~~((4) Bank protection))~~ **(5) Shoreline stabilization location:**

(a) Locate the waterward face of a new hard ((bank protection)) shoreline stabilization structure at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the hard ((bank protection)) structure may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no greater than six feet. Soft shoreline methods that allow beach processes and habitat to remain intact may extend waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired hard ((bank protection)) shoreline stabilization further waterward than the structure it is replacing. Where removing the existing hard ((bank protection)) structure will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement ((bank protection)) shoreline stabilization to extend waterward of, but directly abutting, the existing structure. In these instances, a person must use the least-impacting type of structure and construction method.

~~((5) Bank protection))~~ **(6) Shoreline stabilization construction:**

(a) The department requires that plans submitted as part of a complete application show the horizontal distances of the structure(s) from permanent local benchmark(s) (fixed objects). Each horizontal distance shown must include the length and compass bearing from the benchmark to the waterward face of the structure(s). The benchmark(s) must be located, marked, and protected to serve as a post-project reference for at least ~~((ten))~~ 10 years from the date the HPA application is submitted to the department.

(b) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(c) No stockpiling of excavated materials containing silt, clay, or fine-grained soil is approved waterward of the OHWL.

(d) The department may allow stockpiling of sand, gravel, and other coarse material waterward of the OHWL. Place this material within the designated work corridor. Remove all excavated or stockpiled material from the beach within ~~((seventy-two))~~ 72 hours of construction.

(e) Backfill all trenches, depressions, or holes created during construction that are waterward of the OHWL before they are filled by tidal waters.

[Statutory Authority: RCW 77.04.012, 77.12.047, 77.55.021, 34.05.328, and 2019 c 290. WSR 20-11-019 (Order 20-75), § 220-660-370, filed

5/12/20, effective 6/12/20. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.12.047. WSR 15-02-029 (Order 14-353), § 220-660-370, filed 12/30/14, effective 7/1/15.]

WSR 22-19-085

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed September 20, 2022, 2:58 p.m.]

Supplemental Notice to WSR 22-11-090.

Preproposal statement of inquiry was filed as WSR 21-22-033.

Title of Rule and Other Identifying Information: WAC 458-20-285
Working families tax credit.

Hearing Location(s): On October 25, 2022, at 2:00 p.m. This meeting will be conducted over the internet/telephone. Contact Sierra Crumbaker at SierraC@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: November 14, 2022.

Submit Written Comments to: Chelsea Brenegan, P.O. Box 47453, Olympia, WA 98504-7453, email ChelseaB@dor.wa.gov, fax 360-534-1606, 360-534-1530, by October 28, 2022.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department intends to create a rule to clarify eligibility requirements and program administration standards, including application submission procedures for the working families tax credit (WFTC). The rule is to explain the statutory requirements for eligibility and to explain department processes for application, how the refund is to be calculated, and how the program will be administered. Since the previous CR-102 filing, the department has removed the photo ID requirement from the proposed rule and has updated the rule language to provide additional technical clarification.

Reasons Supporting Proposal: WFTC is a new program by the department and this rule will assist eligible low-income persons to better understand whether they qualify and their responsibilities under the 2021 and 2022 legislation. In response to the comments received as a result of the public hearing in June, additional revisions were made to the proposed rule to reflect these comments and the considerations proposed.

Statutory Authority for Adoption: RCW 82.08.0206, 84.32.300.

Statute Being Implemented: RCW 82.08.0206.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Chelsea Brenegan, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1530; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule language for WAC 458-20-285 provides clarification regarding WFTC and how eligible low-income persons may apply to receive a WFTC refund in accordance with RCW 82.06.0206. WFTC program is aimed at individuals rather than businesses, so the proposed rule does not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

September 20, 2022
Atif Aziz
Rules Coordinator

OTS-3829.3NEW SECTION

WAC 458-20-285 Working families tax credit. This rule provides information on the working families tax credit (WFTC). The WFTC is a credit in the form of a refund of retail sales and use tax provided to eligible low-income persons (referred to as "refund" in this rule). Starting February 1, 2023, applicants may apply to the department to receive a refund of sales or use tax paid during the period for which they are claiming the refund. The refund amount is based upon the applicant's income (including the applicant spouse's income, if the applicant is filing married filing jointly on their federal income tax return) and the number of qualifying children the applicant (and the applicant's spouse, if applicable) have.

To qualify for a refund, applicants must meet the eligibility requirements provided in RCW 82.08.0206 and complete a WFTC application in the form and manner provided by the department.

This rule is organized into four parts. Each part addresses a question or topic relevant to the application for and administration of the WFTC program as follows:

1. Part 1: Eligibility Requirements
2. Part 2: Application Process
3. Part 3: Refund Amount
4. Part 4: General Administration and Review

Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances.

References in this rule to "I," "my," "you," "your," "we," or "our" are intended to refer to the individual applying for the WFTC (i.e., the applicant).

Part 1: Eligibility Requirements

(1) **Am I eligible to receive a WFTC refund?** To be eligible for a refund under the WFTC, you must be an "eligible low-income person." An "eligible low-income person" is an "individual" who meets all of the requirements in (a) through (e) of this subsection. An "individual" means any natural person who files a federal income tax return under the single, head of household, qualifying widow/widower, or married filing separately (but only if they meet the "unmarried" requirements per answer 1A of this rule) filing statuses. The term "individual" **also** means an individual natural person and that individual's spouse if they file a federal joint income tax return with the married filing jointly status. Accordingly, if you file a federal income tax return with your spouse under the married filing jointly filing status, you and your spouse are each considered to be a single "individual" for the purposes of WFTC eligibility with the exception of determining residency.

(a) **Valid SSN or ITIN:** You (and your spouse if you are filing married filing jointly on your federal income tax return) must have a valid Social Security number (SSN) or individual taxpayer identification number (ITIN);

(b) **Properly file a federal income tax return:** You (and your spouse if you are filing married filing jointly) must properly file a federal income tax return for the tax year for which the refund is being claimed;

(c) **EITC eligible:** You must generally be eligible for the federal Earned Income Tax Credit (EITC), including meeting the federal income thresholds; however, the one exception is that you, your spouse (if you are filing married filing jointly on your federal income tax return), and/or your qualifying children may have a valid ITIN instead of a SSN, which is not permitted under federal EITC eligibility requirements;

(d) **Residency:** The primary applicant on the WFTC application (which may be either you or your spouse, if you are filing married filing jointly on your federal income tax return) must be a resident of Washington for at least 183 days during the tax year for which the refund is being claimed; and

(e) **Sales or use tax paid:** You (and/or your spouse if you are filing married filing jointly on your federal income tax return) paid Washington sales or use tax on taxable purchases you made during the tax year for which the refund is being claimed.

Question 1A: What if I am still married to my spouse, but we are separated, and I file a separate federal income tax return. Am I still eligible for the WFTC?

Answer 1A: Yes, you are eligible if certain conditions are met. If you are still married to your spouse, but you do not file a federal income tax return under the married filing jointly status and you are considered "unmarried" per Internal Revenue Code section 32(d), then you may still be eligible for the federal EITC, and this in turn would make you an individual eligible for a WFTC refund.

If you are filing "married filing separately" on your federal income tax return, then the department will require you to provide additional information to confirm your "unmarried" status. "Unmarried," as used in Internal Revenue Code section 32(d) requires the following:

(a) You are married, but you did not file a federal income tax return under the married filing jointly status.

(b) You lived with your qualifying child for more than half of the year. You may demonstrate this by providing:

(i) School records that match your place of residence;

(ii) Rental application or lease with child/children listed;

(iii) Landlord statement regarding child/children;

(iv) Public benefits verification letters or statements;

(v) Community-based organization letters of recommendation, or vouchers; or

(vi) Any other records that establish that your qualifying child lived with you for more than half of the year.

(c) You must be able to show either:

(i) You did not have the same principal place of abode as your spouse during the last six months of the tax year; or

(ii) You have a decree, instrument, or agreement (other than a divorce decree) described in IRC 121(d)(3)(C) (e.g., a written separation agreement, alimony, or spousal maintenance decree, etc.) with your spouse concerning marital separation and you and your spouse are not members of the same household by the end of the tax year.

Question 1B: I am still legally married and I meet the "unmarried" requirements in Answer 1A. If my spouse is not eligible for a WFTC refund, does that disqualify me from receiving the WFTC refund?

Answer 1B: No. If you are filing a separate federal income tax return from your spouse, you will not be disqualified from receiving the WFTC refund solely because your spouse does not meet the WFTC requirements as you are considered to be a separate individual from your spouse in this situation. If you are filing your federal income tax return under the married filing separately status, the department will require additional documentation to establish your "unmarried" status as indicated in Answer 1A.

The following subsections (2) through (6) of this rule describe these eligibility requirements in subsection (1)(a) through (e) of this rule.

(2) **Valid SSN or ITIN** - To be eligible for the WFTC, you must have a valid Social Security number (SSN) or a valid individual taxpayer identification number (ITIN).

Question 2A: What is a valid SSN?

Answer 2A: An SSN is a number issued by the Social Security Administration to identify and record an individual's wages or self-employment earnings. Your SSN must be valid for employment and issued before the due date of the federal income tax return you plan to claim the federal EITC (including extensions). A Social Security number on a Social Security card that provides, "Valid for work with DHS authorization," will be accepted as a valid SSN.

However, if your Social Security card has the words, "Not valid for employment," your SSN is not valid.

Question 2B: What is a valid ITIN?

Answer 2B: An ITIN is a tax processing number issued by the Internal Revenue Service (IRS). A valid ITIN for WFTC eligibility purposes is one that is not expired or revoked.

An ITIN must be applied for and renewed periodically pursuant to federal requirements. If you, your spouse, or any of your qualifying children do not have a valid ITIN and are waiting for an ITIN or an ITIN renewal from the IRS, you must notify the department that you have applied for and are waiting to receive an ITIN or an ITIN renewal from the IRS when you submit your WFTC application. If the department does not receive documentation confirming that you, your spouse, or your qualifying children have received a valid ITIN by or before the December 31st application deadline, then your application may be denied. The department will consider a new or renewed ITIN to be valid as of its issuance date, even if notification of issuance is received after the December 31st application deadline. A valid ITIN must have an issuance date prior to the December 31st application deadline. For new ITINs, the IRS back-dates the issuance date of the ITIN to the date the Form W-7 application was received by the IRS. For renewed ITINs, the IRS back-dates the issuance date of the ITIN to the original issuance date of that ITIN. The department will use the IRS issuance date for processing the WFTC application, but the department will not complete processing of the WFTC application until the ITIN application has been fully processed and is either issued or renewed by the IRS. If your ITIN status is pending, you must still provide your complete WFTC application to the department before the December 31st application deadline.

(3) **Properly file a federal income tax return** - To be eligible for the WFTC, you (and your spouse, if filing married filing jointly

on your federal income tax return) must properly file a federal income tax return for the tax year for which you are claiming the refund.

Question 3A: What does it mean to "properly file" a federal income tax return?

Answer 3A: The federal income tax return you and your spouse (if you are filing married filing jointly on your federal income tax return) file must fulfill the statutory and regulatory requirements for the federal government to process your return. For example, if you wish to claim the WFTC refund for the 2022 tax period, you must properly file your 2022 federal tax return and include all information required on the return for the federal government to be able to process it.

Question 3B: Do I have to claim the EITC to be eligible for the WFTC refund?

Answer 3B: No. You are not required to claim or to actually receive the federal EITC to be eligible to receive the WFTC refund. So long as you and your spouse (if you are filing married filing jointly on your federal income tax return) and your qualifying children have valid SSNs or ITINs, and otherwise meet all other requirements to be eligible for the federal EITC, you may be eligible to receive the WFTC refund.

(4) **Federal Earned Income Tax Credit eligible** - To be eligible for the WFTC, you must first be eligible for the federal Earned Income Tax Credit (EITC), except for the requirement to have a valid SSN. This includes meeting the federal income thresholds for your federal adjusted gross income (AGI). If your AGI is at or above the federal income threshold, you are not eligible for the EITC. The department will calculate the WFTC refund based on the earned income you reported on your properly filed federal income tax return. For more information on how the WFTC refund is determined, see Part 3 of this rule.

Question 4A: What does earned income mean?

Answer 4A: "Earned income" means earned income as defined by the Internal Revenue Code (IRC or Title 26 U.S.C.) section 32. RCW 82.08.0206 (2) (b).

Question 4B: Is "combat pay" considered earned income for purposes of the WFTC refund?

Answer 4B: IRC section 32 allows those who have combat pay to elect whether to include their combat pay as earned income for the purposes of calculating their federal EITC amount. Regardless of whether you elect to include your combat pay as earned income for federal purposes, you can make a separate election of whether to include your combat pay as earned income for WFTC refund calculation purposes.

Question 4C: What are the federal income thresholds?

Answer 4C: The federal income thresholds are income limits the federal government applies to determine eligibility for the EITC. The federal income thresholds for the federal EITC generally change on an annual basis. These thresholds vary depending on your filing status and how many qualifying children you have. Eligibility for the federal EITC is based on your adjusted gross income (AGI). If your AGI is equal to or more than the federal income threshold, then you are not eligible for the federal EITC and, as such, you are not eligible for the WFTC. The department will use the federal income thresholds applicable for the tax period for which the refund is being claimed. For more information about these federal income thresholds, please see Part 3 of this rule.

Question 4D: Not all members of my family have a valid SSN, but I am otherwise eligible for the federal EITC. Am I still eligible for the WFTC?

Answer 4D: Yes, unlike the federal EITC, the WFTC does not require that all claimed individuals must have a valid SSN to be eligible. To be eligible for the WFTC, you, your spouse (if you are married and filing married filing jointly on your federal income tax return), and your qualifying children (if applicable), may have either a valid SSN or a valid ITIN.

Question 4E: Are there any other federal EITC requirements that could potentially disqualify me from receiving the WFTC?

Answer 4E: Yes. To be eligible for the federal EITC, you cannot file Form 2555, Foreign Earned Income and your investment income (income you receive from interest, dividends, capital gains, royalties, rental income, or other passive activities) cannot exceed \$10,300 (based on 2022 figures, indexed by the federal government for inflation in later years). Additionally, nonresident aliens are ineligible to receive the federal EITC, even if they have a valid SSN. If you are not eligible to receive the federal EITC for these reasons, then you are not eligible to receive the WFTC.

Question 4F: What if I am prohibited from claiming the federal EITC? Can I still qualify to receive the WFTC refund?

Answer 4F: If the federal government has prohibited you from claiming the EITC due to reckless or intentional disregard or due to fraud and you are currently within the disallowance period during which you are not allowed to claim the federal EITC, then you are not eligible to receive the WFTC refund.

(5) **Residency** - To be eligible for the WFTC, you must be a resident of Washington. The term resident means that you were physically present and resided in Washington for at least 183 days during the year for which you are claiming the refund.

Question 5A: What does it mean to be "physically present" and "reside" in Washington?

Answer 5A: To be "physically present" means that you are in or located within the state of Washington. To "reside" in Washington means that you have your home or residence in the state. Individuals who commute to Washington (e.g., for work) do not "reside" in Washington.

Example 1:

Facts: Doug lives in an apartment in Tacoma, Washington. Doug is located in Washington for 300 days during calendar year 2022. Doug is placed on a job assignment in Utah for the remaining 65 days of the same year.

Conclusion: Doug was "physically present" and "resided" in Washington for at least 183 days in 2022. Doug meets the definition of a resident of Washington for the 2022 calendar year and would be eligible for a WFTC refund during the year if all other statutory requirements are met.

Example 2:

Facts: Sally lives in Oregon but works in Washington. Sally drives to her work in Washington every morning and drives back to her home in Oregon every evening. She does this for 300 days during the 2022 calendar year.

Conclusion: While Sally might be "physically present" in Washington for at least 183 days, she did not "reside" in Washington as she resided in Oregon and simply commuted to Washington. Sally does not

meet the definition of a resident of Washington for the 2022 calendar year and, accordingly, would not be eligible for a WFTC refund.

Question 5B: What if I am in Washington for at least 183 days for work or for school without commuting back to my state of residence, do I meet the WFTC residency requirement?

Answer 5B: Yes. An individual who is physically present in Washington for at least 183 days and does not commute back to their state of residence will generally be considered to "reside" in Washington and is a Washington resident for WFTC residency purposes.

Question 5C: What if I work or attend school out-of-state and was not physically present in Washington for at least 183 days, can I still qualify if I consider Washington to be my home?

Answer 5C: No. Even if you consider Washington to be your home and your state of residence, you must still be physically present in Washington for at least 183 days to meet the WFTC residency requirement.

Question 5D: What if my spouse is not a Washington resident but I am and we file under the married filing jointly status on our federal income tax return, are we eligible for the WFTC refund?

Answer 5D: Yes. If you and your spouse are filing married filing jointly on your federal income tax return and your spouse does not meet the definition of a Washington resident, you may both still qualify to receive a joint refund so long as the primary applicant on the WFTC application meets the definition of a Washington resident.

Question 5E: What if I am experiencing homelessness, can I still qualify for the WFTC refund?

Answer 5E: Yes. The term "reside" does not require that an individual have a physical dwelling in Washington, just that Washington is the place they reside for at least 183 days. Individuals or their families who are experiencing homelessness may demonstrate that they "reside" in Washington by providing proof of their residency via a letter from a community-based organization, shelter, public benefits caseworker, or from any other organizations or programs that interact with the individual or their families that states the following:

- (a) They know and can identify the individual;
- (b) The individual has resided in a particular area in Washington (which the organization or shelter will describe); and
- (c) The individual has resided in this area at least 183 days during the period for which the credit is being claimed. If an individual or their families are experiencing homelessness and move frequently as a result, the letter may state that the individual has resided within a general geographic area or areas (i.e., town, city, county, etc.) within the state of Washington for at least 183 days during the period for which the refund is being claimed.

Question 5F: What if I am not a United States citizen or what if I am in the United States on a visa, can I still qualify as a Washington resident for WFTC purposes?

Answer 5F: Yes, if you can demonstrate you resided in Washington and were physically present in Washington for at least 183 days during the year for which you are claiming the credit. Generally, an individual's citizenship or visa status is not considered for WFTC residency purposes.

Question 5G: What if the department has questions and needs additional documentation?

Answer 5G: If you are asked to confirm your status as a Washington resident, you must provide the department with documentation which demonstrates that you were physically present and resided in Washing-

ton for at least 183 days during the year for which you are claiming the refund.

(a) Documents that may help you to demonstrate you are a Washington resident include, but are not limited to, the following:

- (i) Washington driver's license;
- (ii) Washington ID card;
- (iii) Utility bills;
- (iv) Landlord statements;
- (v) Rental agreement or lease;
- (vi) Mortgage statements;
- (vii) Public benefits verification letters from state or federal agencies or case worker statements;
- (viii) Community-based organization letters or statements; or
- (ix) School records.

(b) If you are unable to provide documentation that demonstrates your Washington resident status, you will need to contact the department to determine if there are other methods by which you can demonstrate you meet the residency requirement, which the department may allow at its discretion.

(6) **Sales or use tax paid** - The department will generally presume that if you and/or your spouse (if you are filing married filing jointly on your federal income tax return) lived in the state of Washington for at least 183 days, that you paid Washington sales or use tax on the taxable purchases you made during that period. You will need to attest to this fact on the WFTC application under penalty of perjury.

Part 2: Application Process

(7) **How do I file a WFTC application with the department?** To receive a refund, you must file an application with the department. The department will accept either a paper or electronic application. The department will begin accepting WFTC applications on February 1st of each year or, if the 1st falls on a Saturday, Sunday, or legal holiday, the next business day. RCW 1.12.070(3).

The WFTC application, along with the required attachments, must be received by the department no later than December 31st in the calendar year following the tax year for which you file your federal income tax return. If December 31st falls on a Saturday or Sunday, then the application will be due the next business day. For example, if you are requesting a WFTC refund based on your 2022 tax year information, the WFTC application, along with all required attachments, are due on or before January 2, 2024. This is because December 31, 2023 falls on a Sunday and January 1, 2024 is a holiday, so the WFTC application deadline would fall on the next business day which is January 2, 2024. RCW 1.16.050.

(a) If you are submitting your application electronically: To be considered timely, your WFTC application, along with all required attachments, must be received by the department on or before December 31st.

(b) If you are submitting your application by mail: To be considered timely, your WFTC application, along with all required attachments, must be sent by the United States mail and postmarked on or before the December 31st deadline.

(c) For information on how to file an application, refer to the department's website.

(8) **What additional items do I need to include for the department to process my WFTC application?** In addition to the WFTC application, you must also attach a copy of your filed federal income tax return to

your WFTC application. The attached copy of your federal income tax return must be complete, meaning that it must include all applicable schedules filed with the federal government for the period for which you are claiming the WFTC refund. For example, if you are claiming a WFTC refund for the 2022 tax year, you must submit a full and complete copy of your 2022 federal income tax return that you filed with the federal government.

Question 8A: What happens if I do not provide my complete federal income tax return with my WFTC application?

Answer 8A: Your application will not be considered "complete" and the department will not be able to process your WFTC refund.

Question 8B: What does it mean to have a "complete" WFTC application?

Answer 8B: To process your WFTC refund, you must provide a "complete" WFTC application to the department on or before the filing deadline, which includes the following items:

(a) A filled-out and signed WFTC application (your spouse must also sign the WFTC application if you are filing married filing jointly on your federal income tax return); and

(b) A copy of your complete federal income tax return that was filed with the federal government.

(9) **What if I did not file my WFTC application by December 31st, is it too late to file?** If you do not apply to receive the refund before the December 31st deadline, then you cannot apply for it later. For example, if you wish to request a WFTC refund based on your 2022 tax year information, the department will not accept WFTC applications that were filed or postmarked after January 2, 2024 (December 31, 2023 falls on a Sunday and January 1, 2024 is a holiday, so the deadline would fall on the next business day which is January 2, 2024).

However, the department, for good cause, may extend the due date for filing your WFTC application.

Part 3: Refund amount

(10) **How much of a refund can I receive?** WFTC refunds will be paid to individuals who file a timely completed application and who meet the eligibility requirements. The refund amount you can receive is based on your income, your spouse's income (if you are filing married filing jointly on your federal income tax return), and how many qualifying children you have.

Question 10A: What is the maximum refund amount that I can receive?

Answer 10A: The maximum refund amount depends on how many qualifying children you have, but only your first three qualifying children are considered for payment purposes.

(a) If you have no qualifying children, your maximum refund amount is \$300;

(b) If you have one qualifying child, your maximum refund amount is \$600;

(c) If you have two qualifying children, your maximum refund amount is \$900; and

(d) If you have three or more qualifying children, your maximum refund amount is \$1,200.

The maximum refund amount will be reduced in cases where your income is greater than what is referred to in this rule as the "reduced federal income threshold." See answer 10D for more information on this reduction.

Question 10B: What is the minimum refund amount that I can receive?

Answer 10B: So long as you meet all eligibility requirements and you are entitled to receive one cent or more under the WFTC, you will receive a minimum refund of \$50. RCW 82.08.0206 (3)(c).

Question 10C: What information does the department use to calculate my WFTC refund?

Answer 10C: The department calculates your WFTC refund based on your properly filed federal income tax return for the period for which you are claiming the refund.

Question 10D: What is the reduced federal income threshold and how does it affect my WFTC refund amount?

Answer 10D: To be eligible for the WFTC refund, you must generally be eligible for the federal EITC, including satisfying the federal income thresholds for that program; however, in determining the amount of the WFTC refund, the department must first calculate the reduced federal income threshold. The department determines the reduced federal income thresholds as provided in RCW 82.08.0206 (3)(b). If your income exceeds the reduced federal income threshold, but is still below the federal income thresholds, your maximum refund will be decreased, but not below \$50, as follows (the below figures reflect the 2022 tax year adjustments to the original statutory amounts):

(a) If you have no qualifying children, then the department will reduce the federal income threshold by \$2,500 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund received by \$0.12 (i.e., the WFTC remittance reduction).

(b) If you have one qualifying child, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.12.

(c) If you have two qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.18.

(d) If you have three or more qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.24.

The department will adjust the WFTC refund reduction amounts on an annual basis beginning in 2023 to align the WFTC program with the federal EITC program.

Question 10E: How does the department calculate my WFTC refund?

Answer 10E: Below is an example of how the WFTC refund is calculated based on the federal income threshold amounts for the 2022 tax year.

Table A
For Those Filing as Single, Head of Household, Widowed, or Married Filing Separately*

Number of Qualifying Children	Federal Income Thresholds	Federal Income Threshold Reduction Amount	Reduced Federal Income Threshold
0	\$16,480	\$2,500	\$13,980
1	\$43,492	\$5,000	\$38,492

Number of Qualifying Children	Federal Income Thresholds	Federal Income Threshold Reduction Amount	Reduced Federal Income Threshold
2	\$49,399	\$5,000	\$44,399
3 or more	\$53,057	\$5,000	\$48,057

*Those filing married filing separately must meet the "unmarried" requirement to qualify.

Table B
For Those Filing as Married Filing Jointly

Number of Qualifying Children	Federal Income Thresholds	Federal Income Threshold Reduction Amount	Reduced Federal Income Threshold
0	\$22,610	\$2,500	\$20,100
1	\$49,622	\$5,000	\$44,622
2	\$55,529	\$5,000	\$50,529
3 or more	\$59,187	\$5,000	\$54,187

Example 3:

Facts: John and Mary are married and filed their 2022 federal income tax return as married filing jointly. John and Mary have one qualifying child. On their federal income tax return, John and Mary's combined earned income was \$44,700 and they meet all of the requirements in subsection (1) (a) through (e) of this rule to qualify for the WFTC refund.

Conclusion: The applicable federal income threshold for a couple that is married filing jointly with one qualifying child is \$49,622. See Table B. This amount must be reduced by \$5,000 (the federal income threshold reduction amount), which results in a reduced federal income threshold amount of \$44,622. See Table B. John and Mary's earned income for WFTC purposes is \$78 higher than the reduced federal income threshold (\$44,700 - \$44,622 = \$78). The department must reduce the couple's maximum refund by \$0.12 for every dollar above the \$44,622 reduced federal income threshold (or 12 percent for each dollar).

Because they have one qualifying child, the maximum refund amount that John and Mary could receive is \$600. Because their earned income is \$78 above the reduced federal income threshold, their refund will be reduced by \$9.36 (\$78 x \$0.12 = \$9.36). John and Mary's WFTC refund amount is \$590.64.

Question 10F: What is a "qualifying child" for WFTC purposes?

Answer 10F: To be eligible under the WFTC, a "qualifying child" must meet the federal tax requirements under Internal Revenue Code section 32. The only exception to this is that children who do not meet the valid SSN requirements for federal EITC purposes will still be considered "qualifying children" for WFTC purposes so long as they have a valid ITIN and meet all other federal requirements.

Question 10G: How do I determine whether a person is a "qualifying child"?

Answer 10G: A qualifying child must meet the following requirements per IRC section 32:

- (a) The child must be:
 - (i) Your child or grandchild; or
 - (ii) Your brother, sister, stepbrother, stepsister, or any descendant of such relative;
- (b) The child must have shared the same principal place of abode with you in the United States for more than one-half of the tax year;
- (c) The child has not filed a joint tax return with their spouse;

(d) The child must be younger than you (and your spouse, if you are filing married filing jointly on your federal income tax return) and:

(i) Is not yet 19 years old at the end of the year for which you are claiming the refund; or

(ii) Is a student no older than 24 years old at the end of the year for which you are claiming the refund; or

(iii) Permanently and totally disabled during the tax year, regardless of age.

Question 10H: For circumstances where several people could potentially claim the same qualifying child, how does the department decide who can claim the qualifying child for WFTC purposes?

Answer 10H: If there is a question of who may claim the child, the department will determine who can claim based on the following hierarchy of rules:

(a) If only one person is the child's legal parent ("parent"): The parent may claim the child;

(b) If both parents file a joint tax return with each other: They may claim the child;

(c) If both parents claim the child on separate tax returns: The parent with whom the child lived with the longest during the year may claim the child;

(d) If the child lived with each parent for the same amount of time: The parent with the higher adjusted gross income (AGI) for the year may claim the child;

(e) If neither parent can claim the child: The person who had the highest AGI for the year may claim the child; and

(f) If a parent can claim the child but does not: The person who had the highest AGI for the year may claim the child, but only if that person's AGI is greater than the AGI of any of the child's parents who can claim the child.

Example 4:

Facts: Tina and her five year old son, Anthony, live with Tina's parents (Anthony's grandparents), Jordan and Alex. Both Tina and Jordan and Alex provide more than half of their own support and cannot be claimed as dependents by anyone else. Tina's federal AGI is \$16,000 while Jordan and Alex's federal AGI is \$15,000. Tina and Jordan and Alex otherwise qualify for the federal EITC and fulfill all other WFTC eligibility requirements. Anthony meets the requirements of a qualifying child with respect to Tina, and Jordan and Alex and no one else is able to claim Anthony as a qualifying child.

Conclusion: In this situation, there is a question of whether Tina or Jordan and Alex may claim Anthony as a qualifying child for WFTC purposes. In applying the rules above, Tina would be the one eligible to claim Anthony as a qualifying child for WFTC purposes for 2022 as she is Anthony's legal parent and her federal AGI is greater than Jordan and Alex's.

Example 5:

Facts: Lucas is 25 years old and lives in the same home with his mother, Betty, and his eight-year-old niece, Tabatha, for all of 2022. Tabatha's parents do not live in the same principal place of abode as Lucas, Betty, and Tabatha. Both Lucas and Betty provide more than half of their own support and cannot be claimed as dependents by anyone else. In completing their 2022 federal income tax returns, Lucas's federal AGI is \$15,000 and Betty's federal AGI is \$9,300. Tabatha's parents file married filing jointly on their federal income tax return and their federal AGI is \$9,000. Lucas and his mother otherwise quali-

fy for the federal EITC and fulfill all other WFTC eligibility requirements. There are no other persons who would be able to claim Tabatha as a qualifying child.

Conclusion: Lucas is eligible to claim the WFTC with his niece as his qualifying child. Tabatha's parents are not eligible to claim Tabatha as a qualifying child as she did not share the same principal place of abode with them for at least 183 days during 2022. Lucas and Betty both otherwise meet the relationship, age, residency, and joint return requirements to treat Tabatha as a qualifying child, but because Lucas's federal AGI is higher, he would be able to claim Tabatha as a qualifying child for WFTC purposes.

Question 10I: What if I am the noncustodial parent of my child? Can I still receive the WFTC refund if my spouse does not claim our child?

Answer 10I: You may still qualify to receive the WFTC if you meet the requirements for an individual without children, but you cannot claim the child as a qualifying child on your WFTC application. A custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent. While it may be possible for you to claim the child as your qualifying child for other federal tax benefits, the child must still live with you for more than half the year to be considered a qualifying child for federal EITC purposes. As you are the noncustodial parent, and therefore the child did not live with you for the required period of time during the year, you cannot claim this child for federal EITC purposes and, as such, you cannot claim this child for WFTC purposes.

Question 10J: What if my qualifying child lives with my spouse outside of Washington? If I am a Washington resident, can I claim my qualifying child for WFTC purposes?

Answer 10J: Yes, but only if you and your spouse are filing married filing jointly on your federal income tax return and you or your spouse are considered to be a Washington resident for the year for which you are claiming the refund. The child claimed must also meet all WFTC requirements for a qualifying child. The department may request additional information from you and your spouse to confirm that these requirements have been met.

Question 10K: Will the WFTC refunds be adjusted for inflation?

Answer 10K: Yes, the refund amounts will be adjusted for inflation each year beginning January 1, 2024, based on changes to the consumer price index that are published by November 15th of the previous year for the most recent 12-month period. "Consumer price index" means, for any 12-month period, the average consumer price index for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor Statistics, United States Department of Labor. RCW 82.08.0206 (3)(d) and (e).

Refund amounts that are adjusted due to inflation must be rounded to the nearest \$5.

(11) **What if I made a mistake?** If you realize that you have made a mistake on your WFTC application, then you must correct the mistake by updating or amending your WFTC application.

Question 11A: When do I need to amend my WFTC application?

Answer 11A: You must amend your WFTC application when you realize the information submitted on your application is not accurate. This allows the department to make sure that it has accurate records and that it can process your refund without additional delay. If you have

questions about amending your application, please contact the department for additional information.

Question 11B: What if the Internal Revenue Service (IRS) makes changes to my federal income tax return? Do I need to amend my WFTC application?

Answer 11B: Yes, if the IRS makes changes to your federal income tax return, then the amount of refund that you are eligible to receive may be different than what the department provided to you. Accordingly, you will need to amend your WFTC application. If the department finds that the IRS has made changes to the federal income tax return that would increase or decrease the amount of the WFTC refund you are entitled to receive, then the department may make changes to your WFTC refund amount. This may mean that you will be required to pay back some of the refund that you received. If you know that the IRS has made changes to your federal tax return, you should alert the department of these changes as soon as possible by amending your WFTC application.

Question 11C: How long do I have to amend my WFTC application?

Answer 11C: If you timely filed your WFTC application, along with all required attachments, you may amend your application at any point within the statutory nonclaim period provided in RCW 82.32.060. The statutory nonclaim period is four years beginning with the calendar year for which the refund is being claimed. For example, if an applicant wishes to amend their 2022 WFTC application, they may do so at any point during the indicated years below:

Year 1	Year 2	Year 3	Year 4	Year 5
2022 - Sales/use tax paid	2023 - Applicant files 2022 WFTC application			2026 - Final year to submit amended application
<div style="border: 1px solid black; width: 100%; height: 15px; margin-bottom: 5px;"></div> Period you may amend your WFTC application				

Question 11D: If I should have received a larger WFTC refund than I got, can I still receive the additional amount?

Answer 11D: Yes, if you notify the department that you should have been paid a larger refund than you received, or if the department finds that you should have been paid a larger refund than you received, then the department will pay the additional amount; however, the department may only do so if it discovers or is notified of the error before the end of the four-year statutory nonclaim period. The department encourages you to submit an amended application as soon as possible to avoid being time barred. Interest is not paid on any additional WFTC amounts that you are entitled to receive. See RCW 82.08.0206(10).

Part 4: General Administration and Review

(12) **How is the WFTC program administered?** The department is responsible for administering the WFTC program. The department administers the application process described in Part 2 of this rule, by providing refunds to applicants who meet the eligibility requirements in Part 1 of this rule. As part of this administration, the department has the authority to review all WFTC applications and determine the amount the applicant is legally entitled to receive. If the department determines that a refund was overpaid, it may issue an assessment within four years after the close of the calendar year for which the WFTC refund is being claimed. For example, if you file your 2022 WFTC

application on December 1, 2023, the department has until the end of 2026 to issue an assessment for the overpaid refund amount. If the department finds that you have received less than you were legally entitled to receive, then the department must adjust your WFTC refund amount and pay you the additional refund owed to you.

(13) **What if I disagree with the department's decision?** If you disagree with the department's decision concerning your WFTC refund amount or assessment of WFTC overpayment, you may seek administrative review of that decision. To have this decision reviewed, you must seek an informal review under WAC 458-20-100. Additional information and details regarding the process in WAC 458-20-100 is available on the department's website at <https://dor.wa.gov/file-pay-taxes/reviews-and-appeals>.

Question 13A: For what types of issues may I seek informal review?

Answer 13A: You may seek administrative review of the following actions taken by the department regarding the WFTC:

(a) You received an assessment for overpayment of the WFTC refund amounts;

(b) The department denied all or part of your request for a WFTC refund;

(c) You received a letter ruling from the department.

You may find additional details regarding letter rulings on the department's website here.

Question 13B: How do I request an informal review?

Answer 13B: All informal review requests must be submitted in writing to the department within 30 days of the date the department issues a decision on one of the actions listed under Answer 13A. Information about how to seek review, including filing your petition, is available on the department's website.

Question 13C: What is the informal review process?

Answer 13C: WFTC reviews are subject to small claims review as described in WAC 458-20-100 as the amount at issue is below \$25,000. This process provides petitioners with a simplified review that includes an abbreviated written determination, which becomes the final action of the department. If you do not want your case heard as a small claims review, you may request a longer mainstream review with the department. Once the petition for informal review is received, the department will acknowledge receipt with a letter. You will have the opportunity to provide additional records and explain your position in an informal hearing. After the department has reviewed your claim, a tax review officer assigned to your case will issue a final agency determination. A determination concerning the review of an assessment or refund denial may be appealed to the board of tax appeals. A determination concerning the review of a letter ruling is not subject to further appeal beyond the department.

(14) **What if I owe money to the department?** If you receive a WFTC refund amount that is larger than you were entitled to receive, the department may issue an assessment for the overpaid amount.

Question 14A: Do the WFTC overpayments accrue interest?

Answer 14A: Yes. However, interest will not begin to accrue on the amount assessed for the first six months from the date the department issued the assessment. After this initial six-month period, interest will accrue on the amount due and owing at the rates specified under RCW 82.32.050 until the total amount due has been paid in full.

Question 14B: Can the department assess penalties on WFTC overpayments?

Answer 14B: Yes. If overpayment due is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess applicable penalties under RCW 82.32.090; however, these penalties are not due until six months after the date the assessment has been issued. The department will take appropriate steps to work with you to establish a payment plan or other means to resolve the liability.

If the department finds, by clear, cogent, and convincing evidence, that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent WFTC claim for refund, the department must assess a penalty of 50 percent of the overpaid amount in addition to any other applicable penalties.

Below is an example of how interest and penalties may be assessed if you received a larger WFTC refund than you were entitled to receive and are required to pay the overpayment back. This example is to only demonstrate when interest and penalties may be first assessed and is not reflective of all potential assessment situations or circumstances:

January 1st	WFTC overpayment amount is assessed and issued. The issued notice requires full payment of the WFTC overpayment amount that is due and owing on or before June 30th.
January 1st through June 30th	Six-month period in which no penalties are assessed and interest does not accrue.
June 30th	Due date of WFTC overpayment amount per notice issued January 1st.
July 1st	If the WFTC overpayment amount is not fully paid, the department assesses a 15 percent penalty on the WFTC overpayment amount that is still due and owing. Interest begins to accrue on the WFTC overpayment amount that is still due and owing.
July 15th	If the WFTC overpayment amount is not fully paid, the department may issue a warrant for any WFTC overpayment amount that is still due and owing. If a warrant is issued, the department will also assess an additional 10 percent warrant penalty to the WFTC overpayment amount that is still due and owing. Interest continues to accrue until the WFTC overpayment amount is fully paid.
July 31st	If the WFTC overpayment amount is not fully paid, the department may assess an additional 10 percent penalty on the WFTC overpayment amount that is still due and owing for a total of 25 percent penalty (excluding warrant penalty if warrant is issued). Interest continues to accrue until the WFTC overpayment amount is fully paid.

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WSR 22-19-092

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed September 21, 2022, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-065.

Title of Rule and Other Identifying Information: WAC 182-501-0300 Telemedicine and store and forward technology, 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative, 182-531-1730 Telemedicine, 182-538-195 Telemedicine and store and forward technology, 182-551-2010 Definitions, 182-551-2040 Face-to-face encounter requirements, 182-551-2210 Provider requirements, 182-551-2125 Home health services delivered using telemedicine, and 182-537-0200 Definitions.

Hearing Location(s): On October 25, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (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 https://us02web.zoom.us/webinar/register/WN__qei9CXvT4yA1EjxXzF7lw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 26, 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 October 25, 2022.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-1349, telecommunications relay service 711, email Johanna.Larson@hca.wa.gov, by October 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is developing and revising rules to provide for telemedicine and store and forward technology, in alignment with ESHB 1196. New WAC 182-501-0300 would replace WAC 182-531-1730 and provide more details regarding the authorized use of telemedicine and store and forward technology, including allowing audio-only telemedicine. WAC 182-501-0300 also sets out the agency's requirements for telemedicine and store and forward technology.

Although the agency planned to revise WAC 182-531A-1200 as part of this rule making, this revision will be done as part of a separate rule making, filed under WSR 22-19-087.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1196.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Josh Morse, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-0839.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

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 on small businesses.

September 21, 2022

Wendy Barcus

Rules Coordinator

OTS-3973.2

NEW SECTION

WAC 182-501-0300 Telemedicine and store and forward technology.

(1) Purpose and scope.

(a) This section identifies the requirements and limitations for coverage, authorization, and payment of health care services provided through telemedicine or store and forward technologies as defined in subsection (2) of this section.

(b) This section applies to health care services, including behavioral health services, provided to clients enrolled in:

(i) An agency-contracted managed care organization (MCO) and fee-for-service programs; and

(ii) Other agency-contracted programs, including grant-funded health care services and health care services administered by behavioral health administrative services organizations (BH-ASOs).

(2) **Definitions.** The following definitions and those found in RCW 71.24.335, 74.09.325, and chapter 182-500 WAC apply to this section.

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the client at the originating site and the provider, for the purposes of diagnosis, consultation, or treatment.

(b) "Distant site" means the same as in RCW 71.24.335 or 74.09.325.

(c) "Established relationship" means the same as in RCW 71.24.335 or 74.09.325.

(d) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW.

(e) "In person" means the client and the provider are in the same location.

(f) "Originating site" means the same as in RCW 71.24.335 or 74.09.325.

(g) "Store and forward technology" see RCW 71.24.335 or 74.09.325.

(h) "Telemedicine" means the delivery of health care services using interactive audio and video technology, permitting real-time communication between the client at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine includes audio-only telemedicine, but does not include the following services:

- (i) Email and facsimile transmissions;
- (ii) Installation or maintenance of any telecommunication devices or systems;
- (iii) Purchase, rental, or repair of telemedicine equipment; and
- (iv) Incidental services or communications that are not billed separately, such as communicating laboratory results.

(3) Requirements and authorized use of telemedicine and store and forward technology.

(a) **Governing authority.** The medicaid agency determines the health care services that may be paid for when provided through telemedicine or store and forward technology as authorized by state law, including RCW 71.24.335, 74.09.325, and 74.09.327.

(b) **Coverage, authorization, and payment.** Health care services approved for delivery through telemedicine or store and forward technology must comply with the agency's program rules. The program rules include coverage, authorization, and payment by the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization).

(c) **Billing requirements.** Providers must bill for health care services as required by the program rules and provider guides of the agency or the agency's designee, including a contracted managed care entity.

(d) Criteria for health care services.

(i) The agency determines the health care services that may be provided through telemedicine or store and forward technology based on whether the health care service is:

- (A) A covered service when provided in person by the provider;
- (B) Medically necessary;
- (C) Determined to be safely and effectively provided through telemedicine or store and forward technology based on generally accepted health care practices and standards; and
- (D) Provided through a technology that meets the standards required by state and federal laws governing the privacy and security of protected health information.

(ii) For health care services provided by audio-only telemedicine, the provider and client must have an established relationship.

(iii) For behavioral health services authorized for delivery through store and forward technology, there must be an associated visit between the referring provider and the client.

(4) Health care services authorized for telemedicine and store and forward technology.

(a) Health care services that are authorized to be provided through telemedicine or store and forward technology are identified in the agency's provider guides and fee schedules.

(b) For covered health care services approved for delivery through telemedicine or store and forward technology, the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization (MCO) or behavioral health administrative services organization (BH-ASO)), may require:

- (i) Utilization review;

(ii) Prior authorization; and

(iii) Deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable in-person health care service.

(5) Payment of health care services delivered through telemedicine or store and forward technology.

(a) The agency's designee, including an agency-contracted managed care entity (managed care organization (MCO) or behavioral health administrative services organization (BH-ASO)), pays providers for health care services delivered through telemedicine or store and forward technology in the same amount as when the health care services are provided in person, except as provided in these rules, RCW 71.24.335, and 74.09.325.

(b) The agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) pays for encounter-eligible health care services authorized for delivery through telemedicine at the encounter rate when provided by:

(i) Rural health clinics;

(ii) Federally qualified health centers; or

(iii) Direct Indian health service clinics, tribal clinics, or tribal federally qualified health centers.

(6) Client consent.

(a) To receive payment for an audio-only telemedicine service, a provider must obtain client consent before delivering the service to the client.

(b) The client's consent to receive services must:

(i) Acknowledge the provider will bill the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) for the service; and

(ii) Be documented in the client's medical record.

(c) A provider may only bill a client for services if they comply with the requirements in WAC 182-502-0160.

(7) Originating site and distant site.

(a) Originating sites and distant sites must be located within the 50 United States, the District of Columbia, or United States territories.

(b) Originating sites may be paid facility fee for infrastructure and client preparation except as noted in (c) of this subsection.

(c) Originating sites facility fees are not paid when the:

(i) Service is provided by audio-only telemedicine;

(ii) Service is store and forward;

(iii) Originating site is:

(A) The client's home;

(B) A hospital, for inpatient services;

(C) A hospital or a hospital provider-based clinic that is an originating site for audio-only telemedicine;

(D) A skilled nursing facility;

(E) Any other location receiving payment for the client's room and board;

(F) Unable to qualify as a provider as defined in WAC 182-500-0085; or

(G) A provider employed by or affiliated with the same entity as the distant site.

(d) A facility fee payment may be subject to a negotiated agreement between the originating site and the managed care organization or the behavioral health administrative services organization.

(e) A distant site may not charge or be paid a facility fee for infrastructure and client preparation.

(8) **Recordkeeping.**

(a) Providers who furnish a health care service through telemedicine or store and forward technology must comply with the recordkeeping requirements in WAC 182-502-0020.

(b) Providers using telemedicine or store and forward technology must document in the client's medical record the:

(i) Technology used to deliver the health care service by telemedicine or store and forward technology (audio, visual, or other means) and any assistive technologies used;

(ii) Client's location for telemedicine only. This information is not required when a provider uses store and forward technology;

(iii) People attending the appointment with the client (e.g., family, friends, or caregivers) during the delivery of the health care service;

(iv) Provider's location;

(v) Names and credentials (MD, ARNP, RN, PA, CNA, LMHP, etc.) of all originating and distant site providers involved in the delivery of the health care service;

(vi) Start and end time or duration of service when billing is based on time;

(vii) Client's consent for the telemedicine technology used to deliver the health care service. In extenuating circumstances when consent cannot be obtained, the provider must document the reason.

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OTS-3974.1

AMENDATORY SECTION (Amending WSR 19-22-017, filed 10/25/19, effective 11/25/19)

WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative. (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's Washington apple health program. Refer to WAC 182-501-0060 and 182-501-0065; and

(b) Medically necessary as defined in WAC 182-500-0070.

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);

- (b) Allergen immunotherapy services;
- (c) Anesthesia services;
- (d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);
- (e) Emergency physician services;
- (f) ENT (ear, nose, and throat) related services;
- (g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);
- (h) Habilitative services (refer to WAC 182-545-400);
- (i) Reproductive health services (refer to chapter 182-532 WAC);
- (j) Hospital inpatient services (refer to chapter 182-550 WAC);
- (k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);
- (l) Office visits;
- (m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients (~~(twenty)~~) 20 years of age and younger);
- (n) Osteopathic treatment services;
- (o) Pathology and laboratory services;
- (p) Psychiatry and other rehabilitation services (refer to chapter 182-550 WAC);
- (q) Foot care and podiatry services (refer to WAC 182-531-1300);
- (r) Primary care services;
- (s) Psychiatric services;
- (t) Psychotherapy services (refer to WAC 182-531-1400);
- (u) Pulmonary and respiratory services;
- (v) Radiology services;
- (w) Surgical services;
- (x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects (e.g., congenital or as a result of illness or physical trauma), or for mastectomy reconstruction for post cancer treatment;
- (y) Telemedicine (refer to WAC (~~(182-531-1730)~~) 182-501-0300);
- (z) Tobacco/nicotine cessation counseling (refer to WAC 182-531-1720);
- (aa) Vaccines for adults, adolescents, and children in the United States administered according to the current advisory committee on immunization practices (ACIP) recommended immunization schedule published by the Centers for Disease Control and Prevention (CDC). Vaccines outside the regular schedule may be covered if determined to be medically necessary;
- (bb) Other outpatient physician services.

(5) The agency covers physical examinations for Washington apple health clients only when the physical examination is for one or more of the following:

- (a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);
- (b) An annual exam for clients of the division of developmental disabilities; or
- (c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for Washington apple health, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and provider notices.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-22-017, § 182-531-0100, filed 10/25/19, effective 11/25/19; WSR 18-21-058, §

182-531-0100, filed 10/9/18, effective 11/9/18; WSR 15-03-041, § 182-531-0100, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 41.05.021. WSR 13-18-035, § 182-531-0100, filed 8/28/13, effective 9/28/13. Statutory Authority: RCW 41.05.021 and 42 C.F.R. 455.410. WSR 13-04-095, § 182-531-0100, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 41.05.021 and section 1927 of the Social Security Act. WSR 12-18-062, § 182-531-0100, filed 8/31/12, effective 10/1/12. WSR 11-14-075, recodified as § 182-531-0100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 11-14-055, § 388-531-0100, filed 6/29/11, effective 7/30/11. Statutory Authority: RCW 74.09.521. WSR 08-12-030, § 388-531-0100, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-531-0100, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-0100, filed 12/6/00, effective 1/6/01.]

OTS-3983.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-531-1730 Telemedicine.

OTS-3984.1

AMENDATORY SECTION (Amending WSR 20-14-062, filed 6/26/20, effective 7/27/20)

WAC 182-537-0200 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Agency" - See WAC 182-500-0010.

"Assessment" - For the purposes of this chapter, an assessment is made-up of medically necessary tests given to an individual child by a licensed health care provider to evaluate whether a child with a disability is in need of early intervention services or special education and related services. Assessments are a part of the individualized education program (IEP) and individualized family service plan (IFSP) evaluation and reevaluation processes.

"Charter school" - A public school governed by a charter school board and operated according to the terms of the charter school contract. Charter schools are open to all students, do not charge tuition, and do not have special entrance requirements.

"Child with a disability" - For purposes of this chapter, a child with a disability is a child evaluated and determined to need early intervention services or special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;
- Deaf-blindness;
- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;
- Hearing loss (including deafness);
- Intellectual disability;
- Multiple disabilities;
- Orthopedic impairment;
- Other health impairment;
- Serious emotional disturbance (emotional behavioral disturbance);
- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; and
- Visual impairment (including blindness).

"Core provider agreement" - See WAC 182-500-0020.

"Early intervention services" - Means developmental services provided to children ages birth through two. For the purposes of this chapter, early intervention services include:

- Audiology services;
- Health services;
- Nursing services;
- Occupational therapy;
- Physical therapy;
- Psychological services; and
- Speech-language pathology.

"Educational service district" - A regional agency which provides cooperative and informal services to local school districts within defined regions of the state.

"Electronic signature" - See WAC 182-500-0030.

"Evaluation" - Procedures used to determine whether a child has a disability, and the nature and extent of the early intervention or special education and related services needed. (See WAC 392-172A-01070 and 34 C.F.R. Sec. 303.321.)

"Fee-for-service" - See WAC 182-500-0035.

"Handwritten signature" - A scripted name or legal mark of an individual on a document to signify knowledge, approval, acceptance, or responsibility of the document.

"Health care-related services" - For the purposes of this chapter, means developmental, corrective, and other supportive services required to assist a student ages three through twenty eligible for special education and include:

- Audiology;
- Counseling;
- School health services and school nurse services;
- Occupational therapy;
- Physical therapy;
- Psychological assessments and services; and
- Speech-language therapy.

"Individualized education program (IEP)" - A written educational program for a child who is age three through twenty-one and eligible for special education. An IEP is developed, reviewed and revised according to WAC 392-172A-03090 through 392-172A-03115.

"Individualized family service plan (IFSP)" - A plan for providing early intervention services to a child birth through age two, with a disability or developmental delay and the child's family. The IFSP:

- Is based on the evaluation and assessment described in 34 C.F.R. Sec. 303.321;
- Includes the content specified in 34 C.F.R. Sec. 303.344; and
- Is developed under the IFSP procedures in 34 C.F.R. Secs. 303.342, 303.343, and 303.345.

"Medically necessary" - See WAC 182-500-0070.

"National provider identifier (NPI)" - See WAC 182-500-0075.

"Reevaluation" - Procedures used to determine whether a child continues to need early intervention services or special education and related services. (See WAC 392-172A-03015 and 34 C.F.R. Secs. 303.342 and 303.343.)

"Related services" - See WAC 392-172A-01155.

"School-based health care services contract" - A contract that describes and defines the relationship between the agency, the school-based health care services program, and the school district, ESD, charter, or tribal school.

"School-based health care services program" or "SBHS" - Is an agency-administered program that pays contracted school districts, educational service districts (ESDs), charter schools, and tribal schools for providing early intervention services or special education health-related services to children ages birth through twenty who have an IEP or IFSP.

"School district" - A group of schools administered by a particular authority within defined geographical division.

"Signature log" - A typed list that verifies a licensed provider's identity by associating each provider's signature with their name, handwritten initials, credentials, license and national provider identifier (NPI).

"Special education" - See WAC 392-172A-01175.

"Supervision" - Means supervision provided by a licensed health care provider either directly or indirectly to assist the supervisee in the administration of early intervention or health care-related services outlined in the IEP or IFSP.

"Telemedicine" - See WAC (~~182-531-1730~~) 182-501-0300.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-14-062, § 182-537-0200, filed 6/26/20, effective 7/27/20; WSR 19-04-095, § 182-537-0200, filed 2/5/19, effective 3/8/19; WSR 16-07-141, § 182-537-0200, filed 3/23/16, effective 4/23/16. Statutory Authority: RCW 41.05.021, 34 C.F.R. 300.154(d), and chapter 182-502 WAC. WSR 13-21-079, § 182-537-0200, filed 10/17/13, effective 11/17/13. Statutory Authority: RCW 41.05.021. WSR 13-05-017, § 182-537-0200, filed 2/7/13, effective 3/10/13. WSR 11-14-075, recodified as § 182-537-0200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, and 42 C.F.R. 440.110. WSR 09-07-004, § 388-537-0200, filed 3/4/09, effective 4/4/09.]

OTS-3976.1

NEW SECTION

WAC 182-538-195 Telemedicine and store and forward technology.

The medicaid agency's rules related to the authorized use of telemedi-

cine and store and forward technology are found in WAC 182-501-0300 and are applicable to the benefits (including behavioral health services) administered by agency-contracted managed care entities (managed care organizations and behavioral health administrative service organizations) and fee-for-service programs.

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OTS-3977.1

AMENDATORY SECTION (Amending WSR 22-05-048, filed 2/9/22, effective 3/12/22)

WAC 182-551-2010 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to subchapter II:

"Acute care" means care provided by a home health agency for clients who are not medically stable or have not attained a satisfactory level of rehabilitation. These clients require frequent intervention by a registered nurse or licensed therapist.

"Authorized practitioner" means:

- (a) A physician, nurse practitioner, clinical nurse specialist, or physician assistant who may order and conduct home health services, including face-to-face encounter services; or
- (b) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare who may conduct home health services, including face-to-face encounter services.

"Brief skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs only one of the following activities during a visit to a client:

- (a) An injection;
- (b) Blood draw; or
- (c) Placement of medications in containers.

"Chronic care" means long-term care for medically stable clients.

"Full skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs one or more of the following activities during a visit to a client:

- (a) Observation;
- (b) Assessment;
- (c) Treatment;
- (d) Teaching;
- (e) Training;
- (f) Management; and
- (g) Evaluation.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on an intermittent or part-time basis to a patient in any setting where the patient's normal life activities take place.

"Home health aide" means a person registered or certified as a nursing assistant under chapter 18.88 RCW who, under the direction and

supervision of a registered nurse or licensed therapist, assists in the delivery of nursing or therapy related activities, or both.

"Home health aide services" means services provided by a home health aide only when a client has an acute, intermittent, short-term need for the services of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract with a home health agency. These services are provided under the supervision of the previously identified authorized practitioners and include, but are not limited to, ambulation and exercise, assistance with self-administered medications, reporting changes in a client's condition and needs, and completing appropriate records.

"Home health skilled services" means skilled health care (nursing, specialized therapy, and home health aide) services provided on an intermittent or part-time basis by a medicare-certified home health agency with a current provider number in any setting where the client's normal life activities take place. See also WAC 182-551-2000.

"Long-term care" is a generic term referring to various programs and services, including services provided in home and community settings, administered directly or through contract by the department of social and health services' (DSHS) division of developmental disabilities (DDD) or aging and long-term support administration (AL TSA) through home and community services (HCS).

"Medical social services" are services delivered by a medical social worker that are intended to resolve social or emotional problems that are expected to be an impediment to the effective treatment of the client's medical condition or rate of recovery. Medical social services include assessment of the social and emotional factors related to the client's illness, need for care, response to treatment, and adjustment to care; evaluation of the client's home situation, financial resources, and availability of community resources; assistance in obtaining available community resources and financial resources; and counseling the client and family to address emotional issues related to the illness.

"Medical social worker" has the same meaning given for "social worker" in WAC 246-335-510.

"Plan of care (POC)" (also known as **"plan of treatment (POT)"**) means a written plan of care that is established and periodically reviewed and signed by both an authorized practitioner and a home health agency provider. The plan describes the home health care to be provided in any setting where the client's normal life activities take place. See WAC 182-551-2210.

"Review period" means the three-month period the medicaid agency assigns to a home health agency, based on the address of the agency's main office, during which the medicaid agency reviews all claims submitted by that home health agency.

"Specialized therapy" means skilled therapy services provided to clients that include:

- (a) Physical;
- (b) Occupational; or
- (c) Speech/audiology services.

(See WAC 182-551-2110.)

"Telemedicine" - (~~For the purposes of WAC 182-551-2000 through 182-551-2220, means the use of telemonitoring to enhance the delivery of certain home health skilled nursing services through:~~

~~(a) The collection and transmission of clinical data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may~~

~~be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry; or~~

~~(b) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit)) See WAC 182-501-0300.~~

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-05-048, § 182-551-2010, filed 2/9/22, effective 3/12/22; WSR 21-23-044, § 182-551-2010, filed 11/9/21, effective 12/10/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2010, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-03-035, § 182-551-2010, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2010, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2010, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2010, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2010, filed 8/2/99, effective 9/2/99.]

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

WAC 182-551-2125 Home health services delivered ((through)) using telemedicine. (1) The medicaid agency covers the delivery of home health services through telemedicine for clients who have been diagnosed with an unstable condition who may be at risk for hospitalization or a more costly level of care. The client must have a diagnosis or diagnoses where there is a high risk of sudden change in clinical status which could compromise health outcomes.

(2) The medicaid agency pays for one telemedicine interaction, per eligible client, per day, based on the ordering physician's home health plan of care.

(3) To receive payment for the delivery of home health services through telemedicine, the services must involve:

(a) An assessment, problem identification, and evaluation which includes:

(i) Assessment and monitoring of clinical data including, but not limited to, vital signs, pain levels and other biometric measures specified in the plan of care. Also includes assessment of response to previous changes in the plan of care; and

(ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care; and

(b) Implementation of a management plan through one or more of the following:

(i) Teaching regarding medication management, as appropriate ~~((based on the telemedicine findings for that encounter));~~

(ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;

(iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;

(iv) Coordination of care with the ordering physician regarding ~~((telemedicine))~~ findings;

(v) Coordination and referral to other medical providers as needed; and

(vi) Referral to the emergency room as needed.

(4) The medicaid agency does not require prior authorization for the delivery of home health services through telemedicine.

(5) The medicaid agency does not pay for the purchase, rental, or repair of telemedicine equipment.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2125, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-03-035, § 182-551-2125, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2125, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2125, filed 5/3/10, effective 6/3/10.]

OTS-3982.1

AMENDATORY SECTION (Amending WSR 21-12-051, filed 5/26/21, effective 6/26/21)

WAC 182-551-2040 Face-to-face encounter requirements. (1) The face-to-face encounter requirements of this section may be met using telemedicine (~~or telehealth~~) services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

(3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within (~~ninety~~) 90 days before or within the (~~thirty~~) 30 days after the start of the services.

(4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no more than six months before the start of services.

(5) The face-to-face encounter may be conducted by:

- (a) A physician;
- (b) A nurse practitioner;
- (c) A clinical nurse specialist;

(d) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare;

(e) A physician assistant; or

(f) The attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

(6) Services may be ordered by:

- (a) Physicians;
- (b) Nurse practitioners;
- (c) Clinical nurse specialists; or
- (d) Physician assistants.

(7) For all home health services except medical equipment under WAC 182-551-2122, the physician, nurse practitioner, clinical nurse specialist, or physician assistant responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

(8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, nurse practitioner, clinical nurse specialist, physician assistant, or the attending physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. § 440.70. WSR 21-12-051, § 182-551-2040, filed 5/26/21, effective 6/26/21; WSR 18-24-023, § 182-551-2040, filed 11/27/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 21-23-044, filed 11/9/21, effective 12/10/21)

WAC 182-551-2210 Provider requirements. For any delivered home health service to be payable, the medicaid agency requires home health providers to develop and implement an individualized plan of care (POC) for the client.

(1) The POC must:

(a) Be documented in writing and be located in the client's home health medical record;

(b) Be developed, supervised, and signed by a licensed registered nurse or licensed therapist;

(c) Reflect the authorized practitioner's orders and client's current health status;

(d) Contain specific goals and treatment plans;

(e) Be reviewed and revised by an authorized practitioner at least every 60 calendar days, signed by the authorized practitioner within 45 days of the verbal order, and returned to the home health agency's file; and

(f) Be available to medicaid agency staff or its designated contractor(s) on request.

(2) The provider must include all the following in the POC:

(a) The client's name, date of birth, and address (to include name of residential care facility, if applicable);

(b) The primary diagnosis (the diagnosis that is most related to the reason the client qualifies for home health services) or the diagnosis that is the reason for the visit frequency;

(c) All secondary medical diagnoses, including date or dates of onset or exacerbation;

- (d) The prognosis;
- (e) The type or types of equipment required (~~(, including telemedicine as appropriate)~~);
- (f) A description of each planned service and goals related to the services provided;
- (g) Specific procedures and modalities;
- (h) A description of the client's mental status;
- (i) A description of the client's rehabilitation potential;
- (j) A list of permitted activities;
- (k) A list of safety measures taken on behalf of the client; and
- (l) A list of medications which indicates:
 - (i) Any new prescription; and
 - (ii) Which medications are changed for dosage or route of administration.
- (3) The provider must include in or attach to the POC:
 - (a) A description of the client's functional limits and the effects;
 - (b) Documentation that justifies why the medical services should be provided in any setting where the client's life activities take place instead of an authorized practitioner's office, clinic, or other outpatient setting;
 - (c) Significant clinical findings;
 - (d) Dates of recent hospitalization;
 - (e) Notification to the department of social and health services (DSHS) case manager of admittance;
 - (f) A discharge plan, including notification to the DSHS case manager of the planned discharge date and client disposition at time of discharge; and
 - (g) Order for the delivery of home health services through telemedicine or telemonitoring, as appropriate.
 - (4) The individual client medical record must comply with community standards of practice, and must include documentation of:
 - (a) Visit notes for every billed visit;
 - (b) Supervisory visits for home health aide services as described in WAC 182-551-2120(3);
 - (c) All medications administered and treatments provided;
 - (d) All authorized practitioner's orders, new orders, and change orders, with notation that the order was received before treatment;
 - (e) Signed authorized practitioner's new orders and change orders;
 - (f) Home health aide services as indicated by a registered nurse or licensed therapist in a home health aide care plan;
 - (g) Interdisciplinary and multidisciplinary team communications;
 - (h) Inter-agency and intra-agency referrals;
 - (i) Medical tests and results;
 - (j) Pertinent medical history; and
 - (k) Notations and charting with signature and title of writer.
 - (5) The provider must document at least the following in the client's medical record:
 - (a) Skilled interventions per the POC;
 - (b) Client response to the POC;
 - (c) Any clinical change in client status;
 - (d) Follow-up interventions specific to a change in status with significant clinical findings;
 - (e) Any communications with the attending authorized practitioner; and
 - (f) Telemedicine findings, as appropriate.

(6) The provider must include the following documentation in the client's visit notes when appropriate:

(a) Any teaching, assessment, management, evaluation, client compliance, and client response;

(b) Weekly documentation of wound care, size (dimensions), drainage, color, odor, and identification of potential complications and interventions provided;

(c) If a client's wound is not healing, the client's authorized practitioner has been notified, the client's wound management program has been appropriately altered and, if possible, the client has been referred to a wound care specialist; and

(d) The client's physical system assessment as identified in the POC.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-23-044, § 182-551-2210, filed 11/9/21, effective 12/10/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2210, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-03-035, § 182-551-2210, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2210, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2210, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2210, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2210, filed 8/2/99, effective 9/2/99.]

WSR 22-19-093
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 21, 2022, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-19-117.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-464-0001 Am I required to cooperate with quality assurance?

Hearing Location(s): On October 25, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than October 26, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by October 25, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov, by October 11, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments proposed under this filing will more accurately align rule language with federal regulations related to quality control for the supplemental nutrition assistance program, specifically clarifying which programs these quality control requirements apply to.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 275.12.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Burgess, P.O. Box 45470, Olympia, WA 98504-5470, 360-584-5162.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii), which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

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

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

September 19, 2022

Katherine I. Vasquez
Rules Coordinator

SHS-4912.1

AMENDATORY SECTION (Amending WSR 11-14-084, filed 7/1/11, effective 8/1/11)

WAC 388-464-0001 Am I required to cooperate with quality ((assurance)) control? (1) To be eligible for ~~((temporary assistance for needy families (TANF), state family assistance (SFA), or food assistance through))~~ basic food assistance, transitional food assistance (TFA), or the Washington combined application project (WASHCAP), ~~((the following persons))~~ all household members must cooperate in the quality ~~((assurance (QA)))~~ control (QC) review process ~~((÷~~

~~(a) All adult recipients or payees in a TANF or SFA assistance unit (AU); or~~

~~(b) All household members in a Basic Food, TFA or WASHCAP AU).~~

(2) If someone who must cooperate under subsection (1) of this section refuses to cooperate, your ~~((AU))~~ assistance unit (AU) is ineligible for benefits from the date ~~((QA))~~ QC has determined that you are refusing to cooperate until the person meets ~~((QA))~~ QC requirements ~~or((÷~~

~~(a) For TANF/SFA clients, one hundred twenty days from the end of the annual QA review period; or~~

~~(b) For Basic Food, TFA, or WASHCAP members, the penalty period is one hundred twenty-five))~~ 125 days from the end of the annual ~~((QA))~~ QC review period.

(3) If a person leaves a basic food AU that is currently disqualified for refusing to cooperate in the ~~((QA))~~ QC review process, the penalty for refusal to cooperate follows that person and continues for the AU that includes the person(s) who refused to cooperate. If we cannot determine which person refused to cooperate, the penalty continues for the AU that includes the head of household at the time ~~((QA))~~ QC found your AU refused to cooperate.

(4) The ~~((QA))~~ QC review period covers the federal fiscal year, which runs from October 1st of one calendar year through September 30th of the following calendar year.

(5) People applying for ~~((TANF, SFA, or))~~ basic food after the penalty period in subsection (2) of this section has ended must provide verification of all eligibility requirements. However, if your AU is eligible for expedited service under WAC 388-406-0015, you only need to provide expedited service required verifications.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090 and 7 C.F.R. § 273.2 (d) (2). WSR 11-14-084, § 388-464-0001, filed 7/1/11, effective 8/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-464-0001, filed 7/31/98, effective 9/1/98.]

WSR 22-19-098

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed September 21, 2022, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-103.

Title of Rule and Other Identifying Information: Chapter 308-108 WAC, Driver training schools.

Hearing Location(s): On October 25, 2022, at 3:00 p.m. Join Zoom meeting [https://dol-wa.zoom.us/j/84028626686?](https://dol-wa.zoom.us/j/84028626686?pwd=OEFrdVBreWdtVkNTNXBySmFadFhWUT09)

Meeting ID 840 2862 6686, Passcode 109799, One-tap mobile +12532158782,,84028626686#,,,,*109799# US (Tacoma), +17193594580,,84028626686#,,,,*109799# US; dial by your location +1 253 215 8782 US (Tacoma); find your local number [https://dol-wa.zoom.us/j/84028626686?](https://dol-wa.zoom.us/j/84028626686?pwd=OEFrdVBreWdtVkNTNXBySmFadFhWUT09)

Date of Intended Adoption: October 26, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by October 24, 2022.

Assistance for Persons with Disabilities: Contact email rulescoordinator@dol.wa.gov, by October 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing is amending rules to allow driver training schools to offer driver training education classes virtually after the state of emergency ends in Washington state.

Reasons Supporting Proposal: The department was petitioned to adopt these changes and has received support for these changes from the Washington traffic safety commission (WTSC), association leaders, the public, and driver training schools. Continuing to allow virtual classrooms for driver training education increases access to driver training education in Washington state, eases the cost of obtaining a translator for students, and supports public safety.

Statutory Authority for Adoption: RCW 46.82.290 Administration of chapter—Adoption of rules and 46.01.110 Rule-making authority.

Statute Being Implemented: Not applicable.

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: Parkside Driving School and WTSC, public, private, and governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; Implementation: Sarann Sinthavong, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3901; and Enforcement: Ryan Flanagan, 1125 Washington Street S.E., Olympia, WA 98504, 360-890-5712.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not impose costs on businesses. There is no requirement to participate in virtual classroom, and the rules also clarify that schools can provide records to the department either through paper or electronic means.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These changes do not require a change to existing business practices when a state of emergency is not in place.

September 21, 2022
Ellis Starrett
Rules and Policy Manager

OTS-4098.1

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-020 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Behind the wheel instruction" means that portion of a traffic safety education course that consists of on-street, dual-controlled vehicle operation or similar instruction given under simulated conditions that has been approved by the director.

(2) "Branch office" or "branch classroom" means a facility within a (~~(thirty-five mile)~~) 35-mile radius of a driver training school's established place of business, except where the (~~(thirty-five mile)~~) 35-mile radius requirement has been waived or extended by the department as provided by RCW 46.82.360 (6) (c), that has been approved by the department for use by the driver training school.

(3) "Classroom," defined in RCW 46.82.280(2), may also include a virtual classroom environment when video conferencing technology is capable of two-way communication between the instructor and all students.

(4) "Engage in a course of instruction" means to enroll in, schedule, collect a fee for, or sign an application for an instruction permit in order to attend or take part in a driver training education course.

~~((4))~~ (5) "Inactive instructor" means an instructor with a valid Washington instructor's license who is no longer employed by or otherwise associated with a licensed driver training school.

~~((5))~~ (6) "Instructor-led" means person-to-person learning where students can ask questions, receive feedback in real-time, and interaction and discussion are enabled.

(7) "Instructor-trainer" means a currently licensed instructor who is training traffic safety education instructors and who has not less than:

(a) One thousand hours of experience in providing traffic safety education in the past year;

(b) Five years of previous experience in providing traffic safety education; or

(c) One thousand hours or five years experience in the field of traffic safety and proof of training acceptable to the director in how

to teach and train others, and not less than (~~three hundred~~) 300 hours of previous experience in training others.

(~~(6)~~) (8) "Records" means all documents, papers and reports required to own a driver training school, including but not limited to:

(a) Vehicle registration, title, insurance policy, and maintenance information;

(b) Business financial documents, such as franchise agreements, corporate documents, bank records, partnership agreements, lease agreements, and purchase and sale agreements; and

(c) Student classroom and behind-the-wheel instruction reports.

(~~(7)~~) (9) "Student" means any person enrolled in an approved driver training education course who is at least (~~fifteen~~) 15 years of age.

[Statutory Authority: RCW 46.82.290. WSR 09-21-093, § 308-108-020, filed 10/20/09, effective 11/20/09. Statutory Authority: RCW 46.82.290, 46.82.310, 46.82.320, 46.82.330, and 46.82.340. WSR 07-01-069, § 308-108-020, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 46.82.290. WSR 05-16-061, § 308-108-020, filed 7/29/05, effective 8/29/05.]

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-120 Administration. (1) The driver training school's license and all instructor certificates shall be posted in a conspicuous place (~~at the location where instruction takes place. The school license must be posted~~) before engaging students in a course of instruction. An additional electronic copy will be provided to school customers, upon request.

(2) Each driver training school shall adopt and provide for its customers a written policy that includes, but is not limited to:

(a) Enrollment criteria;

(b) Student fees and student fee refunds;

(c) Course failures and course repeats;

(d) The minimum and maximum course duration;

(e) Refusing to allow a student to attend a driver training education course before the age of (~~fifteen~~) 15 years;

(f) Refusing to enroll new students in a driver education course after the first three classes have been completed; and

(g) Information about Washington's intermediate licensing requirements, restrictions, and penalties and a place for parents to initial indicating that they have received the information.

(3) Driver training school owners and instructors shall maintain individual student records on forms provided by the department or on substantially similar forms that have been approved by the department. Student records shall document for each student:

(a) Course attendance, starting, and ending dates;

(b) The dates and times for each session of classroom and behind the wheel instruction;

(c) Classroom and behind the wheel progress and time involvement or flowchart;

(d) Classroom and behind the wheel performance evaluation results;

(e) The name and signature of the instructor who provided each session of classroom and behind the wheel instruction; and

(f) That both the student and parent received intermediate license requirements, restriction, and penalty information.

(4) Student records must be maintained by a driver training school for three years from the date instruction has ended.

(5) Driver training school records that must be maintained by a driver training school for three years, include but are not limited to:

(a) The school's written curriculum guide;

(b) Insurance policies;

(c) Collision or injury reports;

(d) Traffic safety education vehicle registration records; and

(e) Records of any traffic violations committed by an instructor employed by the school.

(6) Upon the sale or other transfer of a school by its owner, the school and student records shall be transferred to the new owner and become the property and responsibility of the new owner.

(7) The driving school owner must notify the department within ~~((thirty))~~ 30 days of closing the school and submit all unused traffic safety certificates and student course completion reports to the department.

(8) Class size must not exceed city fire code requirements for the classroom.

(9) Traffic safety education classroom hours shall not overlap between two or more classes.

(10) Failure to renew a school license before it expires will put all related branch office or branch classroom licenses into an inactive status.

(11) Student records are subject to department audit and inspection anytime after ~~((ninety))~~ 90 days of the school's initial licensing, or as soon as practicable for the department.

(12) Branch office or classroom locations must display an official license issued by the department in a conspicuous place.

[Statutory Authority: RCW 46.82.290. WSR 09-21-093, § 308-108-120, filed 10/20/09, effective 11/20/09. Statutory Authority: RCW 46.82.290, 46.82.310, 46.82.320, 46.82.330, and 46.82.340. WSR 07-01-069, § 308-108-120, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 46.82.290. WSR 05-16-061, § 308-108-120, filed 7/29/05, effective 8/29/05.]

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06, effective 1/18/07)

WAC 308-108-130 Inspection and review. (1) The department may require that a driver training school owner submit to an inspection or review of the school's operations and records at any time during regular business hours.

(2) Records shall be housed electronically or via hard copy and ~~((immediately available for inspection at a driver training school's primary place of business. Branch office records may be housed at the primary place of business, however, such records must be))~~ made available for inspection ~~((at the branch location))~~ within ~~((twenty-four~~

hours)) two business days following a request for review by the department.

(3) Schools will provide the department access to virtual classroom sessions upon request.

[Statutory Authority: RCW 46.82.290, 46.82.310, 46.82.320, 46.82.330, and 46.82.340. WSR 07-01-069, § 308-108-130, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 46.82.290. WSR 05-16-061, § 308-108-130, filed 7/29/05, effective 8/29/05.]

AMENDATORY SECTION (Amending WSR 19-07-058, filed 3/18/19, effective 4/18/19)

WAC 308-108-150 Course requirements. Driver training schools that provide education for persons under the age of ~~((eighteen))~~ 18 must ensure their course:

(1) Includes a minimum of ~~((thirty))~~ 30 hours of classroom instruction;

(2) Meets the behind the wheel instruction and observation requirements of WAC 308-108-160;

(3) Has a minimum of one hour and no more than two hours of classroom instruction and no more than one hour of behind the wheel instruction during a single day, except when adding a make-up class, in which case classroom instruction must not exceed four hours in a single day;

(4) Has a classroom portion that is ~~((at least fifty percent))~~ instructor-led ~~((with verbal))~~, where the instructor is present for the duration instruction ((consisting)), and consists of:

(a) ~~((In-person training;))~~ Lecture, group work, videos, and/or other activities;

(b) Teacher and student interaction; and

(c) Questions and answers ~~((; and~~

~~((d) No)), and/or discussion;~~

(5) Has no more than six make-up hours of alternative instructor-led classroom instruction, delivering the same information that was missed.

~~((5))~~ (6) Has all students in a classroom session on the same lesson, with the exception of make-up lessons. Open enrollment or self-paced instruction is not permitted;

~~((6))~~ (7) Is not completed in fewer than ~~((thirty))~~ 30 calendar days;

~~((7))~~ (8) Includes comprehensive final written and behind the wheel examinations;

~~((8))~~ (9) Has a flow chart that indicates how the classroom and behind the wheel instruction are completed throughout the course;

~~((9))~~ (10) Includes information on the state of Washington's intermediate license requirements, restrictions, violations, and sanctions for violation of these requirements;

~~((10))~~ (11) Includes the delivery of instructional material developed by the department and the federally designated organ procurement organization for Washington state relating to organ and tissue donation awareness education; and

~~((11))~~ (12) Has a designated time for a parent, guardian, or employer night that is no less than one hour, which may fulfill one of

the ((~~thirty~~)) 30 hours required for student training, and must include:

- (a) Instruction on the parent, guardian, or employer responsibilities and the importance of parent, guardian, or employer involvement with the teen driver;
- (b) Information on intermediate license laws, restrictions, and sanctions;
- (c) An introduction to the parent guide to teen driving; and
- (d) A questions and answers period.

[Statutory Authority: Chapter 46.82 RCW. WSR 19-07-058, § 308-108-150, filed 3/18/19, effective 4/18/19. Statutory Authority: RCW 46.82.290. WSR 09-21-092, § 308-108-150, filed 10/20/09, effective 1/1/10. Statutory Authority: RCW 46.82.290, 46.82.310, 46.82.320, 46.82.330, and 46.82.340. WSR 07-01-069, § 308-108-150, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 46.82.290. WSR 05-16-061, § 308-108-150, filed 7/29/05, effective 8/29/05.]

AMENDATORY SECTION (Amending WSR 17-21-026, filed 10/10/17, effective 11/10/17)

WAC 308-108-165 Prohibition on wireless communication devices during instruction. (1) Driving school instructors must not use personal electronic devices, hands-free or otherwise, that distract from or interfere with the behind the wheel or classroom instruction task. This includes the use of any communications devices that result in verbal or written text responses while conducting instruction. While supervising the operation of a vehicle, instructors are additionally prohibited from sending or receiving messages with these devices. Ring volumes for these devices, or any phone in proximity, are to be silenced so as not to interfere in any way with the student learning or interacting with the instructor.

(2) This section does not apply to voice activated GPS devices or classroom devices that are being used as part of an approved curriculum. This section also does not preclude the use of devices to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property, as permitted under RCW 46.61.672.

(3) An unreasonable risk associated with a failure to obey this section is a violation of RCW 18.235.130(4).

(4) This section does not prohibit the use of wireless communication devices during instruction if the use is to access a virtual classroom or in the case of an emergency.

[Statutory Authority: RCW 46.01.110, 46.20.2891, 46.82.290, and 46.90.010. WSR 17-21-026, § 308-108-165, filed 10/10/17, effective 11/10/17. Statutory Authority: RCW 46.82.290. WSR 09-21-093, § 308-108-165, filed 10/20/09, effective 11/20/09.]

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-170 Ensuring student accomplishment. (1) Each driver training school must have a written curriculum guide available to each instructor and such guide shall be used for student instruction.

(2) In order to receive a traffic safety education certificate, all students under the age of (~~eighteen~~) 18 must satisfactorily complete all portions of the course of instruction included in the student curriculum as approved by the driver instructors' advisory committee.

(3) In order to satisfactorily complete a school's driver training course, all students under the age of (~~eighteen~~) 18 must pass a comprehensive driving knowledge and skills test or tests that deals with all or many of the relevant details of the course curriculum that meets the standards established by the department.

(4) Each driver training school must assess the needs and progress of students and give appropriate direction for additional driving experience and/or (~~parent~~) guided practice provided by a licensed driver with at least five years of driving experience.

[Statutory Authority: RCW 46.82.290. WSR 09-21-093, § 308-108-170, filed 10/20/09, effective 11/20/09. Statutory Authority: RCW 46.82.290, 46.82.310, 46.82.320, 46.82.330, and 46.82.340. WSR 07-01-069, § 308-108-170, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 46.82.290. WSR 05-16-061, § 308-108-170, filed 7/29/05, effective 8/29/05.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-108-190 Emergency clause.

WSR 22-19-099
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 21, 2022, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-080.

Title of Rule and Other Identifying Information: Transportation network companies. New sections in chapter 296-128 WAC.

Hearing Location(s): On November 1, 2022, at 1:00 p.m., at the Department of Labor and Industries (L&I) Service Location, 12806 Gateway Drive South, Tukwila, WA 98168; on November 2, 2022, at 1:00 p.m., at L&I Service Location, 312 S.E. Stonemill Drive, Suite 120, Vancouver, WA 98684; and on November 4, 2022, at 9:00 a.m., virtual/telephonic meeting. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/89814993126?pwd=ODQradZiKzk5TVJYRjErdjR6QnJYUT09>; join by phone 253-215-8782, Meeting ID 898 1499 3126, Passcode EmpStds22#. The meetings will begin at the time indicated, and will continue until all oral comments are received.

Date of Intended Adoption: November 22, 2022.

Submit Written Comments to: Bridget Osborne, L&I, Employment Standards, P.O. Box 44540, Olympia, WA 98504-4510, email ESRules@Lni.wa.gov, fax 360-902-5300, by November 7, 2022, by 5 p.m.

Assistance for Persons with Disabilities: Contact Bridget Osborne, phone 360-902-5552, fax 360-902-5300, email ESRules@Lni.wa.gov, by October 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature passed ESHB 2076 during the 2022 legislative session. ESHB 2076 sets new requirements for transportation network companies and gives drivers new rights and protections. Section 1 (13) (f) of ESHB 2076, now codified in RCW 49.46.300 (1) (13) (f), requires L&I to conduct rule making regarding the reimbursements from the newly created driver resource center to a transportation network company for costs associated with deduction and remittance. Additional rules are needed to clarify the new requirements for transportation network companies and new driver protections relating to minimum compensation, paid sick time, retaliation and deactivations, and administrative violations. Rules are also needed to carry out and enforce the new requirements and help L&I coordinate with the driver resource center.

This rule making proposes to create new rule sections and will not change any existing rules.

Reasons Supporting Proposal: Section 1 (13) (f) of ESHB 2076, now codified in RCW 49.46.300 (1) (13) (f), requires L&I to conduct rule making. Additional rule making has been determined to be the best approach to outline the transportation network company's compliance requirements relating to driver payments, electronic receipts, deductions, deactivations, notices, paid sick time, and the department's enforcement capabilities. The proposed rules also provide clarity for drivers on their new protections.

Statutory Authority for Adoption: Chapter 49.46 RCW; RCW 43.22.270.

Statute Being Implemented: RCW 49.46.210, 49.46.300 through 49.46.350.

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: Bridget Osborne, Tumwater, Washington, 360-902-5552; Implementation: Cristina Evans, Tumwater, Washington, 360-485-2965; and Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-5310.

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 Bridget Osborne, L&I, Employment Standards, P.O. Box 44540, Olympia, WA 98504-4510, phone 360-902-5552, fax 360-902-5300, email ESRules@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 34.05.328 (5)(c)(ii).

Explanation of exemptions: See table in Section 2 below.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections and Title	This proposed rule section is <i>not exempt</i> - Analysis is required	This proposed rule section is <i>exempt</i>. Provide RCW to support this exemption.
1.	WAC 296-128-99010 Definitions.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) because the definitions are interpretive rules that do not result in a violation and adopt definitions from RCW 48.177.005, 49.46.210, 49.46.300, WAC 296-128-035 without material change.
2.	WAC 296-128-99020 Fees collected and remitted for the driver resource center fund.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) because it adopts without material change the fee structure established in RCW 49.46.300 (12) and (14).
3.	WAC 296-128-99030 Driver electronic receipts and weekly trip notices.	X	This section is partially exempt under RCW 34.05.310 (4)(c) by adopting RCW 49.46.300 (8) and (10) without material change.
4.	WAC 296-128-99040 Payment requirements.	X	
5.	WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) because it is interpretive and adopts language from RCW 49.46.300(4) without material change.
6.	WAC 296-128-99060 Tips and gratuities.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) because it adopts RCW 49.46.300(4) without material change.

	Proposed WAC Sections and Title	This proposed rule section is <i>not exempt</i> - Analysis is required	This proposed rule section is <i>exempt</i>. Provide RCW to support this exemption.
7.	WAC 296-128-99070 Driver reimbursements.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05. 310 (4)(c) because this section is interpreting and adopting RCW 49.46.300(6) without material change.
8.	WAC 296-128-99080 Deductions from driver compensation.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) because it interprets and adopts RCW 49.46.300 without material change.
9.	WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center.	X	This section is partially exempt under RCW 34.05.310 (4)(c) because it adopts RCW 49.46.300(13).
10.	WAC 296-128-99100 Deactivations.	X	
11.	WAC 296-128-99110 Notice of rights.	X	This section is partially exempt under RCW 34.05.310 (4)(c) by adopting RCW 49.46.300(7) without material change.
12.	WAC 296-128-99120 Retaliation.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) by adopting RCW 49.46.340 without material change.
13.	WAC 296-128-99130 Paid sick time accrual.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210(1) without material change.
14.	WAC 296-128-99140 Paid sick time usage.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210(5) without material change.
15.	WAC 296-128-99150 Paid sick time rate of pay.	<input type="checkbox"/>	This section is exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210(5) without material change.
16.	WAC 296-128-99160 Reasonable notice.	X	
17.	WAC 296-128-99170 Paid time off (PTO) programs.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
18.	WAC 296-128-99180 Verification for paid sick time usage.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210 (5)(l) without material change.
19.	WAC 296-128-99190 Frontloading.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
20.	WAC 296-128-99200 Third-party administrators.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
21.	WAC 296-128-99210 Paid sick time notifications.	X	This section is partially exempt under RCW 34.05.328 (5)(c)(ii) and 34.05.310 (4)(c) by interpreting and adopting RCW 49.46.210 (5)(n) without material change.
22.	WAC 296-128-99220 Shared paid sick time.	<input type="checkbox"/>	This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it provides guidance and does not subject anyone to a violation.
23.	WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes.	X	

	Proposed WAC Sections and Title	This proposed rule section is not exempt - Analysis is required	This proposed rule section is exempt. Provide RCW to support this exemption.
24.	WAC 296-128-99240 Enforcement —Complaints by driver—Additional investigations by department for amounts owed to drivers.	X	
25.	WAC 296-128-99250 Enforcement —Remittances.	X	
26.	WAC 296-128-99260 Enforcement —Complaint by driver—Paid sick time.	X	
27.	WAC 296-128-99270 Enforcement —Retaliation investigations.	X	
28.	WAC 296-128-99280 Enforcement —Administrative violations.	X	
29.	WAC 296-128-99290 Enforcement —Administrative enforcement supplemental.	X	

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

Small Business Economic Impact Statement (SBEIS)

Rules proposed: ESHB 2076, An act relating to rights and obligations of transportation network company drivers and transportation network companies, chapter 296-128 WAC, Minimum wages.

Date: September 20, 2022.

1. Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the amendments in this proposal that would impose new or additional costs on affected businesses, including small businesses. The Washington state legislature passed ESHB 2076, now codified under chapter 49.46 RCW during the 2022 legislative session, which sets new requirements for transportation network companies (TNCs) and gives drivers new rights and protections.

Section 1 (13) (f) of ESHB 2076, now codified in RCW 49.46.300 (1) (13) (f), requires L&I to conduct rule making regarding the reimbursements from the driver resource center to TNCs for costs associated with deduction and remittance. Additional rules are needed to clarify the new requirements for TNCs and new driver protections relating to minimum compensation, paid sick time, retaliation and deactivations, and administrative violations. Rules are also needed to carry out and enforce the new requirements and help L&I coordinate with the driver resource center. This rule making does not make any changes to the existing rules in chapter 296-128 WAC that apply to "employees" covered under the Minimum Wage Act.

The proposed rules that may impose new or additional costs on businesses are related to: The requirements of providing "preferred language"; driver receipts and weekly trip notices; deactivations; notice of rights; and paid sick time notifications.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS). The requirements of ESHB 2076 are limited to those companies that meet the definition of TNCs in RCW 49.46.300 (1) (v):

"Transportation network company" has the same meaning as defined in RCW 46.04.652. A TNC does not provide for hire transportation service. RCW 46.04.652 defines a "transportation network company" as "a corporation, partnership, sole proprietorship, or other entity that operates in this state, and uses a digital network to connect passengers with TNC drivers to provide prearranged rides."

The proposed rules are intended to implement requirements of ESHB 2076. Therefore, all businesses who meet the definition in RCW 49.46.300 (1)(v) are required to comply with the proposed rule. Table 1 below shows the NAICS code that TNCs most likely fall under and the best estimate of the total numbers of TNCs and workers that may be affected by these rules.

Table 1: The Affected Industry, Establishments, and Workers

NAICS	Industry	# of Companies	Affected Drivers/Workers ¹
485310	Taxi and Ridesharing Services	7	84,000

¹ Data source: Fiscal note for HB 2076. The number of 84,000 is updated from the 80,000 drivers estimated in the fiscal note using the share of drivers in total workforce and the latest statewide employment statistics from the employment security department.

This NAICS code data does not distinguish between companies who meet the definition of TNC in the statute and those that do not.

3. Identify and analyze the probable costs to comply with the proposed rule. The probable costs analyzed included both the following required and optional elements of the proposed rule.

3.1 The following proposed rules were determined to be exempt from the cost benefit analysis requirement and were not considered²:

² See chapter 2 of the cost-benefit analysis, available upon request.

- WAC 296-128-99010 (1), (5) through (30), and (32) through (35), Definitions.
- WAC 296-128-99020 Fees collected and remitted for the driver resource center fund.
- WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements.
- WAC 296-128-99060 Tips and gratuities.
- WAC 296-128-99070 Driver reimbursements.
- WAC 296-128-99120 Retaliation.
- WAC 296-128-99130 Paid sick time accrual.
- WAC 296-128-99140 Paid sick time usage.
- WAC 296-128-99150 Paid sick time rate of pay.
- WAC 296-128-99170 Paid time off (PTO) programs.
- WAC 296-128-99190 Frontloading.
- WAC 296-128-99200 Third-party administrators.
- WAC 296-128-99220 Shared paid sick time.
- WAC 296-128-99290 Enforcement—Administrative enforcement supplemental.

3.2 The following proposed rules were determined to be significant legislative rules and the costs were analyzed as follows:

3.2.1 Quantifiable costs of the rule amendments: There are two categories of rule amendments whose cost impacts are quantified in this analysis: (1) The preferred language requirement under WAC 296-128-99010(3); and (2) the provisions of various notices to drivers under multiple sections.

WAC 296-128-99010(31) "Preferred language" definition: Rule Overview: This proposed rule defines the term "preferred language" used in the rules and provides that a TNC must make good faith effort to learn

the language and must translate documents via an accessible system when the preferred language is identified as the preferred language of at least two percent of drivers who use the TNC's platform in Washington. The definition applies to the requirements for an "accessible system" as defined in WAC 296-128-99010(1).

Costs: L&I's proposed "preferred language" definition, which applies to substantially similar notices for drivers as in Seattle's Transportation Network Company Driver Minimum Compensation Ordinance, includes a two percent threshold of languages spoken by drivers. This is more lenient than language access requirements TNCs are currently required to follow under Seattle's ordinance.

There may be a few TNCs not currently covered by Seattle's ordinances who will now be subject to the proposed rule. Costs for routine business translation range from \$20 to \$60 for translation of one million characters per month, and can go as high as \$75 for custom translation. For more sensitive documents such as deactivation notices and other legal documents, certified human translation is available for the price ranging from \$20 to \$29 per page.³

³ Sources of translation cost estimates: Amazon Translate, Google Translate, Microsoft Azure, US Language Services, and Universal Translation Services.

Assuming the number of the unidentified TNCs that are not covered by Seattle and King County's ordinances is no more than the number of TNCs that are currently identified by L&I, and they chose services at the upper end of the price spectrum, the total costs would be as follows:

- The maximum cost of machine translation of business documents and communications both as batches and in real time for as many as one million characters per month is \$75. For seven TNCs, the total annual cost equals \$6,300.
- The maximum cost of certified translation of one-page sensitive documents, such as deactivation notices, is \$29.
- Based on a 2014 business report,⁴ two to three percent of drivers are in danger of deactivation for their low ratings. Assuming the same percent of drivers are at risk of deactivation for all other possible reasons, an average of five percent of all drivers are vulnerable for deactivation each year.⁵
- L&I estimates that out of 84,000 drivers statewide, about 56,000 drivers are not covered by the existing local ordinances. Therefore, approximately 2,800 drivers are vulnerable to deactivation each year, and the total annual costs of translating all required deactivation notices for these drivers will amount to \$81,200.
- The total annual costs for the preferred language requirement would be \$87,500.

⁴ Business Insider quoting an internal UBER driver's manual.

⁵ This does not include those drivers who would be deactivated because they voluntarily resign or fail to appear on the platform for a period of time (365 days, for example).

WAC 296-128-99030 Electronic driver receipts and weekly trip notices, 296-128-99110 Notice of rights, and 296-128-99210 Paid sick time notifications: Rule Overview: RCW 49.46.300 (8) and (10) require TNCs to provide itemized reporting in both driver receipts and weekly trip notices. This proposed rule requires TNCs to include itemized information on driver receipts as well as itemized information, including total passenger platform time performed within the past 365 calendar days, on weekly trip notices. This information is needed to confirm a TNC's compliance with compensation and paid sick time requirements under the statute. All but two of the itemized reporting re-

quirements are included in the statute itself. The only additional data added to these requirements through rule are the requirement to report pickup and drop off location data, which is data already collected and included on passenger receipts, and the total amount of passenger platform time in the past 365 calendar days.

This proposed rule clarifies the requirement for TNCs to provide drivers with a notice of rights. The proposed rules include a requirement to maintain a driver's access to the notice of rights for at least three years. The rule also clarifies the TNC requirement to provide drivers with paid sick time notifications.

Costs: Given that L&I is committed to developing and providing sample notices for TNCs, L&I anticipates the compliance costs would not be substantial if TNCs chose to utilize L&I's notices. After discussing with its internal IT experts, L&I estimates that creating all these notices will cost an IT specialist no more than eight hours. Using the average hourly cost of \$72.52 for a typical computer professional in Washington state⁶ and a maximum of seven companies that are subject to these requirements, the total one-time cost will be no more than \$4,061.

⁶ Data source: 2022 Occupational Employment and Wage Estimates, ESD. This is the loaded wage, which includes the \$47.14 base wage, plus all fringe benefits.

3.2.2 Unquantifiable costs of the rule amendments: The following amendments either impose no new costs on the TNCs, or the costs of the amendments are negligible and, therefore, need not be quantified in this report.

WAC 296-128-99010(2) "Accessible system" definition: Rule Overview: The proposed rule defines the term "accessible system." An accessible system requires, in part, the use of a driver's preferred language, as defined in WAC 296-128-99010(31). Drivers must receive information in an accessible way in order to ensure their rights have not been violated.

Costs: The only prescriptive portion of the rule is the requirement for use of a driver's preferred language. This requirement is covered in the cost evaluation of WAC 296-128-99010(31).

WAC 296-128-99010(4) "Communication system" definition: Rule Overview: The proposed rule defines the term "communication system." A "communication system" ensures drivers receive important information to ensure their rights have not been violated, but does not include all of the requirements of an "accessible system."

Costs: Converting files to a comma-separated values file format is a routine computer activity. It presents no cost with saving a document in any other format. Therefore, it creates no new costs.

WAC 296-128-99040 Payment requirements: Rule Overview: This proposed rule clarifies pay requirements including pay intervals with which TNCs must comply. L&I's proposed rule specifies that payment intervals must occur at least biweekly which is less frequent than current practice by TNCs, who already pay more frequently. L&I's proposed rule on payment intervals does not require TNCs to pay additional compensation to drivers, so there is no cost to the rule.

Costs: L&I's proposed rule does not contain the same monthly payment interval contained in the rule that applies to employees as a payment interval option. See WAC 296-128-035. This recognizes that the drivers are not salaried employees. Hourly workers or workers paid on a work-performed basis are not typically paid on a monthly basis. TNC's current pay practices do not include a monthly payment option.

Because the requirement is no more restrictive than the current practice of TNCs, there are no new costs associated with this rule.

WAC 296-128-99080 Deductions from driver compensation: Rule Overview: This proposed rule clarifies which voluntary deductions from driver compensation are allowable, including what written authorization information is needed from a driver prior to a deduction being made. The written authorizations of deduction do not create new requirements for TNCs beyond what is provided in the statute. The information provided in written authorizations for deductions is provided by the driver if they elect to request a deduction. This is a discretionary rule that is only applicable if TNCs choose to allow for voluntary deductions. This rule also clarifies that deductions for loss or breakage are not allowable. This proposed rule language is based on existing deduction WAC 296-126-028, which applies to most employees. L&I's proposed rule language is consistent with existing rules and only clarifies what deductions can and cannot be taken from a driver's wages without creating new requirements for TNCs. Further, this is a discretionary rule that is only applicable if TNCs allow for voluntary deductions, and thus there is no required cost associated with the rule.

Costs: This is a rule that is only applicable if/when TNCs choose to allow for voluntary deductions, so there is no required cost associated with the rule.

WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center: Rule Overview: This proposed rule enacts the requirement from the statute for TNCs to provide an opportunity for drivers to make voluntary per trip earnings deduction contributions to the driver resource center, if the TNC has 100 or more drivers authorize such a deduction. It provides the process for administering such contributions through deductions and it provides for the reimbursement process to TNCs that seek reimbursement. The information provided in written authorizations for deductions is provided to the driver if they elect to request a deduction and if the driver resource center chooses to accept the voluntary contributions.

Costs: The portions of the rule beyond statutory requirements are discretionary, so there is no required cost associated with the rule.

WAC 296-128-99100 Deactivations: Rule Overview: This proposed rule clarifies what information must be included in deactivation notifications provided by a TNC to a driver when deactivated. L&I's proposed rule related to deactivation notifications is substantially similar to the deactivation notification required under Seattle Office of Labor Standards' rules passed under the Transportation Network Company Driver Minimum Compensation Ordinance, with which most TNCs are already required to comply. L&I's proposed rule includes the additional requirement to notify drivers of their ability to use paid sick time and the estimated end date of the deactivation.

Costs: There may be negligible and unquantifiable costs associated with providing this additional information on account deactivation notifications. There may be a small number of TNCs not currently covered by Seattle's ordinance. We currently lack sufficient data to determine if these TNCs will have more significant fiscal impacts from this requirement than TNCs covered by the ordinance. Deactivation notices include preferred language requirements; those costs have been estimated above.

WAC 296-128-99160 Reasonable notice: Rule Overview: This proposed rule clarifies that a TNC may not require advanced notice of paid sick time use from a driver for an authorized purpose under RCW 49.46.210. A TNC's request or requirement for advanced notice of paid sick time from a driver is considered an interference with a driver's lawful use of paid sick time.

Costs: The proposed rule does not create a new requirement for TNCs, so there is no cost associated with the rule.

WAC 296-128-99180 Verification for paid sick time usage: Rule Overview: This proposed rule clarifies requirements when a TNC chooses to verify that a driver's use of paid sick time is for an authorized purpose under the statute.

Costs: TNCs are not required to verify the use of paid sick time. Verification is optional, thus there is no required cost to the proposed rule.

WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes: Rule Overview: This rule allows withholding payment for unauthorized purposes and requires a TNC to provide notification when choosing to withhold the payment.

Costs: Because verifying sick leave and withholding the payment is discretionary, there is no cost created by the notification unless the TNC chooses to exercise this option.

WAC 296-128-99240 Enforcement—Complaints by driver—Additional investigations by department for amounts owed to drivers: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate compensation-related complaints. The proposed rule grants L&I the ability to request that a TNC perform a self-audit to mitigate potential burden and costs associated with investigations. Self-audits are intended to be a less burdensome and less costly alternative to extensive document and information production during investigations. If self-audits are performed during an investigation, it may also reduce investigative timelines. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Self-audits and notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99250 Enforcement—Remittances: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate if the department receives information suggesting that a TNC may have violated the remittance provisions of RCW 49.46.330. The proposed rule grants L&I the ability to request that a TNC perform a self-audit to mitigate potential burden and costs associated with investigations. Self-audits are intended to be a less burdensome and less costly alternative to extensive document production during investigations. If self-audits are performed during an investigation, it may also reduce investigative timelines.

Costs: Self-audits are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99260 Enforcement—Complaint by driver—Paid sick time: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate paid sick time-related complaints. The proposed rule grants L&I the ability to request that a TNC perform a self-audit to mitigate potential burden and costs associated with investigations. Self-audits are intended to be a less burdensome and less costly alternative to extensive document production during investigations. If self-audits are performed during an investigation, it may also reduce investigative timelines. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Self-audits and notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99270 Enforcement—Retaliation investigations: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate retaliation-related complaints. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

WAC 296-128-99280 Enforcement—Administrative violations: Rule Overview: This proposed rule clarifies L&I's enforcement authority to investigate administrative violation-related complaints. The proposed rules also grant L&I the ability to require TNCs to notify drivers that L&I is conducting an investigation. This would only occur if allegations of a violation are brought forward. If the department does not receive complaints of potential violations, this rule requirement will not be applicable. Requiring TNCs to provide this notification to drivers is a less burdensome alternative to TNCs needing to respond to multiple individual complaints and the rule is an attempt to reduce the number of separate complaints to which TNCs and the department must respond.

Costs: Notifications to drivers using previously mandated systems are intended to mitigate potential costs associated with the normal process of investigations, thus there is no cost associated with the rule.

The cost-benefit analysis (CBA) is available on the L&I website or it may be obtained by contacting Bridget Osborne at phone 360-902-5552, email ESRules@Lni.wa.gov.

4. Determine whether or not the proposed rule may impose a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Under the Regulatory Fairness Act (RFA), "'Small business' means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees," RCW 19.85.020(3).

Based on the best information available, most or all of the existing TNCs do not qualify as small businesses based on their nondriver employees. However, it is unclear if drivers count towards the employee totals in the definition of small business, because ESHB 2076 defines "drivers" separately from employees for the purposes of chapter 49.46 RCW and RCW 19.85.025 does not specifically define "employees." For these reasons, and for the purposes of determining applicability under RFA, L&I makes the conservative assumption that TNCs operating in Washington state might include small businesses as defined under RCW 19.85.020 even though the majority of them are large employers. Based on the costs estimated in the preliminary CBA, we have calculated costs and less-than-minor costs, assuming costs are equally shared in Table 1 below.

Table 1. Summary of Per-business Average Cost vs Minor Cost Threshold

Total Cost:	
One-time cost	\$4,061
Annual recurring cost	\$87,500
Number of affected businesses:	7
Per business cost:	
One-time cost	\$580
Annual recurring cost	\$12,500
Minor cost threshold for the industry with NAICS 485310 ⁷ :	\$15,908

⁷ [https://esd.wa.gov/labormarketinfo/covered-employment, 2021 annual averages \(revised\).](https://esd.wa.gov/labormarketinfo/covered-employment, 2021 annual averages (revised).)

As analyzed above, we estimate the proposed rule will impose a one-time cost of \$4,061 and an annual cost of \$87,500 across all the affected businesses. If we assume these costs are evenly borne by the seven companies that are possibly uncovered by the local ordinances, the average one-time cost is \$580 and the ongoing cost is \$12,500 per business per year. When compared to the minor cost threshold (max of one percent of annual payroll or 0.3 percent of annual revenue), this analysis indicates the average per-business cost of the proposed rule is likely below the threshold for affected businesses discussed above. Accordingly, an SBEIS would not be required for this rule making pursuant to RCW 19.85.030(1). However, as discussed below, L&I has taken additional steps to meet the requirements of RCW 19.85.040 if L&I's cost analysis does not capture all the costs associated with the proposed rules.

In the alternative, the department assumed there would be disproportionate impacts on small businesses (if any of the smaller TNCs qualify as a small business) due to the absence of data confirming that no small businesses will be impacted by the rules and insufficient information to otherwise determine the cost impact if the costs

are not equally shared. As such, this document meets the requirements of an SBEIS. As required by RCW 19.85.030 and 19.85.040, in the absence of this data, the department identified cost-mitigation measures, where legal and feasible, as described below.

5. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. As discussed above, L&I does not have sufficient data to conclude that the rules will have disproportionate impacts, so instead will consider mitigation steps in RCW 19.85.030(2). Because at least two of the TNCs are not small businesses, RCW 19.85.030(3) does not apply. See RCW 19.85.030(3) (If a proposed rule affects only small businesses, the proposing agency must consider all mitigation options defined in this chapter). However, L&I considered the list of methods for reducing the impact on small businesses under RCW 19.85.030(2), and is taking the following steps to reduce the costs of the rules on small businesses:

5.1 As described below, L&I added language to the rules specifically to mitigate cost for small businesses.

WAC 296-128-99010(2) "Accessible system" definition: The only prescriptive portion of the rule is the requirement for use of a driver's preferred language. This requirement is covered in the cost evaluation of WAC 296-128-99010(31) (below). The rule does also not prescribe a particular IT system or program that must be used to meet the accessible system requirements, allowing for TNCs to use their existing systems, or whatever system works best for their business model. This flexibility is particularly important and helpful to small businesses, as they normally lack the IT resources that their larger counterparts possess. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99010(4) "Communication system" definition: Converting files to a comma-separated values file format is a routine computer activity. It presents no cost with saving a document in any other format. Therefore, it creates no new costs. The rule does not prescribe a particular IT system or program that must be used to meet the communication system requirements, allowing for TNCs to use their existing systems, or whatever system works best for their business model. This flexibility is particularly important and helpful to small businesses, as they normally lack the IT resources that their larger counterparts possess. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99010(31) "Preferred language" definition: In order to mitigate costs associated with translations and other potential language access-related costs, the proposed rule includes a two percent threshold of languages spoken by drivers. This is intended to mitigate the potentially high cost of translating notices into all languages, particularly for small businesses. So if small businesses do not have at least two percent of drivers who speak more than the top five languages spoken in the state, they would not be required to provide notifications in any additional languages than statutorily required. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99030 Electronic driver receipts and weekly trip notices: All but two of the itemized reporting requirements in the proposed rule are included in the statute itself. The only addition added to these requirements through rule is the requirement to report pickup and drop off location data and the total passenger platform time performed within the past 365 calendar days. The rule does not prescribe a particular IT system or program that must be used to generate driver receipts and weekly trip notices, allowing for TNCs to use their existing systems, or whatever system works best for their business mod-

el. This flexibility is particularly important and helpful to small businesses, as they normally lack the IT resources that their larger counterparts possess. See RCW 19.85.030 (2)(a), (b).

WAC 296-128-99100 Deactivations: Most of the information required in deactivation notifications is adopted from the statute without material change. The proposed rule includes the additional requirement to notify drivers of their ability to use paid sick time and the estimated end date of the deactivation. The proposed rule is intended to mitigate potential deactivation notification requirements on TNCs, particularly smaller TNCs. This is accomplished by modeling the proposed deactivation notification requirements after substantially similar requirements in Seattle's Transportation Network Company Driver Minimum Compensation Ordinance, which most TNCs are already required to comply with. Additionally, the proposed rule is intended to reduce the burden of potential disputes over deactivations, by ensuring drivers understand why they were deactivated. It is also intended to reduce the number of unnecessary complaints, investigations, and inspections of records by ensuring that drivers have a clear understanding of the end date for their deactivation so they do not file unnecessary appeals or complaints. See RCW 19.85.030 (2)(a), (b), (c).

WAC 296-128-99110 Notice of rights: The proposed rule clarifies the TNC requirements to provide drivers with a notice of rights and includes a requirement to maintain a driver's access to the notice of rights for at least three years. The statute does not specify an end date of when notices must be available to drivers, so the proposed rule is intended to mitigate storage costs by limiting the storage to three years. The rule also intends to mitigate costs through the allowance of an established "accessible system" to meet the manner of distribution requirements. Additionally, in order to help mitigate potential burden of creating a driver's notice of rights, the proposed rule specifies that L&I may provide a sample notice of rights and that a TNC may satisfy its obligation to distribute the written notice of rights by providing the department's sample notice. It is also intended to reduce the number of unnecessary complaints, investigations, and inspections of records by ensuring that drivers have access to their notice of rights. See RCW 19.85.030 (2)(a), (b), (c).

WAC 296-128-99210 Paid sick time notifications: The proposed rule clarifies the TNC requirement to provide drivers with paid sick time notifications. In order to mitigate potential costs associated with translations and other potential language access-related costs, the proposed rules distinguish that the notice of paid sick time rights must be available via an "accessible system," but the monthly notifications may be made available via a "communication system" which does not include the same language access requirements. For the paid sick time notification via an accessible system, which includes language preference requirements, L&I has taken the steps above to mitigate the impacts of language preference requirements. See RCW 19.85.030 (2)(a), (b), (c).

5.2 L&I will be pursuing other steps to mitigate costs to small businesses, including:

- Developing and implementing a robust outreach and education program, so all transportation network companies are informed about what they need to know to comply with the law.
- Developing template notices of rights. RCW 19.85.030 (2)(a), (b).

- Considering other mitigation techniques including those suggested by small businesses or small business advocates. RCW 19.85.030 (2) (f).

6. Describe how small businesses were involved in the development of the proposed rule. Many of the provisions of ESHB 2076 go into effect January 1, 2023. In order to have rules in place before that date, L&I began a comprehensive rule-making development process in May 2022. As part of the process, L&I reached out to the seven companies currently licensed with the Washington state department of licensing as a TNC, and some may be small businesses. Three of those companies expressed interest in being involved in L&I's implementation efforts. Those three companies, and other stakeholders representing drivers, provided input on predraft versions of the proposed rules. Additionally, L&I will hold three public hearings in November 2022 to seek comments about the proposed rule and all supported analyses from the affected businesses and workers, which provides another opportunity for small businesses to be engaged in the development of the final rule.

7. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. L&I lacks credible information or data to estimate how many jobs will be created or lost due to the proposed rule. However, L&I believes that any potential job impact is likely a direct result of ESHB 2076, which granted drivers new substantive benefits, rather than L&I's modest rule making to implement ESHB 2076's substantive protections. L&I does not believe the implementation of these requirements will impose a significant impact on the state job market.

A copy of the statement may be obtained by contacting Bridget Osborne, L&I, Employment Standards, P.O. Box 44540, Olympia, WA 98504-4540, phone 360-902-5552, fax 360-902-5300, email ESRules@Lni.wa.gov.

September 21, 2022
Joel Sacks
Director

OTS-4075.3

TRANSPORTATION NETWORK COMPANIES

NEW SECTION

WAC 296-128-99010 Definitions. (1) "Absence" means any period of time in which the driver is unable to perform passenger platform time on the transportation network company's driver platform due to an authorized purpose defined in RCW 49.46.210.

(2) An "accessible system" is:

- (a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;
- (b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;
- (c) Available in a driver's preferred language and English;
- (d) Provided in plain language;
- (e) Available to the driver via smartphone application and online web portal; and
- (f) Available from any location and must not be inaccessible due to geo-fencing.
- (3) "Account deactivation" means one or more of the following actions with respect to an individual driver or group of drivers that is implemented by a transportation network company and lasts for more than three consecutive days:
- (a) Blocking access to the transportation network company driver platform;
- (b) Changing a driver's status from eligible to provide transportation network company services to ineligible; or
- (c) Any other material restriction in access to the transportation network company's driver platform.
- (4) A "communication system" is:
- (a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;
- (b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;
- (c) Available in a downloadable comma-separated values file format, except as provided in WAC 296-128-99030(1);
- (d) Available to the driver via smartphone application and online web portal; and
- (e) Available from any location and must not be inaccessible due to geo-fencing.
- (5) "Compensation" means payment owed to a driver by reason of providing network services including, but not limited to, the minimum payment for passenger platform time and mileage, incentives, and tips. Compensation does not include driver reimbursements.
- (6) "Department" means the department of labor and industries.
- (7) "Digital network" means any online-enabled application, website, or system offered or used by a transportation network company that enables the prearrangement of rides between drivers and passengers.
- (8) "Director" means the director of the department of labor and industries, or the director's authorized representative.
- (9) "Dispatch location" means the location of the driver at the time the driver accepts a trip request through the driver platform.
- (10) "Dispatch platform time" means the time a driver spends traveling from a dispatch location to a passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip or the driver begins the trip through the driver platform. A driver cannot simultaneously be engaged in dispatch platform time and passenger platform time for the same transportation network company. For shared rides, dispatch platform time means the time a driver spends traveling from the first dispatch location to the first passenger pick-up location.

(11) "Dispatched trip" means the provision of transportation by a driver for a passenger through the use of a transportation network company's application dispatch system.

(12) "Driver" has the same meaning as "commercial transportation services provider driver" in RCW 48.177.005. Except as otherwise specified in WAC 296-128-99010 through 296-128-99290, for purposes of Titles 48, 50A, 50B, and 51 RCW, and chapter 49.46 RCW, and any orders, regulations, administrative policies, or opinions of any state or local agency, board, division, or commission, pursuant to those titles, a driver is not an employee or agent of a transportation network company if the following factors are met:

(a) The transportation network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the transportation network company's online-enabled application or platform;

(b) The transportation network company may not terminate the contract of the driver for not accepting a specific transportation service request;

(c) The transportation network company does not contractually prohibit the driver from performing services through other transportation network companies except while performing services through the transportation network company's online-enabled application or platform during dispatch platform time and passenger platform time; and

(d) The transportation network company does not contractually prohibit the driver from working in any other lawful occupation or business. Notwithstanding any state or local law to the contrary, any party seeking to establish that the factors in this subsection are not met bears the burden of proof. A driver for purposes of this section shall not include any person ultimately and finally determined to be an "employee" within the meaning of section 2(3) of the National Labor Relations Act, 29 U.S.C. Sec. 152(3).

(13) "Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a driver, or which enables services to be delivered to a driver, that enables the prearrangement of passenger trips for compensation.

(14) "Driver resource center" or "center" or "DRC" means a nonprofit organization that provides services to drivers. The nonprofit organization must be registered with the Washington secretary of state, have organizational bylaws giving drivers right to membership in the organization, and have demonstrated experience:

(a) Providing services to drivers in Washington state, including representing drivers in deactivation appeals proceedings; and

(b) Providing culturally competent driver representation services, outreach, and education. The administration and formation of the driver resource center may not be funded, excessively influenced, or controlled by a transportation network company.

(15) "Driver resource center fund" or "fund" means the dedicated fund created in RCW 49.46.310, the sole purpose of which is to administer funds collected from transportation network companies to provide services, support, and benefits to drivers.

(16) "Earned paid sick time" is the time provided by a transportation network company to a driver as calculated under RCW 49.46.210 and associated rules. For each hour of earned paid sick time used by a driver, the transportation network company shall compensate the driver at a rate equal to the driver's average hourly compensation.

(17) "Eligible account deactivation" means one or more of the following actions with respect to an individual driver that is implemented by a transportation network company:

(a) Blocking or restricting access to the transportation network company driver platform for more than three consecutive days; or

(b) Changing a driver's account status from eligible to provide transportation network company services to ineligible for more than three consecutive days; but

(c) An eligible account deactivation does not include any change in a driver's access or account status that is:

(i) Related to an allegation of discrimination, harassment, including sexual harassment or harassment due to someone's membership in a protected class, or physical or sexual assault, or willful or knowing commitment of fraud;

(ii) Related to an allegation that the driver was under the influence of drugs or alcohol while a related active investigation that takes no longer than 10 business days is under way; or

(iii) Any other categories the transportation network company and the driver resource center may agree to.

(18) "Geo-fencing" means the use of technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

(19) "Minimum compensation" means the minimum payment for passenger platform time and mileage set forth in RCW 49.46.300(4). Incentives, bonuses, premium pay, and tips are in addition to, and may not count towards, minimum compensation.

(20) "Network services" means services related to the transportation of passengers through the driver platform that are provided by a driver while logged in to the driver platform, including services provided during available platform time, dispatch platform time, and passenger platform time.

(21) "Passenger" has the same meaning as "commercial transportation services provider passenger" in RCW 48.177.005.

(22) "Passenger drop-off location" means the location of a driver's vehicle when the passenger leaves the vehicle.

(23) "Passenger pick-up location" means the location of the driver's vehicle at the time the driver starts the trip in the driver platform.

(24) "Passenger platform miles" means all miles driven during passenger platform time as recorded in a transportation network company's driver platform.

(25) "Passenger platform time" means the period of time when the driver is transporting one or more passengers on a trip, or portion of a trip, as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington, the portion of passenger platform time and mileage that occurs within Washington.

(26) "Payday" means a specific day or date established by the transportation network company on which compensation, bonuses, incentives, tips, and other owed amounts are paid to a driver during a pay period.

(27) "Payment interval" means the amount of time between established paydays. A payment interval may be instant, daily, weekly, or bi-weekly.

(28) "Pay period" means a defined time frame for which a driver will receive a payment. A pay period may be instant, daily, weekly, or bi-weekly.

(29) "Personal vehicle" has the same meaning as "personal vehicle" in RCW 48.177.005.

(30) "Plain language" is language that is clear, concise, and visually easy to read. It must use common words, rather than jargon, acronyms, or unnecessary legal language.

(31) "Preferred language" is the driver's language choice provided in response to a transportation network company's request for their preferred language. Each transportation network company must make a good faith effort to learn a driver's preferred language. A transportation network company must translate documents available via an accessible system into the driver's preferred language, provided that the preferred language has been identified as the preferred language of at least two percent of drivers who utilize the transportation network company's driver platform in Washington. The transportation network companies and the driver resource center must work with the department to identify the preferred languages that meet the two percent threshold(s), at least every two years.

(32) "Shared ride" means a dispatched trip in which, prior to its commencement, a passenger requests through the transportation network company's digital network to share the dispatched trip with one or more passengers and each passenger is charged a fare that is calculated, in whole or in part, based on the passenger's request to share all or a part of the dispatched trip with one or more passengers, regardless of whether the passenger actually shares all or a part of the dispatched trip.

(33) "Tips" means a verifiable sum to be presented by a passenger as a gift or gratuity in recognition of service performed for the passenger by the driver receiving the tip.

(34) "Transportation network company" has the same meaning as defined in RCW 46.04.652. A transportation network company does not provide for hire transportation service and includes a third-party administrator when a transportation network company contracts with a third-party administrator for the purposes of providing paid sick time.

(35) "Verification" means evidence that establishes or confirms that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210.

[]

GENERAL REQUIREMENTS

NEW SECTION

WAC 296-128-99020 Fees collected and remitted for the driver resource center fund. Transportation network companies must collect and

remit per trip fee amounts from passenger fares to the driver resource center fund as follows:

- (1) Beginning July 1, 2024, the per trip fee amount is \$0.15.
- (2) Beginning January 1, 2025, and every January 1st thereafter, the per trip fee amount is as adjusted and published by the department in accordance with RCW 49.46.300 (12) (b).
- (3) Each transportation network company shall submit to the fund, with its remittance under RCW 49.46.300(12), a report detailing the number of trips in the previous quarter and the total amount of the surcharge charged to customers. The first payment and accounting is due on the 30th day of the quarter following the collection of the surcharge. The department may request records from a transportation network company in order to confirm accuracy of remittance payments and reports submitted to the department.

[]

NEW SECTION

- WAC 296-128-99030 Driver electronic receipts and weekly trip notices.** (1) **Electronic receipts.** Within 24 hours of each dispatched trip, a transportation network company must transmit to the driver an electronic receipt, available in a communication system, for each unique trip or portion of a unique trip. For the purposes of an electronic receipt, a transportation network company may either provide a downloadable comma-separated values file or searchable PDF format containing a table with rows for each unique trip or portion of the trip and columns for each itemized element contained in the trip receipt. Electronic receipts must be available to the driver for at least two years following the date the transportation network company provided the receipt to the driver. The electronic receipt must itemize the following information for each unique trip, or portion of a unique trip:
- (a) The total amount of passenger platform time;
 - (b) The total mileage driven during passenger platform time;
 - (c) The applicable rate(s) of pay including, but not limited to, the rate(s) per minute, rate(s) per mile, percentage of passenger fare, and any applicable price multiplier(s) or variable pricing policy in effect including variable rates based on geographic location;
 - (d) Any tip compensation paid by the passenger within 24 hours of the dispatched trip;
 - (e) Gross payment;
 - (f) Net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
 - (g) Itemized deductions or fees, including any tolls, surcharges, commissions, lease fees, and other charges;
 - (h) The applicable date and time frame for each trip and each portion of a trip; and
 - (i) The passenger pick-up and passenger drop-off locations for each trip and each portion of a trip as described by the street, city, and state in which the passenger pick-up and passenger drop-off occurred; however, if the passenger is an unaccompanied minor, only the city and state need be disclosed.
- (2) **Weekly trip notices.** At least once a week, a transportation network company must transmit to the driver a written notice, availa-

ble in a communication system, that contains the following information for trips, or portions of trips, which occurred in the prior week:

- (a) The driver's total passenger platform time;
- (b) Total mileage driven by the driver during passenger platform time;
- (c) The driver's total tip compensation received from passengers within the prior week, itemized by the date of each dispatched trip or portion of a dispatched trip;
- (d) The driver's gross payment, itemized by:
 - (i) Rate(s) per minute;
 - (ii) Rate(s) per mile; and
 - (iii) Any other method used to calculate pay including, but not limited to, base pay, percentage of passenger fare, or any applicable price multiplier(s) or variable pricing policy in effect for the trip, including variable rates based on geographic location;
- (e) The driver's net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
- (f) An itemization of deductions or fees, including all tolls, surcharges, commissions, lease fees, and other charges, from the driver's payment; and
- (g) The total passenger platform time performed within the past 365 calendar days.

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NEW SECTION

WAC 296-128-99040 Payment requirements. (1) A transportation network company must establish regularly scheduled payment intervals for compensation, tips and gratuities, reimbursements, or any other amounts due to a driver. The scheduled interval must occur at least bi-weekly. Nothing in this provision prevents a transportation company from establishing a more frequent interval or paying in advance of a scheduled payday, such as an instant payment.

(2) A transportation network company must pay the driver amounts owed no later than 10 calendar days after the end of the pay period.

(3) Transportation network companies may pay drivers by direct deposit or other electronic means on the established payday. If a transportation network makes a payment by mail, any mailed payment must be postmarked no later than the established payday. If the established payday falls on a weekend day or holiday when the business office is not open, mailed paychecks must be postmarked no later than the next business day.

(4) If any applicable federal, state, or local law or ordinance provides specific payment interval requirements that are more favorable to a driver than the payment interval requirements provided under this rule, that law shall apply.

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NEW SECTION

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements. (1) A transportation network company must pay drivers in accordance with RCW 49.46.300(4) as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the portion of a trip that occurs within Washington.

(2) For a dispatched trip with a passenger pick-up location in a city in the state of Washington with a population above 600,000, all minimum compensation requirements under RCW 49.46.300 (4)(a)(i) apply, regardless of the passenger drop-off location.

(3) For a trip with a passenger pick-up location in the state of Washington outside a city with a population above 600,000 and a passenger drop-off location inside a city with a population above 600,000 in the state of Washington, the greater of:

(a) The combined total of:

(i) The per minute and per mile minimum compensation requirements under RCW 49.46.300 (4)(a)(i) applied to the portion of passenger platform time or mileage that occurs within the city with a population above 600,000; and

(ii) The per minute and per mile compensation requirements under RCW 49.46.300 (4)(a)(ii) applied to the portion of passenger platform time or mileage that occurs outside the city with a population above 600,000; or

(b) The per trip minimum for a dispatched trip under RCW 49.46.300 (4)(a)(1)(B).

(4) **Shared rides.** The per trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any pick-up location, passenger platform time, or mileage within the shared ride meets the requirements of subsection (1)(a) or (b) of this section.

(5) **More favorable standards.** If any portion of a dispatched trip or shared ride is subject to a standard established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which is more favorable to drivers than these minimum compensation requirements, such standard shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

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NEW SECTION

WAC 296-128-99060 Tips and gratuities. (1) A transportation network company shall remit to drivers all tips, except as provided in WAC 296-128-99080. Tips paid to a driver are in addition to, and may not count towards, the driver's minimum compensation under RCW 49.46.300(4) or associated rules.

(2) All tips must be paid in regular intervals in accordance with WAC 296-128-99040, upon payment from the passenger.

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NEW SECTION

WAC 296-128-99070 Driver reimbursements. (1) "Driver reimbursement" is an amount charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges.

(2) A transportation network company must pay driver reimbursements in an amount at least equal to the amount charged to the passenger for tolls, fees, or any other charges or surcharges.

(3) Amounts charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges must be paid in accordance with WAC 296-128-99040.

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NEW SECTION

WAC 296-128-99080 Deductions from driver compensation. (1) **Mandatory deductions.** A transportation network company may deduct any portion of a driver's compensation, without a driver's prior written authorization, for the following reasons:

(a) If the deduction is required by state or federal law; or

(b) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

(2) A mandatory deduction may reduce a driver's compensation below the minimum compensation requirements in RCW 49.46.300(4) and associated rules.

(3) **Voluntary deductions.** Except as required by law, a transportation network company may only deduct compensation when the driver expressly authorizes the deduction in writing and does so in advance and for a lawful purpose. Voluntary deductions may reduce the driver's per trip earnings below the minimum compensation requirements set forth in chapter 49.46 RCW and associated rules. Any authorization by a driver must be voluntary and knowing.

(a) Voluntary deductions that may be authorized by a driver include, but are not limited to:

(i) Voluntary per trip earnings deduction contributions in accordance with WAC 296-128-99090; or

(ii) Voluntary deductions for a lease or rental car program.

(b) A driver's written authorization for deductions is valid if it:

(i) Is written in either English or the driver's preferred language;

(ii) States that the driver authorizes a deduction from the driver's compensation;

(iii) States the deduction amount(s), interval(s) of deductions, and nature of any deductions;

(iv) States the effective date(s) of a deduction;

(v) States the estimated end date of a deduction, if any;
 (vi) Includes sufficient information to identify the driver;
 (vii) Is submitted in advance of the deduction; and
 (viii) Is submitted by the driver or the driver's authorized representative.

(c) A "voluntary and knowing" deduction means:

(i) The driver was informed via an accessible system that the deduction may reduce their compensation below the minimum compensation requirements in RCW 49.46.300 or associated rules; and

(ii) The driver was not pressured, manipulated, or coerced into authorizing the deduction.

(d) A driver may rescind a voluntary deduction with notice, written in either English or the driver's preferred language, at least 10 days before a scheduled deduction.

(4) **No financial benefit for any deduction.** A transportation network company, or any person acting in the interest of the transportation network company, may not derive any financial profit or benefit from any deduction.

(a) A deduction will be considered for financial profit or benefit only if it results in a gain over and above the fair market value of the goods or services for which the deduction was made.

(b) In determining whether a deduction resulted in a financial profit or benefit to the transportation network company, or any person acting in the interest of the transportation network company, the department may consider any of the following nonexhaustive factors:

(i) The cost of the goods or services incurred by the transportation network company, including reasonable administrative costs to provide the goods or services to the transportation network company driver;

(ii) The fair market value for the goods or services; and

(iii) Whether the deduction resulted in a gain over and above expenditures.

(5) **No deductions for loss or breakage.** In no case may a transportation network company deduct the cost of damage to or loss of transportation network company equipment, software, intellectual property, or other tangible or intangible property from a driver's compensation.

(6) A transportation network company must not deduct from a driver's tips, unless required by law or expressly authorized under the voluntary deduction provisions of this section.

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NEW SECTION

WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center. (1) Beginning no later than June 9, 2023, each transportation network company must provide an opportunity for drivers to make voluntary per trip earnings deduction contributions to the driver resource center, if the transportation network company has 100 or more drivers authorize such a deduction.

(2) The driver resource center will administer driver authorizations and revocations of the voluntary per trip earnings deduction contributions subject to the following:

(a) Each driver must expressly authorize the deduction in writing;

(b) Each deduction authorization must include sufficient information to identify the driver and driver's per trip deduction amount;

(c) Such a deduction may reduce the driver's per trip earnings below the minimum compensation requirements set forth in RCW 49.46.300 (13)(a) and all associated rules; and

(d) A driver's authorization will remain in effect until the driver or driver resource center provides the driver's express revocation to the transportation network company.

(3) The driver resource center must inform drivers that deductions will continue unless the driver requests express revocation or an adjustment of the deduction amount. The driver resource center may choose to meet this requirement by providing a standard form to drivers. If the driver resource center chooses to develop a standard form, it must:

(a) Be made available in English and the driver's preferred language; and

(b) Include the driver's requested per trip deduction amount.

(4) Transportation network companies must rely on the information provided by the driver resource center regarding any authorization or revocation of a deduction.

(5) A transportation network company may seek reimbursement from the driver resource center for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions. Costs associated with deductions and remittances eligible for reimbursement include:

(a) Administrative costs; and

(b) Any transfer fees, charges, or other costs associated with any bank fees.

(6) The transportation network company must submit any reimbursement requests for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions to the driver resource center by no later than 28 calendar days following the end of the month in which costs were accrued.

(7) With each reimbursement request, a transportation network company must provide the following supporting documents:

(a) A list of the drivers from whose compensation such deductions were made and the amounts deducted during that month; and

(b) Supporting documentation showing any claimed administrative costs, transfer fees, charges, or other associated costs.

(8) The driver resource center must issue a reimbursement to the transportation network company by no later than 28 calendar days following the reimbursement request.

(9) The driver resource center may deny a transportation network company's request for reimbursement of costs associated with deduction and remittance, if the request does not include supporting records sufficient to show the costs are reasonably related to the deduction or remittance of voluntary per-trip earnings deductions.

(10) The transportation network company may resubmit the request within 30 days of the rejection with additional supporting documents for further consideration.

(11) If the driver resource center denies a transportation network company's request for reimbursement of costs associated with de-

duction and remittance after providing further documentation, the transportation network company may request the department review the submissions and issue an order determining whether the reimbursement should be paid. Such an order will be subject to review under the provisions of chapter 34.05 RCW.

(12) The transportation network company must keep records of all costs associated with reimbursement requests for deduction and remittance costs for three years.

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NEW SECTION

WAC 296-128-99100 Deactivations. (1) A transportation network company must enter into an agreement with the driver resource center regarding the driver account deactivation appeals process for eligible account deactivations. Any agreement must be approved by the department. The department may approve an agreement only if the agreement is consistent with RCW 49.46.300 (15) (a) (iv) and associated rules, as set forth under RCW 49.46.300 (15) (c).

(2) Upon a driver's account deactivation, the transportation network company must provide notification via email and an accessible system to the driver that includes:

(a) Notification that the driver may have the right to appeal the account deactivation and receive representation by the driver resource center in an appeal;

(b) Contact information for the driver resource center, as specified by the driver resource center;

(c) A written statement describing the reason for deactivation and the internal policy violated;

(d) The effective start date of deactivation;

(e) The anticipated end date of deactivation or confirmation that the deactivation is permanent;

(f) Any action necessary for the driver to remedy the deactivation; and

(g) Notification of the driver's right to use earned accrued paid sick time during a deactivation period.

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NEW SECTION

WAC 296-128-99110 Notice of rights. (1) **Notice of rights requirements.** A transportation network company must provide each driver with a written notice of rights as established by RCW 49.46.300 (7) and associated rules. The notice must inform drivers of:

(a) The right to the applicable per minute rate, per mile rate, or per trip rate guaranteed by RCW 49.46.300 or associated rules;

(b) The right to be protected from retaliation for exercising in good faith the rights protected by RCW 49.46.300 or associated rules; and

(c) The right to seek legal action or file a complaint with the department for violation of the requirements of RCW 49.46.300 or asso-

ciated rules, including a transportation network company's failure to pay the minimum per minute rate, per mile rate, or per trip rate, or a transportation network company's retaliation against a driver or other person for engaging in an activity protected by RCW 49.46.300 or associated rules.

(2) **Sample notice.** The department may develop a sample notice of rights that meets the department's standard for compliance with RCW 49.46.300(7) and associated rules. If the department provides such a notice:

(a) The department may provide the sample notice of rights in English and the five most common languages spoken in the state, but may also consult with the driver resource center and transportation network company representatives to identify other common languages spoken by drivers in the state of Washington to provide additional translated sample notices of rights;

(b) Each transportation network company may satisfy its obligation to distribute the written notice of rights by providing the department's sample notice in an accessible system; and

(c) Each transportation network company should make additional efforts to provide access to the notice of rights in a driver's preferred language when a transportation network company knows or has reason to know the driver's preferred language.

(3) **Manner of distribution.** The transportation network company must distribute the notice of rights as follows:

(a) The written notice of rights must be made available and remain accessible to the driver in an electronic format that is readily accessible for at least three years. A transportation network company must make the notice of rights available to the driver via smartphone application or online web portal, in English and the five most common foreign languages spoken in this state. A transportation network company may meet this requirement by distributing the notice of rights via an accessible system;

(b) For a new driver or a driver who has not begun a period of passenger platform time for a 90 day period, the transportation network company shall affirmatively provide the driver with the notice of rights within 48 hours of the driver beginning a period of passenger platform time in Washington.

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NEW SECTION

WAC 296-128-99120 Retaliation. (1) It is unlawful for a transportation network company to interfere with, restrain, or deny the exercise of any driver right provided under or in connection with chapter 49.46 RCW or associated rules. This means a transportation network company may not use a driver's exercise of any of their rights provided under chapter 49.46 RCW or associated rules as a negative factor in any account deactivation, restriction in account access, or other adverse action, or otherwise subject a driver to an adverse action for the exercise of any rights provided under chapter 49.46 RCW or associated rules.

(2) It is unlawful for a transportation network company to adopt or enforce any policy that counts the use of paid sick time for a purpose authorized under RCW 49.46.210 (1)(b), (c), or (5)(h) as an ab-

sence that may lead to or result in any account deactivation or other adverse action.

(3) It is unlawful for a transportation network company to deactivate, restrict account access, or take any adverse action against a driver because the driver has exercised their rights provided under chapter 49.46 RCW or associated rules. Such rights include, but are not limited to: Filing an action, filing a complaint with the department or driver resource center, or otherwise instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW or associated rules; exercising their right to paid sick time, compensation, tips and gratuities, reimbursements or other amounts due to a driver; utilizing the driver resource center; or testifying or offering or intending to testify in any such proceeding related to any driver rights provided under chapter 49.46 RCW or associated rules.

(4) Adverse action means any action taken or threatened by a transportation network company against a driver for the driver's exercise of chapter 49.46 RCW or associated rule rights, which actions may include, but is not limited to:

(a) Denying use of or delaying payment for paid sick time, compensation, all tips and gratuities, reimbursements, or any other amounts due to a driver;

(b) Deactivating an account as defined by RCW 49.46.300 (1)(a) and associated rules;

(c) Restricting any account access;

(d) Altering any of the driver's rates of pay;

(e) Preventing a driver's alternate compensation rate tier opportunities;

(f) Threatening to take, or taking, action based upon the immigration status of a driver or a driver's family member;

(g) Preventing a driver from working in any other lawful occupation or business; or

(h) Altering a driver's rating.

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TNC—PAID SICK TIME STANDARDS

NEW SECTION

WAC 296-128-99130 Paid sick time accrual. (1) Drivers accrue earned paid sick time for all passenger platform time worked. A driver must accrue at least one hour of paid sick time for every 40 hours of passenger platform time worked. Transportation network companies may provide drivers with a more generous paid sick time accrual rate.

(2) Drivers who provide network services on a driver platform shall accrue paid sick time for all passenger platform hours performed on or after January 1, 2023.

(3) Transportation network companies are not required to allow drivers to accrue paid sick time for any time not considered passenger platform time. Transportation network companies are not required but may choose to allow drivers to accrue paid sick time for time not considered passenger platform time.

(4) Transportation network companies must allow drivers to carry over at least 40 hours of accrued, unused paid sick time to the following calendar year. However, a transportation network company may allow for more than 40 hours of accrued, unused paid sick time to carry over to the following calendar year. If a driver carries over unused paid sick time to the following calendar year, accrual of paid sick time in the subsequent year would be in addition to the hours accrued in the previous calendar year and carried over.

(5) Transportation network companies may cap carry over of accrued, unused paid sick time to the following calendar year at 40 hours. Transportation network companies may allow for a more generous carry over of accrued, unused paid sick time to the following calendar year.

(6) If a driver does not record any passenger platform time on a transportation network company's driver platform for 365 consecutive calendar days, the transportation company may choose to allow any earned paid sick time to expire. A transportation network company must make available for use any unused earned paid sick time to a driver with less than a consecutive 365-day gap between recording passenger platform time for the transportation network company.

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NEW SECTION

WAC 296-128-99140 Paid sick time usage. (1) A driver is entitled to use earned paid sick time for the following purposes authorized in RCW 49.46.210(5):

(a) An absence resulting from the driver's mental or physical illness, injury, or health condition; to accommodate the driver's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or a driver's need for preventive medical care;

(b) To allow the driver to provide care for an authorized family member under RCW 49.46.210 with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care;

(c) When the driver's child's school or place of care has been closed by order of a public official for any health-related reason;

(d) For absences for which an employee would be entitled to leave under RCW 49.76.030;

(e) During an account deactivation or other status that prevents the driver from performing network services on the transportation network company's platform, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver; and

(f) A transportation company may provide more generous paid sick time policies or permit use of paid sick time for additional purposes or family members.

(2) After three consecutive days of account deactivation, a driver may request paid sick time for any portion of the deactivation period, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver.

(3) A driver is entitled to use accrued earned paid sick time upon recording 90 hours of passenger platform time on the transportation network company's driver platform. Transportation network companies may allow drivers to use accrued, unused paid sick time prior to recording 90 hours of passenger platform time.

(4) Upon recording 90 hours of passenger platform time on the transportation network company's driver platform, a transportation network company must make earned accrued paid sick time available for use to the driver.

(5) A driver is entitled to use earned paid sick time if the driver has recorded passenger platform time as a driver within 90 calendar days preceding the driver's request to use earned paid sick time.

(6) Earned paid sick time must be made available for use within a communication system for drivers.

(7) A transportation network company must allow drivers to use paid sick time in four-hour increments, not to exceed eight hours within one day. A transportation network company may allow paid sick time usage in shorter increments.

(8) A transportation network company must allow drivers to claim earned paid sick time through a communication system within a time frame during which a driver was eligible to use their earned paid sick time and projected absences, so long as the absence is for an authorized purpose under RCW 49.46.210.

(9) A driver may choose to use earned paid sick time simultaneously for multiple transportation network companies during the same time period for a purpose authorized under RCW 49.46.210.

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NEW SECTION

WAC 296-128-99150 Paid sick time rate of pay. (1) A transportation network company must pay drivers their average hourly compensation for each hour of paid sick time used, as established by RCW 49.46.210.

(2) "Average hourly compensation" means a driver's compensation during passenger platform time for, or facilitated by, the transportation network company during the 365 days immediately prior to the day that paid sick time is used, divided by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. A transportation network company may also calculate the "average hourly compensation" by adopting a consistent practice of dividing the last 12 full calendar months immediately prior to the day that paid sick time is used by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. "Aver-

age hourly compensation" includes bonus and incentive pay. "Average hourly compensation" does not include tips or reimbursements.

(3) Nothing in this section prevents a transportation network company from providing a more generous rate of average hourly compensation.

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NEW SECTION

WAC 296-128-99160 Reasonable notice. (1) A transportation network company may not require advanced notice of paid sick time use from a driver for an authorized purpose under RCW 49.46.210.

(2) A transportation network company's request or requirement for advanced notice of paid sick time from a driver is considered an interference with a driver's lawful use of paid sick time and is subject to enforcement procedures under chapter 49.46 RCW and associated rules.

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NEW SECTION

WAC 296-128-99170 Paid time off (PTO) programs. (1) Paid time off (PTO) provided to drivers by a transportation network company's PTO program (e.g., a program that combines leave for multiple purposes into one pool), created by a written policy or agreement with a third-party administrator, satisfies the requirement to provide paid sick time if the PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules, including:

(a) Accrual of PTO leave at a rate of not less than one hour for every 40 hours of passenger platform time worked as a driver;

(b) Payment for PTO leave at a rate of no less than the driver's average hourly compensation;

(c) Carryover of at least 40 hours of unused earned PTO leave to the next calendar year;

(d) Access to use PTO leave for all the purposes authorized under RCW 49.46.210 (5) (h); and

(e) Transportation network company notification and recordkeeping requirements set forth in RCW 49.46.210 and all applicable rules.

(2) If a driver chooses to use PTO leave for purposes other than those authorized under RCW 49.46.210 and the need for use of paid sick time later arises when no additional PTO leave is available, the transportation network company is not required to provide any additional PTO leave to the driver as long as the transportation network company's PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules.

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NEW SECTION

WAC 296-128-99180 Verification for paid sick time usage. (1) A transportation network company must not request or require verification of a driver's authorized use except as permitted under RCW 49.46.210.

(2) For a driver's use of paid sick time for an absence exceeding three calendar days, a transportation network company may require verification that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210(5), except during an account deactivation as provided in subsection (3) of this section. "Exceeding three calendar days" means a driver spends more than three consecutive calendar days using earned paid sick time without recording passenger platform time on the transportation network company's driver platform.

(3) A transportation network company must not request verification if the paid sick time usage occurs during a deactivation period that prevents the driver from providing network services to the transportation network company.

(4) Before a transportation network company requires verification for the use of paid sick time under RCW 49.46.210, the transportation network company must:

(a) Provide a written policy or agreement with a third-party administrator in advance to the driver via an accessible system, outlining any such requirements; and

(b) Notify the driver of such policy or agreement with a third-party administrator, including the driver's right to assert that the verification requirement results in an unreasonable burden or expense on the driver, prior to the driver requesting the paid sick time.

(5) If a transportation network company requires verification from a driver, the verification must be provided to the transportation network company within a reasonable time period during or after the use of the paid sick time. For driver use of paid sick time under RCW 49.46.210, "reasonable time period" is a period of time defined by a transportation network company's written policy or agreement with a third-party administrator, but may not be less than 10 calendar days following the first day upon which the driver uses paid sick time.

(6) A transportation network company's requirements for verification may not result in an unreasonable burden or expense on the driver and may not exceed privacy or verification requirements otherwise established by law.

(7) If a transportation network company requires verification and the driver anticipates that the requirement will result in an unreasonable burden or expense:

(a) The driver must be allowed to provide a written explanation via an accessible system which asserts:

(i) The driver's use of paid sick time was for an authorized purpose under RCW 49.46.210; and

(ii) How the transportation network company's verification requirement creates an unreasonable burden or expense on the driver;

(b) The transportation network company must consider the driver's explanation. Within 10 calendar days of the driver providing an explanation to the transportation network company about the existence of an unreasonable burden or expense, the transportation network company must make a reasonable effort to identify and provide alternatives for the driver to meet the transportation network company's verification requirement in a manner which does not result in an unreasonable burden or expense on the driver. A reasonable effort by the transporta-

tion network company to identify and provide alternatives could include, but is not limited to:

(i) Accepting the written explanation provided by the driver as a form of verification that meets the transportation network company's verification requirement; or

(ii) Mitigating the driver's out-of-pocket expenses associated with obtaining medical verification, by no later than the driver's next regularly scheduled date of compensation or no more than 14 calendar days, whichever occurs first; and

(c) If after the transportation network company considers the driver's explanation, the transportation network company and driver disagree on whether the transportation network company's verification requirement results in an unreasonable burden or expense on the driver:

(i) The transportation network company and driver may consult with the department regarding verification requirements; and

(ii) A driver may file a complaint with the department.

(8) If a transportation network company requires a driver to provide verification from a health care provider identifying the need for use of paid sick time for an authorized purpose under RCW 49.46.210, the transportation network company must not require that the information provided explain the nature of the condition. If the transportation network company obtains any health information about a driver or a driver's family member, the transportation network company must treat such information in a confidential manner consistent with applicable privacy laws.

(9) If a transportation network company requires verification pursuant to this subsection, the transportation network company must compensate the driver for the requested hours or days of earned paid sick time no later than the driver's next regularly scheduled date of compensation or no more than 14 calendar days after verification is provided.

(10) If a transportation network company requires verification that the use of paid sick time is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070.

(11) For use of paid sick time for purposes authorized under federal, state, or other local laws that permit transportation network companies to make medical inquiries, a transportation network company may require verification from a driver that complies with such certification requirements.

(12) Nothing in this section prevents a transportation network company from providing a more favorable verification process as long as such process meets or exceeds the requirements of this section and RCW 49.46.210.

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NEW SECTION

WAC 296-128-99190 Frontloading. (1) A transportation network company may, but is not required to, frontload paid sick time to a driver in advance of accrual.

(2) If a transportation network company frontloads paid sick time, the transportation network company must ensure that such frontloaded paid sick time complies with the provisions of RCW 49.46.210 and all applicable rules.

(3) If a transportation network company frontloads paid sick time, the transportation network company must do so by using a reasonable calculation, consistent with the accrual requirement set forth under RCW 49.46.210(5), to determine the amount of paid sick time the driver would be projected to accrue during the period of time for which paid sick time is being frontloaded.

(a) If the transportation network company calculates and frontloads, and a driver subsequently uses, an amount of paid sick time which exceeds the paid sick time the driver would have otherwise accrued absent frontloading, the transportation network company must not seek reimbursement from the driver for such paid sick time.

(b) If a transportation network company frontloads paid sick time to a driver, but such frontloaded paid sick time is less than the amount the driver was entitled to accrue under RCW 49.46.210(5), the transportation network company must make such additional amounts of earned paid sick time available for use by the driver as soon as practicable, but no later than 30 calendar days after identifying the discrepancy.

(4) If a transportation network company frontloads paid sick time, the company must have a written policy or an agreement with a third-party administrator which addresses the requirements for use of frontloaded paid sick time. A transportation network company must notify drivers of such policy or an agreement with a third-party administrator prior to frontloading a driver paid sick time, and must make this information readily available to all drivers via an accessible system.

(5) A transportation network company may not seek reimbursement from a driver for frontloaded paid sick time used prior to accrual under RCW 49.46.210(5), unless there is a specific agreement with a third-party administrator in place allowing for such a reimbursement.

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NEW SECTION

WAC 296-128-99200 Third-party administrators. (1) Transportation network companies may contract with a third-party administrator in order to administer the earned paid sick time requirements under RCW 49.46.210 and applicable rules. A transportation network company may contract with the driver resource center to act as a third-party administrator.

(2) With the consent of transportation network companies, third-party administrators may pool a driver's earned paid sick time from multiple transportation network companies as long as the accrual rate is at least equal to one hour of earned paid sick time for every 40 hours of passenger platform time worked. For example, if a group of transportation network companies has drivers who perform work for various transportation network companies at different times, the transportation network companies may choose to contract with a third-party administrator to track the hours worked and rate of accrual for earned paid sick time for each driver, and pool such earned paid sick time

for use by the driver when the driver is working for any transportation network companies in the same third-party administrator network.

(3) A transportation network company must have a written policy or third-party administrator agreement that outlines the provisions for a transportation network company to use a third-party administrator. Such written policies must meet all of the paid sick time requirements under RCW 49.46.210 and all applicable rules, inform drivers of any other transportation network companies within the same third-party administrator network, and be made available via an accessible system.

(4) Transportation network companies are not relieved of their obligations under RCW 49.46.210, and all applicable rules, if they elect to contract with a third-party administrator to administer earned paid sick time requirements.

[]

NEW SECTION

WAC 296-128-99210 Paid sick time notifications. (1) Transportation network companies must notify each driver of the driver's entitlement to paid sick time, the rate at which the driver will accrue paid sick time, the authorized purposes for which paid sick time may be used, and that retaliation by the transportation network company for the driver's lawful use of paid sick time and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.

(2) Transportation network companies must provide such a notification via an accessible system. For drivers hired on or after January 1, 2023, transportation network companies must notify each driver of such rights no later than the commencement of the driver performing passenger platform time. For existing drivers, the transportation network company must notify each driver no later than January 1, 2023.

(3) No less than monthly, transportation network companies must provide each driver with notification via a communication system detailing:

(a) The amount of paid sick time accrued since the last notification;

(b) The amount of paid sick time reductions since the last notification;

(c) The amount of unused earned paid sick time available for use;

(d) The average hourly compensation rate applied to any paid sick time used since the last notification and the calculation used to identify such rate; and

(e) The driver's expected average hourly rate of compensation for paid sick time use during the month following the statement, and the calculation used to identify such rate.

(4) Transportation network companies may satisfy the notification requirements by providing this information in regular pay statements.

(5) If a transportation network company chooses to frontload paid sick time to a driver in advance of accrual:

(a) The transportation network company must make notification to a driver via an accessible system no later than the end of the period for which the frontloaded paid sick time was intended to cover, establishing that the amount of paid sick time frontloaded to the driver was at least equal to the accrual rate under RCW 49.46.210; and

(b) The transportation network company is not relieved of its obligation to provide notification, not less than monthly, of the paid sick time available for use by the driver.

(6) A transportation network company must satisfy all notification requirements in RCW 49.46.210(5) and related rules for drivers with an account deactivation.

[]

NEW SECTION

WAC 296-128-99220 Shared paid sick time. (1) A transportation network company may, but is not required to, establish a shared paid sick time program in which a driver may choose to donate paid sick time to another driver.

(2) If a transportation network company establishes a shared paid sick time program, the company must have a written policy or third-party administrator agreement which specifies that a driver may donate accrued earned paid sick time to another driver for purposes authorized under RCW 49.46.210(5).

(3) The transportation network company must notify drivers of such policy or third-party administrator agreement via an accessible system prior to allowing a driver to donate or use shared paid sick time.

[]

NEW SECTION

WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes. (1) If a transportation network company can demonstrate that a driver's use of paid sick time was for a purpose not authorized under RCW 49.46.210(5), the transportation network company may withhold payment of paid sick time for such hours, but may not subsequently deduct those hours from a driver's legitimately unused accrued earned paid sick time hours.

(2) If a transportation network company withholds payment for the use of paid sick time for purposes not authorized under RCW 49.46.210(5), the transportation network company must provide notification that includes a description of the reason the purpose was considered unauthorized via an accessible system to the driver. If the driver maintains that the use of paid sick time was for an authorized purpose, the driver may file a complaint with the department.

(3) If a driver accepts an offer of prearranged services for compensation from a transportation network company during the period of time for which the driver requested earned paid sick time, a transportation network company may determine that the driver did not use earned paid sick time for an authorized purpose.

[]

TNC—ENFORCEMENT STANDARDSNEW SECTION

WAC 296-128-99240 Enforcement—Complaints by driver—Additional investigations by department for amounts owed to drivers. (1) If a driver files a complaint with the department alleging a transportation network company violated any compensation-related requirements of RCW 49.46.300, or any associated rules, the department will investigate the complaint under the provisions of RCW 49.46.320. "Compensation-related requirements" include compensation, improper deductions, or any other amounts owed to the driver.

(2) During an investigation, if the department discovers information suggesting additional violations of any compensation-related requirements of RCW 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of any compensation-related requirements of RCW 49.46.300, or any associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged compensation-related violations identified under RCW 49.46.300, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[]

NEW SECTION

WAC 296-128-99250 Enforcement—Remittances. (1) Upon receiving information suggesting that a transportation network company may have violated the remittance provisions of RCW 49.46.330, the department will investigate the applicable provisions of that section.

(2) If the department determines that a transportation network company has violated the remittance provisions of RCW 49.46.330 and issues a citation and notice of assessment, the department may order the transportation network company to pay all owed remittance payments as required under RCW 49.46.330. The department shall deposit all owed remittance payments into the driver resource center fund.

(3) Failure to accurately remit all applicable per trip fees is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(4) Failure to remit payments by the deadlines is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(5) The department may, for the purposes of enforcing RCW 49.46.330 or the associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(6) All remittance fees under RCW 49.46.330 for a calendar quarter are due the day immediately following the last day of the month following the calendar quarter. Any remittance fees not paid the day they are due are delinquent.

[]

NEW SECTION

WAC 296-128-99260 Enforcement—Complaint by driver—Paid sick time. (1) If a driver files a complaint with the department alleging that the transportation network company failed to provide the driver with earned paid sick time as provided in RCW 49.46.210, or any associated rules, the department will investigate the complaint as an alleged violation of a compensation-related requirement of RCW 49.46.300.

(2) If the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover as required by RCW 49.46.210, the driver may elect to:

(a) Receive full access to the balance of accrued earned paid sick time hours withheld by the transportation network company, based on a calculation of at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance; or

(b) Receive payment from the transportation network company at the driver's average hourly compensation for each hour of earned paid sick time that the driver would have used or have been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the driver would have otherwise accrued. The driver will receive full access to the balance of accrued paid sick time hours unlawfully withheld by the transportation network company, less the number of paid sick time paid out to the driver pursuant to this subsection.

(3) When the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover, and the driver has a deactivated account, the driver may elect to receive payment at the driver's average hourly compensation for each hour of earned paid sick time; receive reinstatement of the balance of paid sick time hours; or receive a combination of payment and reinstatement from the transportation network company for all hours of earned paid sick time that would have accrued during the period of noncompliance, unless such reinstatement is prohibited by law. Such hours must be based on a calculation at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance.

(4) The department's notice of assessment may order the transportation network company to provide the driver any combination of reinstatement and payment of accrued, unused paid sick leave hours assessed pursuant to subsection (2) or (3) of this section.

(5) For the purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to access any unused earned paid time ordered by the department for 365 days following the reinstatement of the earned paid sick time.

(6) For purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to carryover over any additional earned paid sick time ordered by the department to the next calendar year in addition to the carryover of 40 hours of unused earned sick time required by RCW 49.46.210.

(7) The department may conduct a consolidated investigation for any alleged violations identified in RCW 49.46.210 or any associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(8) The department may, for the purposes of enforcing RCW 49.46.210 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(9) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and

whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[]

NEW SECTION

WAC 296-128-99270 Enforcement—Retaliation investigations. (1)

The department will investigate any allegations that a transportation network company violated any of the protections of RCW 49.46.340, or any associated rules, pursuant to the enforcement procedures outlined in RCW 49.46.340.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.340 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.340, or associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, and 49.46.340, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.340 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[]

NEW SECTION

WAC 296-128-99280 Enforcement—Administrative violations. (1)

If a driver files a complaint with the department alleging a violation of any noncompensation requirement of RCW 49.46.210, 49.46.300 or any associated rules, the department will investigate the complaint under RCW 49.46.330.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.210, 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.210, 49.46.300, or any associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, or associated rules when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records, which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[]

NEW SECTION

WAC 296-128-99290 Enforcement—Administrative enforcement supplemental. Nothing in these rules limits the department's authority to enforce RCW 49.46.200 through 49.46.350, or associated rules, as otherwise provided under Title 49 RCW.

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WSR 22-19-100
PROPOSED RULES
NOXIOUS WEED
CONTROL BOARD

[Filed September 21, 2022, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-035.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties. The Washington state noxious weed control board (WSNWCB) is proposing to amend the state noxious weed list for 2023.

Hearing Location(s): On November 1, 2022, at 1:00 p.m., WebEx, phone 1-404-410-4537, toll free 1-877-312-2531, Meeting Access Code 2594 342 2821. Due to the mandated social distancing requirements in place during the current COVID-19 pandemic, the public hearings will be held solely over video and teleconference.

Date of Intended Adoption: December 1, 2022.

Submit Written Comments to: Mary Fee, WSNWCB, P.O. Box 42560, Olympia, WA 98504-2560, email mfee@agr.wa.gov or noxiousweeds@agr.wa.gov, fax 360-902-2053, by October 31, 2022.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388, email dpainter@agr.wa.gov, by October 31, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state noxious weed list provides the basis for noxious weed control efforts for county noxious weed control boards and other entities. It also provides guidelines for WSNWCB. This proposal makes a few amendments to WAC 16-750-003, 16-750-011, and 16-750-015. Specifically, WSNWCB is proposing:

1. WAC 16-750-003 addition of the definition of feral. Feral means where a plant species has escaped a managed landscape or is growing without human management or design. "Feral" does not include any plants grown for agricultural or commercial purposes.

2. WAC 16-750-011 proposed Class B designation changes:

- Common tansy, *Tanacetum vulgare*, undesignate in Lewis County.
- Spotted knapweed, *Centaurea stoebe*, designate in Douglas County.
- Shiny geranium, *Geranium lucidum*, undesignate in King County.
- Scotch Thistle, *Onopordum acanthium*, designate in Douglas County.

3. WAC 16-750-015:

- Feral holly, *Ilex aquifolium*: Addition as a Class C noxious weed species not including holly found in managed landscapes or where commercially or agriculturally grown.

Reasons Supporting Proposal: Under RCW 17.10.080, WSNWCB is charged with updating the state noxious weed list on an annual basis to ensure it accurately reflects the noxious weed control priorities and noxious weed distribution. Under RCW 17.10.070, WSNWCB is charged with adopting, amending, or repealing rules, pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to WSNWCB by this chapter.

The proposed addition of feral holly, *Ilex Aquifolium*, as a Class C noxious weed species is intended to keep them from spreading from current feral infestations to new locations within Washington state. Noxious weeds are very invasive species that, when left uncontrolled, outcompete agricultural crops and native species. Noxious weed infes-

tations negatively impact both terrestrial and aquatic habitats as well as farming and grazing lands. Feral holly is known to invade riparian and sensitive areas as well as grow in forested understories.

The designation changes of common tansy, spotted knapweed, shiny geranium, and Scotch thistle are intended to better match the infestation distribution in those counties. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable.

Statutory Authority for Adoption: RCW 17.10.070, 17.10.080.

Statute Being Implemented: Chapter 17.10 RCW.

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

Name of Proponent: WSNWCB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mary Fee, 1111 Washington Street S.E., Olympia, WA 98504, 360-561-4428.

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. WSNWCB is not one of the agencies listed in this section.

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. Approximately 132 businesses responded to an online survey emailed to licensed nurseries and agricultural industry associations. Seventeen businesses (12.8 percent) reported selling *Ilex aquifolium*, feral populations of this species are proposed for listing as a Class C noxious weed. Two businesses indicated the listing would impact their business due to loss of sales, revenue, or jobs, but only minimally. Both of these businesses plus an additional six other businesses reported that they provide alternatives to holly for purchase. Additionally, the noxious weed list is separate from the Washington state department of agriculture (WSDA) quarantine lists (WAC 16-752-300, 16-752-400, 16-752-500, and 16-752-600), which prohibit the sale and transport of particular species, so the proposed listing of feral holly would not prohibit the production or sale of English holly grown for foliage or for horticultural use. One business noted that if not listed, they would incur an economic loss due to feral holly invasion that is not being controlled.

Approximately 104 (96.3 percent) respondents indicated that the proposed designation change for common tansy would not cost their small business any loss in revenue or jobs. Two were unsure.

Approximately 102 (95.33 percent) respondents indicated that the proposed designation change for shiny geranium would not cost their small business any loss in revenue or jobs. Three were unsure.

Approximately 106 (98.15 percent) respondents indicated that the proposed designation change for shiny geranium would not cost their small business any loss in revenue or jobs. One was unsure.

Approximately 103 (95.37 percent) respondents indicated that the proposed designation change for shiny geranium would not cost their small business any loss in revenue or jobs. Three were unsure.

An analysis of the direct economic effects of the proposed rule amendments indicates that costs to businesses would be negligible or none at all. The proposed Class C addition of feral holly will not require control at the state level. The majority of the county noxious weed boards polled indicated either an interest in educating the public, or taking no action at all about feral holly. Therefore, there

will be little to no cost associated with compliance with this rule making concerning feral holly. However, the Northwest Holly Growers Association has concerns that the listing of feral holly as a Class C noxious weed species may impact their sales. The noxious weed list is separate from the WSDA quarantine lists (WAC 16-752-300, 16-752-400, 16-752-500, and 16-752-600), which prohibit the sale and transport of particular species, so the proposed listing of feral holly would not prohibit the production or sale of English holly grown for foliage or for horticultural use. One business from the survey reported that they did not know if they sold *Ilex aquifolium*, and did indicate a \$5,000 estimated loss. The basis for this estimated loss was unclear. This ruling will not limit the sale or production of holly and should not directly impact this business.

Two Class B noxious weed designation changes are being designated for control in counties where they are either absent or limited in distribution; businesses in these counties should not be faced with more-than-minor costs to control those noxious weeds. Limited distribution is typically defined as less than 100 infested acres within a county. The other two designation changes are less restrictive and should not pose any costs associated with these changes.

Based upon the above analysis, WSNWCB concludes that direct minor costs, if any, imposed would affect less than 10 percent of businesses and would not exceed \$100 in cost to comply as a direct result of these proposed rule-making changes, nor would any of these amendments to the noxious weed list directly cause the creation of or loss of any jobs. WSNWCB concludes that the proposed rule changes will not impose more-than-minor cost on businesses in an industry. Therefore, a formal small business economic statement is not required.

September 21, 2022
Mary Fee
Executive Secretary

OTS-4100.1

AMENDATORY SECTION (Amending WSR 10-03-046, filed 1/14/10, effective 2/14/10)

WAC 16-750-003 Definitions. (1) The definitions in this section shall apply throughout this chapter, unless the context plainly requires otherwise:

(a) "Action" means the transaction of the official business of the Washington state noxious weed control board including, but not limited to, receipt of public testimony, deliberations, discussions, considerations, reviews, and final actions.

(b) "Board" means the Washington state noxious weed control board, or a duly authorized representative.

(c) "Director" means the director of the department of agriculture, or the director's appointed representative.

(d) "Executive secretary" means the executive secretary of the Washington state noxious weed control board.

(e) "Feral" means where a plant species has escaped a managed landscape or is growing without human management or design. "Feral"

does not include any plants grown for agricultural or commercial purposes.

~~(f)~~ "Department" means the department of agriculture of this state.

~~((f))~~ ~~(g)~~ "Final action" means a collective positive or negative decision, or an actual vote by a majority of board members when sitting as a body or entity, upon a motion, proposal, resolution, or order.

~~((g))~~ ~~(h)~~ "Meeting" means meetings at which action is taken.

~~((h))~~ ~~(i)~~ "Regular meetings" means recurring meetings held in accordance with a periodic schedule in compliance with applicable statute or rule.

(2) The definitions in this subsection apply throughout this chapter, chapter 17.10 RCW, and any rules adopted thereunder unless the context plainly requires otherwise:

(a) "Control" of noxious weeds means to prevent all seed production and to prevent the dispersal of all propagative parts capable of forming new plants.

(b) "Contain" means to confine a noxious weed and its propagules to an identified area of infestation.

(c) "Eradicate" means to eliminate a noxious weed within an area of infestation.

(d) "Prevent the spread of noxious weeds" means to contain noxious weeds.

(e) Class A noxious weeds are those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state.

(f) Class B noxious weeds are those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region.

(g) "Class B designate" means those Class B noxious weeds whose populations in a region or area are such that all seed production can be prevented within a calendar year.

(h) Class C are any other noxious weeds.

(3) Any county noxious weed control board may enhance the clarity of any definition contained in subsection (2) of this section, making that definition more specific, but shall not change its general meaning.

[Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 10-03-046, § 16-750-003, filed 1/14/10, effective 2/14/10. Statutory Authority: Chapter 17.10 RCW. WSR 99-24-029, § 16-750-003, filed 11/23/99, effective 1/3/00; WSR 97-06-108, § 16-750-003, filed 3/5/97, effective 4/5/97; WSR 93-01-004, § 16-750-003, filed 12/2/92, effective 1/2/93; WSR 91-24-072, § 16-750-003, filed 12/2/91, effective 1/2/92; WSR 91-01-016, § 16-750-003, filed 12/7/90, effective 1/7/91; WSR 90-01-004, § 16-750-003, filed 12/7/89, effective 1/7/90; WSR 88-18-001 (Order 24, Resolution No. 24), § 16-750-003, filed 8/25/88.]

AMENDATORY SECTION (Amending WSR 22-01-040, filed 12/7/21, effective 1/1/22)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name		Will be a "Class B designate" in all lands lying within:	
(1)	blueweed, <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 6
		(b)	region 5, except Spokane County
(2)	Brazilian elodea, <i>Egeria densa</i>	(a)	region 1, except Grays Harbor County
		(b)	region 2, except Kitsap County
		(c)	King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d)	region 3, except Wahkiakum County
		(e)	regions 4, 5, and 6
(3)	bugloss, annual, <i>Lycopsis arvensis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(4)	bugloss, common, <i>Anchusa officinalis</i>	(a)	regions 1, 2, 3, and 6
		(b)	All of region 4 except those areas lying within the Entiat River Valley between the Columbia River confluence and Stormy Creek in Chelan County
		(c)	region 5, except Spokane County
(5)	butterfly bush, <i>Buddleja davidii</i>	(a)	Grays Harbor County of region 1
		(b)	San Juan County of region 2
		(c)	Cowlitz County of region 3
(6)	camelthorn, <i>Alhagi maurorum</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(7)	common fennel, <i>Foeniculum vulgare</i> (except bulbing fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a)	region 1, except Jefferson County
		(b)	region 2, except King and Skagit counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6
(9)	common tansy, <i>Tanacetum vulgare</i>	(a)	Clallam County of region 1
		(b)	Kitsap and San Juan counties of region 2
		(c)	Cowlitz ((and Lewis counties)) County of region 3
		(d)	Adams and Lincoln counties of region 5
(10)	Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a)	regions 1, 2, and 3
		(b)	Adams, Kittitas, and Lincoln counties of region 5
		(c)	Benton, Franklin, and Walla Walla counties of region 6
(11)	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(a)	region 1, except Pacific County
		(b)	Island, Kitsap, and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams, Kittitas, Lincoln, and Whitman counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(12)	European coltsfoot, <i>Tussilago farfara</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(13)	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Cowlitz County
(14)	gorse, <i>Ulex europaeus</i>	(a)	region 1, except Grays Harbor and Pacific counties

Name		Will be a "Class B designate" in all lands lying within:	
		(b)	regions 2, 3, 4, 5, 6
(15)	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(a)	region 1
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
(16)	hairy willow-herb, <i>Epilobium hirsutum</i>	(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	region 6, except Benton and Franklin counties
(17)	hanging sedge, <i>Carex pendula</i> , <i>Carex pendula subsp. pendula</i> and <i>Carex pendula subsp. agastachys</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(18)	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(19)	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
(20)	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)	(a)	region 1
		(b)	region 2, except Thurston County
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6
(21)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except King, Skagit, Snohomish, and Whatcom counties
		(c)	region 4, except Stevens County
(22)	herb-Robert, <i>Geranium robertianum</i>	(a)	regions 4, 5, and 6
(23)	hoary alyssum, <i>Berteroa incana</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Pend Oreille and Ferry counties
		(c)	region 5, except Klickitat County
(24)	houndstongue, <i>Cynoglossum officinale</i>	(a)	regions 1, 2, and 3
		(b)	Chelan and Douglas counties of region 4
		(c)	Yakima, Grant and Adams counties of region 5
		(d)	Benton and Franklin counties of region 6
(25)	indigobush, <i>Amorpha fruticosa</i>	(a)	regions 1, 2, and 4
		(b)	Lewis County of region 3
		(c)	region 5, except Klickitat County
(26)	knapweed, black, <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 5, and 6

Name		Will be a "Class B designate" in all lands lying within:	
(27)	knapweed, brown, <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(28)	knapweed, diffuse, <i>Centaurea diffusa</i>	(a)	region 1
		(b)	region 2
		(c)	region 3, except Cowlitz County
		(d)	Adams County of region 5
(29)	knapweed, meadow, <i>Centaurea x gerstlaueri</i>	(a)	regions 1 and 4
		(b)	region 2, except Whatcom County
		(c)	Thurston County of region 2, except below the ordinary high-water mark of the Nisqually River
		(d)	Lewis and Wahkiakum counties of region 3
		(e)	region 5, except Kittitas and Klickitat counties
		(f)	region 6, except Franklin and Walla Walla counties
(30)	knapweed, Russian, <i>Rhaponticum repens</i>	(a)	regions 1, 2, and 3
		(b)	Ferry and Pend Oreille counties of region 4
		(c)	Lincoln, Spokane, and Whitman counties of region 5
		(d)	Adams County of region 5, except for the area west of Highway 17 and north of Highway 26
		(e)	Asotin and Garfield counties of region 6
(31)	knapweed, spotted, <i>Centaurea stoebe</i>	(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	Clark, Lewis, and Wahkiakum counties of region 3
		(d)	Ferry ((County)) and Douglas counties of region 4
		(e)	Adams, Grant and Yakima counties of region 5
		(f)	region 6, except Columbia and Walla Walla counties
(32)	knotweed, Bohemian, <i>Fallopia x bohémica</i>	(a)	Island and San Juan counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, 5, and 6
(33)	knotweed, giant, <i>Fallopia sachalinensis</i>	(a)	region 2, except King, Pierce, and Snohomish counties
		(b)	region 3, except Cowlitz and Lewis counties
		(c)	regions 4, 5, and 6
(34)	knotweed, Himalayan, <i>Persicaria wallichii</i>	(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
		(c)	region 3, except Wahkiakum County
		(d)	region 4, 5, and 6
(35)	knotweed, Japanese, <i>Fallopia japonica</i>	(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, except Okanogan County
		(d)	region 5, except Spokane County
		(e)	region 6
(36)	kochia, <i>Bassia scoparia</i>	(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4
		(c)	Adams County of region 5
(37)	lesser celandine, <i>Ficaria verna</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except King and Whatcom counties
(38)	loosestrife, garden, <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 5, 6

Name		Will be a "Class B designate" in all lands lying within:	
(39)	loosestrife, purple, <i>Lythrum salicaria</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(40)	loosestrife, wand, <i>Lythrum virgatum</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(41)	Malta starthistle, <i>Centaurea melitensis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat and Whitman counties
(42)	parrotfeather, <i>Myriophyllum aquaticum</i>	(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
		(c)	Clark and Skamania counties of region 3
(43)	perennial pepperweed, <i>Lepidium latifolium</i>	(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
		(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
(44)	poison hemlock, <i>Conium maculatum</i>	(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
		(c)	Clark and Skamania counties of region 3
		(d)	Chelan, Douglas, and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
(45)	policeman's helmet, <i>Impatiens glandulifera</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except Thurston and Whatcom counties
(46)	puncturevine, <i>Tribulus terrestris</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
(47)	Ravenna grass, <i>Tripsidium ravennae</i>	(a)	Cowlitz County of region 3
		(b)	region 4
		(c)	region 5, except Yakima County
		(d)	region 6, except Benton County
(48)	rough chervil, <i>Chaerophyllum temulum</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(49)	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except all areas of Stevens County south of Township 29
		(c)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(d)	Asotin County of region 6

Name		Will be a "Class B designate" in all lands lying within:	
(50)	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except King and Thurston counties
(51)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
(52)	shiny geranium, <i>Geranium lucidum</i>	(a)	regions 1, 4, 5, and 6
		(b)	region((s)) 2, except <u>King and Thurston ((County)) counties</u>
		(c)	region 3, except Clark County
(53)	spurge flax, <i>Thymelaea passerina</i>	(a)	region 4, except Okanogan County
		(b)	regions 5 and 6
(54)	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3
		(d)	regions 4, 5, and 6
(55)	spurge, leafy, <i>Euphorbia virgata</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane County
		(c)	region 6, except Columbia County
(56)	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, Pierce, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan County
(57)	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
(58)	tansy ragwort, <i>Jacobaea vulgaris</i>	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4, 5, and 6
(59)	thistle, musk, <i>Carduus nutans</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County
(60)	thistle, plumeless, <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except those areas north of State Highway 20 in Stevens County
(61)	thistle, Scotch, <i>Onopordum acanthium</i>	(a)	regions 1, 2, ((and)) 3, and 4
		(b)	((region 4, except Douglas County
		(e))	region 5, except Spokane and Whitman counties
(62)	velvetleaf, <i>Abutilon theophrasti</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Yakima County
(63)	water primrose, <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(64)	white bryony, <i>Bryonia alba</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton and Garfield counties of region 6

Name		Will be a "Class B designate" in all lands lying within:	
(65)	Wild basil/basil savory, <i>Clinopodium vulgare</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except for Skamania County
(66)	wild chervil, <i>Anthriscus sylvestris</i>	(a)	regions 1, 3, 4, and 6
		(b)	region 2, except Whatcom County
		(c)	region 5, except Whitman County
(67)	yellow archangel, <i>Lamium galeobdolon</i>	(a)	Clallam County of region 1
		(b)	Island, San Juan, Skagit, and Whatcom counties of region 2
		(c)	Cowlitz, Skamania, and Wahkiakum counties of region 3
		(d)	regions 4, 5, and 6
(68)	yellow floating heart, <i>Nymphoides peltata</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Stevens County
		(c)	region 5, except Spokane County
(69)	yellow nutsedge, <i>Cyperus esculentus</i>	(a)	regions 1 and 4
		(b)	region 2, except Skagit and Thurston counties
		(c)	region 3, except Clark County
		(d)	region 5, except Klickitat and Yakima counties
		(e)	region 6, except Franklin and Walla Walla counties
(70)	yellow starthistle, <i>Centaurea solstitialis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat, and Whitman counties

[Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 22-01-040, § 16-750-011, filed 12/7/21, effective 1/1/22; WSR 20-24-098, § 16-750-011, filed 11/30/20, effective 1/1/21; WSR 19-24-052, § 16-750-011, filed 11/26/19, effective 1/1/20; WSR 18-24-010, § 16-750-011, filed 11/26/18, effective 1/1/19; WSR 17-24-035, § 16-750-011, filed 11/29/17, effective 1/1/18; WSR 16-24-031, § 16-750-011, filed 11/30/16, effective 1/1/17; WSR 15-24-078, § 16-750-011, filed 11/30/15, effective 12/31/15; WSR 14-24-103, § 16-750-011, filed 12/2/14, effective 1/2/15; WSR 14-02-072, § 16-750-011, filed 12/30/13, effective 1/30/14; WSR 13-01-038, § 16-750-011, filed 12/12/12, effective 1/12/13; WSR 12-01-050, § 16-750-011, filed 12/15/11, effective 1/15/12; WSR 10-24-037, § 16-750-011, filed 11/22/10, effective 12/23/10; WSR 09-01-071, § 16-750-011, filed 12/15/08, effective 1/16/09; WSR 07-24-023, § 16-750-011, filed 11/28/07, effective 1/1/08; WSR 06-24-056, § 16-750-011, filed 12/4/06, effective 1/4/07; WSR 05-24-026, § 16-750-011, filed 11/30/05, effective 12/31/05; WSR 05-01-012, § 16-750-011, filed 12/2/04, effective 1/2/05. Statutory Authority: Chapter 17.10 RCW. WSR 04-13-014, § 16-750-011, filed 6/4/04, effective 7/5/04. Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 03-24-012, § 16-750-011, filed 11/20/03, effective 12/21/03; WSR 03-04-001, § 16-750-011, filed 1/22/03, effective 2/22/03. Statutory Authority: Chapter 17.10 RCW. WSR 01-24-035, § 16-750-011, filed 11/28/01, effective 12/29/01; WSR 00-24-017, § 16-750-011, filed 11/28/00, effective 1/2/01; WSR 99-24-029, § 16-750-011, filed 11/23/99, effective 1/3/00; WSR 98-24-026, § 16-750-011, filed 11/23/98, effective 1/2/99; WSR 97-24-051, § 16-750-011, filed

11/26/97, effective 1/2/98; WSR 97-06-108, § 16-750-011, filed 3/5/97, effective 4/5/97. Statutory Authority: RCW 17.10.080. WSR 96-06-030, § 16-750-011, filed 2/29/96, effective 3/31/96. Statutory Authority: Chapter 17.10 RCW. WSR 95-06-002, § 16-750-011, filed 2/16/95, effective 3/19/95; WSR 94-01-076, § 16-750-011, filed 12/10/93, effective 1/10/94; WSR 93-01-004, § 16-750-011, filed 12/2/92, effective 1/2/93; WSR 91-24-072, § 16-750-011, filed 12/2/91, effective 1/2/92; WSR 91-01-016, § 16-750-011, filed 12/7/90, effective 1/7/91; WSR 90-01-004, § 16-750-011, filed 12/7/89, effective 1/7/90; WSR 88-24-002 (Order 26, Resolution No. 26), § 16-750-011, filed 11/29/88; WSR 88-18-001 (Order 24, Resolution No. 24), § 16-750-011, filed 8/25/88. Statutory Authority: RCW 17.10.080. WSR 88-07-016 (Order 22, Resolution No. 22), § 16-750-011, filed 3/7/88.]

AMENDATORY SECTION (Amending WSR 22-01-040, filed 12/7/21, effective 1/1/22)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
absinth wormwood	<i>Artemisia absinthium</i>
Austrian fieldcress	<i>Rorippa austriaca</i>
babysbreath	<i>Gypsophila paniculata</i>
black henbane	<i>Hyoscyamus niger</i>
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus bifrons</i>
blackgrass	<i>Alopecurus myosuroides</i>
buffalobur	<i>Solanum rostratum</i>
cereal rye	<i>Secale cereale</i>
common barberry	<i>Berberis vulgaris</i>
common catsear	<i>Hypochaeris radicata</i>
common groundsel	<i>Senecio vulgaris</i>
common St. Johnswort	<i>Hypericum perforatum</i>
common teasel	<i>Dipsacus fullonum</i>
curly-leaf pondweed	<i>Potamogeton crispus</i>
English hawthorn	<i>Crataegus monogyna</i>
English ivy 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica' <i>Hedera helix</i> 'Baltica' <i>Hedera helix</i> 'Pittsburgh' <i>Hedera helix</i> 'Star'
Eurasian watermilfoil hybrid	<i>Myriophyllum spicatum</i> x <i>M. sibiricum</i>
<u>Feral holly (not including holly found in managed landscapes or where commercially or agriculturally grown)</u>	<u><i>Ilex aquifolium</i> (feral populations)</u>
field bindweed	<i>Convolvulus arvensis</i>
fragrant water lily	<i>Nymphaea odorata</i>
green alkanet	<i>Pentaglottis sempervirens</i>
hairy whitetop	<i>Lepidium appelianum</i>

Common Name	Scientific Name
hoary cress	<i>Lepidium draba</i>
Italian arum	<i>Arum italicum</i>
Japanese eelgrass	<i>Nanozostera japonica</i>
jointed goatgrass	<i>Aegilops cylindrica</i>
jubata grass	<i>Cortaderia jubata</i>
lawnweed	<i>Soliva sessilis</i>
longspine sandbur	<i>Cenchrus longispinus</i>
Medusahead	<i>Taeniatherum caput-medusae</i>
nonnative cattail species and hybrids	Including, but not limited to, <i>Typha angustifolia</i> , <i>T. domingensis</i> and <i>T. x glauca</i>
old man's beard	<i>Clematis vitalba</i>
oxeye daisy	<i>Leucanthemum vulgare</i>
pampas grass	<i>Cortaderia selloana</i>
perennial sowthistle	<i>Sonchus arvensis</i> ssp. <i>arvensis</i>
reed canarygrass	<i>Phalaris arundinacea</i>
Russian olive	<i>Elaeagnus angustifolia</i>
scentless mayweed	<i>Tripleurospermum inodorum</i>
smoothseed alfalfa dodder	<i>Cuscuta approximata</i>
spikeweed	<i>Centromadia pungens</i>
spiny cocklebur	<i>Xanthium spinosum</i>
spotted jewelweed	<i>Impatiens capensis</i>
Swainsonpea	<i>Sphaerophysa salsula</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
tree-of-heaven	<i>Ailanthus altissima</i>
ventenata	<i>Ventenata dubia</i>
white cockle	<i>Silene latifolia</i>
wild carrot (except subs. sativus where grown commercially or for food)	<i>Daucus carota</i>
yellow flag iris	<i>Iris pseudacorus</i>
yellow toadflax	<i>Linaria vulgaris</i>

[Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 22-01-040, § 16-750-015, filed 12/7/21, effective 1/1/22; WSR 20-24-098, § 16-750-015, filed 11/30/20, effective 1/1/21; WSR 17-24-035, § 16-750-015, filed 11/29/17, effective 1/1/18; WSR 15-24-078, § 16-750-015, filed 11/30/15, effective 12/31/15; WSR 14-24-103, § 16-750-015, filed 12/2/14, effective 1/2/15; WSR 14-02-072, § 16-750-015, filed 12/30/13, effective 1/30/14; WSR 13-01-038, § 16-750-015, filed 12/12/12, effective 1/12/13; WSR 12-01-050, § 16-750-015, filed 12/15/11, effective 1/15/12; WSR 10-24-037, § 16-750-015, filed 11/22/10, effective 12/23/10; WSR 09-01-071, § 16-750-015, filed 12/15/08, effective 1/16/09; WSR 07-24-023, § 16-750-015, filed 11/28/07, effective 1/1/08; WSR 06-24-056, § 16-750-015, filed 12/4/06, effective 1/4/07; WSR 05-01-012, §

16-750-015, filed 12/2/04, effective 1/2/05. Statutory Authority: Chapter 17.10 RCW. WSR 04-13-014, § 16-750-015, filed 6/4/04, effective 7/5/04. Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 03-24-012, § 16-750-015, filed 11/20/03, effective 12/21/03; WSR 03-04-001, § 16-750-015, filed 1/22/03, effective 2/22/03. Statutory Authority: Chapter 17.10 RCW. WSR 01-24-035, § 16-750-015, filed 11/28/01, effective 12/29/01; WSR 00-24-017, § 16-750-015, filed 11/28/00, effective 1/2/01; WSR 99-24-029, § 16-750-015, filed 11/23/99, effective 1/3/00; WSR 98-24-026, § 16-750-015, filed 11/23/98, effective 1/2/99; WSR 97-06-108, § 16-750-015, filed 3/5/97, effective 4/5/97. Statutory Authority: RCW 17.10.080. WSR 96-06-030, § 16-750-015, filed 2/29/96, effective 3/31/96. Statutory Authority: Chapter 17.10 RCW. WSR 95-06-002, § 16-750-015, filed 2/16/95, effective 3/19/95; WSR 94-01-076, § 16-750-015, filed 12/10/93, effective 1/10/94; WSR 93-01-004, § 16-750-015, filed 12/2/92, effective 1/2/93; WSR 91-24-072, § 16-750-015, filed 12/2/91, effective 1/2/92; WSR 91-01-016, § 16-750-015, filed 12/7/90, effective 1/7/91; WSR 90-01-004, § 16-750-015, filed 12/7/89, effective 1/7/90; WSR 88-24-002 (Order 26, Resolution No. 26), § 16-750-015, filed 11/29/88. Statutory Authority: RCW 17.10.080. WSR 88-07-016 (Order 22, Resolution No. 22), § 16-750-015, filed 3/7/88.]