

WSR 16-24-017
WITHDRAWAL OF PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

(By the Code Reviser's Office)
 [Filed November 29, 2016, 10:43 a.m.]

WAC 480-120-441, proposed by the utilities and transportation commission in WSR 16-11-096, appearing in issue 16-11 of the Washington State Register, which was distributed on June 1, 2016, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 16-24-018
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed November 29, 2016, 11:34 a.m.]

The aging and long-term support administration requests the withdrawal of the proposed rule-making notice filed as WSR 16-19-088 on September 20, 2016 (chapter 388-71 WAC) regarding adult day health and adult day care.

The aging and long-term support administration has filed a new preproposal statement of inquiry as WSR 16-21-081 and will soon proceed by filing a new proposed rule-making notice.

Katherine I. Vasquez
 Rules Coordinator

WSR 16-24-055
PROPOSED RULES
HEALTH CARE AUTHORITY
 (Washington Apple Health)
 [Filed December 2, 2016, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-094.

Title of Rule and Other Identifying Information: WAC 182-531-0050 Physician-related services definitions and 182-531-0550 Experimental and investigational services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on January 10, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 11, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on January 10, 2017.

Assistance for Persons with Disabilities: Contact Amber Loughheed by January 6, 2017, e-mail amber.loughheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising WAC 182-531-0050 to remove the definition of "ADSA," clarify the definitions of "experimental" and "investigational," and align the definition of "peer-reviewed medical literature" with other agency rules. WAC 182-531-0550 is being updated to strike redundant subsections and clarify information regarding experimental and investigational services. These revisions do not change current policy. Housekeeping changes were also made in these WAC.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1346; Implementation and Enforcement: Shana Johnson, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1668.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

December 2, 2016
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-01-039, filed 12/9/15, effective 1/9/16)

WAC 182-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC, apply to this chapter.

"Acquisition cost" - The cost of an item excluding shipping, handling, and any applicable taxes.

"Acute care" - Care provided for clients who are not medically stable. These clients require frequent monitoring by a health care professional in order to maintain their health status. See also WAC 246-335-015.

"Acute physical medicine and rehabilitation (PM&R)" - A comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at an agency-approved rehabilitation facility. The program provides twenty-four hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client

shows significant potential for functional improvement (see WAC 182-550-2501).

"Add-on procedure(s)" - Secondary procedure(s) that are performed in addition to another procedure.

"Admitting diagnosis" - The medical condition responsible for a hospital admission, as defined by the ICD diagnostic code.

"Advanced registered nurse practitioner (ARNP)" - A registered nurse prepared in a formal educational program to assume an expanded health services provider role in accordance with WAC 246-840-300 and 246-840-305.

~~("Aging and disability services administration (ADSA)" - The administration that administers directly or contracts for long term care services including, but not limited to, nursing facility care and home and community services. See WAC 388-71-0202.)~~

"Allowed charges" - The maximum amount reimbursed for any procedure that is allowed by the agency.

"Anesthesia technical advisory group (ATAG)" - An advisory group representing anesthesiologists who are affected by the implementation of the anesthesiology fee schedule.

"Bariatric surgery" - Any surgical procedure, whether open or by laparoscope, which reduces the size of the stomach with or without bypassing a portion of the small intestine and whose primary purpose is the reduction of body weight in an obese individual.

"Base anesthesia units (BAU)" - A number of anesthesia units assigned to a surgical procedure that includes the usual preoperative, intraoperative, and postoperative visits. This includes the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring by the anesthesiologist.

"Bundled services" - Services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

"Bundled supplies" - Supplies ~~(which)~~ that are considered to be included in the practice expense RVU of the medical or surgical service of which they are an integral part.

"By report (BR)," see WAC 182-500-0015.

"Call" - A face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" - A reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Center of excellence (COE)" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)," see WAC 182-500-0020.

"Certified registered nurse anesthetist (CRNA)" - An advanced registered nurse practitioner (ARNP) with formal training in anesthesia who meets all state and national criteria for certification. The American Association of Nurse Anesthetists specifies the national certification and scope of practice.

"Children's health insurance plan (CHIP)," see chapter 182-542 WAC.

"Clinical Laboratory Improvement Amendment (CLIA)" - Regulations from the U.S. Department of Health and Human Services that require all laboratory testing sites to have either a CLIA registration or a CLIA certificate of waiver in order to legally perform testing anywhere in the U.S.

"Conversion factors" - Dollar amounts the agency uses to calculate the maximum allowable fee for physician-related services.

"Covered service" - A service that is within the scope of the eligible client's medical care program, subject to the limitations in this chapter and other published WAC.

"CPT," see "current procedural terminology."

"Critical care services" - Physician services for the care of critically ill or injured clients. A critical illness or injury acutely impairs one or more vital organ systems such that the client's survival is jeopardized. Critical care is given in a critical care area, such as the coronary care unit, intensive care unit, respiratory care unit, or the emergency care facility.

"Current procedural terminology (CPT)" - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Emergency medical condition(s)," see WAC 182-500-0030.

"Emergency services" - Medical services required by and provided to a patient experiencing an emergency medical condition.

"Estimated acquisition cost (EAC)" - The agency's best estimate of the price providers generally and currently pay for drugs and supplies.

"Evaluation and management (E&M) codes" - Procedure codes ~~((which))~~ that categorize physician services by type of service, place of service, and patient status.

"Expedited prior authorization" - The process of obtaining authorization that must be used for selected services, in which providers use a set of numeric codes to indicate to the agency which acceptable indications, conditions, diagnoses, and/or criteria are applicable to a particular request for services.

"Experimental" - A term to describe a ~~((procedure, or course of treatment, which))~~ health care service that lacks sufficient scientific evidence of safety and effectiveness. ~~((See WAC 182-531-0550.))~~ A service is not "experimental" if the service:

(1) Is generally accepted by the medical profession as effective and appropriate; and

(2) Has been approved by the ~~((FDA))~~ federal Food and Drug Administration or other requisite government body, if such approval is required.

"Federally approved hemophilia treatment center" - A hemophilia treatment center (HTC) ~~((which))~~ that:

(1) Receives funding from the U.S. Department of Health and Human Services, Maternal and Child Health Bureau National Hemophilia Program;

(2) Is qualified to participate in 340B discount purchasing as an HTC;

(3) Has a U.S. Center for Disease Control (CDC) and prevention surveillance site identification number and is listed in the HTC directory on the CDC web site;

(4) Is recognized by the Federal Regional Hemophilia Network that includes Washington state; and

(5) Is a direct care provider offering comprehensive hemophilia care consistent with treatment recommendations set by the Medical and Scientific Advisory Council (MASAC) of the National Hemophilia Foundation in their standards and criteria for the care of persons with congenital bleeding disorders.

"Fee-for-service," see WAC 182-500-0035.

"Flat fee" - The maximum allowable fee established by the agency for a service or item that does not have a relative value unit (RVU) or has an RVU that is not appropriate.

"Geographic practice cost index (GPCI)" - As defined by medicare, means a medicare adjustment factor that includes local geographic area estimates of how hard the provider has to work (work effort), what the practice expenses are, and what malpractice costs are. The GPCI reflects one-fourth the difference between the area average and the national average.

"Global surgery reimbursement," see WAC 182-531-1700.

"HCPCS Level II" - Health care common procedure coding system, a coding system established by Centers for Medicare and Medicaid Services (CMS) to define services and procedures not included in CPT.

"Health care financing administration common procedure coding system (HCPCS)" - The name used for the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) codes made up of CPT and HCPCS level II codes.

"Health care team" - A group of health care providers involved in the care of a client.

"Hospice" - A medically directed, interdisciplinary program of palliative services which is provided under arrangement with a Title XVIII Washington licensed and certified Washington state hospice for terminally ill clients and the clients' families.

"ICD," see "International Classification of Diseases."

"Informed consent" - That an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

(1) Disclosed and discussed the client's diagnosis; and
 (2) Offered the client an opportunity to ask questions about the procedure and to request information in writing; and

(3) Given the client a copy of the consent form; and

(4) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. Chapter IV 441.257; and

(5) Given the client oral information about all of the following:

(a) The client's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure; and

(b) Alternatives to the procedure including potential risks, benefits, and consequences; and

(c) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital admission" - An admission to a hospital that is limited to medically necessary care based on an evaluation of the client using objective clinical indicators, assessment, monitoring, and therapeutic service required to best manage the client's illness or injury, and that is documented in the client's medical record.

"International Classification of Diseases (ICD)" - The systematic listing that transforms verbal descriptions of diseases, injuries, conditions, and procedures into numerical or alphanumeric designations (coding).

"Investigational" - A term to describe a ~~((procedure, or course of treatment, which))~~ health care service that lacks sufficient scientific evidence of ((benefit)) safety and effectiveness for a particular condition. A service is not "investigational" if the service:

(1) Is generally accepted by the medical professional as effective and appropriate for the condition in question; or

(2) Is supported by an overall balance of objective scientific evidence, ~~((in which))~~ that examines the potential risks and potential benefits ~~((are examined, demonstrating))~~ and demonstrates the proposed service to be of greater overall benefit to the client in the particular circumstance than another(-s) generally available service.

"Life support" - Mechanical systems, such as ventilators or heart-lung respirators, which are used to supplement or take the place of the normal autonomic functions of a living person.

"Limitation extension," see WAC 182-501-0169.

"Long-acting reversible contraceptive (LARC)" - Subdermal implants and intrauterine devices (IUDs).

"Maximum allowable fee" - The maximum dollar amount that the agency will reimburse a provider for specific services, supplies, and equipment.

"Medically necessary," see WAC 182-500-0070.

"Medicare clinical diagnostic laboratory fee schedule" - The fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.

"Medicare physician fee schedule data base (MPFSDB)" - The official CMS publication of the medicare policies and RVUs for the RBRVS reimbursement program.

"Medicare program fee schedule for physician services (MPFSPS)" - The official CMS publication of the medicare fees for physician services.

~~((**"Medicare clinical diagnostic laboratory fee schedule"** - The fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.))~~

"Mentally incompetent" - A client who has been declared mentally incompetent by a federal, state, or local court.

"Modifier" - A two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting physician can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or

code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"Outpatient," see WAC 182-500-0080.

"Peer-reviewed medical literature" - ~~((Medical literature published in professional journals that submit articles for review by experts who are not part of the editorial staff. It does not include publications or supplements to publications primarily intended as marketing material for pharmaceutical, medical supplies, medical devices, health service providers, or insurance carriers.))~~ A research study, report, or findings regarding a medical treatment that is published in one or more reputable professional journals after being critically reviewed by appropriately credentialed experts for scientific validity, safety, and effectiveness.

"Physician care plan" - A written plan of medically necessary treatment that is established by and periodically reviewed and signed by a physician. The plan describes the medically necessary services to be provided by a home health agency, a hospice agency, or a nursing facility.

"Physician standby" - Physician attendance without direct face-to-face client contact and which does not involve provision of care or services.

"Physician's current procedural terminology," see "current procedural terminology (CPT)."

"PM&R," see acute physical medicine and rehabilitation.

"Podiatric service" - The diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

"Pound indicator (#)" - A symbol (#) indicating a CPT procedure code listed in the agency's fee schedules that is not routinely covered.

"Preventive" - Medical practices that include counseling, anticipatory guidance, risk factor reduction interventions, and the ordering of appropriate laboratory and diagnostic procedures intended to help a client avoid or reduce the risk or incidence of illness or injury.

"Prior authorization," see WAC 182-500-0085.

"Professional component" - The part of a procedure or service that relies on the provider's professional skill or training, or the part of that reimbursement that recognizes the provider's cognitive skill.

"Prognosis" - The probable outcome of a client's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the client's probable life span as a result of the illness.

"Prolonged services" - Face-to-face client services furnished by a provider, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services. The time counted toward payment for prolonged E&M services includes only face-to-face contact between the provider and the client, even if the service was not continuous.

"Provider," see WAC 182-500-0085.

"Radioallergosorbent test" or "RAST" - A blood test for specific allergies.

"RBRVS," see resource based relative value scale.

"RBRVS RVU" - A measure of the resources required to perform an individual service or intervention. It is set by Medicare based on three components - Physician work, prac-

tice cost, and malpractice expense. Practice cost varies depending on the place of service.

"Reimbursement" - Payment to a provider or other agency-approved entity who bills according to the provisions in WAC 182-502-0100.

"Reimbursement steering committee (RSC)" - An interagency work group that establishes and maintains RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"Relative value guide (RVG)" - A system used by the American Society of Anesthesiologists for determining base anesthesia units (BAUs).

"Relative value unit (RVU)" - A unit ~~((which))~~ that is based on the resources required to perform an individual service or intervention.

"Resource based relative value scale (RBRVS)" - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"RSC RVU" - A unit established by the RSC for a procedure that does not have an established RBRVS RVU or has an RBRVS RVU deemed by the RSC as not appropriate for the service.

"RVU," see relative value unit.

"Stat laboratory charges" - Charges by a laboratory for performing tests immediately. "Stat" is an abbreviation for the Latin word "statim," meaning immediately.

"Sterile tray" - A tray containing instruments and supplies needed for certain surgical procedures normally done in an office setting. For reimbursement purposes, tray components are considered by CMS to be nonroutine and reimbursed separately.

"Technical advisory group (TAG)" - An advisory group with representatives from professional organizations whose members are affected by implementation of RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"Technical component" - The part of a procedure or service that relates to the equipment set-up and technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0550 Experimental and investigational services. (1) When the ~~((department makes a determination as to whether))~~ medicaid agency determines a proposed service is experimental or investigational, the ~~((department))~~ agency follows the procedures in this section. ~~((The policies and procedures and any criteria for making decisions are available upon request.))~~

(2) The determination of whether ~~((a service is))~~ to authorize an experimental ~~((and/or))~~ or investigational service is subject to a case-by-case review under the provisions of WAC ~~((388-501-0165 which relate to medical necessity. The department))~~ 182-501-0165. The agency also considers the following criteria:

WSR 16-24-056

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 2, 2016, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-20-039.

Title of Rule and Other Identifying Information: WAC 182-551-1510 Rates methodology and payment method for hospice agencies.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on January 10, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 11, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on January 10, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by January 6, 2017, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 182-551-1510 add new language that reflects a two percent payment reduction for hospice providers who did not comply with the medicare quality data reporting program. All other changes are housekeeping changes.

Reasons Supporting Proposal: Amendments to this rule are necessary to implement CMS requirements under 42 U.S.C. Sec. 1395f (i)(5)(A)(i).

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 42 U.S.C. Sec. 1395f (i)(5)(A)(i).

Statute Being Implemented: 42 U.S.C. Sec. 1395f (i)(5)(A)(i).

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1346; Implementation and Enforcement: Mary Hughes, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-0469.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

(a) Evidence in **peer-reviewed medical literature**, as defined in WAC ((388-531-0050, and preclinical and clinical data reported to the National Institute of Health and/or the National Cancer Institute)) 182-531-0050, concerning the probability of the service maintaining or significantly improving the enrollee's length or quality of life, or ability to function, and whether the benefits of the service or treatment are outweighed by the risks of death or serious complications;

(b) Whether evidence indicates the service or treatment is more likely than not to be as beneficial as existing conventional treatment alternatives for the treatment of the condition in question;

(c) Whether the service or treatment is generally used or generally accepted for treatment of the condition in the United States;

(d) Whether the service or treatment is under continuing scientific testing and research;

(e) Whether the service or treatment shows a demonstrable benefit for the condition;

(f) Whether the service or treatment is safe and (~~effective~~) **effective**;

(g) Whether the service or treatment will result in greater benefits for the condition than another generally available service; and

(h) If approval is required by a regulating agency, such as the federal Food and Drug Administration, whether such approval has been given before the date of service.

~~(3) ((The department applies consistently across clients with the same medical condition and health status, the criteria to determine whether a service is experimental. A service or treatment that is not experimental for one client with a particular medical condition is not determined to be experimental for another enrollee with the same medical condition and health status. A service that is experimental for one client with a particular medical condition is not necessarily experimental for another, and subsequent individual determinations must consider any new or additional evidence not considered in prior determinations.~~

~~(4) The department does not determine a service or treatment to be experimental or investigational solely because it is under clinical investigation when there is sufficient evidence in peer-reviewed medical literature to draw conclusions, and the evidence indicates the service or treatment will probably be of greater overall benefit to the client in question than another generally available service.~~

~~(5))~~ All determinations that a proposed service or treatment is "experimental" or "~~(investigation)~~ **investigational**" are subject to the review and approval of a physician who is:

(a) Designated by the agency's medical director to issue such approvals;

(b) Licensed under chapter 18.57 RCW or an osteopath licensed under chapter 18.71 RCW(~~;~~

(b) ~~Designated by the department's medical director to issue such approvals~~); and

(c) Available to consult with the client's treating physician by telephone.

December 2, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-14-009, filed 6/23/16, effective 7/24/16)

WAC 182-551-1510 Rates methodology and payment method for hospice agencies. This section describes rates methodology and payment methods for hospice care provided to hospice clients.

(1) The medicaid agency uses the same rates methodology as medicare uses for the four levels of hospice care identified in WAC 182-551-1500.

(2) Each of the four levels of hospice care has the following three rate components:

- (a) Wage component;
- (b) Wage index; and
- (c) Unweighted amount.

(3) To allow hospice payment rates to be adjusted for regional differences in wages, the medicaid agency bases payment rates on the core-based statistical area (CBSA) county location. CBSAs are identified in the medicaid agency's provider guides.

(4) The medicaid agency pays hospice agencies for services (not room and board) at a daily rate methodology as follows:

(a) Payments for services delivered in a client's residence (routine and continuous home care) are based on the county location of the client's residence.

(b) Payments for routine home care (~~((RHC))~~) are based on a two-tiered payment methodology.

(i) Days one through sixty are paid at the base (~~((RHC))~~) routine home care rate.

(ii) Days sixty-one and after are paid at a lower (~~((RHC))~~) routine home care rate.

(iii) If a client discharges and readmits to a hospice agency's program within sixty calendar days of that discharge, the prior hospice days will continue to follow the client and count towards the client's eligible days in determining whether the hospice agency may bill at the base or lower (~~((RHC))~~) routine home care rate.

(iv) If a client discharges from a hospice agency's program for more than sixty calendar days, a readmit to the hospice agency's program will reset the client's hospice days.

(c) Hospice services are eligible for an end-of-life service intensity add-on (~~((SIA))~~) payment when the following criteria are met:

(i) The day on which the services are provided is (~~((an RHC))~~) a routine home care level of care;

(ii) The day on which the service is provided occurs during the last seven days of life, and the client is discharged deceased;

(iii) The service is provided by a registered nurse or social worker that day for at least fifteen minutes and up to four hours total; and

(iv) The service is not provided by the social worker via telephone.

(d) Payments for respite and general inpatient care are based on the county location of the providing hospice agency.

(5) The medicaid agency:

(a) Pays for routine (~~((hospice))~~) home care, continuous home care, respite care, or general inpatient care for the day of death;

(b) Does not pay room and board for the day of death; and

(c) Does not pay hospice agencies for the client's last day of hospice care when the last day is for the client's discharge, revocation, or transfer.

(6) Hospice agencies must bill the medicaid agency for their services using hospice-specific revenue codes.

(7) For hospice clients in a nursing facility:

(a) The medicaid agency pays nursing facility room and board payments at a daily rate directly to the hospice agency at ninety-five percent of the nursing facility's current medicaid daily rate in effect on the date the services were provided; and

(b) The hospice agency pays the nursing facility at a daily rate no more than the nursing facility's current medicaid daily rate.

(8) The medicaid agency:

(a) Pays a hospice care center a daily rate for room and board based on the average room and board rate for all nursing facilities in effect on the date the services were provided.

(b) Does not pay hospice agencies or hospice care centers a nursing facility room and board payment for:

(i) A client's last day of hospice care (e.g., client's discharge, revocation, or transfer); or

(ii) The day of death.

(9) The daily rate for authorized out-of-state hospice services is the same as for in-state non-CBSA hospice services.

(10) The medicaid agency reduces hospice payments by two percent for providers who did not comply with the annual medicare quality data reporting program as required under 42 U.S.C. Sec. 1395f (i)(5)(A)(i). The payment reduction is effective for the fiscal reporting year in which the provider failed to submit data required for the annual medicare quality reporting program.

(a) The two percent payment reduction applies to routine home care, including the service intensity add-on, continuous home care, inpatient respite care, and general inpatient care.

(b) The two percent payment reduction does not apply to pediatric palliative care, the hospice care center daily rate, and the nursing facility room and board rate.

(c) Any provider affected by the two percent payment reduction will receive written notification.

(d) Any provider affected by the two percent payment reduction may appeal the rate reduction per WAC 182-502-0220.

(11) The client's notice of action (award) letter states the amount the client is responsible to pay each month towards the total cost of hospice care. The hospice agency receives a copy of the award letter and:

(a) Is responsible to collect the correct amount that the client is required to pay, if any; and

(b) Must show the client's monthly required payment on the hospice claim. (Hospice providers may refer to the medicaid agency's provider guides for how to bill a hospice claim.) If a client has a required payment amount that is not reflected on the claim and the medicaid agency reimburses

the amount to the hospice agency, the amount is subject to recoupment by the medicaid agency.

WSR 16-24-060
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 5, 2016, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-052.

Title of Rule and Other Identifying Information: WAC 82-75-060 Historical data submission.

Hearing Location(s): Office of Financial Management (OFM), Insurance Building, 302 Sid Snyder Avenue S.W., Conference Room 440, Olympia, WA 98501, on January 10, 2017, at 10:00 a.m.

Date of Intended Adoption: February 7, 2017.

Submit Written Comments to: Mandy Stahre, OFM, P.O. Box 43113, Olympia, WA 98504-3113, e-mail apcd@ofm.wa.gov, fax (360) 725-5517, comments must be submitted by January 10, 2017.

Assistance for Persons with Disabilities: Contact OFM by January 6, 2017, TTY (360) 753-4107 or (360) 902-3092.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule-making proposal relates to the statewide all-payer health care claims data base (APCD). Specifically, the rule amendment will change the time period in the definition of "historical data." The rule currently defines historical data as data for the period of January 1, 2011, through December 31, 2015. The end date is being change[d] to "April 1, 2017 or from the start date of the first regular quarterly submission in accordance with the data submission schedule."

Reasons Supporting Proposal: Originally, WAC 82-75-060 defined "historical data" as data files for the period of January 1, 2011, through December 31, 2015. This period was developed based on the time period in which it was anticipated that APCD would be implemented. Due to the delay in implementation, it is necessary to put in place a different and more flexible historical data time period.

Statutory Authority for Adoption: Chapter 43.371 RCW.

Statute Being Implemented: Chapter 43.371 RCW.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Roselyn Marcus, 302 Sid Snyder Avenue S.W., Olympia, WA 98501, (360) 902-0434; Implementation and Enforcement: Thea Mounts, General Administration Building, Olympia, WA 98501, (360) 902-0552.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not have an impact to small businesses, as that term is defined in statute.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are not significant legislative rules, as

defined in statute. These rules are not subject to this requirement.

December 5, 2016
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 16-04-068, filed 1/29/16, effective 2/29/16)

WAC 82-75-060 Historical data submission. (1) The purpose of collecting historical data into the WA-APCD is to permit the systematic analysis of the health care delivery system including evaluation of the effectiveness of the Patient Protection and Affordable Care Act signed into law on March 23, 2010.

(2) The lead organization will provide written notification to the data suppliers when the WA-APCD is ready to accept the submission of historical data. Data suppliers shall submit the historical data within sixty days of notification. Requests for an extension of time to submit historical data shall be made in accordance with WAC 82-75-080(3).

(3) "Historical data" means covered medical services claim files, pharmacy claim files, dental claim files, member eligibility and enrollment data files, and provider data files with necessary identifiers for the period January 1, (~~2011~~) 2013, through December 31, (~~2015~~) 2016, or through the end of the quarter immediately prior to the first regular quarterly submission due in accordance with the data submission schedule.

(4) The office may grant an exception to this section and approve the filing of historical data for a period less than the period specified in subsection (3) of this section. (~~In no event will an exception be granted for a period beginning later than January 1, 2013.~~) Requests for an exception under this subsection shall be made to the lead organization within fifteen calendar days of being notified in accordance with subsection (2) of this section. The lead organization shall make a recommendation to the office as to whether to approve or deny the request. The office may approve the request for good cause.

WSR 16-24-061
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket A-130355—Filed December 5, 2016, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-071.

Title of Rule and Other Identifying Information: The Washington utilities and transportation commission has been engaged in this rule making to consider amendments to the rules in chapter 480-07 WAC, the commission's procedural rules, governing the conduct of business before the commission, including rules governing formal proceedings. At this time, the commission proposes additional rules and modifica-

tions or repeal of the rules in Parts I, II, and IIIA in this chapter.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on January 30, 2017, at 1:30 p.m.

Date of Intended Adoption: January 30, 2017.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 27350 [27250], Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by January 16, 2017. Please include "Docket A-130355" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by June 28, 2016 [January 18, 2017], TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to amend Parts I, II, and IIIA in chapter 480-07 WAC to reflect current technology and commission practice, implement statutory authority, and address additional procedural issues.

Reasons Supporting Proposal: The commission last revised chapter 480-07 WAC in 2006. Since that time, there have been technological changes, including greater use of electronic documents, and new legislation, including the authority to use and accept electronic signatures. In addition, the commission has received suggestions to clarify the rules in this chapter to incorporate and better reflect current commission practice. The commission currently proposes to add to, amend, or repeal the rules in Parts I, II, and IIIA to address these concerns. The commission will continue this rule making and will consider proposing additional amendments to other rules in this chapter in the future.

Statutory Authority for Adoption: RCW 34.05.020.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Gregory J. Kopta, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1355; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules are being modified to reflect the current practice of companies and to make it easier and less expensive for companies to adhere to the rules, therefore the commission determined there should be no economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

December 5, 2016
Steven V. King
Executive Director
and Secretary

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-010 Scope of this chapter. This chapter includes rules that explain how to conduct business with the Washington utilities and transportation commission (~~((the))~~ commission). The commission interacts both informally and formally with the public and with the businesses it regulates.

Part I of this chapter includes basic information about the commission, such as the agency's office hours, its physical address and other contact information, and general requirements for communicating with the commission.

Part II includes provisions that relate specifically to rule-making proceedings, such as how a person may submit comments that will be taken into account when the commission considers making changes to its rules.

Part III concerns adjudicative proceedings including hearings on formal complaints, general rate proceedings, applications for authority, petitions for relief, and abbreviated proceedings that may be used in some circumstances.

Part IV concerns other types of commission proceedings, including regular and special open public meetings, interpretive and policy statements, declaratory orders, penalty assessments, and informal complaints.

These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the ~~((principal))~~ statutes that define the commission's authority and ~~((responsibility. These statutes are))~~ responsibilities found principally in Titles 80 and 81 ~~((of the Revised Code of Washington (RCW). These))~~ RCW. The commission's procedural rules should be ~~((read and understood))~~ interpreted in conjunction with ~~((the Administrative Procedure Act and Titles 80 and 81 RCW. Certain of these statutes establish procedural requirements for conducting particular types of business with the commission))~~ these statutes.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-100 Scope of Part I. Part I of this chapter contains information about the commission(~~(s)~~) and general rules that apply in rule-making, adjudicative, and other proceedings described in this chapter.

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

WAC 480-07-110 Exemptions from and modifications to commission rules; conflicts ~~((involving))~~ with other rules. (1) **Exceptions and modifications.** The commission, in response to a request or on its own initiative, may grant an exemption from, or modify the application of, any of its rules in individual ~~((eases if))~~ circumstances if the exemption or modification is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Consistent with due process and the public interest, the commission may modify the application of procedural rules in this chapter on its own initiative during a particular adjudication ~~((consistent with other adjudicative decisions,))~~ or other docket without following the process identified in subsection (2) of this section.

(2) **Process.**

(a) *How to request an exemption ~~((to)) from, or modification ~~((of)) to, a rule.~~~~* To request a rule exemption or modification, a person must file with the commission a written petition identifying the rule for which the person seeks an exemption ~~((is sought, and provide)) and providing~~ a full explanation of the reason for requesting the exemption. Telecommunications companies, gas companies, or electric companies filing petitions for exemption under this section ~~((shall)) must~~ provide ~~((a)) an electronic~~ copy of the request ~~((with)) to~~ the public counsel ~~((section)) unit~~ of the attorney general's office by ~~((mail or e-mail, within one business day of the)) e-mail on the same~~ day the request is filed with the commission.

(b) *Commission process.* The commission will assign the petition a docket number ~~((, if it)) if the request~~ does not arise in an existing docket, and will schedule the petition for consideration at one of ~~((its)) the commission's~~ regularly scheduled open meetings or ~~((;)) in an adjudicative proceeding~~ if appropriate under chapter 34.05 RCW ~~((, in an adjudication))~~. The commission will notify the person requesting the exemption ~~((;)) and other interested persons ~~((;)) of the date of the open meeting or hearing when the commission will consider the petition.~~~~

(c) *Standard for ~~((consideration)) determination.~~* The ~~((standard for consideration is the public interest standard)) commission uses the public interest standard to determine whether to grant an exemption from, or modification to, a commission rule.~~ Factors the commission may consider in making this determination include whether ~~((application of)) the rule ~~((would)) imposes an~~ undue hardship on the requesting person ~~((;)) of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule ~~((;~~~~~~

~~((d)) **Disposition.** The commission will enter an order granting or denying the petition, or setting it for hearing)) and the public interest.~~

(3) **Conflicts ~~((involving)) with other rules.~~ ~~((In the event of conflict between these rules and statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, applicable to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings)) Statutes or other commission rules may establish a process for requesting rule exemption or modification, and if they conflict with this rule, those statutes or ~~((special)) other~~ rules govern the request.~~**

(4) **Emergency situations.** In the event of a state of emergency ~~((;)) and for good cause shown, the commission may enter an order on its own motion, or upon the motion of any person or public service company affected by the rule, exempting public service companies, the commission, and all affected persons ~~((;)) from complying with the requirements of specific rules in this title.~~~~

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-120 Office hours. ~~((“Business day,” as used in this chapter, means any day when the commission's offices are open to the public. Commission)) The commission's offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on official state holidays ~~((;)) as defined in RCW 1.16.050 ~~((; Legal holidays and legislatively recognized days))~~.~~~~

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

WAC 480-07-125 ~~((Physical address; telephone; fax; web portal; e-mail; internet.)) Commission contact information.~~ The information included in this section is current at the time of rule adoption ~~((;)) but may change. Persons may obtain current ~~((information)) and additional contact information ~~((are available on)) for the commission and its personnel by accessing~~ the commission's internet ~~((site,)) web site or by requesting the information~~ in person at the commission offices, ~~((or)) by a telephone call to the commission's main public number, or through an e-mail to the commission's records center.~~~~~~

Location and mailing address:	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone:	
Public number	360-664-1160
Records center number	360-664-1234
Consumer inquiries, comments and informal complaints	1-800-562-6150
((Fax:)) Public and records center <u>Conference bridge for participating in proceedings by telephone</u>	((360-586-1150)) 360-664-3846
Web portal	www.utc.wa.gov/e-filing
Records center e-mail	records@utc.wa.gov
Internet web site	www.utc.wa.gov

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-130 Time periods specified for acts governed by this chapter. (1) (~~Computation of time.~~) Definitions.

(a) "Day" means calendar day whenever used in this chapter, unless otherwise specified.

(b) "Business day" as used in this chapter, means any day when the commission's offices are open to the public as provided in WAC 480-07-120.

(2) Computation of time. The period of time for doing an act governed by this chapter is determined by excluding the first day and including the last day, unless the last day is ((an official state holiday, Saturday, or Sunday)) not a business day, in which ((event)) circumstance the period runs until the end of the next business day ((that is not an official state holiday, Saturday, or Sunday. For example, if a formal complaint is served on the first day of the month, any answer to the complaint must be filed by the twenty-first day of the same month, unless the twenty-first day is an official state holiday, in which case the answer will be timely if filed on the next business day after the holiday.

(2)).

(3) Variation from time limits. The commission may modify the time limits stated in chapter 34.05 RCW, subject to the requirements of RCW 34.05.080. The commission may modify the time limits stated in a commission rule, subject to other requirements of law. WAC 480-07-385 ((sets out procedures for and)) governs ((when the commission will grant)) continuances or extensions of time in adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

WAC 480-07-140 (~~Communicating with~~) General requirements for submitting documents to the commission. ((1) Scope of rule. This rule includes general requirements for effective communication with the commission.

The commission encourages use of the commission's records center web portal for filing and submitting documents with the commission. Customers of regulated companies who have a complaint about their service provider are encouraged to contact the commission as described in WAC 480-07-910. Anyone wishing to comment on a matter before the commission may submit comments by telephone, letter, fax, e-mail or by using the comment form available on the commission's web site.

(a) Electronic filing, limitations. You may file documents electronically using the commission's records center web portal (see WAC 480-07-125) if you are submitting documents that are not part of an adjudicative proceeding. Examples include registration applications, tariffs, contracts, rule-making comments, and comments on open meeting items. Electronic filing means the commission accepts the electronic version of the document as the official filing and does not require a paper copy of the documents.

(b) Electronic submission, adjudications. You may submit documents electronically using the commission's records center web portal (see WAC 480-07-125) or e-mail if

you are submitting documents in an adjudicative proceeding. Electronic submission means the commission allows submission of electronic versions of documents, but requires a paper copy of the document as the official filing. Except for testimony and exhibits filed in general rate cases, parties may submit one paper copy of documents of less than twenty-five pages, but must follow the filing requirements in WAC 480-07-510(1) (nineteen copies) and WAC 480-07-150 (3)(a) (twelve copies) for documents exceeding twenty-five pages.

(c) Electronic filing of public records requests. You may file requests for public records electronically using the commission's records center web portal (see WAC 480-07-125). You do not have to file a paper copy of the public records request if it is filed electronically.

(d) Use of e-mail for electronic filing or submission. The commission encourages you to use its records center web portal for filing or submitting electronic documents, because it is more reliable and secure than e-mail. If you are unable to use the records center web portal to file or submit documents, the commission will accept a filing or submission received via e-mail addressed to the records center.

(e) You must also comply with other requirements when submitting certain documents, as shown below:

Submissions in these dockets or filings:	Must comply with these rules:
Rule-making dockets	This rule, WAC 480-07-143, and Part II of this chapter
Adjudicative dockets	This rule, WAC 480-07-145, and Part III of this chapter, <i>plus</i> any requirements in the specific adjudication
Utility tariffs and contracts	This rule, chapter 480-80 WAC, and WAC 480-07-141
Transportation tariffs and time-schedules	This rule, WAC 480-07-141; and
(i) For auto transportation companies	Chapters 480-30 and 480-149 WAC;
(ii) For commercial ferry companies	Chapters 480-51 and 480-149 WAC;
(iii) For solid waste collection companies	Chapter 480-70 WAC
For public records requests	Chapter 42.56 RCW and chapter 480-04 WAC

(2) Content of letters and e-mail messages to the commission. Letters and e-mail messages to the commission should include only one subject.

(3) Where to send letters and e-mail messages. WAC 480-07-125 includes the commission's mailing address and other contact information current at the time of rule publication. Persons who communicate with the commission are encouraged to do so by e-mail to the commission's records

2. U-020304 (name of witness) direct-att 1 (name of party) (date))

(1) General.

(a) Informal submissions. Informal submissions are oral or written comments or communications directed to the commission that do not seek, or respond to, formal commission action, are not required by statute or commission rule, and generally are not filed in a docket. Informal submissions include, but are not limited to, consumer complaints other than complaints requesting commencement of an adjudicative proceeding, and public comments made on matters the commission considers at an open public meeting or in an adjudication when submitted by persons who are not, and do not seek to be, parties to that adjudication. A person may make informal submissions by using the comment form available on the commission's web site or by contacting the commission records center or consumer protection section by telephone, letter, or e-mail at the contact information listed in WAC 480-07-125.

(b) Formal filings. Formal filings are written submissions that seek or respond to formal commission action or are required by statute or commission rule and that the commission may file in a docket. Unless otherwise provided in this chapter, all documents submitted to the commission for formal filing, including documents that contain confidential information, must be submitted electronically to the commission records center in conformance with this rule. The commission will not accept a document for formal filing unless the commission receives that document in electronic form.

(2) Where to send written communications. Persons should send written communications to the commission using the contact information contained in WAC 480-07-125 or on the commission's web site. Correspondence directed to the commission should be addressed to the commission secretary.

(3) Cover letters. Persons submitting documents to the commission for formal filing must include a cover letter with the submission unless the sole document submitted is a letter or the document is one page in length and includes the information identified in subsection (4) of this section.

(4) Requirements. The following requirements enable the commission to identify submissions and to facilitate prompt delivery of communications to commission personnel.

(a) Identification of sender. All persons who communicate with the commission should provide their full name, mailing address, telephone number, and e-mail address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf they are sending the communication. All submissions on behalf of a company the commission regulates must identify the company using the exact name of the company in the commission's records. The commission's web site includes a list of all such companies by the names in the commission's records. The commission may reject or require resubmission of any submission that does not comply with this requirement.

(b) Identification of permit, license, or certificate. Any person or entity holding a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) Identification of proceeding. Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding.

(d) Identification of documents. All documents submitted to the commission must be named in conformance with subsection (6)(b) of this section.

(5) Electronic submission of documents. The commission accepts only electronic versions of documents for formal filing. Unless required in a specific rule or order, the commission does not require a paper copy of the document.

(a) Electronic submission via web portal. Documents submitted electronically must be submitted using the commission's records center web portal except as provided in this rule.

(i) How to use the web portal. To use the web portal to submit documents for filing, persons should navigate to, and follow the instructions on, the web portal at the address specified in WAC 480-07-125.

(ii) Official commission receipt. The commission officially receives a document submitted through the web portal on the date and at the time registered by the portal; provided that documents the commission receives after 5:00 p.m. are not considered officially received or filed until the next business day. The web portal will send an automated notification to the person submitting the document when the commission has received the document.

(iii) Insufficient capacity. If a submission exceeds the size limitations of the commission's web portal for a single submission, the person may submit the documents in multiple web portal submissions, via one or more e-mails as provided in subsection (6)(c) of this section, or on a disc or other commonly used electronic storage medium delivered by mail or hand delivery. The commission includes on its web site the current size limitation of submissions on the web portal and instructions for making multiple web portal submissions.

(b) Electronic submission via e-mail. If a person is unable to use the web portal to submit documents for filing, the commission will accept a submission via e-mail. The commission may also accept correspondence or comments directed to the commission in the form of an e-mail. An e-mail transmitting documents must explain the reason the documents are not being submitted via the web portal and must comply with the following requirements:

(i) Where to send electronic documents. E-mails and e-mailed submissions for filing must be directed to the commission's records center at the e-mail address specified in WAC 480-07-125. Courtesy or informational copies may be sent to other e-mail addresses for individual commission personnel. The commission will receive for filing only e-mail submissions sent to the records center.

(ii) When deemed received. An e-mail and any transmitted documents are deemed received only when the e-mail and

the entire document or set of documents successfully reach the commission's records center electronic mailbox. E-mails or documents wholly or partly received by e-mail in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day.

(iii) Insufficient capacity. If a submission exceeds the size limitations of the commission's e-mail system for a single message, the person may submit the documents in multiple messages as provided in subsection (6)(c) of this section or on a disc or other commonly used electronic storage medium delivered via mail or hand delivery. The commission includes on its web site the current size limitation of a single e-mail.

(c) Electronic submission by mail or hand delivery. A person may submit for filing electronic copies of documents on a disc or other commonly used electronic storage medium by mail or hand delivery (e.g., courier delivery service) to the commission's business address. The commission deems it has received an electronic document submitted by mail or hand delivery when the commission's records center physically receives it. Documents delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day.

(d) Additional requirements. The following additional requirements apply when submitting documents in the circumstances identified below.

<u>Submissions in these dockets or types of documents:</u>	<u>Must comply with these rules and:</u>
<u>Rule-making dockets</u>	<u>Part II of this chapter</u>
<u>Adjudicative dockets</u>	<u>Part III of this chapter, plus any requirements in the specific adjudication</u>
<u>Utility tariffs and contracts</u>	<u>Chapter 480-80 WAC and WAC 480-07-141</u>
<u>Transportation tariffs and time schedules</u>	<u>WAC 480-07-141; and</u>
<u>(a) For auto transportation companies</u>	<u>(a) Chapter 480-30 WAC;</u>
<u>(b) For commercial ferry companies</u>	<u>(b) Chapters 480-51 and 480-149 WAC;</u>
<u>(c) For solid waste collection companies</u>	<u>(c) Chapter 480-70 WAC</u>
<u>For public records requests</u>	<u>Chapters 42.56 RCW and 480-04 WAC</u>

(6) Electronic file format requirements. Electronic versions of all documents filed with the commission must conform to the following file format requirements.

(a) Acceptable format.

(i) All documents other than spreadsheets as described in (a)(ii) of this subsection and e-mail correspondence or comments must be filed in searchable .pdf (adobe acrobat or comparable software) format and to the extent feasible should be saved or otherwise converted directly from the native format in which the document was created. Parties that cannot create .pdf files directly from the document in its native format must

provide a copy of the document converted to .pdf via scanning or other available technology. Scanned documents must be searchable unless readily available software does not support searchable scanned documents.

(ii) Any document in the form of a spreadsheet that displays results of calculations based on formulas must be filed in its native Excel format (.xls, .xlsx, .xlsm) or the updated version of, or successor to, that software program. The commission will accept spreadsheets created using a different software program only if the commission has a license to use that program and personnel who know how to use it. Spreadsheets must include all formulas and may not include locked, password protected, or hidden cells or tabs, or any other restrictions that impair or hamper the commission's ability to review or modify the data in those cells.

(iii) Correspondence or comments in the form of an e-mail must conform to generally accepted conventions for e-mail communications.

(b) File naming conventions. Documents must be named in a way that describes the contents. Each document a person submits must be labeled with the docket number of the proceeding (except in the case of original submissions), any confidentiality designation, the name of the document, the name of the person or party on whose behalf the document is submitted, the last name of any witness sponsoring the document, and the date the document is submitted. The prefix to the docket number (e.g., UE-, TG-, etc.) may be omitted, and words may be abbreviated as necessary in the file name of an electronic document if the full name is too long. The cover letter accompanying the submission must list all of the documents included in the submission using the same identifying information. The commission maintains a sample list of acceptable file names and abbreviations on its web site.

(c) Acceptable organization. Except as provided in WAC 480-07-160 (4)(d)(vii) when submitting documents that include information designated as confidential, all files required to meet a single deadline must be submitted at the same time and in the same message, if possible, or on the same disc or commonly used electronic storage medium. A person may submit files in more than one submission or message when submitting those files via the commission's web portal or via e-mail as authorized in subsection (5)(a)(iii) and (b)(iii) of this section if the total size of the submission exceeds the size constraints of the commission's web portal or e-mail system for a single submission. If the documents are submitted in multiple e-mail messages, each e-mail message must prominently identify which one it is in the sequence of messages and, to the extent possible, the total number of messages used (e.g., "Message 2 of 4"). The first and final messages in the sequence must be identified as such. The first message also must explain the reason for the multiple messages and must include the cover letter and any required certificate of service. All such messages must be submitted as close to simultaneously as practicable.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-141 ((Receiving and filing)) Commission receipt of a document is not filing or acceptance. The

commission ~~((assigns docket numbers to a filing or proceeding and))~~ receives documents ~~((under docket numbers))~~ for administrative purposes, and such receipt alone does not ~~((to denote))~~ constitute filing or legal acceptance of a document. ~~((Receipt of a document for filing in a docket, or the assignment of a docket number to a document, does not mean that the commission has accepted the document, or waived any deficiencies that would allow the commission to reject the document. After a receiving a document,))~~

(1) Compliance review. Upon receipt, the commission will review a submission to determine whether it complies with applicable filing requirements prior to accepting it for filing and assigning a docket number, if applicable.

(2) Notice of, and opportunity to correct, noncompliance. The commission ~~((may address any deficiencies))~~ will identify any areas of noncompliance in the ~~((document, may require))~~ submission and will notify the person who made the submission within two business days, or as soon thereafter as practicable, of any areas of noncompliance that require corrective action before the commission can accept the document for filing. The notification will indicate one of the following:

(a) A requirement to submit one or more additional documents (e.g., a cover letter, certificate of service, etc.);

(b) A requirement to resubmit the document ~~((to be resubmitted))~~ with the deficiencies corrected~~((;))~~ within a specified period of time; or ~~((may reject))~~

(c) Rejection of the document and its return to the sender.

The commission will consider corrected documents to have been filed on the date the original documents were submitted if the deficiencies are not substantive or otherwise do not impair or hamper the commission's ability to timely review, analyze, or act on the merits of the submission. Otherwise, the commission will consider the documents to have been filed on the date the corrected documents are submitted.

(3) No waiver of noncompliance. By accepting a submission for filing in a docket or assigning a docket number, the commission does not necessarily certify that the submission complies with all filing requirements or waive the commission's ability to subsequently reject a document as deficient or require deficiencies to be corrected; provided that in the absence of extraordinary circumstances, the commission will not reject a document for failure to comply with applicable filing requirements more than five business days after the document has been submitted, and documents are deemed accepted and filed unless the commission provides notice of noncompliance within that time period.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-150 Commission service of documents ~~((in adjudicative proceedings))~~. (1) Commission service defined. Commission service means sending or delivering~~((; in accordance with RCW 34.05.010(19) and this rule, documents relating to commission adjudications, to parties and any other persons to whom service may be required by statute. Service includes the formal exchange of documents among parties to adjudicative proceedings))~~ notices, orders,

or other commission documents from the commission to parties, regulated companies, or interested stakeholders. Such service includes, but is not limited to, commission service of documents in adjudications pursuant to WAC 480-07-360.

(2) Designation of person to receive service.

(a) Each party ~~((in an adjudicative proceeding)),~~ regulated company, or interested stakeholder must designate at least one person to receive commission service of documents ~~((relating to the adjudication)).~~

(b) ~~((When any party has appeared by an attorney or other authorized representative in a proceeding before the commission, the party must name the representative, or one of the representatives if there is more than one, to receive service of documents. Service on the representative is valid service upon the party, except as provided by law. When an individual party appears on his or her own behalf, she or he must be the person to receive service.~~

(c) ~~The commission may order different arrangements for service in individual proceedings.~~

(3) Person to receive service of orders.

The commission will serve orders in adjudicative proceedings upon the party's representative and also on the party. Therefore, all parties must provide the name and mailing address of a person for purposes of direct service on the party.

(4)) Companies the commission regulates must provide the commission with current, accurate, and complete contact information for the company itself and at least one person who owns the company or who is employed or otherwise authorized by the company to receive commission service of documents on behalf of the company. Companies must inform the commission of any changes to this contact information as soon as practicable. The commission is not responsible for a company not receiving commission service of documents if the company fails to comply with this requirement.

(3) Contact information. Each party, regulated company, or interested stakeholder must ~~((supply))~~ provide the following information about every individual that it ~~((names))~~ designates to receive commission service of documents:

(a) Name~~((;))~~ (and title, if applicable);

(b) Mailing address~~((;))~~;

(c) Telephone number~~((;))~~; and

(d) ~~((Fax number, if any.~~

~~((e)))~~ E-mail address~~((, if any.~~

~~((f))~~ Relationship to party (e.g., executive director, etc.);

(5) Waiver of service by statutory means.

(a) ~~A party may choose to waive service of process by means of personal delivery, United States mail or parcel delivery service, in whole or in part, and elect to receive service by electronic means.~~

(b) ~~Waiver must be made in writing, filed with the commission, and must specify alternative methods of communication to effect service. Alternates may include fax or e-mail.~~

(c) ~~Waiver excuses other parties and the commission from the obligation to use methods of service specified in rule or statute.~~

Neither the commission nor any party is foreclosed from making service by statutory means upon a party who has waived such service, and timely service by a method speci-

fied in the statute will satisfy legal requirements for service when it is used.

~~(6) **Service by parties.** Parties must serve documents by delivering one copy to each other party by one of the following methods:~~

~~(a) In person.~~

~~(b) By mail, properly addressed with first class postage prepaid.~~

~~(c) By delivering to a commercial parcel delivery company and making or arranging payment of the pertinent fee.~~

~~(d) By fax transmission, if other forms of service are waived.~~

~~(e) By e-mail, if other forms of service are waived.~~

~~(7) **Service by commission.** All notices, complaints, petitions, findings of fact, opinions, and orders required to be served by the commission may be served by one of the following methods:~~

~~(a) In person.~~

~~(b) By mail, properly addressed with first class postage prepaid.~~

~~(c) By commercial parcel delivery company.~~

~~(d) By fax transmission, when a paper copy is simultaneously mailed or tendered to a commercial parcel delivery company.~~

~~(e) By e-mail if originals are simultaneously mailed or sent by commercial parcel delivery company.~~

~~(8))).~~

~~(4) **Forms of service by commission.**~~

~~(a) To the full extent authorized by applicable law, the commission will serve documents only in electronic form except where proof of receipt is required.~~

~~(b) When applicable law requires the commission to demonstrate that a person received a document, the commission will serve the document in one of the following ways:~~

~~(i) By certified United States mail, properly addressed with first class postage prepaid, return receipt requested; or~~

~~(ii) By personal delivery with a declaration of service.~~

~~(c) When required by applicable law or in the exercise of its discretion, the commission will serve paper copies of documents by United States mail, first class postage prepaid.~~

~~(5) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, commission service of documents is complete as follows:~~

~~(a) Electronic service is complete when the commission sends the document to the recipient's designated e-mail address.~~

~~(b) Service by certified mail or personal service is complete on the date indicated on the return receipt or declaration of service.~~

~~(c) Service by mail is complete when ((a copy of) the commission deposits the document ((is)), properly addressed((-stamped, and deposited)), and postage prepaid in the United States mail.~~

~~((b) Service by commercial parcel delivery is complete when the parcel delivery company accepts a copy of the document for delivery.~~

~~(e) Service by fax transmission is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by fax transmission, and~~

~~the document being served has been entirely received in the recipient's fax machine.~~

~~(d) Service by e-mail is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by e-mail, and the document being served has been entirely received at the recipient's designated e-mail address.~~

~~(e) Proof of service by electronic means. Parties effecting service by electronic means are encouraged to secure electronic return receipts or otherwise confirm successful delivery.~~

~~(9) **Certificate of service.** Each person filing a pleading, motion, response, or brief with the commission must include with or on the original of the document either an acknowledgment of service or the following certificate:~~

~~"I hereby certify that I have this day served this document upon all parties of record in this proceeding, by (state the authorized method of service selected under WAC 480-07-150)"~~

~~Dated at this day of~~

~~(signature of person who served the document))~~

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

WAC 480-07-160 Confidential information under RCW 80.04.095 or 81.77.210. The commission will provide special handling ~~((and limited))~~ of, and will limit access to, confidential information submitted in compliance with this rule or WAC 480-07-423. This rule applies to any information ~~((submitted under a claim of confidentiality))~~ the provider claims to be confidential under RCW 80.04.095 or 81.77.210. Title 81 RCW, other than RCW 81.77.210, does not contain a similar statute~~((See also, WAC 480-07-420 regarding protective orders in adjudicative proceedings))~~, and the commission will not accept documents marked as confidential pursuant to this rule and submitted on behalf of companies regulated under Title 81 RCW other than solid waste collection companies. This rule does not apply to information submitted to the commission that is exempt from public disclosure under the Public Records Act, chapter 42.56 RCW, other than RCW 42.56.330(1). A person submitting a document that contains such exempt information should work with the commission to identify the information and, upon commission request, provide an additional copy of the document that redacts that information.

(1) Implementation.

(a) *Designated official.* The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.56 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

(b) *Provider.* Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule or a commission protective order is a ("") provider, ("") as that term is used in this rule.

(c) *Requester.* Any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW, or a data request in an adjudicative proceeding is a requester, as that term is used in this rule.

(2) **Confidential information defined.** Confidential information is ~~(information that meets any of the following criteria:~~

~~(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.56 RCW.~~

~~(b) Information protected under the terms of a protective order in an adjudicative proceeding.~~

~~(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095 or 81.77.210. Only information that satisfies this definition may be designated as confidential.~~

(3) **Highly confidential information.** The commission may authorize protection of information as highly confidential only pursuant to a protective order. Highly confidential information is confidential information to which even more restricted access is necessary to ensure the information is not disclosed to the detriment of the provider (or the party designating the information as confidential, if not the provider). Highly confidential information remains subject to the requirements in RCW 80.04.095 or 81.77.210, and the provisions of this section apply to highly confidential information as well as confidential information unless this rule or the protective order authorizing highly confidential treatment of information states otherwise.

~~((3)) (4) **How to designate and seek protection of confidential information under this section.** A provider may claim the protection of this rule only by strict compliance with the following requirements. ~~(Any failure)~~ The commission may refuse to accept for filing any document that fails to comply with these requirements ~~(may result in the submission not being accepted as one including confidential information)~~. Failure to properly designate information as confidential also may result in the information not being treated as confidential.~~

(a) *Contents.* The provider must submit the claim of confidentiality in writing ~~(, in the same form (i.e., paper or electronic) and)~~ at the same time the information claimed to be confidential is submitted. The provider must state the basis ~~((upon))~~ on which the information is claimed to be confidential ~~((under this rule))~~, and if the document is not submitted pursuant to a protective order in an adjudicative proceeding, the provider must identify any person (other than the provider) ~~((that))~~ who might be directly affected by disclosure of the confidential information.

(b) *Documents with information designated as confidential or information designated as highly confidential.* The provider must submit two versions of all documents claimed to include either (but not both) confidential or highly confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information

designated as confidential (confidential version) or highly confidential (highly confidential version); and

(ii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks the information claimed to be confidential or highly confidential (redacted version).

(c) *Documents with information designated as confidential and information designated as highly confidential.* The provider must submit three versions of all documents claimed to include both highly confidential and confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as highly confidential or confidential (highly confidential version);

(ii) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential and masks all information designated as highly confidential (confidential version); and

(iii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks all information claimed to be highly confidential or confidential (redacted version).

(d) *Marking and submission.*

(i) ~~((Paper copies. When the document is in paper format, and there is no protective order in place,))~~ Documents containing information designated as confidential or highly confidential must be marked as follows:

(A) The provider must clearly mark each copy of the confidential version of the document with the designation ~~((“”))~~ "Designated information is confidential per protective order in Docket [insert docket number]" if the provider submits confidential information under the provisions of a protective order, or "Designated information is confidential per WAC 480-07-160~~((:))~~" if not submitted under the terms of a protective order. The provider must clearly mark each copy of the highly confidential version of the document with the designation "Designated information is highly confidential per protective order in Docket [insert docket number]." The provider must place ~~((this))~~ the applicable mark on the first page of a multipage document and each specific page ~~((where))~~ on which the provider claims there is confidential or highly confidential information. ~~((ii) *Electronic copies.* When the document is in electronic format, such as an e-mail message, or a word processing or spreadsheet file, the "confidential per WAC 480-07-160" mark must be inserted in the e-mail message or on the disk or diskette, on the first page in the file and on each page that the provider claims contains confidential information. The provider must follow the requirements in (c) of this subsection and the format requirements in WAC 480-07-140(6) for submitting electronic documents. Specifically, parties must separately submit and clearly identify electronic versions of confidential and redacted documents when submitting documents via e-mail or the commission's web portal.~~

(iii) *Protective order, if any, must be cited.* If the provider submits confidential information under the provisions of a protective order, the "confidential" identification on the

disk, diskette, or e-mail, on the first page of the document and each page that includes confidential information must state: "Confidential per protective order in WUTC Docket [insert docket number]." When the provider submits confidential information in an electronic format, the provider must mark the document as with a paper copy and follow the format requirements in WAC 480-07-140(6) for submitting electronic documents.

(e) ***Unredacted version under seal; redacted version.*** The provider must submit an original and the required number of complete copies of the version of the document as to which confidentiality is claimed (unredacted version) and an original and one complete copy of the version of the document with the information claimed to be confidential masked (redacted version). If the provider submits a document under a claim that the entire document is confidential, the provider may submit only the first page of the redacted version if the page indicates that the entire document is claimed to contain confidential information.

(i) ***Sealing and labels.*** The redacted version must be so labeled and submitted along with a set of any confidential documents. The confidential unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. A party submitting multiple confidential documents must collate the documents into sets and, to the extent feasible, must enclose each set of confidential documents in a separate envelope and each set of highly confidential documents for filing in a separate envelope.

(ii) ***Marking.*** Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper with the confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the confidential information in a box or border, or setting the text off with asterisks). Similarly, each page of the unredacted version that contains information designated highly confidential under a protective order, must be printed on light blue paper with the highly confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the highly confidential information in a box or border, or setting the text off with asterisks). The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

(iii) ***Number of copies.*** The provider must submit an original and ***one*** redacted copy of each confidential or highly confidential document and an original and ***twelve*** copies of the unredacted version of each confidential or highly confidential document, unless the commission has required a different number of copies to be filed. If a document includes both confidential and highly confidential information, the provider must submit unredacted copies including both the confidential and highly confidential information in the same document.

(4)) In the subject line of the e-mail or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain information designated as confidential or highly confidential under a protective order or WAC 480-07-160, as applicable.

(B) Each page of the electronic document and any required paper copies of the confidential version that includes information claimed to be confidential must clearly designate that information on each page by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on yellow paper.

(C) Each page of the electronic document and any required paper copies of the highly confidential version that contains information designated as highly confidential under a protective order must clearly designate the highly confidential information by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on light blue paper.

(D) If a document includes both confidential and highly confidential information, each page of any paper copies of the confidential version that contains only information designated as confidential must be printed on yellow paper, and pages containing information designated as highly confidential must be printed on light blue paper, including pages that contain both highly confidential and confidential information. The provider is responsible for ensuring that highly confidential information is clearly distinguished from confidential information when a document includes both highly confidential and confidential information.

(E) Any required paper copy of the confidential or highly confidential version of a document, in its entirety, must be submitted in a sealed envelope. A person submitting more than one confidential or highly confidential document in a single submission must collate all of the confidential documents into a set and all of the highly confidential documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be submitted, each set of confidential or highly confidential documents must be submitted in a separate envelope to the extent feasible.

(F) The redacted version of the document must be labeled as redacted and submitted simultaneously with the corresponding confidential or highly confidential document. The redacted version must completely black out the information claimed to be confidential or highly confidential or leave a blank space where that information is located in the document. The redacted and confidential or highly confidential versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is confidential or highly confidential, the provider may submit a single page in the redacted version for the contiguous confidential pages if that page identifies the pages claimed to be confidential or highly confidential.

(ii) Documents containing information designated as confidential or highly confidential must be submitted as follows:

(A) All documents containing information designated as confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include

information designated as highly confidential or that do not include any information designated as confidential.

(B) All documents containing information designated as highly confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as confidential or that do not include any such information.

(C) The fully redacted versions of all documents containing information designated as confidential or highly confidential, along with any other nonconfidential documents that are part of the filing, must be submitted separately from the documents containing information designated as confidential or highly confidential, and all of the nonconfidential documents must be submitted in a single message or on the same electronic storage medium.

(D) If the volume of documents of any type exceeds the size constraints of the commission's web portal or e-mail system for a single submission, those documents may be submitted in multiple submissions as provided in WAC 480-07-140 (6)(c).

(E) All submissions comprising a single filing must be made as close to simultaneously as practicable.

(5) Challenges to ~~((claims))~~ **designations of confidentiality.** The commission or a party to ~~((a))~~ an adjudicative proceeding in which a provider submits a document with ~~((a claim of confidentiality))~~ information designated as confidential may challenge ~~((the claim. When a challenge is made,~~ the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter 42.56 RCW, RCW 80.04.095, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

~~((5))~~ that designation. If a confidentiality designation is challenged, the commission will continue to protect the information from public disclosure for ten days from the date the challenge is served on the provider (and the party that has designated the information as confidential or highly confidential, if different). Upon the expiration of that ten-day period, the commission will remove the confidential or highly confidential designation of the information from the commission's files and will make the information publicly available unless prior to the expiration of the ten-day period.

(a) The party challenging the confidential designation notifies the commission in writing that the party withdraws the challenge;

(b) The party challenging the confidential designation notifies the commission in writing that the party waives the statutory deadline to enable the affected parties additional time to resolve the challenge; or

(c) The commission is served with a court order directing the commission not to disclose the challenged information.

(6) **Requests for ~~((²))~~ information designated as confidential~~((¹ information))~~.** Subject to the requirements of this subsection~~((s (6) and (7) of this section))~~, the commission will release information designated as confidential or highly

confidential in response to a written request ~~((properly filed under the following requirements:~~

(a) The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

(b) The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make arrangements with the commission's secretary to pay the designated copying fees, if any.

(6) **Informal resolution.** When the secretary)) for public records made in compliance with WAC 480-04-090.

(a) *Avoidance of disclosure.* If the public records officer and the requester agree that the ~~((secretary))~~ commission can satisfy the ~~((requester's need))~~ request for information without disclosing information designated as confidential ~~((information, the secretary will make the information available))~~ or highly confidential, the public records officer will provide or make available for review the publicly available information in the commission's possession that is responsive to the request.

~~((7))~~ (b) *Notice of request for ~~((information designated confidential;))~~, and release of, information designated confidential. If the requester does not agree that the commission can satisfy the request without disclosing information designated as confidential or highly confidential, the commission will implement the following procedure:*

(i) Pursuant to RCW 80.04.095 or 81.77.210, as applicable, the commission will provide written notice of any request for information designated as confidential or highly confidential to the provider (and the party that has designated the information as confidential or highly confidential, if different) and any person that has been identified ~~((by the provider))~~ as a person who might be directly affected by release of the information. ~~((This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding.))~~ The commission will issue such notice not more than two business days after ~~((the requested materials are located and it determines that they contain))~~ receiving confirmation that the requester requests information ~~((claimed to be))~~ designated as confidential or highly confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider (and the party that has designated the information as confidential or highly confidential, if different).

(ii) The commission need not assist any person in seeking or resisting judicial intervention to protect from disclosure any information designated as confidential or highly confidential, but the commission may participate in any such proceeding.

(iii) If the provider (and the party that has designated the information as confidential or highly confidential, if different) consents in writing to the release of the information(;) designated as confidential or highly confidential or does not restrain disclosure of that information by ((way of)) obtaining a court order within ten days following the commission's notice of the request, the commission will consider the information public, remove the confidential or highly confidential designation from its files, and release the information to the requester.

~~((8) **Judicial intervention by the commission.** The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.~~

~~((9)) **(7) Designation or redesignation of confidential information ((in adjudications. At the conclusion of)).** No later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record in an adjudication in which ((confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record, do the following:~~

~~((a)) a party has designated information as confidential or highly confidential, that party must verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final, and the commission will ((be changed)) **change those designations** only if the ((party asserting confidentiality)) **provider (or the party that has designated the information as confidential or highly confidential, if different)** voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the **commission will adopt the** designation that is least restrictive to public access ((will be adopted).~~

~~(b) File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.~~

~~(c) File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony, and similar documents, the authoring party must file the unredacted version)).~~

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

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-170 Official communications from the commission. (1) Definition. An official communication from the commission notifies interested parties and the public of the agency's position, anticipated action, or resolution of issues in matters that come within the commission's statutory authority.

(2) When a communication is official. A communication from the commission is ~~((not))~~ an ~~(())~~ official communication ~~(("unless"))~~ only if it is signed or otherwise verifiably issued or entered by the commissioners, the commission's secretary or other assistant deputized, designated, or delegated to perform commission duties pursuant to RCW 80.01.030, or the secretary's designee ~~((signs it))~~. In addition, the presiding administrative law judge or the administrative law judge's designee may sign, issue, or enter official communications relating to an adjudicative proceeding.

NEW SECTION

WAC 480-07-175 Inspection and production of documents in commission investigations. (1) Inspection. Every public service company must make its accounts, books, papers, and documents available for commission inspection at any and all times.

(2) Production. The commission may require a public service company to provide copies of documents to the commission for inspection at the commission's offices.

(a) *Format.* The commission will require a public service company to provide documents for commission inspection by serving the company with a letter or other writing signed by the secretary or an administrative law judge.

(b) *Response.* The public service company must provide the required documents, or any objections to providing those documents, to the commission within ten business days of the date the commission serves the letter or other writing unless the commission specifies a different deadline.

(c) *Objections.* Any objections the public service company gives in lieu of providing the requested documents must describe in detail the legal and factual basis for the company declining to provide the documents. Commission staff must file a response to the objections within five business days. The commission will notify the company of the disposition of its objections and the date by which the company must provide any requested documents the commission determines that the company must provide.

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

WAC 480-07-180 Incorporated and referenced materials in commission rules and orders. Any document that is incorporated by reference in a commission rule or order is available for public inspection at the commission unless exempt from the public disclosure requirements in chapter 42.56 RCW, or under a protective order in an adjudicative proceeding. The commission's secretary or public records officer will provide a copy of a referenced document upon request, allowing reasonable time for any necessary

copying, subject to any (~~(pertinent)~~) applicable charge, and subject to copyright restrictions or statutory exemptions from public disclosure. The commission incorporates or references the version of the incorporated or referenced material that is current on the day the commission adopts a rule, makes a ruling, or enters an order that makes the incorporation or reference, unless the commission specifies another version or unless another version is apparent from the reference. In most instances, such information is available to the public on the commission's web site (~~((see WAC 480-07-125))~~).

NEW SECTION

WAC 480-07-190 Electronic signatures. (1) **Authorization.** To the extent authorized under RCW 19.360.020, the commission will accept electronic signatures on all documents submitted to the commission for filing that applicable law requires or allows to be signed by hand if the electronic signature complies with this rule and any other applicable requirements (e.g., of the entity on whose behalf the person is signing). The commission may use electronic signatures on documents it issues, enters, or serves including, but not limited to, orders, notices, and correspondence, to the extent authorized under RCW 19.360.020.

(2) **Definitions.**

(a) An electronic signature is one or more letters, characters, numbers, or other symbols in digital form incorporated in, attached to, or otherwise logically associated with an electronic document that:

(i) Identifies and authenticates a particular person as the source of the document; and

(ii) Indicates such person's intent to sign the document and approval of the information contained in that document.

(b) A secure electronic signature is an electronic signature that:

(i) Is unique to the person making the signature;

(ii) The technology or process used to make the signature is under the sole control of the person making the signature;

(iii) The technology or process can be used to identify the person using the technology or process; and

(iv) The electronic signature can be linked with the document in such a way that the signature can be used to determine whether the document has been changed since the electronic signature was incorporated in, attached to, or otherwise associated with the document.

(3) **Requirements.**

(a) *Attorney signatures.* An electronic document that requires an attorney's signature must include the date on which the document was signed and be signed:

(i) With a secure electronic signature;

(ii) With the symbol "/s/" followed by the attorney's name, state bar number, and full contact information; or

(iii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review.

(b) *Other signatures.* An electronic document that requires a signature and is signed by a person who is not an attorney acting in a representative role must include the date on which it was signed and be signed:

(i) With a secure electronic signature;

(ii) With the symbol "/s/" followed by the person's name, title, company, street address, telephone number, and e-mail address; or

(iii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review, or for as long as the document is effective, whichever period of time is longer.

(c) *Signatures subject to penalty of perjury.* An electronic document required to be signed under penalty of perjury must include the date on which it was signed and be signed by the person subject to penalty of perjury:

(i) With a secure electronic signature; or

(ii) By hand and the entire document scanned and submitted in searchable .pdf format (adobe acrobat or comparable software); the party or person submitting the electronic document must maintain the original signed paper document for at least sixty days beyond the close of the docket, proceeding, or matter in which it is filed, including any period of judicial review, or for as long as the document is effective, whichever period of time is longer.

(4) **Effect.**

(a) *Submissions.* An electronic document submitted to the commission in compliance with this rule shall bind each person whose electronic signature is incorporated in, attached to, or otherwise logically associated with the document and shall be deemed the equivalent of an original signed document.

(b) *Commission communications.* All notices, orders, or other documents issued, entered, or served by the commission with one or more electronic signatures in compliance with this rule and WAC 480-07-170 are official communications of the commission.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-07-143 Submitting documents in rule-making proceedings.

WAC 480-07-145 Filing documents in adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-220 Monitoring rule-making proceedings; lists of interested persons. (1) (~~(Internet)~~) **Information.** The commission's (~~(internet)~~) web site includes information about each pending rule-making proceeding(~~(s)~~)

under the docket number the commission has assigned to that rule making.

(2) ~~((Mail or e-mail))~~ **Notification.** The commission maintains lists of persons interested in potential rule-making proceedings that concern particular regulated industries and other areas of potential interest. The commission sends notice of rule-making proceedings via e-mail to persons on these lists. Any person may request in writing that the commission's records center include them on the relevant list or lists ~~((for the person's area(s) of interest))~~. Such requests must include the person's name, entity and title (if the person is representing a company, association, or other organization), and e-mail address. The commission may establish a fee for this service.

(3) **Individual rule making.** The commission also maintains a distribution list of persons to whom it sends electronic copies of notices, orders, or other documents it issues in individual rule making. Any interested person may be included on the distribution list the commission maintains for specific rule making by requesting in writing to be included on that list. Such requests must include the person's name, entity and title (if the person is representing a company, association, or other organization), and e-mail address. In addition, the commission generally will include on that distribution list persons who file comments in the rule making unless those persons submit only generic comments as a member of an organization or other entity that prepared, sponsored, or otherwise generated or arranged for those comments.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-230 Inquiring about rule-making proceedings. Persons who wish to inquire about rules being proposed or considered by the commission may contact the commission's rules coordinator, whose contact information is available on the commission's ~~((internet))~~ web site.

NEW SECTION

WAC 480-07-250 Submitting documents in rule-making proceedings. (1) **Scope of rule.** This section governs communications to the commission in rule-making proceedings. These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Submitting comments.** All written comments submitted in a rule making must be addressed to the commission secretary.

(3) **Methods for delivering comments and other communications.** The commission will accept only electronic copies of comments or other documents submitted for filing in a rule-making proceeding. A person must submit such documents by sending them to the commission through the records center web portal, at the address provided in WAC 480-07-125 or the commission's web site, without providing a paper copy. If a person is unable to use the records center web portal to submit documents for filing, the commission will accept a submission via e-mail as provided in WAC 480-07-140 (5)(b) or on a disc or other commonly used electronic storage medium by mail or hand delivery as provided in WAC 480-07-140 (5)(c), without providing a paper copy.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-300 Scope of Part III. (1) **Scope.** The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). An ~~((²))~~ adjudicative proceeding ~~((³))~~ for purposes of this chapter ~~((⁴))~~ is a proceeding in which an opportunity for hearing is required by statute or constitutional right ~~((before or after the commission enters an order, or as to which))~~ or is a proceeding the commission voluntarily ~~((enters))~~ commences as an adjudication ~~((, and))~~ as defined and described in chapter 34.05 RCW.

(2) **Examples of adjudicative proceedings before the commission.** The following are nonexclusive examples of ~~((proceedings that are))~~ adjudicative proceedings for purposes of this chapter ~~((, if set for hearing))~~ once the commission takes formal action to commence such a proceeding pursuant to WAC 480-07-035:

(a) Formal complaint proceedings commenced pursuant to RCW 80.04.110 or 81.04.110 or complaints the commission initiates.

(b) ~~((General rate proceedings.))~~ Suspended tariff filings including, but not limited to, tariffs increasing rates.

(c) Applications for authority (e.g., certificates, licenses, and permits) to which a person has filed an objection or protest or as to which the commission has issued a notice of intent to deny the application and grants a request for hearing.

(d) Petitions for enforcement of interconnection agreements.

(e) Objections to closures of highway-railroad grade crossings.

(f) Declaratory order proceedings.

(g) Challenges to, or requests for mitigation of, a penalty assessment when the commission grants a request for a hearing.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-305 Commencement of an adjudicative proceeding. (1) **Commencement.** The commission may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority. An adjudicative proceeding begins when the commission ~~((or presiding officer))~~ notifies a party that the commission will conduct a prehearing conference, hearing, or other stage of an adjudicative proceeding ~~((will be conducted)).~~

(2) **Who may ~~((file a pleading seeking to initiate))~~ seek to commence an adjudicative proceeding.** A person involved in an actual case or controversy subject to the commission's jurisdiction may apply to the commission ~~((for))~~ to commence an adjudicative proceeding by ~~((filing))~~ submitting the appropriate form of pleading.

(3) **Types of pleadings that ~~((may initiate))~~ request an adjudicative proceeding.** The following pleadings, when properly and timely ~~((filed))~~ submitted for filing, constitute applications for adjudicative proceedings:

(a) Formal complaints submitted by persons other than commission staff.

(b) ~~Petitions~~ for commission action when the relief requested requires adjudication or when the commission determines the issues presented should be resolved through adjudication.

(c) Petitions for declaratory orders under RCW 34.05.-240, when the commission determines that an adjudicative process is necessary to provide parties the opportunity to resolve contested issues.

(d) ~~(Filings for general rate increases, as defined in this chapter)~~ Requests for a hearing to contest, or seek mitigation of, penalties assessed without a prior hearing.

(e) Protests of, or objections to, applications for authority ~~(that are not protested, if the commission is required by law to conduct a hearing or determines, in its discretion, that it should set the matter for hearing).~~

(f) ~~(Petitions for review of the denial of)~~ Requests for hearing to contest a commission notice of intent to deny an unprotested application for authority ~~(and petitions for mitigation of penalties assessed without hearing).~~

(g) Protests to applications for authority.
The commission will not initiate an adjudicative proceeding in response to such an application when contrary to statute or rule, when the application is presented during an existing adjudication (except pursuant to the commission's discretion under RCW 34.05.413(1)), or when the subject raised by the application is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW).

(4) **Commission notification of any deficiencies in a pleading.** Within thirty days after receiving an application for an adjudicative proceeding, the commission may notify the applicant of any obvious errors or omissions, request any additional information ~~(if)~~ the commission requires regarding the application ~~(for adjudicative proceeding)~~, and notify the applicant of the name, ~~(mailing)~~ e-mail address, and telephone number of a person on the commission staff ~~(that may be contacted)~~ who the applicant may contact regarding the application.

(5) **Commission determination whether to conduct an adjudicative proceeding.** Within ninety days after ~~(a party files and serves a pleading or a party files and serves a response, whichever comes later)~~ receiving an application for an adjudicative proceeding, the commission will:

(a) Commence an adjudicative proceeding by serving ~~(the parties with)~~ a notice of hearing pursuant to RCW 34.05.434; or

(b) Decide not to conduct an adjudicative proceeding and furnish the applicant with a ~~(copy of its written decision, which will include a)~~ brief written statement of the reasons ~~(and notice of any administrative review available)~~ for that decision. While other circumstances may justify not commencing an adjudicative proceeding, the commission will not commence an adjudicative proceeding under the following circumstances:

(i) The commission lacks jurisdiction or the authority to grant the requested relief.

(ii) The matter is not ripe for commission determination.

(iii) An adjudicative proceeding would be contrary to statute or rule.

(iv) The subject matter is being, or will be, considered in another proceeding.

(v) The applicant lacks standing to request the relief it seeks from the commission.

(vi) The subject matter is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW, or would be better addressed informally or in a different proceeding.

(c) The commission will conduct any administrative review of a decision not to conduct an adjudicative proceeding using the same procedures applicable to review of initial orders set forth in WAC 480-07-825.

AMENDATORY SECTION (Amending WSR 06-17-126, filed 8/21/06, effective 9/21/06)

WAC 480-07-307 Probable cause determinations. An administrative law judge will review the information or evidence supporting ~~(a proposed complaint or penalty assessment and)~~ any complaint commission staff proposes to have the commission issue and will determine whether probable cause exists to issue the complaint ~~(or assess penalties. If the judge determines).~~ Upon determining that the information would ~~(support the proposed penalties or)~~ sustain the complaint ~~(if)~~ if proved at hearing and ~~(if)~~ not rebutted or explained, the judge will sign the complaint ~~(or penalty assessment)~~ on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for ~~(the proposed penalties or)~~ the complaint.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-310 Ex parte communication. (1) **General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final ~~(determination)~~ resolution of the proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy ~~(or)~~ or investigative ~~(or prosecutorial)~~ staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge assigned to the adjudication, or the commissioners' ~~(staff)~~ assistants, advisory staff, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding ~~(or)~~ so that they may participate in, or respond to, the communication.

(2) **Communications not considered ex parte for purposes of this section.** The following communications are not considered ex parte:

(a) *Procedural aspects.* Communications ~~(necessary to)~~ concerning procedural aspects of ~~(maintaining an orderly process)~~ the proceeding, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) *Commissioners* ~~(The commissioners may communicate with one another regarding the merits of any adjudicative proceeding.~~

~~(e)~~, commission employees, and consultants. ~~((A))~~ As presiding officers, commissioners and administrative law judges may receive legal counsel((;)) or consult with ((staff)) assistants, advisory staff, or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or ((prosecutorial)) advocacy functions in the same or a factually related case. The presiding officers and these assistants, advisory staff, and consultants also may communicate with one another regarding the merits of any adjudicative proceeding.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving in that capacity, the presiding officer, after starting to serve, must promptly disclose the communication as prescribed in subsection (4) of this section ((promptly after starting to serve)).

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives or becomes aware of any communication that appears to violate RCW 34.05.455((;)) or this section((;)) will ((place on)) include documentation of the communication in the record of the pending matter. Such documentation will include any ((such)) written communication received((;)) and any written response ((to the communication, and)), or a memorandum stating the substance of any ((such)) oral communication received((,-any)) and response made, ((and)) as well as the identity of each person ((from whom the presiding officer received an ex parte)) involved in the communication. The presiding officer will ((advise)) notify all parties that ((these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party who wants to respond to the communication may place a written rebuttal statement on the record. Portions of the record)) this documentation has been included in the record and will provide parties with the opportunity to file and serve a written rebuttal statement in response to the notice of ex parte communication. Materials pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of ((the)) them into the evidentiary record for purposes of establishing a fact at issue and the commission admits that portion ((is admitted)) into the record pursuant to RCW 34.05.452.

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission ~~((will, and))~~ or any party may((;)) report ((any)) a violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-330 Presiding officers. (1) **Commissioners.** The commissioners may preside in any adjudicative proceeding with or without the assistance of an administrative law judge. When the commissioners preside, they are

~~((presiding officers((presiding officers)) as that term is used in chapter 34.05 RCW and in this chapter. When the commissioners preside with the assistance of an administrative law judge, the administrative law judge also is a presiding officer, except for purposes of making final decisions on substantive matters in the proceeding. The administrative law judge may enter procedural and other interlocutory orders. When the commissioners preside, they may enter procedural and other interlocutory orders and will enter one or more final orders in the proceeding to resolve the substantive matters presented.~~

(2) **Administrative law judge.** ~~The ((supervisor)) director of the administrative law ((judge function within the agency)) division will designate ((one or more)) an administrative law judge((s)) to preside in individual proceedings, ((subject to the commissioners' approval. An administrative law judge may be designated)) either to assist the commissioners in their role as presiding officers as described in subsection (1) of this section, or ((may be designated)) to serve alone as the presiding officer. When serving alone as the presiding officer, the administrative law judge will enter one or more initial orders, unless the parties and the commission agree to waive an initial order, or applicable law prohibits entry of an initial order. An initial order becomes final if no party petitions for administrative review within twenty days and the commissioners do not review the order on their own motion. The commissioners will enter a final order ((following the opportunity for)) if a party petitions for, or the commission on its own motion undertakes, administrative review of an initial order, ((upon waiver of)) if the parties and the commission agree to waive an initial order, or as otherwise provided by law.~~

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-340 Parties—General. (1) Definitions.

(a) *Person.* As defined in RCW 34.05.010(14), a ~~((presiding officer))~~ person((presiding officer)) is any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(b) *Party.* As defined in RCW 34.05.010(12), a ~~((party))~~ party((party)) is a person to whom the agency action is specifically directed~~((,-or))~~. A party is also a person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

~~((c))~~ **Interested person.** An "interested person" is a person who does not want to participate in a pending docket as a party or is not permitted to do so, but who wants to receive copies of all documents that the commission serves on parties, simultaneous with service, as well as documents served on the commission and other parties. The commission may charge for this service.

~~((d))~~ **Docket monitor.** A "docket monitor" is a person who would like to receive orders entered by the commission in a docket~~((;))~~.

(2) **Appearance requirement.** The commission will not grant party status to a person who fails to appear at the earliest prehearing conference~~((;))~~ if one is held, or hearing session~~((;))~~ if there is no prehearing conference, unless the ~~((party))~~ person is excused from appearing by the presiding

officer or shows good cause for failing to timely appear. The commission staff and the public counsel (~~(section)~~) unit of the attorney general's office become parties to an adjudicative proceeding for all purposes upon entering an appearance. (~~(When the commission's regulatory staff appears as a party it will be called "commission staff" or "staff." When the public counsel section of the office of the Washington attorney general appears as a party, it will be called "public counsel.")~~)

(3) Classification of parties. The commission generally will refer to parties (~~(to)~~) in commission proceedings (~~(before the commission will be called applicants, complainants, petitioners, respondents, intervenors, or protestants,)~~) by their names but may refer to them according to (~~(the nature of)~~) their classification in the proceeding (~~(and the relationship of the parties)~~), as follows:

(a) *Applicants.* Persons applying for any right or authority that the commission has jurisdiction to grant are (~~(the)~~) applicants.(~~(s)~~)

(b) *Complainants.* Persons who file a formal complaint with the commission are (~~(the)~~) complainants.(~~(s)~~) When the commission commences an adjudicative proceeding on its own complaint (~~(seeking to impose a penalty or other sanction based upon alleged acts or omissions of the respondent)~~), the commission is the (~~(the)~~) complainant.(~~(s)~~)

(c) *Petitioners.* Persons petitioning for relief other than by complaint are (~~(the)~~) petitioners.(~~(s)~~)

(d) *Movants.* Persons filing a motion for relief are (~~(the)~~) movants(~~(s)~~) or (~~(the)~~) moving parties.(~~(s)~~)

(e) *Respondents.* Persons against whom any formal complaint, petition, or motion is filed are (~~(the)~~) respondents.(~~(s)~~ ~~In general rate proceedings that are set for hearing on the commission's motion or complaint, the party seeking to increase rates is a "respondent," but bears the burden of proof in the proceeding pursuant to RCW 80.04.130 or 81.04.130.)~~)

(f) *Intervenors.* Persons(~~(s)~~) other than the original parties, (~~(that are permitted)~~) commission staff, and public counsel that the commission permits to appear and participate as parties are (~~(the)~~) intervenors.(~~(s)~~)

(g) *Protestants.* Persons (~~(that)~~) who file a protest to oppose an application are (~~(the)~~) protestants.(~~(s)~~)

(h) *Objectors.* Persons who file an objection to oppose an application are objectors.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-345 Appearance and practice before the commission. (1) **Minimum qualifications.** No person may appear before the commission as a representative of a party to an adjudicative proceeding without meeting at least one of the following qualifications:

(a) Membership in good standing in the Washington State Bar Association;

(b) Admission to practice, in good standing, before the highest court of any other state or the District of Columbia;

(c) Status as an officer or employee of a party or person seeking party status, if granted permission by the presiding officer to represent the party; or

(d) Status as a legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admis-

sion to practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the presiding officer approves the intern's sole appearance in advance.

The presiding officer may refuse to allow a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) **Written notice of appearance and withdrawal by counsel or other representative is required.**

(a) Attorneys or other authorized representatives (~~(that)~~) who wish to appear on behalf of a party or person seeking party status (~~(, or to withdraw from a proceeding, must immediately provide separate)~~) must file a written notice (~~(to)~~) of appearance with the commission and serve all parties to the proceeding (~~(- Parties must supplement the written notice by submitting the document in electronic form as specified in WAC 480-07-140(5))~~) prior to acting in a representative capacity unless the attorney or authorized representative has previously appeared through the party's initial pleading or written petition to intervene.

(b) A party's initial pleading or written petition to intervene filed in (~~(the)~~) a proceeding must designate the party's attorney or other representative (~~(- Later)~~) authorized to accept service on behalf of the party.

(c) A party must file a written notice with the commission and serve all parties to make any changes to (~~(the)~~) its designation of authorized (~~(representative must be made by written notice to the commission, and a copy must be served on each other party in the proceeding. The party's initial pleading must also designate one person as its representative to accept service for the party itself)~~) representative(s).

(d) Attorneys or other authorized representatives who wish to withdraw from representing a party must file a separate written notice of withdrawal with the commission and serve all parties to the proceeding.

(3) **Unethical conduct is not permitted.** Persons appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. Representatives are required to be familiar with, and conform to, the requirements of the rules of professional conduct that are part of the Washington court rules. If any representative fails to conform to those standards, the commission may exclude the person from the proceeding, may report the ethical violation to any appropriate licensing authority, and may refuse to permit the person to appear before (~~(the)~~) the commission in a representative capacity in any future proceeding.

(4) **Former employees.** Former employees of the commission are subject to the provisions of RCW 42.52.080, which governs employment after public service.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-355 Parties—Intervention. (1) **Petition to intervene.**

(a) *Who may petition; when petitions must be filed.* The commission strongly prefers written petitions to intervene from any person (~~(to)~~) who seeks to appear and participate as

a party in a proceeding before the commission other than the original parties ((to any proceeding before the commission)), commission staff, and public counsel((who desires to appear and participate as a party)). Written petitions to intervene should ((file a written petition for leave to intervene)) be filed at least three business days before the initial hearing date or prehearing conference date, whichever occurs first. A person may petition orally for leave to intervene at the time of the initial hearing or prehearing conference, whichever occurs first, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date. ((The commission may extend the period for filing timely petitions to intervene.))

(b) Late-filed petition to intervene. ((Any)) The commission may grant a petition to intervene made after the ((deadline for filing or presenting the petition is a "late-filed petition to intervene." The commission will grant a late-filed petition to intervene)) initial hearing or prehearing conference, whichever occurs first, only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition to intervene.

(c) Contents of petition. Any petition to intervene must disclose:

(i) The petitioner's name and ((address-)) contact information as specified in WAC 480-07-360(3);

(ii) The petitioner's interest in the proceeding((-);

(iii) The petitioner's ((position(s))) position with respect to the matters in controversy((-);

(iv) Whether the petitioner proposes to broaden the issues in the proceeding and, if so, a statement of the proposed issues ((and an affidavit or declaration)) that clearly and concisely sets forth the ((facts supporting)) basis for the petitioner's ((interest in broadening)) proposal to broaden the issues((-); and

(v) The name and ((address of petitioner's attorney or other representative, if any. Attorneys and other party representative must separately file their notice of appearance as required by WAC 480-07-345(2))) contact information as specified in WAC 480-07-360(3) of the persons the petitioner has authorized to act as the petitioner's representatives, including attorneys, if any.

(2) **Response.** Parties may respond to any petition to intervene. Responses may be written((-) or may be heard orally at ((a)) the prehearing conference or ((a)) hearing at which the commission considers the petition. A party's written response to a timely filed written petition to intervene ((must)) should be filed and served at least two business days before the ((next)) prehearing conference or hearing ((date)) at which the commission will consider the petition, or at such other time as the commission may establish by notice.

(3) **Disposition of petitions to intervene.** The commission ((may)) generally will consider petitions to intervene at the prehearing conference or at the initial hearing((-a)) if the commission does not conduct a prehearing conference((-s; or, if persons have responded to a petition, before or after a hearing or prehearing conference. If the petition discloses), The presiding officer may grant a petition to intervene if the petitioner has a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest((-, the presiding officer may orally grant the petition

at a hearing or prehearing conference, or in writing at any time. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2)). If the commission grants intervention, the petitioner becomes a party to the proceeding as an ((=)) intervenor.((=)) The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2).

(4) **Dismissal of intervenor.** The commission may dismiss an intervenor from a proceeding at any time after notice and a reasonable opportunity to be heard if the commission determines ((at any time)) that the intervenor has no substantial interest in the proceeding((-or that)) and the public interest will not be served by the intervenor's continued participation.

(5) **Interlocutory review by commission.** The commission may review a decision regarding a petition to intervene or dismissal of an intervenor pursuant to WAC 480-07-810.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-360 Parties—Service and master service list. (1) Service defined. Service means sending or delivering, in accordance with RCW 34.05.010(19) and this rule, the following documents in an adjudicative proceeding:

(a) Documents submitted to the commission for filing that must be sent or delivered to the parties in that proceeding;

(b) Documents that are not submitted to the commission for filing but that are formally exchanged between parties (e.g., data requests and responses); or

(c) Orders, notices, or other documents the commission enters or issues that must be sent or delivered to the parties or to any other persons to whom service may be required.

(2) **Designation of person to receive service.** Each party in an adjudicative proceeding must designate at least one person to receive service of documents relating to the adjudication. A party may designate more than one person to receive electronic service subject to any limits the presiding officer may establish on the number of persons each party may designate. Service on the person or persons who a party has designated as its representative(s) is valid service upon the party, except as provided by law.

(3) **Contact information.** In its initial filing in the adjudicative proceeding, each party or person seeking to become a party must designate the individuals to receive service on behalf of the party or person and must supply the following information about each such individual:

(a) Name;

(b) Mailing address;

(c) Telephone number;

(d) E-mail address; and

(e) Relationship to party (e.g., counsel, executive director, etc.).

(4) **Master service list.** The commission will maintain a master service list for each adjudicative proceeding. ((It will be available upon request and if feasible, on the commission's web site.)) The commission will include an initial master service list as an appendix to the prehearing conference order, if any, in the proceeding and will maintain a current master ser-

vice list on the commission's web site as a separate document under the docket number for the proceeding. Parties must provide written notice to the commission and the other parties of any changes to the master service list.

(5) **Contents of master service list.** The master service list will contain the (~~name, mailing address, e-mail address, telephone number, and fax number of~~) ~~contact information for each party to the proceeding and (~~of~~) each party's (~~representative~~. The commission will provide a courtesy copy to the parties of contact information provided by each party at the initial prehearing conference. Parties must designate persons to receive service in accordance with WAC 480-07-150.)~~ ~~designated representative(s) for service. If the commission requires both paper and electronic service, the master service list will identify the one person representing each party who must be served paper copies in addition to electronic service.~~

(6) **Electronic service required.**

(a) Each party must serve documents by delivering electronic copies to each person on the master service list. Unless otherwise required by law, a party need not deliver a paper copy of the documents to any other party to perfect service but may serve a paper copy of any documents in addition to the electronic copies on a party that requests a paper copy.

(b) The commission will only serve documents electronically on each party's designated representatives, except as required otherwise by law. To the extent a statute requires a party's agreement to electronic service, the commission presumes that by participating as a party to an adjudicative proceeding, each party agrees to electronic service of all documents in that proceeding, including orders and notices the commission serves, unless the party states on the record at or before the initial prehearing conference or the hearing, whichever occurs first, that the party does not agree to electronic service. If a party lawfully insists on paper service, the commission will serve all documents electronically and also will serve on that party the paper documents the applicable statute requires be served in paper form.

(7) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, service is complete when the document being served has been verifiably sent to the recipient's designated e-mail address. Parties serving documents should maintain records of documents sent by e-mail and, to the extent practicable, should confirm successful delivery.

(8) **Certificate of service.** Each submission of one or more documents for filing to meet a single deadline in an adjudicative proceeding must include a certificate of service that states substantially as follows:

"I hereby certify that I have this day served [name of document(s)] upon all parties of record in this proceeding, by electronic transmission to the e-mail address(es) of each party or party representative listed in the commission's master service list for this docket."

Dated at this day of

(Signature of person who served the document)

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

NEW SECTION

WAC 480-07-365 Filing documents in adjudicative proceedings. (1) **Scope of rule.** The requirements in this section are in addition to the general requirements for submitting documents to the commission in WAC 480-07-140 and any requirements in a specific adjudication. The commission will not consider documents to be filed until all applicable requirements are satisfied.

(2) **Electronic filing is required.** Except as otherwise required by these rules or other law, documents filed in an adjudicative proceeding must be submitted electronically using the commission's records center web portal no later than 5:00 p.m. on the date the documents are required to be filed unless the commission establishes an earlier time.

(a) *Submissions exceeding size limitations.* If the submission exceeds the size limitations of the commission's web portal, the submission will be timely if the documents are submitted by 5:00 p.m. through one of the options specified in WAC 480-07-140(5).

(b) *Exact copy.* Any paper copies of the document the commission requires by rule or order must conform exactly in form and content to the electronic version.

(c) *Simultaneous delivery to all parties and presiding officer.* All electronic documents submitted to the commission through the web portal or by e-mail on a filing deadline date must be delivered to all parties and the presiding administrative law judge by e-mail at the same time the documents are submitted to the commission or immediately thereafter. Copies intended for the presiding administrative law judge must be sent to the judge's individual e-mail address. Submissions should **not** be sent directly to the commissioners.

(3) **Exception for documents offered and received at hearing.** When authorized by the presiding officer, a document may be officially received for purposes of an adjudicative proceeding when the presiding officer receives the document for the record at a hearing. The commission's receipt of the document for filing is contingent on submission of electronic copies as required in this section by 5:00 p.m. on the next business day, unless the presiding officer establishes a different submission deadline.

(4) **Failure to file required copies.** If a person fails to file the required types of electronic copies of a document and any required paper copies of a document, the commission may reject the filing or may require the person to file the required electronic and paper copies. The commission will not consider the document to be officially filed until the commission receives all required copies.

(5) **Service required.** Submission of any document with the commission for filing in an adjudicative proceeding is not complete until the party submitting the document has served all other parties to the proceeding pursuant to WAC 480-07-360.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-370 Pleadings—General. ~~((+))~~ **Types of pleadings permitted.** Pleadings include, but are not necessarily limited to, formal complaints, ~~((petitions;))~~ answers to complaints, petitions, responses to petitions, replies, ~~((counterclaims, answers to counterclaims, cross-claims, answers to cross-claims, third-party complaints, answers to third-party complaints;))~~ applications for authority, ~~((and))~~ protests, and objections. The commission may allow other pleadings upon written motion or on the commission's own motion.

~~((A))~~ (1) *Formal complaints.*

~~((+))~~ (a) Defined. ~~(("))~~ Formal complaints ~~(("))~~ are complaints filed in accordance with RCW 80.04.110 ~~((and))~~ or 81.04.110, complaints filed under RCW 80.54.030, and commission complaints in proceedings designated by the commission as formal commission proceedings. For purposes of this rule, a formal complaint does not include an informal complaint filed pursuant to WAC 480-07-910 or a commission complaint and order suspending a rate increase or other tariff filing.

~~((+))~~ (b) Contents. A formal complaint must be in writing and must clearly and concisely set forth the ~~((ground(s)))~~ grounds for the formal complaint ~~((and))~~, the relief requested, and the commission's jurisdiction to commence an adjudication and grant the requested relief. A formal complaint must state:

~~((A))~~ (i) The complainant's name and address ~~((of the complainant))~~ and the ~~((name and address of complainant's attorney or other representative, if any))~~ contact information for the individuals to receive service on behalf of the complainant as required under WAC 480-07-360(3);

~~((B))~~ (ii) The full name and address of the person complained against, which should be the name and address contained in the commission's records if the respondent is a public service company;

~~((C))~~ (iii) Facts that constitute the basis of the formal complaint and requested relief, including relevant dates; ~~((and~~

~~((D))~~ (iv) Citations to ~~((relevant))~~ statutes or commission rules~~((;~~

~~((iii))~~ ~~Proceedings under RCW 80.04.110 or 81.04.110. In proceedings under RCW 80.04.110 or 81.04.110, the provisions of the respective statute will also apply.~~

~~((b))~~ the complainant alleges that the respondent has violated and that provide the commission with jurisdiction to resolve the complaint and grant the relief the complainant requests; and

~~((v))~~ Facts and law sufficient to demonstrate that the complainant has complied with all other prerequisites including, but not necessarily limited to, the requirements in RCW 80.04.110 or 81.04.110, if applicable.

(2) *Answer to formal complaint.*

(a) Defined. A pleading responding to a formal complaint is an answer.

(b) Timing. If the commission decides to commence an adjudicative proceeding on its own complaint or in response to a formal complaint brought by another person, the commission will serve the complaint on the respondent. A

respondent must file any answer to a formal complaint, whether required or optional, within twenty days after the commission serves the complaint or such other time as the commission specifies in the notice accompanying the complaint.

(c) When required. A named respondent must file an answer to a complaint brought by any party other than the commission.

(d) When optional. A party may file an answer to a complaint brought by the commission.

(e) Content. Answers must include the following information:

(i) The name and contact information of the respondent and the individuals to receive service on behalf of the respondent as required under WAC 480-07-360(3);

(ii) Admissions or denials, specifically and in detail, of all material allegations of the formal complaint; and

(iii) Full and complete disclosure of the respondent's affirmative defenses, if any.

(3) *Petitions.*

~~((+))~~ (a) Defined. ~~((Except for formal complaints and applications, as defined in this section;))~~ All original pleadings that seek relief other than formal complaints and applications as defined in this section and all pleadings that seek relief from a commission order, are ~~(("))~~ petitions. ~~((Examples of petitions are petitions to intervene, petitions for declaratory orders that the commission converts into adjudications under RCW 34.05.310, petitions for enforcement of interconnection agreements under WAC 480-07-650, petitions for accounting orders, petitions for crossing or alteration of railroad crossings under RCW 81.53-030 and 81.53-060 and petitions for exemptions from or waiver of commission rules. Petitions that seek relief from a commission order include petitions for administrative review of an initial order, petitions for reconsideration of a final order, petitions for rehearing of a final order, and petitions for stay of the effectiveness of a final order.))~~ The commission may undertake an action that would be the proper subject of a party's petition, such as authorizing exemption from a commission rule, without receiving a petition from a party. The commission will provide written notice and allow for appropriate process when it acts in the absence of a party's petition.

~~((+))~~ (b) Contents. A petition must be in writing and must clearly and concisely set forth the ~~((ground(s)))~~ grounds for the petition ~~((and))~~, the relief requested, and the commission's jurisdiction to grant the requested relief. A petition must state:

~~((A))~~ The petitioner's name and address and the name and address of the petitioner's attorney or other representative, if any;

~~((B))~~ (i) For original petitions, the name and contact information of the petitioner and the individuals to receive service on behalf of the petitioner as required under WAC 480-07-360(3) if the petitioner is requesting that the commission commence an adjudicative proceeding in response to the petition;

(ii) Facts that constitute the basis of the petition and requested relief, including relevant dates; and

~~((C))~~ (iii) Citations to ~~((relevant))~~ statutes or commission rules that provide the commission with jurisdiction and authority to grant the requested relief.

~~((e))~~ **Answer to formal complaint or petition.**

~~(i) Defined.~~ A response to a formal complaint or petition is an answer. Answers must admit or deny specifically, and in detail, all material allegations of the formal complaint or petition and must fully and completely disclose the nature of the respondent's affirmative defenses, if any. A respondent must separately state and number each affirmative defense asserted.

~~(ii) When required.~~ A named respondent must file an answer to a complaint brought by any party other than the commission.

~~(iii) When optional; when prohibited.~~ A party may file an answer in any case, but an answer may not be filed in response to petition for reconsideration unless the commission expressly requests an answer be filed.

~~(iv) Timing of answer.~~ A respondent must answer a formal complaint within twenty days after the commission serves the formal complaint on the respondent or such shorter time as the commission specifies in its notice. A person who desires to respond to a petition must file the answer within twenty days after the petition is filed. The presiding officer will establish the time for answers to interlocutory petitions. The commission may alter the time allowed for any answer to be filed.

~~((d))~~ (4) Response to a petition.

~~(a) Defined.~~ A pleading responding to a petition is a response.

~~(b) Timing of response.~~ Responses to a petition must be filed within twenty days after the petition is filed unless the commission or these rules establish a different deadline or the petition seeks commission action that the commission generally considers taking at an open public meeting (e.g., an accounting petition). Responses to petitions the commission considers at an open meeting should be filed no later than three business days before that open meeting. The presiding officer will establish the time for responses to interlocutory petitions in an adjudicative proceeding.

~~(c) When permitted.~~ Any person directly affected by an original petition may file a response. Any party to the adjudicative proceeding may file a response to a petition filed in that proceeding except as otherwise provided in this chapter or a commission order.

~~(d) Content.~~ Responses must include the following information:

~~(i) For original petitions,~~ the name and address of the respondent and the individuals to receive service on behalf of the respondent as required under WAC 480-07-360(3) if the respondent seeks to become a party to any adjudicative proceeding the commission commences in response to the petition;

~~(ii) All legal and factual bases that support the respondent's position either to grant or deny the petition.~~

~~(5) Reply to an answer or response.~~

~~((f))~~ (a) Defined. The pleading responding to an answer or response is a ~~((("))~~ reply.~~((("))~~ A party must not file a reply without ~~((authorization))~~ permission from the commission,

which the commission will grant only upon a showing of good cause.

~~((g))~~ (b) Motion for permission to reply. A party that wishes to ~~((respond))~~ reply to an answer or response must file a motion requesting permission to reply within five business days after the respondent serves the answer ~~((is served. Motions for permission to reply should address))~~ or response. The motion must explain why a reply is necessary including, but not necessarily limited to, whether the answer or response raises new ~~((material))~~ facts or legal argument requiring ~~((a response, or state other reason(s) why))~~ a reply ~~((is necessary)).~~ A party ~~((may))~~ should file a proposed reply as an attachment to its motion. ~~((If the commission grants a motion to file a reply and no reply is attached to the motion, the commission will set the time for filing the reply.))~~ The motion is deemed denied unless the commission grants ~~((a))~~ the motion ~~((for permission to reply))~~ within five business days after ~~((filing, it is deemed denied))~~ the movant files it.

~~((h))~~ (c) Commission direction or invitation for a reply. The commission may require or invite a party to file a reply.

~~((i))~~ (6) Application. An ~~((("))~~ application~~((("))~~ is a request for ~~((authority,))~~ a license, ~~((or a))~~ certificate ~~((authorizing a person)),~~ permit, or other authority to provide a service regulated by the commission~~((The term also includes))~~ or a request to transfer or amend any such authority ~~((license, or certificate. Examples of applications are requests for certificates of convenience and necessity under Title 81 RCW and requests for transfers of property under chapter 80.12 or 81.12 RCW.~~

~~((j))~~ (7) Protest.

~~((A))~~ Persons who assert~~((s))~~ that ~~((its))~~ their interests would be adversely affected if the commission grants an application ~~((is granted))~~ other than an application for auto transportation service pursuant to WAC 480-30-096 may file a ~~((("))~~ protest.~~((("))~~ A protest to an application must conform to the requirements of any ~~((special))~~ rules that apply to the type of application ~~((being protested))~~ the person is protesting. A protestant must serve a copy of the protest ~~((upon))~~ on the applicant.

~~(8) Objection.~~ Persons who assert that their interests would be adversely affected if the commission grants an application for auto transportation service pursuant to WAC 480-30-096 may file an objection. An objection must conform to the requirements of WAC 480-30-116. The objector must serve a copy of the objection on the applicant.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-375 Motions. (1) Defined. Except for pleadings identified as petitions under these rules, a party's written or oral request for commission action in the context of an adjudicative proceeding is a ~~((("))~~ motion.~~(((" Persons who file motions are "movants" or "moving parties."))~~ Motions should be in writing unless made on the record during a hearing ~~((session))~~ before the presiding officer. The commission may take or require an action that would be the proper subject of a party's motion~~((such as the rejection of proffered evidence))~~ without receiving a motion from a party. The com-

mission will provide oral or written notice prior to taking or requiring such action and allow for appropriate process when it acts in the absence of a party's motion. The commission recognizes four basic categories of motion:

(a) *Dispositive motions.* Dispositive motions request that the commission ~~((to determine))~~ terminate a proceeding, resolve one or more of the substantive issues presented in ~~((a))~~ the proceeding, or ~~((to))~~ terminate a party's participation in the proceeding. ~~((Examples of dispositive motions are motions to dismiss all or part of a complaint, petition, or application (see WAC 480-07-380(1)); motions for summary determination (see WAC 480-07-380(2)); and motions to dismiss an intervenor (see WAC 480-07-355(4) and 480-07-450) or find a party in default (see WAC 480-07-450).))~~

(b) *Procedural motions.* Procedural motions request ~~((establishment of or modifications to))~~ that the commission establish or modify the process or the procedural schedule in a proceeding. ~~((Examples of procedural motions are motions for continuance (see WAC 480-07-385), motions for extensions of time (see WAC 480-07-385), and motions to reopen the record (see WAC 480-07-830).))~~

(c) *Discovery motions.* Discovery motions are requests to ~~((promote or limit))~~ resolve disputes concerning the exchange of information among parties during the discovery phase of a proceeding. ~~((Examples of discovery motions are motions to compel (see WAC 480-07-405(3) and 480-07-425), motions for sanctions (see WAC 480-07-425), and motions for protective orders (see WAC 480-07-420).))~~

(d) *Evidentiary motions.* Motions related to evidence are requests to limit or add to the evidentiary record in a proceeding. ~~((Examples of motions related to evidence are motions to strike, motions in limine, and motions requesting authority to file supplemental or additional testimony.))~~

(2) **Written motions must be filed separately.** Parties must file motions separately from any pleading or other communication with the commission. The commission will not consider motions that are merely stated in the body of a pleading or within the text of correspondence. The commission may refer to the Washington superior court rules for civil proceedings as guidelines for handling motions.

(3) **Oral motions.** A party may ~~((bring))~~ make an oral motion during a hearing, unless foreclosed from doing so by rule or in the presiding officer's discretion. The presiding officer will provide an opportunity for other parties to respond to any oral motion. The presiding officer may require that an oral motion be reduced to writing and may provide an opportunity for written response.

(4) **Responses to written motions that are not dispositive or do not seek a continuance.** A party ~~((who))~~ that opposes a written motion, other than a dispositive motion ~~((f))~~ governed by WAC 480-07-380(f) or a motion for continuance ~~((f))~~ governed by WAC 480-07-385(f), may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-380 Motions that are dispositive— Motion to dismiss; motion for summary determination; motion to withdraw. (1) **Motion to dismiss.**

(a) *General.* A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief. When ruling on such a motion, the commission will consider the standards applicable to a motion made under ~~((CR 12 (b)(6) and 12(e) of the))~~ Washington superior ~~((court's civil rule in ruling on a motion made under this subsection))~~ court civil rule 12 (b)(6) and 12(c). If a party presents an affidavit, declaration, or other material in support of its motion to dismiss ~~((, and the material is not excluded by the commission)),~~ the commission will treat the motion as one for summary determination as provided in subsection ~~((s (2) and (3)))~~ (2) of this section unless the commission rules on the motion without relying on the material.

(b) *Time for filing motion to dismiss.* A party that opposes a pleading must file any motion directed to the pleading no later than the time the responsive pleading is due, or within twenty days after the pleading is served, whichever time is less, unless the party shows good cause for delay. Filing a motion to dismiss a pleading ~~((;))~~ or seeking a similar remedy ~~((;))~~ does not extend the time for answering the pleading.

(c) *Response.* A party ~~((who))~~ that opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as ~~((may be set by))~~ the commission ~~((or the presiding officer. The commission may allow oral argument))~~ may set.

(2) **Motion for summary determination.**

(a) *General.* A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, declarations, fact stipulations, or matters of which the commission may take official notice ~~((may be taken))),~~ show that there is no genuine issue ~~((as to any))~~ of material fact and that the moving party is entitled to judgment as a matter of law. ~~((In considering))~~ When ruling on such a motion ~~((made under this subsection)),~~ the commission will consider the standards applicable to a motion made under ~~((CR 56 of the))~~ Washington superior ~~((court's))~~ court civil rule ~~((s))~~ 56.

(b) *Time for filing motion for summary determination.* A party must file any motion for summary determination at least thirty days before the next applicable hearing session ~~((;))~~ unless the commission establishes by order a different ~~((specific))~~ date for any such motion to be filed.

(c) *Response.* A party ~~((who answers))~~ must file an answer to a motion for summary determination ~~((must file its answer))~~ and any cross-motion for summary determination within twenty days after the movant serves the motion ~~((is served,))~~ unless the commission establishes a different ~~((specific))~~ filing date ~~((for a response to be filed)).~~

(d) *Continuance not automatic.* Filing a motion for summary determination will not automatically stay any scheduled procedures. The commission may order a continuance of any

procedure and may order that an oral or written response to a motion for summary determination be made at a time that is consistent with any established hearing schedule in the proceeding.

(3) Motion to withdraw.

(a) General. Once the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW, a party may withdraw from ~~((a))~~ that proceeding, or may withdraw the party's tariff, complaint, petition, or application on which a proceeding is based, only upon permission granted by the commission in response to a written motion ~~((if:~~

~~(a) In the case of a matter initiated by a tariff filing, the commission has entered a complaint and order suspending the filing; or~~

~~(b) In all other cases, the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW).~~ The motion must include any settlement or other agreement pursuant to which the party is seeking withdrawal.

(b) Response. No party may file a response to a motion to withdraw unless the commission authorizes a response. The commission will grant such a ~~((party's))~~ motion ~~((to withdraw from a proceeding))~~ when the ~~((party's))~~ requested withdrawal is in the public interest. A company need not file a motion to withdraw a tariff filing after the commission has entered a complaint and order suspending that tariff but before the commission commences an adjudicative proceeding. In such circumstances, the company need only file a written notice that it is withdrawing that filing.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-385 Motion for continuance~~((, post-ponement, or extension of time))~~ or suspension. (1) **Definitions.**

(a) ("Continuance," means)) A continuance is any postponement of a deadline established by commission rule or order or any extension of time to comply with such a deadline.

(b) ((A continuance to which all parties agree is an "agreed request.")) A suspension holds all procedural deadlines established by the commission in abeyance pending further commission action.

(2) Procedure.

(a) Continuance. Any party may request a continuance by oral or written motion. The commission may require a confirmation letter or e-mail if a party makes an oral request. The presiding officer may rule on such motions orally at a prehearing conference or hearing session, or by ~~((letter,))~~ written notice~~((s))~~ or order. The commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission. A party may request a continuance by e-mail to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will grant such a ((timely)) request ((to which all parties expressly agree))

unless it is inconsistent with the public interest or the commission's administrative needs.

(b) Suspension. A party may request that the commission suspend the procedural schedule through a letter or e-mail to the presiding administrative law judge if the party accurately represents that all other parties either join or do not oppose the request. The commission will grant such a request unless it is inconsistent with the public interest or the commission's administrative needs.

(3) Timing.

(a) Written motion for continuance. A party must file and serve any written motion for continuance other than an agreed request at least five business days prior to the deadline ~~((as to which the continuance is requested and must serve the motion by means that ensure its receipt by other parties the next business day after filing))~~ the party requests to continue. Parties must file any written response to the motion within three business days after the motion is served ~~((, or two days prior to the deadline that is sought to be continued, whichever is earlier. Parties may orally respond when a hearing session is held prior to the stated deadline for a written response))~~ unless the commission establishes a different date for responses. Parties should submit an agreed request for continuance in writing at least two business days prior to the deadline the parties request to continue.

(b) Oral request for continuance. A party must make any oral request for continuance on the record in a proceeding at least two business days prior to the deadline ~~((as to which the continuance is requested))~~ the party seeks to continue. The commission will permit oral responses at the time the oral request is made.

(c) ((The commission may consider requests for continuance that are made after the deadlines stated in this rule if the requester demonstrates good cause that prevented a timely request.)) Request for suspension. A party should request that the commission suspend the procedural schedule at least five business days prior to the next scheduled deadline in that schedule.

(4) Date certain. The commission will grant continuances only to a specified date.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-390 Briefs; oral argument~~((, findings and conclusions))~~. The commission may permit or require the parties to a proceeding to present their arguments and authority ~~((orally))~~ in support of their positions after the conclusion of any evidentiary hearing. Such a presentation may be in the form of written briefs, oral argument at the close of the hearing, ~~((by written brief,))~~ or both. ~~((The commission may require parties to file proposed findings of fact and conclusions of law. The first brief filed following the close of hearing, if any, should be captioned "initial brief of [party]." A responding brief, if any, should be captioned "reply brief of [party]."))~~

AMENDATORY SECTION (Amending WSR 08-18-012, filed 8/22/08, effective 9/22/08)

WAC 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment. (1) **Format.** All pleadings, motions, and briefs must meet the following format requirements:

(a) ~~(Paper size, legibility, margins. All pleadings, motions, and briefs must be:~~

• ~~Submitted on three hole punched (oversize holes are preferred) 8 1/2 x 11 inch paper.~~

• ~~Presented in)) Appearance.~~

(i) ~~Text must be double-spaced, 12-point(;) type, and in palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type(;- Presented with));~~

(ii) ~~Each paragraph(;) must be numbered(;- Printed with));~~

(iii) ~~Margins must be at least one inch from each edge of the page(;- Documents that are electronically filed must meet these requirements when printed)); and~~

(iv) ~~Any required paper copies must be submitted on three-hole punched, 8 1/2 x 11 inch paper.~~

(b) Length. Pleadings, motions, and briefs must not exceed sixty pages ((6)exclusive of table of contents, table of authorities, signature blocks, exhibits, appended authorities, supporting affidavits or declarations, and other documents(3). The presiding officer may alter the page limit(;- either shortening or lengthening the number of pages allowed, considering)) to accommodate the number and complexity of the disputed issues presented for commission resolution.

(c) Organization. Every pleading, motion, and brief must be organized as follows:

(i) Caption. The commission notice initiating an adjudicative proceeding will include a caption that parties must use for all pleadings, motions, and briefs they file in that proceeding. Pleadings that request that the commission initiate an adjudicative proceeding should include a preliminary caption. At the top of the first page must appear the phrase, ~~("before the Washington utilities and transportation commission.")~~ "BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION." On the left side of the page, the ~~((caption))~~ name of the proceeding must be set out as either "[Name], Complainant, v. [Name], Respondent." for a formal complaint or ~~(, if no caption exists, the following:))~~ "In the matter of the ((complaint,)) [petition, (motion,)) application, etc.(3)] of ((6)[Name of the pleading party(3)] for ((6)[identify relief sought(3)]." On the right side of the page ~~(, opposite the caption, the pleading party))~~ for all pleadings, the caption must include the docket number if one has been assigned, ((identify)) the name of the party submitting the document, and the name of the document (e.g., ((petition, motion, answer, reply, etc., of (role of party: E.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "petition for an accounting order"; "motion for continuance") staff motion for continuance).

(ii) Body of pleading. ~~((The body of the))~~ A pleading must ((be set out in numbered paragraphs-)) include the following information:

(A) ~~The ((first paragraph must state the))~~ pleading party's name and ((address and if it is the party's)) the nature of the pleading, and an initial pleading((, the name and address of)) also must include the contact information as specified in WAC 480-07-360(3) for the party and its representative, if any((-The second paragraph must state));

(B) ~~All rules or statutes that the pleading puts in issue((-Succeeding paragraphs must set out the));~~

(C) ~~A statement of facts ((relied upon)) on which the party relies in a form ((similar)) comparable to complaints in civil actions before the superior courts of this state((-The concluding paragraphs must state)); and~~

(D) ~~The relief the pleading party requests.~~

(ii) Body of motion. A motion must include the following information:

(A) ~~((Relief requested.))~~ A statement of the specific relief the movant requests that the commission ((is requested to)) grant or deny((-);

(B) ~~((Statement of facts.))~~ A succinct statement of the facts that the ((moving party)) movant contends are material to the requested remedy((-);

(C) ~~((Statement of issues.))~~ A concise statement of the legal issue or issues ((upon)) on which the movant requests the commission ((is requested)) to rule((-); and

(D) ~~((Evidence relied upon.))~~ Any evidence on which the motion ((or opposition)) is based ((must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified)). If a party relies on declarations, affidavits, deposition transcripts, or documentary evidence, the party must specify those documents, quote the cited material verbatim ((or)), and attach a ((photocopy)) copy of relevant pages to ((an affidavit)) a declaration that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence ((upon)) on which they place substantial reliance.

(iv) Body of brief. Unless excused by the presiding officer, the parties must include in their briefs that exceed ten pages in length a table of contents in outline format. ~~((The commission may require parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of any common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs.))~~ The conclusion of any brief must state the relief the party requests.

(v) Citation to record. Portions of the record relied on or quoted in the body of a brief must be cited using footnotes.

(A) Transcript. Transcript references should be as follows: [witness's surname], TR. [page]:[line(s)]. If the transcript reference spans multiple pages, the reference should be as follows: [witness's surname], TR. [page]:[line] - [page]:[line]. Examples: Smith, TR. 21:5-14; Jones, TR. 356:4 - 357:21.

(B) Exhibits. Exhibits must be marked as required under WAC 480-07-460, and references to those exhibits should be as follows: Exh. ((No-)) [(insert) number ((assigned at hearing)). In the case of prefiled testimony offered or received as

an exhibit, page ~~((number(s)))~~ numbers, line ~~((number(s)))~~ numbers, and the witness's surname should be added following the style specified in this section for transcript references (e.g., Smith, Exh. ABS-1T at 21:15-17). In other exhibits, references to ~~((page(s), line(s)))~~ pages, lines for text, ~~((row(s) and column(s)))~~ rows and columns for tables, or other specific references may be added in addition to the sponsoring witness's surname, if applicable, to clarify the information cited (e.g., Smith, Exh. ABS-5 at 12, Table 2).

(vi) Citation to authority. Parties must use the citation formats specified in the current edition of the style sheet of the Washington supreme court reporter of decisions. The presiding officer may require parties to file copies of the text of authorities that are cited in parties' briefs and upon which parties place substantial reliance. Unless excused by the presiding officer, parties must include a table of cited authorities, with the full citation of each reference and its location in the brief.

(vii) Attachments or appendices. If a party attaches more than ~~((two))~~ one attachment~~((s))~~ or ~~((appendices))~~ appendix to a pleading, the party must ~~((individually))~~ separate the body of the brief and each attachment~~((s-by))~~ or appendix in any required paper copies with a tabbed blank sheet~~((s-with tabs))~~ of paper.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion, must be dated and signed either by ~~((at least one attorney or))~~ a party representative of record in his or her individual name~~((, stating his or her address))~~, or by the party, if the party is not represented. Parties ~~((who))~~ that are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties ~~((who))~~ that bring ~~((ertain))~~ complaints under RCW 80.04.110 or 81.04.110 ~~((that challenge))~~ challenging the reasonableness of the rates or charges of ~~((jurisdictional))~~ utilities the commission regulates must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission will consider pleadings and motions based primarily on the relief they request and will not rely solely on the name of the document. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

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

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-400 Discovery. (1) General.

(a) *No limitation on commission authority to audit and inspect.* Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or ~~((the))~~ public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

(b) *Informal discovery procedures.* Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

(c) *Definitions.* For purposes of WAC 480-07-400 through 480-07-425, the following terms have the following meanings:

(i) Party. Any party as defined by WAC 480-07-340.

(ii) Data. As used in this section, ~~((data))~~ data ~~((means))~~ is information of any type, in any form.

(iii) Data request. A party's written request that calls for another party to produce data in connection with an adjudicative proceeding is a ~~((data))~~ data request. ~~((Generally, data requests seek one or more of the following: Existing documents; an analysis, compilation, or summary of existing documents into a requested format; a narrative response (explaining a) describing a party's policy, practice, or position (or a document); or the admission of a fact asserted by the requesting party. If a party relies on a cost study, (it is expected that) model, or proprietary formula or methodology, the party (will) must be willing, on request, to rerun or recalculate the study, model, formula, or methodology based on different inputs and assumptions, subject to the standards in subsection ((5)) (3) of this section. The commission otherwise will not order a party to respond to a data request that (seeks production of a new cost study) would require creation of new data or documents unless there is a compelling need for such (production) information.~~ Generally, data requests seek one or more of the following: Existing documents; an analysis, compilation, or summary of existing documents into a requested format; a narrative response (explaining a) describing a party's policy, practice, or position (or a document); or the admission of a fact asserted by the requesting party. If a party relies on a cost study, (it is expected that) model, or proprietary formula or methodology, the party (will) must be willing, on request, to rerun or recalculate the study, model, formula, or methodology based on different inputs and assumptions, subject to the standards in subsection ((5)) (3) of this section. The commission otherwise will not order a party to respond to a data request that (seeks production of a new cost study) would require creation of new data or documents unless there is a compelling need for such (production) information.

(iv) ~~((Record requisition. A request for data made on the record during a conference or hearing session or during a deposition is a "record requisition."~~ Record requisition. A request for data made on the record during a conference or hearing session or during a deposition is a "record requisition."

(v) ~~((Bench request. A request for data made by or on behalf of ((the)) a presiding officer is a ((data)) bench request.~~ Bench request. A request for data made by or on behalf of ((the)) a presiding officer is a ((data)) bench request.

(vi) ~~((Depositions. Depositions are described in WAC 480-07-410.))~~

(2) When discovery available.

(a) *Subpoenas always available.* Subpoenas are available as a means of discovery as provided in Title 80 or 81 RCW and chapter 34.05 RCW.

(b) *When other discovery methods available.* If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery ~~((described in subsections (1)(c)(iii) through (vi) of this section and in WAC 480-07-410 and))~~ set forth in WAC 480-07-405 through 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of ~~((an electric company, natural gas company, pipeline company, telecommunications company, water company, solid waste company, low-level radioactive waste disposal site, or a segment of the transportation industry;~~

~~(ii) Any proceeding that the commission declares to be of a potentially precedential nature;~~

~~(iii)) a public service company;~~

(ii) Any complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, or violations of provisions in Title ~~((s))~~ 80 ~~((and))~~ or 81 RCW; or

~~((iv))~~ (iii) Any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule.

(3) ~~((Frequency, extent, and))~~ **Scope of discovery.** ~~((Data requests))~~ Discovery must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to ~~((a data request))~~ discovery on grounds that the information sought will be inadmissible at the hearing, if ~~((the))~~ that information ~~((sought))~~ appears reasonably calculated to lead to discovery of admissible evidence. Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information ~~((sought))~~ the party seeks or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation. The commission may impose sanctions for abusive discovery practice.

(4) **Schedule.** The commission may establish and set forth in a prehearing order a schedule for discovery. Any such schedule will provide deadlines sufficient to allow a timely opportunity for responses and for disputes to be resolved. The presiding officer may impose or modify time limits to the extent necessary to conform to the commission's hearing schedule.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-405 Discovery—Data requests~~((record requisitions,))~~ and bench requests. (1) **Grouping and numbering.**

(a) *Grouping.* Parties must group their data requests by subject or witness ~~((and present data requests in an electronic format agreed upon by the parties whenever possible, unless the parties agree to a different procedure or the presiding officer orders a different procedure. Requests not presented in electronic format must include no more than one request per page. Parties with similar interests are encouraged, and may be required, to coordinate their issuance of data requests to avoid duplication)).~~

(b) *Numbering.* Each party must number sequentially its data requests~~((, as submitted))~~ to each other party. Numbering of subsequent data requests to the same party must begin with the number next in sequence following the number of

the last previously propounded data request (e.g., if the last data request in an initial set of requests is number 10, the first data request in the next set of requests must be number 11). The presiding officer will ensure that ~~((record requisitions and))~~ bench requests are adequately described on the record and consecutively numbered.

(2) **Service of data requests~~((, records requisitions, and responses to parties.~~**

(a) ~~Written).~~ A party must serve data requests ((must be sent to)) electronically in native format on the party to whom the requesting party makes the requests ((is made)), with copies to all other parties. ((The commission staff copy must be sent to the assistant attorney general who represents the commission staff. The commission encourages parties to agree to exchange data in electronic format by e-mail, on diskette, or by other mutually acceptable electronic means.

(b) If parties agree to the service of data requests and responses to requests by e-mail, the party serving the data requests or responses must serve copies electronically on all parties, including the assistant attorney general who represents the commission staff.

~~((Except when appropriate for other purposes, parties))~~ When propounding data requests to other parties, a party must not file those data requests ((or responses to data requests)) with the commission((, or provide them to)) or copy any person who is presiding or advising the presiding officer. ((Responses that are later offered in evidence must be distributed as required for other proposed exhibits.))

(3) **Motion to compel.** A party's motion to compel responses to data requests must include the relevant data request, any objection to the request, and any response to the objection.

(4) **Limitation on numbers of data requests.** The presiding officer may limit the total number of data requests that a party may ~~((submit and))~~ propound to another party. Each party must make reasonable efforts to ensure that its data requests do not duplicate other parties' requests. The presiding officer may require parties to ((certify that they have coordinated)) coordinate discovery with other parties of similar interest ((and that no substantial duplication exists with other parties' submissions)).

(5) **Responding party to seek clarification.** If a party to whom a data request is ~~((submitted))~~ propounded finds the meaning or scope of a request unclear, the responding party must immediately contact the requesting party for clarification. Lack of clarity is not a basis for objection to a data request unless the responding party has made a good faith effort to obtain clarification.

(6) **Objections; consequence of failure to object.**

(a) *Data requests.* A party ~~((who wishes to object to a data request))~~ must present ~~((the))~~ any objections to a data request to the requesting party in writing by the time the response is due, or at such other time as ~~((may be ordered))~~ the presiding officer orders. A party objecting to a data request must state the objection and explain the basis for the objection. A party ~~((who))~~ that fails to interpose a timely objection to providing a full response to a data request waives any right to object for purposes of discovery and must provide a full response. A party ~~((who))~~ that fails to make an objection when responding to data requests does not lose the

opportunity to raise an objection at hearing if another party seeks to introduce as evidence all or part of the party's response to a data request.

(b) ~~((Records requisition. A party to whom a record requisition is addressed may object to the request at the time it is made or, if it later discovers a reason for objection not reasonably known at the time of the record requisition, within five days after discovering the reason. A party may object to the admission of its response to a records requisition at the time the response is offered into evidence.~~

(c) ~~**Bench request.** Any party may object to the issuance of, or response to, a bench request. A party may object at the time the bench request is made, or if made in writing or the party later discovers a reason for an objection not reasonably known at the time the bench request was made in hearing, within five days after discovery. A party may raise an objection based on the content of a bench request response within five days after distribution of the response. Responses to bench requests will be received in evidence unless a party objects to the bench request or response, or the commission rejects the response.~~) **Bench requests.** Any party may object to a bench request made orally during a hearing at the time the presiding officer makes the request. A party may subsequently object in writing to such a bench request within five days after the presiding officer makes the request if the objection is based on facts or law the party did not reasonably know at the time the presiding officer made the request. A party may object to a written bench request within five days after the commission serves the request.

(7) Responses.

(a) Data requests ((and record requisitions)).

(i) Service. Parties must serve responses to data requests ((and record requisitions)) electronically on the requesting party and on any other party ((who)) that requests a copy, consistent with the terms of any protective order entered in the proceeding. ~~((Parties must send the commission staff copy to the assistant attorney general who represents the commission staff unless the attorney requests an alternative method. Parties may agree to serve responses to data requests and record requisitions through e-mail.~~

~~((b))~~) Except when designated as exhibits to be offered into the evidentiary record, parties must not file responses to data requests with the commission or copy any person who is presiding or advising the presiding officer when serving those responses. The commission will not receive into evidence responses to data requests unless a party offers the responses into evidence. A party may object to the admission of a response to a data request at the time the response is offered into evidence whether or not the party timely objected to providing the response.

(ii) Timing. A party to whom a data request is directed must provide a full response ((to the data request)) within ten business days after the request is ((received)) served. If the ((data cannot be supplied)) responding party cannot provide a full response within ten business days, the responding party must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the responding party cannot comply with the ten-day ((limit cannot be met)) deadline. The responding party must also provide a schedule by which it will produce the

requested data and must explain why the party cannot provide any portion of the data ((cannot be supplied)). The presiding officer may modify these time limits.

~~((e))~~) (iii) Identification of respondent and witness. Each ((data)) response to a data request must state the date the response is produced, the name of the person who prepared the response, and the name of any witness testifying on behalf of the responding party who is knowledgeable about, and can respond to, questions concerning the response.

~~((f))~~) (b) Bench requests. Parties must file responses to bench requests with the commission and serve all parties within ten business days after the commission makes the request ((is made)), unless the presiding officer specifies another ((schedule)) deadline. A party may object to a bench request response within five days after filing and service of the response. The commission will receive responses to bench requests in evidence without further process unless a party objects to the response or the commission rejects the response.

(8) Supplementation. Parties must immediately supplement any response to a data request ~~((record requisition))~~ or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response ~~((s))~~ that was correct and complete when made, is no longer correct or complete.

~~((9))~~) **Use of responses to data requests, record requisitions or bench requests.** The commission will not consider or treat as evidence any response to a data request, record requisition, or bench request unless and until it is entered into the record.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-410 Discovery—Depositions. (1) **Who may be deposed.** A party may depose any person identified by another party as a potential witness. A party may depose a person who has not been identified as a potential witness ~~((s))~~ only if the presiding officer approves the deposition. The presiding officer may approve the deposition of a person who has not been identified as a potential witness on a finding that the person appears to possess information ((significant)) that is necessary to the party's case, the information cannot reasonably be obtained from another source, and the probative value of the information outweighs the burden on the person proposed to be deposed.

(2) **Required notice; ((deposition—conference)) motion.** A party ((who)) that intends to depose ((one or more persons)) another party's designated potential witness must give notice to the commission and all parties. ~~((The presiding officer will consult with the parties and may schedule a deposition conference to facilitate the deposition process. The deposition conference schedule will be adjusted as needed considering any changes in the case schedule. Deposition conferences will be convened at the commission's offices in Olympia unless the parties and the presiding officer agree to another location.))~~ A party that seeks to depose a person who has not been identified as a potential witness must file a motion requesting permission to depose the person.

(3) **How conducted.** Parties should use ~~((CR 30 of the))~~ Washington superior court civil rule ~~((s))~~ 30 as a guide when conducting depositions. Parties must limit the scope of questioning in a deposition to the same standard set forth in WAC 480-07-400(4). A court reporter provided by the party requesting the deposition will record the deposition. Each party will be responsible for the attendance of any of its ~~((prospective))~~ designated potential witnesses ~~((or any of its employees;))~~ who have been scheduled for deposition. ~~((A party may interrupt a deposition, if necessary, to present a dispute regarding the deposition process to the presiding officer. However, to avoid interruption, such disputes should be reserved to the conclusion of the deposition, if possible.))~~

(4) **Use of depositions.** Parties may use depositions for any lawful purpose, subject to the requirements of this subsection. ~~((A party may use a deposition to impeach a witness.))~~ If a party seeks to offer into evidence the deposition of a potential witness who is available to testify to the matters addressed in ~~((the witness's))~~ that person's deposition, the party must do the following:

(a) Offer only those portions of the deposition on which the party intends to rely; and

(b) Provide at least five ~~((business days'))~~ business days' written notice to other parties and to the presiding officer prior to the hearing session at which the potential witness is expected to appear. The party must attach to the notice the portion(s) of the deposition that the party proposes to offer ~~((so that the presiding officer can mark it))~~ in the form of exhibits that are marked for identification as ~~((in the case of all other proposed hearing exhibits))~~ required under WAC 480-07-460(3). If portions of a deposition are admitted into evidence, other parties may offer additional portions of the deposition when necessary to provide a balanced representation of the ~~((witness's))~~ deponent's testimony.

(5) **Correcting/supplementing deposition testimony.**

(a) *Correction.* A party may file a motion to correct a transcription error in a deposition transcript within ten days after the court reporter delivers the deposition transcript ~~((is delivered)).~~

(b) *Supplementation.* Every ~~((witness))~~ deponent must supplement any response given in a deposition immediately upon learning that the prior response was incorrect or incomplete when made, or upon learning that a response ~~((;))~~ that was correct and complete when made ~~((;))~~ is no longer correct or complete. Each party is responsible for ensuring compliance with this requirement by deponents who are the party's potential witnesses.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-415 Discovery conference. (1) General. The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's positions or evidence and the availability of supporting information.

(2) **Purpose.** The purpose of a discovery conference is:

(a) To allow witnesses and others who have knowledge relating to the proceeding (e.g., consultants or employees) to talk directly and informally ~~((;))~~;

(b) To reduce or avoid the need for written data requests and time for their preparation ~~((;))~~;

(c) To allow discussions of potential stipulations regarding individual facts and settlement of individual issues to occur in an informal setting ~~((;))~~;

(d) To discuss the availability of supporting information ~~((;))~~; and

(e) To enhance the parties' ability to acquire or expand their knowledge about the case of one or more designated other parties. (The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's position or evidence and the availability of supporting information.)

(3) **Statements not evidence.** Discovery conferences will not be reported and statements made by participants at discovery conferences are not admissible as evidence unless the parties agree otherwise.

(4) **Facilitator.** The commission may designate a person to facilitate a discovery conference. The designated facilitator must not be associated with any party or with ~~((a member of))~~ the commission advisory staff ~~((who is))~~ involved in the proceeding.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-420 Discovery—Protective orders. (1) Standard form. The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when parties reasonably anticipate that discovery ~~((in a proceeding will call for the production of confidential))~~ or evidentiary submissions will require the disclosure of information designated as confidential as defined in WAC 480-07-160. Parties must strictly limit the information they designate as confidential to information that is or may be exempt from public disclosure under RCW 80.04.095, 81.77.210, or the Public Records Act, chapter 42.56 RCW, including RCW 42.56.330. Parties must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission containing information designated as confidential in a proceeding governed by a protective order.

(2) **Amendment.** The commission may, upon motion by a party, or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases.

(a) Protection for highly confidential information. A party that wishes to designate information as highly confidential must make a motion, orally at the prehearing conference or in writing, for an amendment to the standard protective order, supported by a declaration, testimony, or representations of counsel that set forth the specific factual and legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and declaration or testimony must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.

(b) Limitations. If the commission modifies the standard protective order to include protection for highly confidential information, parties must strictly limit the information they designate as highly confidential to the information identified in the amendment to the protective order and must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission as highly confidential.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may ~~((make any))~~ order ~~((;))~~ appropriate limitations on discovery including, but not necessarily limited to, one or more of the following ~~((; that))~~:

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery; or

(d) Certain matters may not be inquired into, or ~~((that))~~ the scope of the discovery will be limited to certain matters ~~((;))~~

~~((e))~~ Discovery will be conducted with no one present except persons designated by the commission or the presiding officer;

~~((f))~~ The contents of a deposition will not be disclosed or will be disclosed only in a designated way;

~~((g))~~ A trade secret or other confidential research, development, or commercial information will not be disclosed or will be disclosed only in a designated way; or

~~((h))~~ The parties must file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission or the presiding officer).

(4) **Denial of motion for protective order.** The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just ~~((;))~~ if the commission denies a motion for a protective order in whole or in part.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-425 Discovery disputes. (1) Procedure for resolving disputes.

(a) Informal resolution. Parties must make good faith efforts to resolve informally all discovery disputes. The commission may designate a person to assist the parties to resolve discovery issues, at the request or with the consent of the ~~((disputants))~~ parties.

(b) Motion to compel. A party may file a written motion, or move orally at a prehearing conference, to compel discovery if the parties cannot resolve a dispute ~~((cannot be))~~ informally ~~((resolved))~~. The presiding officer will hear a motion to compel discovery ~~((disputes, on shortened notice;))~~ at the earliest reasonable time. The presiding officer may conduct telephone hearings or conferences for the argument of discovery disputes. The presiding officer may make discovery rulings orally on the record or by written order. The presiding

officer's discovery rulings are subject to review under WAC 480-07-810.

(2) **Sanctions for failure to comply.** Any party may by motion, or the commission may on its own motion, propose that sanctions be imposed if a party fails or refuses to comply with the commission's discovery rules or an oral or written order resolving a dispute under this section. The commission may impose sanctions for such violations including, but not limited to, default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-430 Prehearing conferences. (1) General. The commission may require ~~((; by written notice or by oral notice on the record of the hearing;))~~ that all parties to, and all persons who seek to intervene in, a proceeding attend a prehearing conference. The following topics are proper subjects for discussion at a prehearing conference:

(a) Identification and simplification of the issues;

(b) The necessity or desirability of amendments to the pleadings;

~~((c))~~ ~~((The possibility of obtaining stipulations of fact and to documents that might avoid unnecessary proof;))~~

~~((d))~~ Limitations on the number of witnesses;

~~((e))~~ Coordinated examination of witnesses;

~~((f))~~ Procedure at the hearing;

~~((g))~~ Establishment of a procedural schedule including, but not limited to, the need for, and timing of, ((distribution of written)) prefiled testimony and exhibits ((to the parties and the bench prior to the hearing));

~~((h))~~ ~~((d))~~ Disposition of petitions for leave to intervene;

~~((i))~~ Availability of the commission's discovery rules or resolution of discovery disputes;

~~((j))~~ ~~((f))~~ Resolution of pending motions; ~~((and~~

~~((k))~~)

Entry of a standard or amended protective order to protect confidential or highly confidential information;

Service requirements, including creation of a master service list and disposition of any objections to commission service of orders and notices solely in electronic form; and

(i) Any other matters that may aid in the disposition of the proceeding, whether by commission decision or by settlement.

(2) **Notice.** The commission will provide reasonable notice of the time and place established for a prehearing conference and the matters to be addressed. ~~((The notice may provide that failure to attend may result in a party being dismissed, being found in default, or the commission's refusal to consider a later petition for intervention except upon a showing of good cause for the failure to attend.))~~ A party's failure to attend a prehearing conference constitutes the party's waiver of all objections to any order or ruling arising out of the conference or any agreement reached at conference, unless the party shows good cause for its failure to attend.

(3) **Oral statement or written order.** The presiding officer may make an oral statement on the record or may enter an order describing the actions taken at the prehearing

conference and agreements among the parties concerning all of the matters considered.

(a) **Objections.** Parties may object to the oral statement on the record at the time the oral statement is made, or may object to any written prehearing conference order within ten days after the date the order is served. The commission will consider any objections pursuant to the procedures in WAC 480-07-810.

(b) **Results.** In the absence of a timely objection that the commission sustains, the results of the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

(4) **Prehearing conferences to facilitate evidentiary hearing.** The presiding officer may require parties to attend a prehearing conference prior to an evidentiary or other hearing session, or may recess an evidentiary or other hearing session to conduct a prehearing conference.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-440 Hearing notice. (1) **Initial hearing notice.**

(a) **Timing.** The commission will set the time and place of the first hearing session or prehearing conference in any adjudication in a notice served to all parties at least twenty days before the hearing or conference. The commission may shorten the notice period to seven days, as provided by RCW 34.05.434. The commission will set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare, considering the procedural schedule, other pending matters, and the need to minimize continuances.

(b) **Provisions for appointment of interpreter.** The initial notice of hearing ~~((must))~~ will state that if a limited-English-speaking or hearing-impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice will include a form for a party to indicate whether the party needs an interpreter ~~((is needed))~~ and to identify the party's primary language or hearing-impaired status ~~((of the party))~~.

(2) **Notice of continued hearing sessions.** ~~((a) **Permitted forms of notice.**))~~ When a hearing is not concluded as scheduled, the time and place for continued hearing sessions may be set:

~~((i))~~ (a) On the record without further written notice to the parties; or

~~((ii))~~ (b) By letter or formal notice from the presiding officer or the commission secretary ~~((of the commission; or~~

~~((iii))~~ By letter or formal notice from the presiding officer.

(b) **Timing.** There are no specific timing requirements for giving prior notice of continued hearing sessions).

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-450 Hearing—Failure to appear. (1) **Dismissal or default.** The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The ~~((presiding officer may recess a hearing for a brief period to provide an additional opportunity~~

for the party to appear. If the party is not present or represented when the hearing resumes, the commission may dismiss the party or find the party in default. When the commission dismisses a party or finds a party in default, it) commission will implement ~~((the))~~ any dismissal or default by a written order. When a party is found in default, the commission's order stating that finding also may ~~((also))~~ dispose of the issues in the proceeding, as provided by RCW 34.05.440.

(2) **Review of order of dismissal or default.** A party ~~((who is dismissed))~~ that a presiding officer dismisses from a proceeding or ~~((found))~~ finds in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-460 Hearing—~~((Predistribution of)) Exhibits ~~((and prefiled testimony)), exhibit list, and cross-examination estimates.~~~~ (1) ~~((Predistribution of evidence. The commission may require parties to distribute their proposed evidence to other parties before the start of the evidentiary hearing. In general))~~ **Filing exhibits in advance.** Parties must file and serve exhibits that they intend to submit or use in the evidentiary hearing, including proposed cross-examination exhibits, in advance of the hearing. The commission or the presiding officer will establish by notice or in a prehearing conference order the number of paper copies, if any, and deadlines for filing. In rate increase proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with ((WAC 480-07-510. The commission may convene a prehearing conference shortly before a scheduled hearing and require all parties to predistribute their proposed cross-examination exhibits.

~~((a) **Number of copies to be filed or submitted; service.** When predistribution of evidence other than proposed exhibits for use in cross-examination is required, each party must file the original plus twelve copies of its evidence with the commission unless the commission specifies a different number. When the commission requires parties to predistribute their proposed exhibits for use in cross-examination, each party must submit six copies to the bench if the commissioners are sitting as presiding officers and three copies if the commissioners are not sitting. The presiding officer may change the number of copies required. All proposed evidence must be served on all other parties to a proceeding whenever predistribution of evidence is required.~~

~~((b))~~ commission rules.

~~((a))~~ Changes or corrections.

~~((i))~~ Substantive corrections. Prefiled testimony may be revised to correct mistakes of fact asserted by a witness. Such mistakes may arise from a variety of causes such as scrivener's error, error in calculation, or error of misreported fact. Each party must advise all other parties of substantive correc-

tions to any prefiled evidence as soon as the need for correction is discovered.

~~(ii))~~ *Substantive changes.* Parties must seek leave from the presiding officer by written motion if they wish to ~~((submit))~~ file revised prefiled testimony or exhibits that include ~~((s))~~ substantive changes ~~((other than to simply correct errors of fact asserted by a witness))~~. A party proposing such changes ~~((may))~~ should submit the proposed revisions with its motion.

~~((iii))~~ *(i) Minor corrections.* A party may make minor revisions to prefiled testimony and exhibits ~~((may be made))~~ to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment) without leave from the presiding officer. Counsel should not ask a witness on the stand to ~~((correct obvious typographical errors in the prefiled testimony or to make more than three minor substantive corrections. If more than three minor revisions are required, parties must prepare an errata sheet or a revised exhibit for submission at least one business day prior to the hearing to show such corrections to the prefiled evidence.~~

~~(iv))~~ make these corrections, but must submit an errata sheet as provided in subsection (6) of this section.

~~(ii)~~ *Format requirements for revisions.* Parties ~~((who))~~ that submit ~~((revisions to pre-distributed))~~ a revised version of any prefiled or previously admitted testimony or exhibits must prominently label ~~((them))~~ the documents as "REVISED" and indicate the date of the revision. The document's exhibit number also must include a lower case "r" at the end of the number using the format described in subsection (2) of this section (e.g., Exh. JQW-5HCTr). The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. ~~((This practice must be followed even with minor changes that involve only one page of an exhibit. If one or more pages of))~~ The header or footer of each revised page in multiple page testimony or exhibit ~~((s are revised, the header or footer of the affected pages))~~ must be labeled "REVISED" and indicate the date of the revision. Parties may indicate changes to spreadsheets by providing a description of the change and how the change affects other related spreadsheets. For revisions to spreadsheets, counsel must identify partial revisions by page and date when an exhibit is presented ~~((for identification, sponsored,))~~ or offered into evidence, as appropriate.

(b) Timing. A party must file with the commission and serve all other parties with a motion to make substantive changes to any prefiled exhibits as soon as practicable after discovering the need to make that change. A party must file revised exhibits or an errata sheet reflecting minor corrections no later than the deadline for filing errata sheets established in the prehearing conference order.

(c) Distribution at hearing. ~~((When a party offers))~~ Upon a showing of good cause for not filing and serving new exhibits, revised exhibits, or errata sheets prior to the hearing, the presiding officer may allow a party to distribute such documents at ~~((a))~~ the hearing ~~((s)).~~ The party must provide sufficient copies of the documents for all parties and for the commission's distribution requirements ~~((When the commission requires parties to predistribute their exhibits, a party may be required to establish good cause for any failure to predistrib-~~

~~ute a proposed exhibit, other than an exhibit offered solely for impeachment of the witness's testimony on the stand, or the exhibit may be excluded))~~ and must file the document as required in WAC 480-07-145. The presiding officer may refuse to admit into evidence any new or revised exhibits if the failure to provide them prior to the hearing impairs the ability of other parties or the commission to review and examine those exhibits during the hearing.

(2) Prefiled testimony and exhibits.

~~(a)~~ *Exhibit numbers* ~~((Official record. The presiding officer will assign exhibit numbers to all prefiled testimony and exhibits at the final prehearing conference prior to hearing, or at hearing. These assigned numbers will be the exhibit numbers for purposes of the official record in the proceeding.~~

~~(b)~~ *Parties are required to mark prefiled testimony and exhibits for identification* ~~(()).~~ Parties must mark all written testimony and exhibits ~~((for identification))~~ in the upper right-hand corner of the first page prior to submission as follows:

(i) State ~~((Exhibit No.,))~~ Exh. followed by ~~((a blank underline. Then, on the same line, identify))~~ the sponsoring ~~((witness by including the))~~ witness's initials.

(ii) Place a hyphen after the witness's initials and insert a number, beginning with Arabic numeral 1 for the witness's first prefiled testimony, and sequentially number each subsequent exhibit (including any ~~((subsequent))~~ additional written testimony) throughout the proceeding.

(iii) Place the capital letter "C" immediately after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding (or "HC" if the document includes information asserted to be highly confidential under the protective order).

(iv) Place the capital letter "T" after the number and "C" or "HC," if applicable, if the exhibit is a witness's prefiled testimony.

For example, John Q. Witness's prefiled testimony and accompanying exhibits must be marked as follows:

Testimony or Exhibit	Marked ((for Identifica- tion))
John Q. Witness's prefiled direct testimony	((Exhibit No. __ (JQW- 1T))) Exh. JQW-1T
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	((Exhibit No. __ (JQW-2))) Exh. JQW-2
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	((Exhibit No. __ (JQW- 3C))) Exh. JQW-3C
Third exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	((Exhibit No. __ (JQW-4))) Exh. JQW-4
John Q. Witness's prefiled rebuttal testimony (with portions marked highly confidential)	((Exhibit No. __ (JQW- 5CT))) Exh. JQW-5HCT

Testimony or Exhibit	Marked ((for Identification))
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	((Exhibit No. <u> </u> (JQW-6))) <u>Exh. JQW-6</u>

~~((Counsel and other party representatives who are unfamiliar with this method of identification may ask the presiding officer for further guidance.~~

~~((e)) (b) List of exhibits, table of contents, and summary of testimony. ((Each witness must present a short summary of his or her prefiled testimony on the opening page or two of the testimony. Counsel or other party representative will be expected to ask as a foundation question when the witness takes the stand the subjects that will be covered by the witness. This foundation question should request, and the witness's response should include, only a statement of the subject(s) to be covered by the witness (e.g., rate of return on equity, cost of debt, prudence) and not a summary of the witness's positions on the subject(s) identified)) The prefiled testimony of each witness must include a list of exhibits that accompany that testimony. Testimony that exceeds ten pages in length must include a table of contents and a short summary at the beginning of the testimony.~~

~~((d)) (c) Form of testimony and exhibits. All prefiled testimony and exhibits must be paginated ~~((In addition, line numbers)), and the lines on each page must be ((set out on all prefiled testimony))~~ numbered to facilitate transcript or exhibit references. All ~~((copies of))~~ prefiled testimony and exhibits must be ~~((provided on 8 1/2 x 11 inch, three-hole punched paper (oversize holes are preferred),))~~ double-spaced ~~((;))~~ and use 12-point type ((using)) in palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type, with margins of at least one inch on all sides. ~~((Preprinted))~~ Documents ((and spreadsheets)) the party did not create need not conform to these typeface and type size requirements ~~((;))~~ but must be legible. All paper copies of prefiled testimony and exhibits, if required, must be provided on 8 1/2 x 11 inch, three-hole punched paper (oversize holes are preferred). Oversized documents may be used at the hearing for illustrative purposes but paper copies, if required, must be provided on 8 1/2 x 11 inch paper if offered into evidence and reduction to that format is feasible.~~

~~((e) Submission requirements. All prefiled exhibits, both direct examination and cross-examination exhibits, must be individually separated by blank sheets with tabs.))~~ (3) **Cross-examination exhibits.** Each party must file with the commission and serve on the other parties all exhibits the party proposes to use in its cross-examination of witnesses. The presiding officer will establish in a prehearing conference order or notice the number of paper copies, if any, and deadlines for filing.

(a) **Exhibit numbers.** Parties must mark all cross-examination exhibits in the upper right hand corner of the first page prior to submission as follows:

(i) State "Exh." followed by the initials of the witness the party intends to use the exhibit to cross-examine.

(ii) Place a hyphen after the witness's initials and insert the next number in sequence after the number of the last

exhibit sponsored by, or associated with, that witness. If more than two parties are actively participating in a docket, each party should insert an underscored blank space after the initials of a witness who is likely to be cross-examined by more than one party to avoid overlapping numbers with other parties' cross-examination exhibits. The presiding officer will subsequently assign numbers to all cross-examination exhibits for that witness when compiling the exhibit list.

(iii) Place the capital letter "C" immediately after the number (or underscored blank space) if the exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding (or "HC" if the document includes information asserted to be highly confidential under the protective order).

(iv) Place the capital letter "X" after the number (or underscored blank space), "C," or "HC" whichever is last. For example, if the last exhibit attached to a witness's prefiled testimony is Exh. JQW-7, the first cross-examination exhibit for that witness should be marked "Exh. JQW-8X" (or "Exh. JQW-8CX" if the exhibit includes information designated as confidential).

(b) **Format.** All cross-examination exhibits must be filed and served electronically in .pdf (adobe acrobat or comparable software) format. The commission may also require the parties to file and serve paper copies of the exhibits.

(c) **Organization.** Cross-examination exhibits must be segregated, labeled, and grouped according to the witness the party intends to cross-examine with the exhibits. Any paper copies of the exhibits must be organized into sets that are tabbed, labeled, and grouped by witness.

(4) **Exhibit lists.** Each party must file with the commission and serve on all parties a list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits of that party's witnesses and cross-examination exhibits that party has designated for other witnesses. The presiding officer will establish in a prehearing conference order or notice the deadline for this filing.

(5) **Cross-examination time estimates.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file these witness lists or cross-examination time estimates but must provide them in electronic format directly to the presiding administrative law judge and the other parties by the deadline established in a prehearing conference order or notice.

(6) **Errata.** Each party must file with the commission and serve on all parties a list of any corrections or revisions to its witnesses' prefiled testimony and exhibits. Each correction or revision must be identified separately by exhibit number, page, and line (or row, column, cell, etc., as applicable) and must specify the text to be revised, added, or deleted. The presiding officer will establish in a prehearing conference order or notice the deadlines for this filing.

AMENDATORY SECTION (Amending WSR 06-16-053, filed 7/27/06, effective 8/27/06)

WAC 480-07-470 **Hearing guidelines.** These guidelines are of a general nature and are provided to assist the pre-

siding officer in regulating the course of the proceeding. The presiding officer may suspend or modify the guidelines or use measures not specified in this rule.

(1) **Starting times.** The presiding officer will strictly observe starting times ~~((will be strictly observed))~~. The proceeding may go forward in the absence of counsel, parties, or witnesses who are late. Counsel may advise the bench by message to the records center when an emergency prevents timely arrival.

(2) **Appearances.** ~~((All persons who will be representing a party in a formal proceeding must give their names and addresses in writing to the court reporter immediately before the first hearing session in which they appear.))~~ The presiding officer conducting the hearing or prehearing conference will require appearances to be stated orally at the initial prehearing or hearing session, and may also ask for oral appearances at subsequent sessions in the same proceeding, so that all persons attending the hearing will know the identity and interest of all parties present. If the representative has previously filed a notice of appearance or otherwise provided full contact information in a pleading filed in the docket, oral appearances shall consist of the representative's name, law firm, organization, or government entity if any, and the party the person represents. Oral appearance at hearing does not substitute for the requirement for written notice of appearance in WAC 480-07-345(2).

(3) **Matters to be handled at beginning of session.** Parties must notify the presiding officer no later than the start of the hearing session of any motion that a party anticipates may be presented during the hearing, such as one that may require foundation regarding the admissibility of evidence. The presiding officer will give the parties an appropriate opportunity to state and argue any motions related to evidence or to the procedural course of the hearing.

(4) ~~((**Summary by public counsel.** At the beginning of a hearing session during which the commission will hear testimony from members of the public, the commission may provide public counsel an opportunity to inform the public of the major contested issues and to state public counsel's positions on those issues. The commission will give other parties an opportunity to respond.~~

~~((5))~~ **Evidence; exhibits; stipulations of fact.** The presiding officer may receive evidence as provided by RCW 34.05.452.

~~((6))~~ **(5) Order of presentation.** Evidence will ordinarily be received in the following order:

- (a) Party having the burden of proof;
- (b) Parties supporting the party having the burden of proof; and
- (c) Parties opposing the party having the burden of proof;
- ~~((d) **Rebuttal by the party having the burden of proof.**);~~

The presiding officer may direct a modified order of presentation considering the needs of the parties, the commission, ~~((and))~~ the proceeding, and the parties' preferences.

~~((7))~~ **(6) Testimony under oath.** The presiding officer will administer an oath or affirmation to each witness before the witness testifies in an adjudicative proceeding. When members of the public testify, they will be sworn in the same fashion as other witnesses.

~~((8))~~ **(7) Addressing the presiding officer or witnesses.** All counsel and other party representatives, including parties that are not represented, must address all comments, objections, and statements on the record to the presiding officer and not to other counsel or parties. Questions on the record that concern the substance of testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other ~~((party representatives))~~ parties.

~~((9))~~ **(8) Resolving matters off the record.** Counsel or other party representatives who request ~~((off the record))~~ to have discussions with the presiding officer off the record must ask leave to go off the record and state the purpose for the request. Extended colloquies regarding procedural issues may be conducted off the record, but will be summarized for the record by the presiding officer subject to comments from party representatives.

~~((10))~~ **(9) Witness panels.** The commission may direct or allow two or more witnesses to take the stand simultaneously when doing so allows a benefit, such as the integrated response to a line of questions, minimizing referral of questions from one witness to another, or comparing witnesses' positions. The presiding officer will also allow cross-examination of each witness upon matters within the witness's direct evidence.

~~((11))~~ **(10) Cross-examination.** ~~((Counsel and other party representatives should be prepared to provide time estimates for cross-examination of witnesses.))~~ The presiding officer will limit cross-examination to one round unless good cause exists for allowing additional questions. Witnesses must not be asked to perform detailed calculations or extract detailed data while on the stand. Any such questions must be provided to the witness at least two business days prior to the date the witness is expected to testify, must ask the witness to provide the answer for the record later in the hearing session, or must provide an answer and ask the witness to accept it "subject to check." Witnesses must not be asked to accept information ~~((subject to check))~~ if the information is included in a prefiled exhibit or testimony, or is already in evidence. When a witness accepts information ~~((subject to check))~~, the witness must perform the ~~((check))~~ as soon as ~~((possible))~~ practicable. A response given ~~((subject to check))~~ will be considered accurate unless:

(a) The witness ~~((disputes it on the witness stand or by filing an affidavit, stating reasons, within five business days following the date of receipt of the hearing transcript.~~

~~((12))~~ subsequently testifies during the hearing that the witness does not accept the information subject to check and explains the reasons for that position; or

(b) Within five business days following the date of receipt of the hearing transcript, the party sponsoring the witness files and serves a declaration from the witness stating that the witness does not accept the information subject to check and explaining the reasons for that position. Any such declaration must be limited to the information subject to check and may not expand, revise, or otherwise modify the witness's testimony.

(11) Redirect examination. A party whose witness has been cross-examined may conduct redirect examination of the witness on issues raised during cross-examination or examination by the presiding officer, if applicable.

~~((13))~~ **Post hearing planning.** The presiding officer will confer with the parties concerning post hearing process. The presiding officer will determine whether oral argument, briefs, or both will be required, taking into consideration the needs of the commission and the parties' preferences. The presiding officer may determine a common format or outline to be used by all parties if briefs are required. Briefs must comply with the requirements of WAC 480-07-395.

~~(14))~~ **(12) Transcript.** Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it. To protect valuable commercial information unique to the court reporter's work product or services and for which the court reporter charges a fee for copies, the commission will not post on its web site or provide to any parties a copy of the transcript of an evidentiary hearing until after post-hearing briefing has concluded.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-490 Hearing—Exhibits and documentary evidence. (1) **Designation of part of document as evidence.** A party ~~((who))~~ that offers ~~((evidence that consists of))~~ only a portion of a document for admission into the evidentiary record must designate ~~((the))~~ that portion ~~((that is offered))~~ as a separate exhibit. If irrelevant matter included in the original document would unnecessarily encumber the record, the ~~((document will not be received in evidence, but the relevant or material matter may be read into the record, or the presiding officer may receive a copy of the excerpt as an exhibit. If only a portion is offered or received, other parties may examine the document and))~~ presiding officer may admit only the offered portion into evidence but will allow other parties to offer other portions ((into evidence)).

(2) ~~((Official))~~ **Government records.** A party may offer into evidence an official document prepared and issued by any governmental authority ((may be introduced)) that is not publicly available or readily accessible by all parties in the form of a certified copy. ((Official records contained in official publications or nationally recognized reporting service publications that are in general circulation and readily accessible to all parties may be introduced by reference, provided that the party offering the document clearly identifies the record and its source. The presiding officer may require the party offering such evidence to provide a copy for the record and to each party.

(3) **Commission's files.** The presiding officer may receive documents on file with the commission by reference to number, date, or by any other method of identification satisfactory to the presiding officer. If only a portion of a document is offered in evidence, the part offered must be clearly designated. The presiding officer may require the party offering the evidence to provide a copy to the record and to each party.

~~(4) **Records in other proceedings.** A portion of the record of any other commission proceeding that is otherwise admissible may be received as an exhibit in the form of a copy; by citation to the transcript or exhibit number; or by~~

incorporation into the transcript of the current proceeding, as determined by the presiding officer.

(5) **Documents from the public.** When a member of the public presents a document in conjunction with his or her testimony, the commission may receive the document as an illustrative exhibit. The commission may receive as illustrative exhibits any letters that have been received by the secretary of the commission and by public counsel from members of the public regarding a proceeding. Documents a public witness presents that are exceptional in their detail or probative value may be separately received into evidence as proof of the matters asserted after an opportunity for cross-examination.

(6) **Resolutions.** The presiding officer may receive in evidence authenticated resolutions of the governing bodies of municipal corporations and of chambers of commerce, boards of trade, commercial, mercantile, agricultural, or manufacturing societies and other civic organizations. Any recital of facts contained in a resolution may not be considered as proof of those facts.

~~(7))~~ **(3) Objections.** Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each ~~((representative))~~ party whether that party objects to an offer of evidence or other motion or proposed action. Parties that have objections must state them. Failure to object constitutes a waiver of the right to object.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-495 Hearing—Rules of evidence; official notice. (1) **Admissibility; exclusion; offer of proof.** All relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness. The presiding officer will consider, but is not required to follow, the rules of evidence governing general civil proceedings in non-jury trials before Washington superior courts when ruling on the admissibility of evidence.

The presiding officer may exclude evidence that is irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. Parties objecting to the introduction of evidence must state the grounds for the objection at the time the evidence is offered. If the presiding officer excludes the evidence from the record, the presiding officer may ((permit)) provide the party offering ((rejected)) that evidence ((to describe briefly for the record its nature and purpose as an offer of proof. A written offer of proof may be required)) with the opportunity to make an oral or written offer of proof briefly describing the nature and purpose of the evidence for subsequent review of the presiding officer's ruling.

(2) **Official notice.**

(a) The commission may take official notice of:

(i) Any judicially cognizable fact~~((:))~~, examples of ((such facts)) which include, but are not limited to, the following:

(A) Rules, regulations, interpretive and policy statements, administrative rulings, and orders, exclusive of findings of fact, of the commission and other governmental agencies;

(B) Contents of certificates, permits, and licenses issued by the commission; and

(C) Tariffs, classifications, and schedules regularly established by, or filed with, the commission as required or authorized by law(=);

(ii) Technical or scientific facts within the commission's specialized knowledge; (~~and~~)

(iii) Codes or standards that have been adopted by an agency of the United States(~~, or this state or of another~~) or a state, or by a nationally recognized organization or association; and

(iv) Records contained in government web sites or publications or in nationally recognized reporting service publications that are in general circulation and readily accessible to all parties.

(b) The commission may, in its discretion upon notice to all parties, inspect physical conditions that are at issue and take official notice of the results of its inspection.

(c) The presiding officer will notify parties of (~~material officially noticed and its source~~) documents or information of which the commission takes official notice and the source of that information. The presiding officer will afford parties an opportunity to contest facts and material (~~so noticed~~) of which the commission takes official notice. The presiding officer may require a party proposing that the commission take official notice (~~(be taken)~~) of a document or information to provide copies of (~~(officially noted matter to)~~) that document or information for the record and to all other parties.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

WAC 480-07-498 Hearing—Public comment. (1) General. The commission will receive as a bench exhibit any public comment (~~(filed, or otherwise)~~) submitted by nonparties(=) in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may receive into evidence documents a member of the public presents that are exceptional in their probative value after the commission provides the parties an opportunity to respond to those documents.

(2) Public comment hearing. The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, (~~the~~) a presiding officer will make an opening statement explaining the purpose of the hearing and will briefly summarize the principal issues in the matter. The presiding officer will administer an oath to those members of the public (~~that~~) who indicate a desire to testify concerning their views on the issues. The presiding officer will call each member of the public who wishes to testify, will inquire briefly into the identity and interests of the witness, and will provide an opportunity for a brief statement (~~(by the party)~~). Typically, public witnesses may expect to have three to five minutes to make an oral statement. A public witness may supplement his or her oral statements (~~(may be supplemented by)~~) with written comments signed by the witness.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-07-423 Discovery—Protective orders—Submission requirements for documents.

WSR 16-24-063
PROPOSED RULES
COLUMBIA RIVER
GORGE COMMISSION
[Filed December 5, 2016, 2:21 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: Adoption of Legal Descriptions for Urban Areas Designated in Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544b(e).

Hearing Location(s): Fisher's Landing Transit Center, Rose Besserman Community Room, 3510 S.E. 164th Avenue, Vancouver, WA 98683, on February 14, 2017, at 10:00 a.m. Note: The time is the start time for the commission's meeting. The meeting agenda, which will have the hearing time, will be available approximately one week prior to the hearing date.

Date of Intended Adoption: February 14, 2017.

Submit Written Comments to: Jeffrey B. Litwak, Counsel, P.O. Box 730, White Salmon, WA 98672, e-mail jlitwak@gorgecommission.org, by February 2, 2017. Note: Comments submitted prior to the deadline will be addressed in a staff report. The commission accepts written comments until the close of the rule-making hearing.

Assistance for Persons with Disabilities: Contact Nancy Andring by February 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule adopts legal descriptions for the urban areas designated in the Columbia River Gorge National Scenic Area, 16 U.S.C. § 544b(e). The rule does not change any existing commission rule or the National Scenic Area Act - it is, in effect, an interpretation of the National Scenic Area Act. The rule will provide greater certainty for landowners and land managers about the precise location of the urban areas. Where the legal descriptions differ from a prior interpretation of an urban area boundary, the legal description will supersede the prior interpretation. Existing uses based on a prior interpretation will be managed in accordance with the existing uses provisions of the commission's management plan and county land use ordinances administering the plan. The rule does not change any urban area boundary; changes to urban area boundaries may only occur in accordance with 16 U.S.C. § 544b(f) (commonly referred to as "4(f)").

Reasons Supporting Proposal: Congress provided maps of thirteen urban areas and stated that the urban areas are "generally depicted." To date, the commission and United States Forest Service have interpreted those maps as needed,

which led to litigation and claims of inconsistent procedure and outcome. In addition, the commission is authorized to make minor revisions to urban areas in accordance with 16 U.S.C. § 544b(f). The legal descriptions will reduce litigation, increase consistency in surveying urban area boundaries on individual parcels, and allow the commission to better analyze applications to revise urban area boundaries.

Statutory Authority for Adoption: RCW 43.97.015, ORS 197.150, 16 U.S.C. § 544b(e).

Statute Being Implemented: RCW 43.97.015, ORS 197.150, 16 U.S.C. § 544b(e).

Rule is necessary because of federal law, 16 U.S.C. § 544b(e).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The commission and forest service prepared the legal descriptions of the urban areas with the assistance of land surveyors licensed in Oregon and Washington, and with the assistance of two advisory committees. Prior to filing this rule-making notice, the commission held three public workshops to explain the purpose of the legal descriptions and show areas where the commission had to use discretion because the maps were unclear. The commission staff will hold an additional public workshop on January 26, 2017, at 2:00 p.m. at the Gorge Commission Office, 57 N.E. Wauna Avenue, White Salmon, WA 98672. Persons interested in attending must RSVP to Jason Hildreth, jason.hildreth@gorgecommission.org. Space is limited to approximately fifteen persons. If there is greater interest, the commission will schedule additional workshops as needed.

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jeffrey B. Litwak, Counsel, White Salmon, Washington, (509) 493-3323; Implementation: Jason Hildreth, Land Use

Planner, White Salmon, Washington, (509) 493-3323; and Enforcement: Krystyna Wolniakowski, Executive Director, White Salmon, Washington, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt under RCW 19.85.025(3). This rule adopts without material change 16 U.S.C. § 544b(e).

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt under RCW 34.05.328(5), including, but not limited to RCW 34.05.329 [34.05.328] (5)(b)(iii). This rule adopts without material change 16 U.S.C. § 544b(e).

December 5, 2016
Nancy A. Andring
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-02 issue of the Register.

WSR 16-24-067
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 6, 2016, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-15-077.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

	WAC Numbers and Descriptions	Proposed Change	Reason for Change
1.	WAC 296-17A-5301 (subclassification 5301-21, Word processing or secretarial services)	Include tutoring services in scopes of sub-classification 5301-21.	<ul style="list-style-type: none"> • Tutoring services are not currently anywhere in WAC, and classifying them has not been consistent. • Classification 5301 appropriately represents the overall relative low hazard of tutoring services. • Classification 5301 allows for exposure to a business's operative hazards, and is administratively simple, since it doesn't require employers to track hours.
2.	WAC 296-17A-6108 (nursing homes)	Limit classification 6108 to facilities licensed as nursing homes and/or skilled nursing centers by department of social and health services (DSHS).	<ul style="list-style-type: none"> • To provide for more consistency and equity when classifying care facilities.
3.	WAC 296-17A-6205 (clubs)	Reclassify fraternities and sororities from classification 6509 to classification 6205.	<ul style="list-style-type: none"> • Fraternities and sororities do not provide the personal and medical services common to other type residences found in classification 6509.

	WAC Numbers and Descriptions	Proposed Change	Reason for Change
			<ul style="list-style-type: none"> • This is similar to the National Council on Compensation Insurance (NCCI) practices in other states. NCCI includes fraternities and sororities with the clubs, not otherwise classified, code. • Fraternities and sororities appear to have a lower level of hazard than the rest of classification 6509.
4.	WAC 296-17A-6509 (adult family homes, Alzheimer units, and other care facilities)	Assign classification 6509 to residences licensed by DSHS as providing care other than as hospitals, nursing homes, or skilled nursing centers.	<ul style="list-style-type: none"> • To provide for more consistency and equity when classifying care facilities.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501-5414, on February 27, 2017, Monday, at 10:00 a.m.; and at the Yakima Valley Community College, Deccio Higher Education Center, Parker Room, 1000 South 12th Avenue, Yakima, WA 98902, on March 14, 2017, Tuesday, at 11:00 a.m.

Date of Intended Adoption: May 2, 2017.

Submit Written Comments to: Richard Bredeson, Department of Labor and Industries, P.O. Box 44148, Tumwater, WA 98504, e-mail Richard.Bredeson@Lni.wa.gov, fax (360) 902-5830, by March 15, 2017.

Assistance for Persons with Disabilities: Contact office of information and assistance by February 17, 2016 [2017], TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing changes for chapter 296-17A WAC, Classifications for Washington workers' compensation insurance, that will:

- Classify all tutoring services in WAC 296-17A-5301.
- Align the scopes of WAC 296-17A-6108 with facilities licensed by DSHS as skilled nursing centers.
- Reclassify student fraternities and sororities to WAC 296-17A-6205.
- Align the scopes of classification WAC 296-17A-6509 to describe entities classified by DSHS as a residence other than a skilled nursing center.

See Title of Rule above for additional detail.

Reasons Supporting Proposal: Workers' compensation best practices for rating employers require classifications clearly distinguish between different types of work places to ensure employers' premiums are fair and reflect the actual degree of hazard.

Statutory Authority for Adoption: RCW 51.16.035.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Chris Bowe, Tumwater, Washington, (360)

902-4826; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement is required as the proposed rules are adjusting rates pursuant to legislative standards, according to RCW 19.82.025(3) referencing RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are adjusting rates pursuant to legislative standards, according to RCW 34.05.328 (5)(b) (vi).

December 6, 2016
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-5301 Classification 5301.

5301-10 Accounting or bookkeeping services

Applies to establishments engaged in providing general accounting or bookkeeping services to others. Types of services contemplated by establishments subject to this classification include, but are not limited to:

- Auditing;
- Tax preparation;
- Medical or dental claims processing and billing;
- Advisory services.

This classification includes:

- Clerical office;
- Outside sales, and personnel who travel from one office to another.

This classification excludes establishments engaged primarily in management consultant services that are not otherwise classified, which are to be reported separately in classification 5301-12.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business

undertakings unless coincidentally the other operations are also subject to this classification.

5301-11 Law firms

Applies to establishments engaged in providing legal services to others. Law firms may specialize in one or more areas of law. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

Special note: This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-12 Management consultant services, N.O.C.

Applies to establishments engaged in providing management consulting services not covered by another classification (N.O.C.). Management consultants typically will observe and analyze:

- Computer or communication systems;
- Mail distribution;
- Organizational structures;
- Planning or development of related business needs;
- Work processes or work flows.

After a thorough analysis, consultants usually prepare a written report for the customer which identifies problem areas and/or recommends improvements to processes or equipment. Consultants may remain to oversee the implementation of the recommended improvements. Consultants subject to this classification do not sell any product they have recommended although they may act as an agent for their client in purchasing the product. Consulting projects vary from client to client depending upon the contract. Included within this classification are businesses that provide similar consultative services such as, but not limited to:

- Advertising agencies;
- Employer representative organizations;
- Mortgage brokers and financial advisers who do not make purchases on behalf of their clients;
- Public relations companies.

This classification includes clerical office staff, outside sales personnel and other staff who travel from one office to another.

This classification excludes businesses that perform computer consulting for others, which is to be reported in classification 5302.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-13 Credit bureaus; collection agencies

Applies to establishments that are licensed to provide collection and/or credit investigation services to others. Services include, but are not limited to:

- Checking the credit backgrounds of their client's potential customers;
- Collection of NSF checks or delinquent debts owed to clients of the collection agency.

If debts are not collected, the service agency may initiate legal proceedings against the debtor. This classification includes clerical office and outside sales personnel, and other staff who travel from one office to another.

This classification excludes establishments engaged in providing process and legal messenger services which are to be reported separately in classification 6601.

5301-14 Employment agencies

(only to be assigned by the temporary help/leasing underwriter)

Applies to establishments that are licensed to provide employment services for others. Clients of employment agencies may be persons seeking employment or companies looking for employees. Employment agencies usually conduct preliminary interviews with candidates for positions prior to referring them to their client companies for interviews. Generally, establishments subject to this classification place people in permanent positions. This classification includes clerical office and outside sales personnel, and staff who travel from one office to another.

This classification excludes:

- Employees of a temporary help agency who are assigned to work in the administrative or branch offices of the agency who are to be reported separately in classification 7104;
- Employees of a temporary help agency who are assigned on a temporary basis to its customers who are to be reported separately in the appropriate temporary help classification.

5301-15 Court reporting services

Applies to establishments engaged in providing court reporting services to others. Court reporters record verbatim testimony presented in court proceedings, depositions, public hearings or meetings. The most frequently used method to record testimony is by stenotype machine, although it may be recorded by voice recording on audio tape, or by manual shorthand. Transcription of the recorded material may be performed by the court reporter or by "note readers" or typists. The majority of court reporters today use computer-aided transcription systems. Court reporters may also offer notary public services for their clients. This classification includes clerical office and staff who travel from one office to another.

5301-16 Service and professional organizations

Applies to establishments engaged in protecting or furthering the interest of their members and/or the general public. Many of these operate as nonprofit organizations. Service and professional organizations may perform one or many of the following activities:

- Administer certification tests;
- Arbitrate disputes;
- Award scholarships;
- Collect membership dues;
- Compile, review, and disseminate informational data;
- Disburse funds;
- Host conventions;

- Issue vehicle license registrations, plates, decals, and certificates of title;
- Lobby the legislature;
- Manage promotional marketing programs;
- Maintain a membership directory;
- Offer insurance programs;
- Operate a tourist information center;
- Organize fund-raising campaigns;
- Perform charitable community services;
- Perform collective bargaining;
- Provide counseling, adoption, and advocacy services;
- Provide job placement assistance;
- Publish a newsletter;
- Research and interpret local, state, and federal regulations and apprise members of the results;
- Sponsor athletic leagues and tournaments;
- Sponsor educational training programs.

Also included in this classification are Economic Development Councils, Boards, or Associations. These nonprofit organizations provide economic consulting services and related statistics to government and industry in the promotion of economic stability, and recruit businesses that will create jobs and provide loans from the grant funds they manage. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

This classification excludes:

- Collection of donated items by truck which is to be reported separately in classification 1101;
- Labor unions and employee representative associations which are to be reported separately in classification 6503.

Special note: If a charitable organization subject to classification 5301 operates a retail store for the sale of donated items, the collection of those items by truck, and all store operations, are to be reported separately in classification 6504.

5301-18 Telephone answering services

Applies to establishments engaged in providing telephone answering services for others. Customers include, but are not limited to:

- Attorneys;
- Medical professionals;
- Private businesses;
- Individuals.

Most answering services today use computerized communications systems to identify company names when answering calls for various companies, obtain correct information about the company to respond to questions, record and relay accurate messages in a timely manner. Related services often offered by telephone answering service companies include, but are not limited to:

- Dispatching;
- Monitoring alarm systems;
- Placing reminder calls;
- Rental of office space;
- Scheduling appointments for customers;
- Telemarketing;
- Voice mail or paging.

This classification includes clerical office personnel and staff who travel from one office to another.

5301-19 Travel agencies

Applies to establishments engaged in providing travel arrangement services for others. Travel agencies coordinate all types of travel arrangements for their clients through:

- Air;
- Bus lines;
- Car rental agencies;
- Cruise;
- Hotels;
- Motels;
- Related travel providers;
- Resorts;
- Train;
- Travel insurance companies.

Services vary and could include:

- Arrangement of special needs for people with disabilities or elderly travelers;
- Booking reservations;
- Delivery of tickets and itineraries to clients;
- Selling tickets for tours, excursions, or other entertainment events.

This classification includes clerical office and sales staff who travel from one office to another.

5301-21 Word processing (~~(☞)~~), secretarial, or tutoring services

Applies to establishments engaged in providing word processing or secretarial services to others. Services include, but are not limited to:

• Correcting assignments:

- Desktop publishing;
- Dictation and transcription services;

• Instruction:

- Making copies of documents;

• Student assessments:

- Typing/compiling reports, proposals, resumes, or correspondence;
- Testing:
- Sending faxes.

~~((A pickup and delivery service may be offered.))~~ This classification includes clerical office and outside ~~((sales))~~ personnel who travel from one office or instructional environment to another.

Excluded operations: Classification 5301-21 excludes:

- Tutoring programs operated by schools, libraries, and any other organization or enterprise classified 6103 and/or 6104.

Note: WAC 296-17-31017 multiple classifications must be applied when more than one basic classification is assigned.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6108 Classification 6108.

6108-00 (~~Convalescent or nursing homes, rest homes, and homes for the aged~~)

~~Applies to establishments engaged in providing various levels of health care, depending on a patient's needs. Convalescent or nursing homes are state-licensed institutions. The extent of professional or medical services provided ranges from complete medical care for postoperative patients and patients requiring extensive nursing care due to illnesses such as terminal cancer, kidney disorders, and heart disease, to only minimal medical or professional care for other patients. Rest homes provide daily living assistance care to the aged or those with some limits on ability for self care, but where medical care is not yet a major element. Homes for the aged provide care for people who, due to illness, physical infirmity, or advanced age, are unable to care for themselves and who need nursing and/or health-related care, but do not require the degree of care and treatment that a skilled or intermediate care facility is designed to provide. Patients in homes for the aged, because of their mental or physical condition, require some nursing care, including the administering of medications and treatments, or the supervision of self-administered medications in accordance with a physician's orders. Generally these homes will employ therapists, registered nurses, practical nurses, nurses aides and orderlies to provide the necessary medical care to their patients. The homes also may employ cooks, waitresses, maids, maintenance personnel, social workers and recreational directors, but usually do not employ a resident physician, although they may have arrangements with physicians who are on call for emergencies.~~

~~This classification excludes boarding houses which are to be reported separately in classification 6509-))~~ **Nursing homes and skilled nursing centers**

Classification 6108 applies to skilled nursing facilities (SNF). This includes nursing homes, rehabilitation centers, and similar facilities. While the level of care is less urgent than for patients requiring hospitalization, SNFs, such as nursing homes, provide 24-hour supervised nursing care. They also provide personal care, therapy, nutritional management, organized activities, and social services to individuals unable to care for themselves due to injury, illness, or advanced age. These facilities are inspected and licensed by the Washington department of social and health services (DSHS); their administrators are licensed by the Washington department of health (DOH).

Types of workers employed in nursing homes often include, but are not limited to:

- Activity directors;
- Administrative staff;
- Caregivers;
- Chaplains;
- Cooks and chefs;
- Dietary aides;
- Dieticians;
- Dishwashers;
- Housekeepers;

- Janitors;
- Laundry workers;
- Lawn care workers;
- Maintenance personnel;
- Nurses' aides and assistants;
- Practical nurses;
- Registered nurses;
- Social workers;
- Therapists and therapists' assistants.

Medical services provided to residents generally include:

- Checking and monitoring for wellness;
- Dispensing medicine;
- Medical exams;
- Rehabilitative therapies;
- Total nursing care due to illness, injury, or surgery.

Personal care provided to residents may include performing or assisting with:

- Bathing;
- Brushing teeth or hair;
- Dressing;
- Feeding;
- Shaving.

This classification excludes:

• Residences providing varying levels of medical services or basic personal care but not licensed by DSHS as SNF or nursing home, that are to be reported separately in classification 6509.

• Hospitals inspected and licensed by the DOH which are classified in 6105, 6120, 6121, 7200, or 7400 (assigned only by the hospital underwriter).

• Home care providers working in their clients' homes who are to be reported separately in classification 6511 or 6512.

• Home health and nursing providers working in their clients' homes who are to be reported separately in classification 6110.

For administrative purposes, classification 6108 is divided into the following subclassification(s):

6108-00 DSHS licensed nursing homes.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6205 Classification 6205.

6205-00 Clubs, N.O.C.

~~((Applies to establishments engaged in operating clubs not covered by another classification (N.O.C.). Types of clubs contemplated by this classification include, but are not limited to, fraternal, special interest, or social clubs and clubs whose interests revolve around sports activities such as golf, tennis, boating, skiing, fishing, and swimming. The facilities and services offered vary depending on the type and size of the club. Even in an organization that has several locations, the facilities may vary greatly from a simple bar and snack food operation to a large restaurant with dancing areas, gymnasiums, and saunas. These types of clubs charge membership fees and dues as opposed to clubs or halls in classification 6607 which are open to the public. This classification includes all food and beverage operations.~~

~~This classification excludes YMCAs and boys/girls clubs which are to be reported separately in classification 6203; health clubs and gymnasiums which are to be reported separately in classification 6204; golf courses which are to be reported separately in classification 6206; and community and social centers which are to be reported separately in classification 6607.)~~ Applies to clubs not specifically described by another classification. All clubs have members, and most clubs charge membership fees or dues (as opposed to clubs or halls in classification 6607 which are open to the public). The facilities and services offered vary depending on the type and size of the club. A club's operations may be very simple with few services, or it may have many facilities and provide a range of services, such as:

- Bars;
- Restaurants;
- Recreation and activity rooms;
- Conference space;
- Ball rooms;
- Theaters;
- Snack or juice counters;
- Gymnasiums;
- Pools or saunas;
- Golf courses;
- Libraries;
- Meeting rooms;
- Study rooms;
- Lounge areas;
- Overnight accommodations.

Examples of clubs classified in **6205** include:

- Fraternal organizations;
- Country clubs;
- Special interest clubs;
- Social clubs;
- Student fraternities and sororities;
- Sporting clubs, such as:
 - Golf;
 - Tennis;
 - Skiing;
 - Fishing;
 - Sailing;
 - Swimming;
 - Yachting.

This classification excludes:

- YMCAs and boys/girls clubs which are to be reported separately in classification 6203;
- Health facilities and gymnasiums open to the public (even if charging membership fees) which are to be reported separately in classification 6204;
- Golf courses which are to be reported separately in classification 6206; and
- Community and social centers, open to the public, which are to be reported separately in classification 6607.

For administrative purposes, classification **6205** is divided into the following subclassification(s):

6205-00 Clubs, N.O.C.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

WAC 296-17A-6509 Classification 6509.

~~((6509-04 Boarding homes and centers, N.O.C., adult family homes, rooming houses, foster homes, and orphanages~~

Applies to establishments engaged in providing residential and social care for children, aged, and special categories of persons who are ambulatory and for whom medical care is not a major element. This classification includes, but is not limited to, alcohol and drug rehabilitation centers, shelters for the homeless, safe houses for abused women and children, orphanages, homes for people with disabilities, adult family homes, and group homes as well as halfway homes for delinquents and offenders. Alzheimer care facilities are also included in this classification. Work contemplated by this classification includes meal service, linen service, housekeeping and transportation. Medical care includes only the administration of drugs.

~~This classification excludes convalescent, assisted living, and nursing homes which are to be reported separately in classification 6108.~~

~~6509-05 Fraternity or sorority houses~~

~~Applies to establishments providing living accommodations to *only* those college and university students who are members of the fraternity or sorority. Fraternities and sororities operate as independent political, economic and social organizations within the guidelines of the college. Fraternity and sorority houses normally have all the amenities of a home-kitchen, living room, dining room, bedrooms and bathrooms. Chapter houses may also have a party room with floor space for social functions and a Chapter room which are a combination library, study, meeting and trophy room. Employments contemplated by this classification includes house directors who supervise and manage facility, cooks, helpers and facilities maintenance.~~

~~6509-07 Retirement centers~~

~~Applies to establishments engaged in operating retirement centers which cater to the elderly by offering an independent life style in a communal environment. Differing from a boarding home, a retirement center will usually offer a studio, one bedroom or two bedroom apartments as opposed to a single room. Most offer a full service dining area for all meals, exercise programs for individuals or groups, a hairdresser, gift shop, housekeeping/laundry service, a full social/activity program, security, as well as assisted living services. Assisted living services, if offered, include, but are not limited to, assistance in maintaining the resident's schedule for prescription medication, transportation for medical appointments, and 24 hour on-call emergency assistance. On-call emergency services may be provided by a full-time nurse who can assess situations and summon a doctor or ambulance as necessary.~~

~~**Special note:** Residents of a retirement center are capable of an independent lifestyle and do not require an on-site physician or personal care services. Businesses engaged in providing temporary or permanent residences which provide various levels of medical and *personal care services such as*~~

feeding, bathing, and personal hygiene are to be reported separately in classification 6108-)) **6509 Assisted living and group homes**

Classification 6509 applies to facilities with residents who do not require 24-hour nursing care, but often need some degree of medical monitoring and oversight, personal care, treatment, training, or supervision. Residents may need assistance due to illness, advanced age, physical or mental disabilities, dementia, homelessness or youth at risk, mental health concerns, or chemical dependency. Facilities in this classification generally provide residents a meal plan, but may also provide laundry, housekeeping, van or bus service, life or work skills training, therapy, recreational activities, social services, or even amenities such as barbers or beauticians. Most facilities in this classification are inspected and licensed by the department of social and health services (DSHS), or the department of health (DOH).

Examples of facilities in classification 6509 include:

- Adult family homes;
- Assisted living facilities;
- Continuing care retirement communities;
- Enhanced services facilities;
- Homeless shelters;
- Independent living centers;
- Intermediate care facilities;
- Hospice care centers;
- Residential treatment facilities;
- Retirement communities;
- Safe houses for victims of domestic violence;
- Transitional housing (halfway houses) for persons previously in a treatment facility or incarcerated.

Note: Some residences included in classification 6509, such as a retirement community, may not require any special facilities license from DSHS or DOH.

Types of workers employed in assisted living and group homes often include, but are not limited to:

- Activity directors;
- Caregivers;
- Cooks and chefs;
- Counselors;
- Dietary aides;
- Dietitians;
- Dishwashers;
- Drivers;
- Janitors;
- Housekeepers;
- Laundry workers;
- Lawn care workers;
- Maintenance personnel;
- Nurses;
- Nurses' aides and assistants;
- Resident assistants;
- Social workers;
- Therapists and therapists' assistants;
- Wait staff.

Medical services provided to residents in classification 6509 may include:

- Assessments for mental health, chemical abuse, or basic skills;
- Checking and monitoring for wellness;

- Dispensing medicine;
- Rehabilitative therapies;
- Physical examinations.

Personal care provided to residents may include assistance with:

- Bathing;
- Brushing teeth or hair;
- Dressing;
- Feeding;
- Shaving.

Note: Some residences may offer additional services such as haircuts, pedicures, manicures, hairstyling, eye and hearing exams, and other services not normally associated with care facilities. These services are often performed by independent contractors.

This classification excludes:

- DSHS licensed nursing homes and skilled nursing facilities that are reported in classification 6108.
- Fraternity or sorority houses that are reported in classification 6205.
- Home care providers working in their clients' homes who are to be reported in classification 6511 or 6512.
- Home health and nursing providers working in their clients' homes who are reported in classification 6110.
- Retirement communities without any services or meal plans. Generally these are apartment buildings or condominiums that simply restrict the occupants to age fifty-five or above, and are classified in 4910.

For administrative purposes, classification 6509 is divided into the following subclassification(s):

6509-04 Adult family homes, group homes, treatment centers, safe houses, shelters, halfway houses, and similar facilities not specifically assigned to another subclassification, N.O.C.

6509-07 Assisted living facilities, and retirement and continuing care communities.

WSR 16-24-076

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed December 6, 2016, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-105.

Title of Rule and Other Identifying Information: WAC 246-817-760 Moderate sedation with parenteral agents, the dental quality assurance commission is proposing amendments to include specific requirements and exceptions for dentists when sedating pediatric patients.

Hearing Location(s): DoubleTree Suites, 16500 Southcenter Parkway, Seattle, WA 98188, on January 27, 2017, at 8:05 a.m.

Date of Intended Adoption: January 27, 2017.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://>

fortress.wa.gov/doh/policyreview, fax (360) 236-2901, by January 20, 2017.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by January 20, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments update monitoring and equipment requirements to align with the American Dental Association, the American Academy of Pediatric Dentistry (AAPD), the American Association of Oral and Maxillofacial Surgeons, and the American Society of Anesthesiology national standards currently being used by dentists. The proposed rule sets minimum patient safety standards while administering moderate sedation with parenteral agents.

Reasons Supporting Proposal: The proposed rule amendments consider the Washington State Academy of Pediatric Dentistry concerns with previous proposed requirements to obtain vital signs prior to sedating children, and end-tidal carbon dioxide (CO₂) monitoring for moderate sedation with parenteral agents. Requiring all dentists administering moderate sedation with parenteral agents to monitor appropriate patient vitals follows consistent practice standards. Providing specific exemptions for dentists when sedating children is consistent with the AAPD Guidelines on Behavior Guidance for the Pediatric Dental Patient.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.640.

Statute Being Implemented: RCW 18.32.640.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

December 6, 2016

C. Madden, Chairperson
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-760 Moderate sedation with parenteral agents. (1) Training requirements: To administer moderate sedation with parenteral agents, the dentist must have successfully completed a postdoctoral course(s) of sixty clock hours or more which includes training in basic moderate sedation, physical evaluation, venipuncture, technical administration, recognition and management of complications and emergencies, monitoring, and supervised experi-

ence in providing moderate sedation to fifteen or more patients. If treating an adult, the dentist must have training in adult sedation. If treating a minor, the dentist must have training in pediatric sedation.

(2) In addition to meeting the criteria in subsection (1) of this section, the dentist must also have a current ~~((and documented proficiency in))~~ certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS). ~~((One way to demonstrate such proficiency is to hold a valid and current ACLS, PALS certificate or equivalent.))~~ If treating an adult, the dentist must have ACLS certification. If treating a minor, the dentist must have PALS certification.

(3) The drugs, drug amounts, and techniques used must carry a margin of safety wide enough to render unintended loss of consciousness highly unlikely.

(4) Procedures for administration of moderate sedation with parenteral agents by a dentist and an individual trained in monitoring sedated patients:

(a) In the treatment setting, a patient receiving moderate sedation with parenteral ((sedation)) agents must have that sedation administered by a person qualified under this chapter.

(b) A patient may not be left alone in a room and must be continually monitored by a dentist with a valid moderate sedation with parenteral agent permit or trained anesthesia monitor.

(c) An intravenous infusion must be maintained during the administration of a parenteral agent. Two exceptions for intravenous infusion may occur, but reasons why intravenous infusion was not used must be documented:

(i) Pediatric sedation cases using agents for brief procedures; and

(ii) When the pediatric patient is uncooperative or the emotional condition is such that intravenous access is not possible.

(d) When the operative dentist is also the person administering the moderate sedation with parenteral agents, the operative dentist must be continuously assisted by at least one individual experienced in monitoring sedated patients. If treating an adult, the additional individual must have experience or training in adult sedation. If treating a minor, the additional individual must have experience or training in pediatric sedation.

(e) In the treatment setting, a patient experiencing moderate sedation with parenteral agents must be visually and tactilely monitored by the dentist or an individual trained in monitoring sedated patients. Patient monitoring must include:

(i) Heart rate;

(ii) Blood pressure;

(iii) Respiration; ~~((and))~~

(iv) Pulse oximetry; and

(v) Expired carbon dioxide (CO₂). Two exceptions for expired CO₂ monitoring may occur, but reasons why expired CO₂ monitoring was not used must be documented:

(A) Pediatric sedation cases using agents for brief procedures; and

(B) When the pediatric patient is uncooperative or the emotional condition is such that CO₂ monitoring is not possible.

(f) Requirements of immobilization devices for pediatric patients:

(i) Immobilization devices, such as, papoose boards, must be applied in such a way as to avoid airway obstruction or chest restriction.

(ii) The pediatric patient head position and respiratory excursions must be checked frequently to ensure airway patency.

(iii) If an immobilization device is used, a hand or foot must be kept exposed.

(g) The patient's blood pressure and heart rate must be recorded every five minutes, pulse oximetry recorded every five minutes, and respiration rate must be recorded at least every fifteen minutes. ((In all cases these vital sign parameters must be noted and recorded at the conclusion of the procedure.

(g)) (h) The patient's level of consciousness must be recorded prior to the dismissal of the patient.

((h) Patient's) (i) Patients receiving ((these forms of) moderate sedation with parenteral agents must be accompanied by a responsible adult upon departure from the treatment facility.

((i)) (j) If a patient unintentionally enters a deeper level of sedation, the patient must be returned to a level of moderate sedation as quickly as possible. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, blood pressure and continuous monitoring of oxygen saturation must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

((4)) (5) Dental records must contain appropriate medical history and patient evaluation. Sedation records must be recorded during the procedure in a timely manner and must include:

- (a) Blood pressure;
- (b) Heart rate;
- (c) Respiration;
- (d) Pulse oximetry;

(e) End-tidal CO₂. Two exceptions for end-tidal CO₂ monitoring may occur, but reasons why end-tidal CO₂ monitoring was not used must be documented:

(i) Pediatric sedation cases using agents for brief procedures; and

(ii) When the pediatric patient is uncooperative or the emotional condition is such that end-tidal CO₂ monitoring is not possible.

(f) Drugs administered including amounts and time administered;

((f)) (g) Length of procedure; and

((g)) (h) Any complications of sedation.

((5)) (6) Equipment and emergency medications: All offices in which moderate sedation with parenteral ((sedation)) agents is administered or prescribed must comply with the following equipment standards:

Office facilities and equipment shall include:

(a) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(b) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen-enriched patient ventilation and oral and nasal pharyngeal airways ((of appropriate size)). If treating an adult, the equipment must be appropriate for adult sedation. If treating a minor, the equipment must be appropriate for pediatric sedation;

(c) A blood pressure cuff (sphygmomanometer) of appropriate size and stethoscope; or equivalent monitoring devices;

(d) Electrocardiographic monitor;

(e) End-tidal CO₂ monitor;

(f) Pulse oximetry; and

(g) An emergency drug kit with minimum contents of:

(i) Sterile needles, syringes, and tourniquet;

(ii) Narcotic antagonist;

(iii) Alpha and beta adrenergic stimulant;

(iv) Vasopressor;

(v) Coronary vasodilator;

(vi) Antihistamine;

(vii) Parasympatholytic;

(viii) Intravenous fluids, tubing, and infusion set; and

(ix) Sedative antagonists for drugs used, if available.

((6)) (7) Continuing education: A dentist who administers moderate sedation with parenteral ((sedation)) agents must participate in eighteen hours of continuing education or equivalent every three years.

(a) The education must include instruction in one or more of the following areas:

(i) Venipuncture;

(ii) Intravenous sedation;

(iii) Physiology;

(iv) Pharmacology;

(v) Nitrous oxide analgesia;

(vi) Patient evaluation;

(vii) Patient monitoring; and

(viii) Medical emergencies.

(b) In addition to the education requirements in (a) of this subsection, the dentist must ((obtain health care provider basic life support (BLS;)) have a current certification in advanced cardiac life support (ACLS)((;)) or pediatric advanced life support (PALS) ((certification)) to renew the moderate sedation with parenteral agents permit. Hourly credits earned from certification in BLS, ACLS, or PALS courses may not be used to meet the education requirements in (a) of this subsection to renew a moderate sedation with parenteral agents permit. However, the hourly credits earned in ((BLS;)) ACLS((;)) or PALS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.

((7)) (8) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.

WSR 16-24-081
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed December 6, 2016, 4:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-029.

Title of Rule and Other Identifying Information: The following sections of chapter 180-19 WAC, Charter schools: WAC 180-19-010 Definitions, 180-19-020 Notice of intent to submit an authorizer application, 180-19-030 Submission of authorizer application, 180-19-040 Evaluation and approval or denial of authorizer application, 180-19-070 Charter school—Request for proposals, 180-19-080 Charter school applications—Submission, approval, or denial, 180-19-250 Oversight of authorizers—Revocation of authorizing contract, and 180-19-260 Authorizer oversight—Transfer of charter contract.

Hearing Location(s): ESD 113, 6500 Tyee Drive S.W., Tumwater, WA 98501, on January 11, 2017, at 11:00 a.m.

Date of Intended Adoption: January 12, 2017.

Submit Written Comments to: Kaaren Heikes, 600 S.E. Washington Street, Olympia, WA 98504, e-mail Kaaren.heikes@k12.wa.us, by January 6, 2017.

Assistance for Persons with Disabilities: Contact Denise Ross by January 4, 2017, (360) 725-6027.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make various amendments to eight sections of chapter 180-19 WAC, Charter schools, in order to conform adopted state board of education (SBE) rules to implement chapter 180-19 WAC with chapter 241, Laws of 2016 (E2SSB 6194), Concerning public schools that are not common schools. The proposed amendments also make certain technical corrections to this chapter, as in WAC 180-19-010 Definitions.

Reasons Supporting Proposal: The need to ensure that chapter 180-19 WAC, Charter schools, is consistent in language, provisions, and intent with chapter 28A.710 RCW, as amended by chapter 241, Laws of 2016 (E2SSB 6194).

Statutory Authority for Adoption: Chapter 28A.710 RCW.

Statute Being Implemented: Chapter 28A.710 RCW, as amended by chapter 241, Laws of 2016.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting: Kaaren Heikes, 600 Washington Street S.E., Olympia, WA 98504, (360) 725-6029; Implementation and Enforcement: Ben Rarick, 600 Washington Street S.E., Olympia, WA 98504, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

Table with 3 columns: WSR, Title of Rule, Agency. Content: WSR: [blank], Title of Rule: Oversight of charter school authorizers., Agency: SDF - School District Fiscal Impact - SPI.

Part I: Estimates: No fiscal impact, chapter 180-19 WAC, Charter schools, is being updated through this rule revision to conform to the requirements of E2SSB 6194 as passed in the 2016 legislative session. Also included are some changes to delete obsolete language. Neither of these changes create additional costs to school districts, thus this rule change has no fiscal impact.

Estimated Cash Receipts to: No estimated cash receipts.

Estimated Expenditures From: No estimated expenditures.

Estimated Capital Impact: No estimated capital impact.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Room 433, 600 Washington Street S.E., Olympia, WA 98504, phone (360) 725-6301.

A cost-benefit analysis is not required under RCW 34.05.328.

December 6, 2016
Ben Rarick
Executive Director

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

WAC 180-19-010 Definitions. (1) "Board" means the state board of education.

(2) "School district" or "district" means a school district board of directors.

(3) "NACSA Principles and Standards" means the "Principles and Standards for Quality Charter Authorizing ((2012) 2015 Edition or most current edition)" developed by the National Association of Charter School Authorizers.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

WAC 180-19-020 Notice of intent to submit an authorizer application.

((Effective until May 15, 2015))

A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by October 1st of that same year. A district may not file an authorizer application in a calendar year unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in submitting notice of intent, and shall post all notices of intent upon receipt.

(Effective May 15, 2015))

A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by June 15th of that same year. A district may not file an authorizer application in a calendar year

unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in submitting notice of intent, and shall post all notices of intent upon receipt.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

WAC 180-19-030 Submission of authorizer application.

~~((Effective until May 15, 2015))~~

~~(1) The state board of education shall develop and make available on its web site, no later than October 1st of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.~~

~~(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by December 31st of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted via electronic mail to sbe@k12.wa.us by the date specified in this section. The board shall post on its web site each application received from a school district.~~

~~(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:~~

~~(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and intents set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.~~

~~(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:~~

~~(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its autho-~~

~~rizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW;~~

~~(ii) Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education; English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and~~

~~(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.~~

~~(e) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130(1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.~~

~~(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein; and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.~~

~~(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes,** consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:~~

~~(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;~~

~~(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;~~

~~(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;~~

~~(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal~~

compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

~~(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:~~

~~(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;~~

~~(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;~~

~~(c) Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;~~

~~(d) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;~~

~~(e) Ensure that any contract it may execute with the governing board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited English proficient, and any other special populations of students as required by state and federal laws;~~

~~(f) Include in any charter contract it may execute with the governing board of an approved charter school, in accordance with RCW 28A.710.160(2), educational services that at a minimum meet the basic education standards set forth in RCW 28A.150.220.~~

(Effective May 15, 2015))

(1) The state board of education shall develop and make available on its web site, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by October 15th of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted via electronic mail to sbe@k12.wa.us by the date specified in this section. The board shall post on its web site each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the

findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW;

(ii) Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education, English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and

(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the

requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes**, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

~~(c) ((Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;~~

~~(d))~~ Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;

~~((e))~~ (d) Ensure that any contract it may execute with the ~~((governing))~~ charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

~~((f))~~ (e) Include in any charter contract it may execute with the ~~((governing))~~ charter school board of an approved charter school, in accordance with RCW ~~((28A.710.160(2),~~

~~educational services))~~ 28A-710-040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets ~~((the basic education standards set forth in RCW 28A.150.220))~~ the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

WAC 180-19-040 Evaluation and approval or denial of authorizer applications.

~~(((Effective until May 15, 2015)))~~

~~(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by April 1st of each year.~~

~~(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (c) as well developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).~~

~~(a) "Well developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.~~

~~(b) "Partially developed" shall mean that the application response contains some aspects of a well developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.~~

~~(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.~~

~~(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards*, as required by RCW 28A.710.100(3), in at least the following areas:~~

~~(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;~~

~~(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;~~

~~(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;~~

~~(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and~~

~~(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.~~

~~(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.~~

~~(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.~~

~~(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.~~

~~(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part, shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.~~

~~(8) The board shall post on its public web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.~~

~~(Effective May 15, 2015))~~

(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by February 1st of each year.

(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).

(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards* as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

(8) The board shall post on its public web site the applications of all school districts approved as authorizers. A

school district approved as an authorizer shall post its application on a public web site.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

WAC 180-19-070 Charter school—Request for proposals.

~~((Effective until January 16, 2016))~~

~~No later than April 15th, each authorizer shall annually issue requests for proposals for charter schools meeting the requirements of RCW 28A.710.130.~~

~~((Effective January 16, 2016))~~

No later than March 1st, each authorizer shall annually issue ~~((requests))~~ solicitations for proposals for charter schools meeting the requirements of RCW 28A.710.130.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

WAC 180-19-080 Charter school applications—Submission, approval, or denial.

~~((Effective until January 16, 2016))~~

~~(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:~~

~~(a) Submit a nonbinding notice of intent to be approved as a proposed charter school not less than thirty days before the last date for submission of an application to an authorizer as provided in this section. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and~~

~~(b) Submit an application for a proposed charter school to an authorizer by no later than July 15th of the year in which the applicant seeks approval.~~

~~(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than October 15th of the year in which the application is received.~~

~~(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to sbe@k-12.wa.us.~~

~~((Effective January 16, 2016))~~

(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:

(a) Submit a nonbinding notice of intent to be approved as a proposed charter school by May 1st of the year in which approval is sought. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and

(b) Submit an application for a proposed charter school to an authorizer by no later than June 1st of the year in which the applicant seeks approval.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than September 1st of the year in which the application is received.

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to sbe@k-12.wa.us.

AMENDATORY SECTION (Amending WSR 14-02-060, filed 12/26/13, effective 1/26/14)

WAC 180-19-210 Annual report by authorizer. (1)

Each authorizer must, no later than November 1st of each year starting in 2014, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its web site by September 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via electronic mail to sbe@k12.wa.us and shall be posted on the board's web site.

(2) The report must include:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC 180-19-030 (3)(a), and its assessment of progress toward achieving that vision;

(f) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the ~~((governing))~~ charter school board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the (~~governing~~) charter school board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) The authorizer's operating costs and expenses for the prior year for fulfilling the responsibilities of an authorizer as enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

WAC 180-19-250 Oversight of authorizers—Revocation of authorizing contract. (1) Evidence of material or persistent failure by an authorizer to carry out its duties according to nationally recognized principles and standards for charter authorizing is grounds for revocation of an authorizer's chartering contract. This may include:

(a) Failure to comply with the terms of the authorizing contract between the authorizer and the board;

(b) Violation of a term of the charter contract between the authorizer and a charter school board;

(c) Demonstrated failure to develop and follow chartering policies and practices that are consistent with the principles and standards for quality charter authorizing developed by the National Association of Charter School Authorizers in any of the following areas, as required by RCW 28A.710-100:

(i) Organizational capacity;

(ii) Soliciting and evaluating charter applications;

(iii) Performance contracting;

(iv) Ongoing charter school oversight and evaluation;

(v) Charter renewal decision making.

(2) Notice of intent to revoke. If the board makes a determination, after due notice to the authorizer and reasonable opportunity to effect a remedy, that the authorizer continues to be in violation of a material provision of a charter contract or its authorizing contract, or has failed to remedy other identified authorizing problems:

(a) The board shall notify the authorizer in writing that it intends to revoke the authorizer's chartering authority under RCW 28A.710.120. The notification to the authorizer shall explain and document the reasons for the intent to revoke chartering authority.

(b) The authorizer shall, within thirty days of notification, submit a written response showing that the authorizer has implemented or will implement within sixty days of submitting the written response, a sufficient remedy for the violation or deficiencies that are the stated grounds for the intent to revoke chartering authority. The board shall within thirty days of receipt provide written notice to the authorizer whether it finds the proposed remedy sufficient to correct the violation or deficiencies.

(3) Notice of revocation. If the authorizer fails to provide a timely written response or if the response is found insufficient by the board to meet the requirement set forth in subsection (1) of this section:

(a) The board shall provide the authorizer with written notice of revocation of the authorizer's chartering authority. The notice of revocation shall state the effective date of revocation, which shall not be sooner than twenty days from the date of receipt of the notice of revocation by the authorizer unless a timely notice of a request for an adjudicative proceeding is filed as set forth herein.

(b) The authorizer may request an adjudicative proceeding to contest the revocation. The request for an adjudicative proceeding must be submitted in writing by the authorizer to the board within twenty days of receipt of the notice of revocation at the following address:

Old Capitol Building

P.O. Box 47206

600 Washington St. S.E., Room 253

Olympia, Washington 98504

Any adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act (APA).

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

WAC 180-19-260 Authorizer oversight—Transfer of charter contract. (1) In the event that a notice of revocation is provided to the authorizer under WAC 180-19-250, any charter contract held by that authorizer shall be transferred, for the remaining portion of the charter term, to the Washington charter school commission on documentation of mutual agreement to the transfer by the charter school board and the commission.

(2) Documentation of mutual agreement shall consist of a written agreement between the charter school board and the commission, signed and dated by the chair or president of the charter school board and the chair of the commission. The agreement shall include any modification or amendment of the charter contract as may be mutually agreed upon by the charter school (~~board~~) and the commission.

(3) The commission shall submit the agreement to the state board of education. The board shall review the agreement and on a determination that the requirements of these rules have been met, issue written certification of the transfer of the charter contract to the charter school (~~governing~~) board and the commission.

(4) On certification by the board of the transfer of the charter contract, the prior authorizer shall transfer to the commission all student records and school performance data collected and maintained in the performance of its duties as an authorizer under RCW 28A.710.100 and 28A.710.170.

(5) The commission, in consultation with the charter school (~~governing~~) board, shall develop and implement a procedure for timely notification to parents of the transfer of the charter contract and any modifications or amendments to the charter included in the written agreement executed under subsection (2) of this section.

(6) If mutual agreement is not obtained on the transfer of the charter contract under RCW 28A.710.120(6) and this section, the charter school shall be closed under the provisions of RCW 28A.710.210. The district shall develop and implement a termination protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets. The protocol must include, at a minimum, a plan for addressing the following:

(a) Adequate and timely communication with parents, school staff and the community regarding the closing of the charter school and the options for student transfer to another public school;

(b) Retention of student, personnel, governance and financial records in compliance with all applicable laws and policies;

(c) The transfer of all student records in accordance with privacy rules set forth in the Family Educational Rights and Privacy Act (FERPA) and any applicable state laws and school district policies;

(d) Resolution of all financial obligations associated with the closure of the charter school;

(e) Return of the public funds in the possession of the charter school as provided for in RCW 28A.710.201(2), or as required by any other state law; and

(f) A plan for the disposition of all other assets, in compliance with applicable state and federal laws or district policies governing the assets.

The protocol must specify tasks, timelines, and responsible parties, including delineating the respective duties of the charter school and the authorizer. The district shall provide the board with a copy of the termination protocol. The board may review the protocol and request revisions for implementation.

WSR 16-24-087

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 7, 2016, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-024.

Title of Rule and Other Identifying Information: Repealing WAC 182-513-1300, 182-513-1301, 182-513-1305, 182-513-1364, 182-513-1365, 182-513-1366 and 182-513-1500; amending WAC 182-507-0125, 182-512-0400, 182-512-0960, 182-513-1315, 182-513-1320, 182-513-1325, 182-513-1330, 182-513-1340, 182-513-1345, 182-513-1350, 182-513-1363, 182-513-1367, 182-513-1380, 182-513-1395, 182-513-1396, 182-513-1397, 182-513-1400, 182-513-1405, 182-513-1410, 182-513-1415, 182-513-1420, 182-513-1425, 182-513-1430, 182-513-1435, 182-513-1440, 182-513-1445, 182-513-1450, 182-513-1455, 182-513-1505, 182-513-1506, 182-513-1507, 182-513-1508, 182-513-1509, 182-513-1510, 182-513-1511, 182-513-1512, 182-513-1513 and 182-513-1514; new WAC 182-513-1100, 182-513-1200, 182-513-1205, 182-513-1210, 182-513-1215, 182-513-1220, 182-513-1225, 182-513-1230, 182-513-1235, 182-513-1240, 182-513-1245, 182-513-1316, 182-513-1317, 182-513-1318, 182-513-1319, 182-513-1355, and 182-513-1385.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on January 10, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 11, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on January 10, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by January 6, 2017, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- The agency revised eligibility rules for institutional medical assistance programs, and creating [created] new reg-

ulations to implement the Patient Protection and Affordable Care Act established under Public Law 111-148.

- The agency referenced rules that are final January 1, 2014, in the long-term care medical rule in addition to the elimination of the presumptive disability program as an eligibility group.
- The agency added the residential waiver service program as a home and community based (HCB) waiver in chapter 182-515 WAC.
- The agency implemented the community first choice option as directed by the Washington state legislature.
- The agency added clarifying language regarding countable assets for institutional services.
- The agency updated links and references and changing [changed] language for readability and clarity.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act under Public Law 111-148; and Code of Federal Regulations at 42 C.F.R. § 431, 435, and 457, and at 45 C.F.R. § 155.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Lori Rolley, 4500 10th Avenue S.E., Lacey, WA 98503, Mailstop 45600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

December 7, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-507-0125 State-funded long-term care services ((program)). ~~((1) The state-funded long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and disability services administration (ADSA) that caseload limits will not be exceeded as a result of the authorization.~~

~~(2) Long-term care services are defined in this section as services provided in one of the following settings:~~

- ~~(a) In a person's own home, as described in WAC 388-106-0010;~~
- ~~(b) Nursing facility, as defined in WAC 388-97-0001;~~
- ~~(c) Adult family home, as defined in RCW 70.128.010;~~
- ~~(d) Assisted living facility, as described in WAC 388-513-1301;~~

~~(e) Enhanced adult residential care facility, as described in WAC 388-513-1301;~~

~~(f) Adult residential care facility, as described in WAC 388-513-1301.~~

~~(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (f) of this section unless nursing facility care is required to sustain life.~~

~~(4) To be eligible for the state-funded long-term care services program described in this section, an adult nineteen years of age or older must meet all of the following conditions:~~

~~(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a), (b), (e), and (f);~~

~~(b) Reside in one of the settings described in subsection (2) of this section;~~

~~(c) Attain institutional status as described in WAC 388-513-1320;~~

~~(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;~~

~~(e) Not have a penalty period due to a transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366;~~

~~(f) Not have equity interest in a primary residence more than the amount described in WAC 388-513-1350 (7)(a)(ii); and~~

~~(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter 388-561 WAC.~~

~~(5) An adult who is related to the supplemental security income (SSI) program as described in WAC 388-475-0050 (1), (2), and (3) must meet the financial requirements described in WAC 388-513-1325, 388-513-1330, and 388-513-1350.~~

~~(6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC 388-505-0250 or 388-505-0255.~~

~~(7) An adult who is not eligible for the state-funded long-term care services program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:~~

~~(a) WAC 388-513-1395 for adults related to SSI; or~~

~~(b) WAC 388-505-0255 for adults related to family institutional medical.~~

~~(8) All adults qualifying for the state-funded long-term care services program will receive CN scope of medical coverage described in WAC 388-501-0060.~~

~~(9) The department determines how much an individual is required to pay toward the cost of care using the following rules:~~

~~(a) For an SSI-related individual residing in a nursing home, see rules described in WAC 388-513-1380.~~

~~(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC 388-515-1505.~~

~~(c) For an individual eligible under the family institutional program, see WAC 388-505-0265.~~

~~(10) A person is not eligible for state-funded long-term care services if that person entered the state specifically to obtain medical care.~~

(11) A person eligible for the state-funded long-term care services program is certified for a twelve month period.) (1) **Caseload limits.**

(a) The state-funded long-term care services program is subject to caseload limits determined by legislative funding.

(b) The aging and long-term support administration (AL TSA) must preauthorize state-funded long-term care service before payments begin.

(c) AL TSA cannot authorize a service, under chapter 388-106 WAC, if doing so would exceed statutory caseload limits.

(2) **Location of services.** State-funded long-term care services may be provided in:

(a) The person's own home, defined in WAC 388-106-0010;

(b) An adult family home, defined in WAC 182-513-1100;

(c) An assisted living facility, defined in WAC 182-513-1100;

(d) An enhanced adult residential care facility, defined in WAC 182-513-1100;

(e) An adult residential care facility, defined in WAC 182-513-1100; or

(f) A nursing facility, defined in WAC 182-500-0050, but only if nursing facility care is necessary to sustain life.

(3) **Client eligibility.** To be eligible for the state-funded long-term care services program, a person must meet all of the following conditions:

(a) General eligibility requirements for medical programs under WAC 182-503-0505, except (c) and (d) of this subsection;

(b) Be age nineteen or older;

(c) Reside in one of the locations under subsection (2) of this section;

(d) Attain institutional status under WAC 182-513-1320;

(e) Meet the functional eligibility requirements under WAC 388-106-0355 for nursing facility level of care;

(f) Not have a penalty period due to a transfer of assets under WAC 182-513-1363;

(g) Not have equity interest in a primary residence more than the amount under WAC 182-513-1350; and

(h) Meet the requirements under chapter 182-516 WAC for annuities owned by the person or the person's spouse.

(4) **General limitations.**

(a) If a person entered Washington only to obtain medical care, the person is ineligible for state-funded long-term care services.

(b) The certification period for state-funded long-term care services may not exceed twelve months.

(c) People who qualify for state-funded long-term care services receive categorically needy (CN) medical coverage under WAC 182-501-0060.

(5) **Supplemental security income (SSI)-related program limitations.**

(a) A person who is related to the SSI program under WAC 182-512-0050 (1), (2), and (3) must meet the financial requirements under WAC 182-513-1315 to be eligible for state-funded long-term care services.

(b) An SSI-related person who is not eligible for the state-funded long-term care services program under CN rules

may qualify under medically needy (MN) rules under WAC 182-513-1395.

(c) The agency determines how much an SSI-related person is required to pay toward the cost of care, using:

(i) WAC 182-513-1380, if the person resides in a nursing facility.

(ii) WAC 182-515-1505 or 182-515-1510, if the person resides in one of the locations listed in subsection (2)(a) through (e) of this section.

(6) **Modified adjusted gross income (MAGI)-based program limitations.**

(a) A person who is related to the MAGI-based program may be eligible for state-funded long-term care services under this section and chapter 182-514 WAC if the person resides in a nursing facility.

(b) A MAGI-related person is not eligible for residential or in-home care state-funded long-term care services unless the person also meets the SSI-related eligibility criteria under subsection (5)(a) of this section.

(c) A MAGI-based person does not pay toward the cost of care in a nursing facility.

(7) Current resource, income, PNA, and room and board standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc>.

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources. (1) For SSI-related medical programs, a vehicle is defined as anything used for transportation. In addition to cars and trucks, a vehicle can include boats, snowmobiles, and animal-drawn vehicles.

(2) One vehicle is excluded regardless of its value, if it is used to provide transportation for the ((disabled)) SSI-related person or a member of the person's household.

(3) ((For a person receiving SSI-related institutional coverage who has a community spouse, one vehicle is excluded regardless of its value or its use. See WAC 182-513-1350 (7)(b).

(4)) A vehicle used as the person's primary residence is excluded as the home, and does not count as the one excluded vehicle under subsection (2) ((or (3))) of this section.

((5) All other vehicles, except those excluded under WAC 182-512-0350 (11) through (14), are treated as nonliquid resources and the equity value is counted toward the resource limit.))

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0960 SSI-related medical—Allocating income—((How the agency considers income and resources when determining eligibility for a person applying for noninstitutional Washington apple health (WAH) when another household member is receiving institutional WAH)) Determining eligibility for a spouse when the other spouse receives long-term services and supports. ((1) The agency follows rules described in WAC 182-513-1315 for a person considered to be in institutional WAH, which means a person who is either residing in a medical

institution, or approved for a home and community based waiver, or approved for the WAH institutional hospice program. The rules in this section describe how the agency considers household income and resources when the household contains both institutional and noninstitutionalized household members.

(2) An institutionalized person (adult or child) who is not SSI-related may be considered under the long-term care for families and children programs described in WAC 182-514-0230 through 182-514-0265.

(3) The agency considers the income and resources of spouses as available to each other through the end of the month in which the spouses stopped living together. See WAC 182-513-1330 and 182-513-1350 when a spouse is institutionalized.

(4) The agency considers income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a boarding home (assisted living, enhanced adult residential center, adult residential center), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disabilities group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(5) The agency considers income and resources jointly when both spouses are placed in a boarding home, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

(6) When determining SSI-related WAH categorically needy (CN) or medically needy (MN) eligibility for a community spouse applying for health care coverage, the agency counts:

(a) The separate income of the community spouse; plus

(b) One half of any community income received by the community spouse and the institutionalized spouse; plus

(c) Any amount allocated to the community spouse from the institutionalized spouse. The terms "community spouse" and "institutional spouse" are defined in WAC 182-513-1301.

(7) For the purposes of determining the countable income of a community spouse applying for health care coverage as described in subsection (6) of this section, it does not matter whether the spouses reside together or not. Income that is allocated and actually available to a community spouse is considered that person's income.

(8) For the purposes of determining the countable income of a community spouse or children applying for health care coverage under modified adjusted gross income (MAGI)-based family, pregnancy or children's WAH programs, the agency uses the following rules to determine if the income of the institutionalized person is considered in the eligibility calculation:

(a) When the institutionalized spouse or parent lives in the same home with the community spouse and/or children, their income is counted in the determination of household income following the rules for the medical program that is being considered.

(b) When the institutionalized spouse or parent does not live in the same home as the spouse and/or children, only income that is allocated and available to the household is counted.

(9) When determining the countable income of a community spouse applying for health care coverage under the WAH MN program, the agency allocates income from the community spouse to the institutionalized spouse in an amount up to the one-person effective medically needy income level (MNIL) less the institutionalized spouse's income, when:

(a) The community spouse is living in the same household as the institutionalized spouse;

(b) The institutionalized spouse is receiving home and community-based waiver or institutional hospice services described in WAC 182-515-1505; and

(c) The institutionalized spouse has gross income of less than the MNIL.

(10) See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related persons. A separate medical assistance unit is always established for persons who meet institutional status described in WAC 182-513-1320.) (1) General information.

(a) This section describes how the agency determines household income and resources when the household contains both institutional and noninstitutional household members.

(b) A separate medical assistance unit is established for people who meet institutional status under WAC 182-513-1320. See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include people related to the supplemental security income (SSI) program.

(c) Throughout this section, "home" means "own home" as defined in WAC 388-106-0010.

(d) The income and resources of each spouse are available to the other through the end of the month in which the spouses stopped living together.

(e) The agency determines income and resources separately starting the first day of the month following the month of separation if spouses stop living together because of placement in an alternate living facility (ALF) and:

(i) Only one spouse enters the ALF;

(ii) Both spouses enter the same ALF but have separate rooms; or

(iii) Both spouses enter separate ALFs.

(f) If spouses share a room in an ALF, the agency determines that they live together.

(2) The agency determines household income and resources depending on living arrangement of the applicant and spouse.

(a) When the community spouse applies for coverage but the spouse receiving long-term services and supports lives in an institution:

(i) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(ii) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligibility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse.

(b) When the community spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives HCB waiver, PACE, RCL, or hospice, the agency counts income and resources under this chapter.

(c) When the spousal impoverishment protections community (SIPC) spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives community first choice (CFC), the agency counts income and resources under this chapter.

(d) When the community spouse applies for coverage but his or her spouse receives HCB waiver, PACE, RCL, or hospice in an ALF:

(i) If the community spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(A) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(B) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligibility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse; or

(ii) If the community spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(e) When the SIPC spouse applies for coverage but his or her spouse receives CFC in an ALF:

(i) If the SIPC spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(A) The agency counts income under this chapter; and

(B) The agency counts resources under this chapter, plus any resources allocated to the SIPC spouse when eligibility for the spousal impoverishment protections institutionalized (SIPI) spouse was determined, but that remain in the name of the SIPI spouse; or

(ii) If the SIPC spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(3) Determining household income when the spouse of an HCB waiver recipient is not eligible for categorically needy (CN) coverage.

(a) When the community spouse is not eligible for categorically needy (CN) coverage under subsection (2) of this section, the agency determines eligibility under the medically needy program;

(b) The agency counts income and resources as described under subsection (2) of this section;

(c) The agency allocates income to the institutionalized spouse before comparing the community spouse's income to the medically needy income level (MNIL) if:

(i) The community spouse lives in the same household as the institutionalized spouse;

(ii) The institutionalized spouse is receiving home and community-based waiver services under WAC 182-515-1505 or institutional hospice services under WAC 182-513-1240; and

(iii) The institutionalized spouse has gross income under the MNIL.

(d) The allocation in (c) of this subsection cannot exceed the one-person effective MNIL minus the institutionalized spouse's income.

NEW SECTION

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. See chapter 182-500 WAC for additional definitions.

"Adequate consideration" means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

"Administrative costs" or "costs" means necessary costs paid by the guardian including attorney fees.

"Aging and long-term support administration (AL TSA)" means the administration within the Washington state department of social and health services (DSHS).

"Alternate living facility (ALF)" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) An adult family home (AFH) licensed under chapter 70.128 RCW.

(b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) A mental health adult residential treatment facility under chapter 246-337 WAC.

(d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

"Assets" means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

"Clothing and personal incidentals (CPI)" means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

"Community options program entry system (COPEs)" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

"Comprehensive assessment reporting evaluation (CARE) assessment" means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

"Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

"Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Dependent" means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Developmental disabilities administration (DDA) home and community based (HCB) waiver" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCB waivers:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

"Guardianship fees" or "fees" means necessary fees charged by a guardian for services rendered on behalf of a client.

"Home and community based (HCB) waiver programs authorized by home and community services (HCS)" means medicaid HCB waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCB waivers: Community options program entry system (COPEs), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

"Home and community based services (HCBS)" means LTSS provided in the home or a residential setting to persons assessed by the department.

"Institutional services" means services paid for by Washington apple health, and provided:

(a) In a medical institution;

(b) Through an HCB waiver; or

(c) Through programs based on HCB waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is legally married to a person who is not in a medical institution.

"Life care community" see continuing care community.

"Likely to reside" means the agency or its designee reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports (LTSS)" includes institutional and noninstitutional services authorized by the department.

"Medicaid personal care (MPC)" means a medicaid state plan home and community based service under chapter 388-106 WAC.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized

spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

"Noninstitutional medicaid" means any apple health program not based on HCB waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for thirty days or more under chapter 182-513 WAC.

"Nursing facility level of care (NFLOC)" is under WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

"Penalty period" or "period of ineligibility" means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

"Room and board" means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

"Short stay" means residing in a medical institution for a period of twenty-nine days or fewer.

"Special income level (SIL)" means the monthly income standard that is three hundred percent of the supplemental security income (SSI) federal benefit rate.

"Spousal impoverishment protections" means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through December 31, 2018, services authorized under 1115 and 1915(k) of the Social Security Act.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

"State spousal resource standard" means the minimum CSRA standard for a CS or SIPC spouse.

"Third-party resource (TPR)" means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

"Transfer" means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as

income, real property, or personal property, by one of the following:

- (a) An intentional act that changes ownership or title; or
- (b) A failure to act that results in a change of ownership or title.

"Uncompensated value" means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

"Undue hardship" means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

NEW SECTION

WAC 182-513-1200 Long-term services and supports (LTSS) authorized under Washington apple health programs. (1) Long-term services and supports (LTSS) programs available to people eligible for noninstitutional Washington apple health coverage who meet the functional requirements.

(a) Noninstitutional apple health coverage in an alternate living facility (ALF) under WAC 182-513-1205.

(b) Community first choice (CFC) under WAC 182-513-1210.

(c) Medicaid personal care (MPC) under WAC 182-513-1225.

(d) For people who do not meet institutional status under WAC 182-513-1320, skilled nursing or rehabilitation is available under the CN, medically needy (MN) or alternative benefits plan (ABP) scope of care if enrolled into a managed care plan.

(2) Non-HCB waiver LTSS programs that use institutional rules under WAC 182-513-1315 and 182-513-1380 or HCB waiver rules under chapter 182-515 WAC, depending on the person's living arrangement:

(a) Program of all-inclusive care for the elderly (PACE) under WAC 182-513-1230.

(b) Roads to community living (RCL) under WAC 182-513-1235.

(c) Hospice under WAC 182-513-1240.

NEW SECTION

WAC 182-513-1205 Determining eligibility for non-institutional coverage in an alternate living facility (ALF).

(1) This section describes the eligibility determination for noninstitutional coverage for a person who lives in a department-contracted alternate living facility (ALF) defined under WAC 182-513-1100.

(2) The eligibility criteria for noninstitutional Washington apple health in an ALF follows SSI-related rules under WAC 182-512-0050 through 182-512-0960 with the exception of the higher income standard under subsection (3) of this section.

(3) A person is eligible for noninstitutional coverage under the categorically needy (CN) program if the person's monthly income after allowable exclusions under chapter 182-512 WAC:

(a) Does not exceed the special income level (SIL) defined under WAC 182-513-1100; and

(b) Is less than or equal to the person's assessed state rate at a department-contracted facility. To determine the CN standard: $((y \times 31) + \$38.84)$, where "y" is the state daily rate. \$38.84 is based on the cash payment standard for a person living in an ALF setting under WAC 388-478-0006.

(4) A person is eligible for noninstitutional coverage under the medically needy (MN) program if the person's monthly income after allowable exclusions under chapter 182-512 WAC is less than or equal to the person's private rate at a department-contracted facility. To determine the MN standard: $((z \times 31) + \$38.84)$, where "z" is the facility's private daily rate. To determine MN spenddown liability, see chapter 182-519 WAC.

(5) For both CN and MN coverage, a person's countable resources cannot exceed the standard under WAC 182-512-0010.

(6) The agency or its designee approves CN noninstitutional coverage for twelve months.

(7) The agency or its designee approves MN noninstitutional coverage for a period of months under chapter 182-504 WAC for an SSI-related person, provided the person satisfies any spenddown liability under chapter 182-519 WAC.

(8) People who receive medicaid personal care (MPC) or community first choice (CFC) pay all of their income to the ALF except a personal needs allowance of \$62.79.

(9) A person may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the payment under this subsection.

NEW SECTION

WAC 182-513-1210 Community first choice (CFC)

—**Overview.** (1) Community first choice (CFC) is a Washington apple health state plan benefit authorized under Section 1915(k) of the Social Security Act.

(2) CFC enables the agency and its contracted entities to deliver person-centered home and community based long-term services and supports (LTSS) to medicaid-eligible people who meet the institutional level of care under WAC 388-106-0355. See:

(a) WAC 388-106-0270 through 388-106-0295 for services included within the CFC benefit package.

(b) WAC 182-513-1215 for financial eligibility for CFC services.

NEW SECTION

WAC 182-513-1215 Community first choice (CFC)

—**Eligibility.** (1) An applicant who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the applicant is:

(a) Eligible for a noninstitutional Washington apple health program which provides categorically needy (CN) or alternative benefits plan (ABP) scope of care;

(b) A spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1220; or

(c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.

(2) An applicant whose only coverage is through one of the following programs is not eligible for CFC:

(a) Medically needy program under WAC 182-519-0100;

(b) Premium-based children's program under WAC 182-505-0215;

(c) Medicare savings programs under WAC 182-517-0300;

(d) Family planning program under WAC 182-505-0115;

(e) Take charge program under WAC 182-532-0720;

(f) Medical care services program under WAC 182-508-0005;

(g) Pregnant minor program under WAC 182-505-0117;

(h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;

(i) State-funded long-term care (LTC) for noncitizens program under WAC 182-507-0125; or

(j) Kidney disease program under chapter 182-540 WAC.

(3) Transfer of asset penalties under WAC 182-513-1363 do not apply to CFC applicants, unless the applicant is applying for long-term services and supports (LTSS) that are available only through one of the HCB waivers under chapter 182-515 WAC.

(4) Home equity limits under WAC 182-513-1350 do apply.

(5) Post-eligibility treatment of income rules do not apply if the person is eligible under subsection (1)(a) or (b) of this section. People who reside in an alternate living facility (ALF) do pay up to the room and board standard. The room and board amount is based on the effective one-person medically needy income level (MNIL) minus the residential personal needs allowance (PNA) except when eligibility is based on the rules under WAC 182-513-1205.

(6) A person who receives CFC and aged, blind, disabled (ABD) cash assistance in an AFH keeps a clothing and personal incidentals (CPI) amount of \$38.84 and pays the remainder of the cash grant and other available income towards room and board.

(7) A person who receives CFC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board, if residing in a residential setting.

(8) Post-eligibility treatment of income rules do apply if a person is eligible under subsection (1)(c) of this section.

(9) A person may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.

(10) PNA, MNIL, and room and board standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

NEW SECTION

WAC 182-513-1220 Community first choice (CFC)

—**Spousal impoverishment protections for noninstitutional Washington apple health clients.** (1) The agency or its designee determines eligibility for community first choice

(CFC) using spousal impoverishment protections under this section, when an applicant:

(a) Is married to, or marries, a person not in a medical institution;

(b) Meets institutional level of care and eligibility for CFC services under WAC 388-106-0270 through 388-106-0295;

(c) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program:

(i) Due to spousal deeming rules under WAC 182-512-0920, or due to exceeding the resource limit in WAC 182-512-0010, or both; or

(ii) In an ALF due to combined spousal resources exceeding the resource limit in WAC 182-512-0010; and

(d) Meets the aged, blindness, or disability criteria under WAC 182-512-0050.

(2) The agency or its designee determines countable income using the SSI-related income rules under chapter 182-512 WAC but uses only the applicant's or recipient's separate income and not the income of the applicant's or recipient's spouse.

(3) The agency or its designee determines countable resources using the SSI-related resource rules under chapter 182-512 WAC, except pension funds owned by the spousal impoverishment protections community (SIPC) spouse are not excluded as described under WAC 182-512-0550:

(a) For the applicant or recipient, the resource standard is \$2000.

(b) Before determining countable resources used to establish eligibility for the applicant, the agency allocates the state spousal resource standard to the SIPC spouse.

(c) The resources of the SIPC spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for CFC services is established unless subsection (8) of this section applies.

(4) The SIPI spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2000 to the SIPC spouse.

(5) A redetermination of the couple's resources under subsection (3) of this section is required if:

(a) The SIPI spouse has a break in CFC services of at least thirty consecutive days;

(b) The SIPI spouse's countable resources exceed the standard under subsection (3)(a) of this section; or

(c) The SIPI spouse does not transfer the amount under subsection (4) of this section to the SIPC spouse by the end of the month of the first regularly scheduled eligibility review.

(6) If the applicant lives at home and the applicant's separate countable income is at or below the SSI categorically needy income level (CNIL) and the applicant is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(7) If the applicant lives in an ALF, has separate countable income at or below the standard under WAC 182-513-1205(2), and is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(8) If the applicant is employed and has separate countable income at or below the standard under WAC 182-511-

1060, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(9) Once a person no longer receives CFC services for thirty consecutive days, the agency redetermines eligibility without using spousal impoverishment protection, under WAC 182-504-0125.

(10) If the applicant's separate countable income is above the standards under subsections (6), (7), and (8) of this section, the applicant is not eligible for CFC services under this section.

(11) The spousal impoverishment protections under this section expire on December 31, 2018.

(12) Standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

NEW SECTION

WAC 182-513-1225 Medicaid personal care (MPC).

(1) Medicaid personal care (MPC) is a state-plan benefit available to a person who is determined:

(a) Functionally eligible for MPC services under WAC 388-106-0200 through 388-106-0235; and

(b) Financially eligible for a noninstitutional categorically needy (CN) or alternative benefits plan (ABP) Washington apple health program.

(2) MPC services may be provided to a person residing at home, in a department-contracted adult family home (AFH), or in a licensed assisted living facility that is contracted with the department to provide adult residential care services.

(3) A person who resides in an alternate living facility (ALF) listed in subsection (2) of this section:

(a) Keeps a personal needs allowance (PNA) of \$62.79; and

(b) Pays room and board up to the statewide room and board amount, unless CN eligibility is determined using rules under WAC 182-513-1205.

(4) A person who receives MPC and aged, blind, disabled (ABD) cash assistance in an AFH keeps a clothing and personal incidentals (CPI) amount of \$38.84 and pays the rest of the cash grant and other available income towards room and board.

(5) A person who receives MPC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board, if residing in a residential setting.

(6) A person may have to pay third-party resources as defined under WAC 182-513-1100 in addition to room and board.

(7) Current PNA and room and board standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

NEW SECTION

WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE).

(1) The program of all-inclusive care for the elderly (PACE) provides long-term services and supports (LTSS), medical, mental health, and chemical depen-

dency treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

(2) Program rules governing functional eligibility for PACE are listed under WAC 388-106-0700, 388-106-0705, 388-106-0710, and 388-106-0715.

(3) A person is financially eligible for PACE if the person:

- (a) Is age:
 - (i) Fifty-five or older and disabled under WAC 182-512-0050; or
 - (ii) Sixty-five or older;
 - (b) Meets nursing facility level of care under WAC 388-106-0355;
 - (c) Lives in a designated PACE service area;
 - (d) Meets financial eligibility requirements under this section; and
 - (e) Agrees to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.
- (4) Although PACE is not a home and community based (HCB) waiver program, financial eligibility is determined using the HCB waiver rules under WAC 182-515-1505 when a person is living at home or in an alternate living facility (ALF), with the following exceptions:
- (a) PACE enrollees are not subject to the transfer of asset rules under WAC 182-513-1363; and
 - (b) PACE enrollees may reside in a medical institution thirty days or longer and still remain eligible for PACE services. The eligibility rules for institutional coverage are under WAC 182-513-1315 and 182-513-1380.
- (5) A person may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.

NEW SECTION

WAC 182-513-1235 Roads to community living (RCL). (1) Roads to community living (RCL) is a demonstration project authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

(2) Program rules governing functional eligibility for RCL are described in WAC 388-106-0250 through 388-106-0265. RCL services are authorized by the department.

(3) A person must have a stay of at least ninety consecutive days in a qualified institutional setting such as a hospital, nursing home, or residential habilitation center, to be eligible for RCL. The ninety-day count excludes days paid solely by medicare, must include at least one day of medicaid paid inpatient services immediately prior to discharge, and the person must be eligible to receive any categorically needy (CN), medically needy (MN), or alternate benefit plan (ABP) medicaid program on the day of discharge. In addition to meeting the ninety-day criteria, a person who is being discharged from a state psychiatric hospital must be under age twenty-two or over age sixty-four.

(4) Once a person is discharged to home or to a residential setting under RCL, the person remains continuously eli-

gible for medical coverage for three hundred sixty-five days unless the person:

- (a) Returns to an institution for thirty days or longer;
 - (b) Is incarcerated in a public jail or prison;
 - (c) No longer wants RCL services;
 - (d) Moves out-of-state; or
 - (e) Dies.
- (5) Changes in income or resources during the continuous eligibility period do not affect eligibility for RCL services. Changes in income or deductions may affect the amount a person must pay toward the cost of care.
- (6) A person approved for RCL is not subject to transfer of asset provisions under WAC 182-513-1363 during the continuous eligibility period, but transfer penalties may apply if the person needs HCB waiver or institutional services once the continuous eligibility period has ended.
- (7) A person who is not otherwise eligible for a noninstitutional medical program must have eligibility determined using the same rules used to determine eligibility for HCB waivers. If HCB rules are used to establish eligibility, the person must pay participation toward the cost of RCL services. HCB waiver eligibility and cost of care calculations are under:
- (a) WAC 182-515-1508 and 182-515-1509 for home and community services (HCS); and
 - (b) WAC 182-515-1513 and 182-515-1514 for developmental disabilities administration (DDA) services.
- (8) At the end of the continuous eligibility period, the agency or its designee redetermines a person's eligibility for other programs under WAC 182-504-0125.

NEW SECTION

WAC 182-513-1240 The hospice program. (1) General information.

(a) The hospice program provides palliative care to people who elect to receive hospice services and are certified as terminally ill by their physician.

(b) Program rules governing election of hospice services are under chapter 182-551 WAC.

(c) A person may revoke an election to receive hospice services at any time by signing a revocation statement.

(d) Transfer of asset rules under WAC 182-513-1363 do not apply to the hospice program in any setting, regardless of which apple health program the person is eligible to receive.

(2) When hospice is a covered service.

(a) A person who receives coverage under a categorically needy (CN), medically needy (MN), or alternative benefits plan (ABP) program is eligible for hospice services as part of the program specific benefit package.

(b) A person who receives coverage under the alien emergency medical (AEM) program under WAC 182-507-0110 may be eligible for payment for hospice services if pre-approved by the agency.

(c) A person who receives coverage under the medical care services (MCS) program is not eligible for coverage of hospice services.

(3) When HCB waiver rules are used to determine eligibility for hospice.

(a) A person who is not otherwise eligible for a CN, MN, or ABP noninstitutional program who does not reside in a medical institution, may be eligible for CN coverage under the hospice program by using home and community based (HCB) waiver rules under WAC 182-515-1505 to determine financial eligibility.

(b) When HCB waiver rules are used, the following exceptions apply:

(i) A person on the hospice program may reside in a medical institution, including a hospice care center, thirty days or longer and remain eligible for hospice services; and

(ii) A person residing at home on the hospice program who has available income over the special income limit (SIL), defined under WAC 182-513-1100, is not eligible for CN coverage. If available income is over the SIL, the agency or its designee determines eligibility for medically needy coverage under WAC 182-519-0100.

(c) When HCB waiver rules are used, a person may be required to pay income and third-party resources (TPR) as defined under WAC 182-513-1100 toward the cost of hospice services. The cost of care calculation is described under WAC 182-515-1509.

(d) When a person already receives HCB waiver services and elects hospice, the person must pay any required cost of care towards the HCB waiver service provider first.

(4) Eligibility for hospice services in a medical institution:

(a) A person who elects to receive hospice services, resides in a medical institution for thirty days or longer, and has income:

(i) Equal to or less than the SIL is income eligible for CN coverage. Eligibility for institutional hospice is determined under WAC 182-513-1315; or

(ii) Over the SIL may be eligible for MN coverage under WAC 182-513-1245.

(b) A person eligible for hospice services in a medical institution may have to pay toward the cost of nursing facility or hospice care center services. The cost of care calculation is under WAC 182-513-1380.

(5) Changes in coverage. The agency or its designee redetermines a person's eligibility under WAC 182-504-0125 if the person:

(a) Revokes the election of hospice services and is eligible for coverage using HCB waiver rules only, described in subsection (3) of this section; or

(b) Loses CN, MN, or ABP eligibility.

(6) Personal needs allowance and income and resource standards for hospice and home and community based (HCB) waiver programs are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

NEW SECTION

WAC 182-513-1245 Medically needy hospice program in a medical institution. (1) General information.

(a) When living in a medical institution, a person may be eligible for medically needy coverage under the hospice program. A person must:

(i) Meet program requirements under WAC 182-513-1315;

(ii) Have available income that exceeds the special income level (SIL), defined under WAC 182-513-1100, but is below the institution's monthly state-contracted rate;

(iii) Meet the financial requirements of subsection (4) or (5) of this section; and

(b) Elect hospice services under chapter 182-551 WAC.
(2) Financial eligibility.

(a) The agency or its designee determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.

(b) The agency or its designee determines a person's countable income by:

(i) Excluding income under WAC 182-513-1340;

(ii) Determining available income under WAC 182-513-1325 or 182-513-1330;

(iii) Disregarding income under WAC 182-513-1345; and

(iv) Deducting medical expenses that were not used to reduce excess resources under WAC 182-513-1350.

(3) Determining the state-contracted daily rate in an institution, and the institutional medically needy income level (MNIL).

(a) The agency or its designee determines the state-contracted daily rate in an institution and the institutional MNIL based on the living arrangement, and whether the person is entitled to receive hospice services under medicare.

(b) When the person resides in a hospice care center:

(i) If entitled to medicare, the state-contracted daily rate is the state-contracted daily hospice care center rate. The institutional MNIL is calculated by multiplying the state-contracted daily rate by 30.42.

(ii) If not entitled to medicare, the state-contracted daily rate is the state-contracted daily hospice care center rate, plus the state-contracted daily hospice rate. To calculate the institutional MNIL, multiply the state-contracted daily rate by 30.42.

(c) When the person resides in a nursing facility:

(i) If entitled to medicare, the state-contracted daily rate is ninety-five percent of the nursing facility's state-contracted daily rate. The institutional MNIL is calculated by multiplying the state-contracted daily rate by 30.42.

(ii) If not entitled to medicare, the state-contracted daily rate is ninety-five percent of the nursing facility's state-contracted daily rate, plus the state-contracted daily hospice rate. The institutional MNIL is calculated by multiplying the state-contracted daily rate by 30.42.

(4) Eligibility for agency payment to the facility for institutional hospice services and the MN program.

(a) If a person's countable income plus excess resources is less than or equal to the state-contracted daily rate under subsection (3) of this section times the number of days the person has resided in the medical institution, the person:

(i) Is eligible for agency payment to the facility for institutional hospice services;

(ii) Is approved for MN coverage for a twelve-month certification period;

(b) Pays excess resources under WAC 182-513-1350; and

(c) Pays income towards the cost of care under WAC 182-513-1380.

(5) Eligibility for institutional MN spenddown.

(a) If a person's countable income is more than the state-contracted daily rate times the number of days the person has resided in the medical institution, but less than the institution's private rate for the same period, the person:

(i) Is not eligible for agency payment to the facility for institutional hospice services; and

(ii) Is eligible for the MN spenddown program for a three-month or six-month base period when qualifying medical expenses meet a person's spenddown liability.

(b) Spenddown liability is calculated by subtracting the institutional MNIL from the person's countable income for each month in the base period. The values from each month are added together to determine the spenddown liability.

(c) Qualifying medical expenses used to meet the spenddown liability are described in WAC 182-519-0110, except that only costs for hospice services not included within the state-contracted daily rate are qualifying medical expenses.

(6) Eligibility for MN spenddown.

(a) If a person's countable income is more than the institution's private rate times the number of days the person has resided in the medical institution, the person is not eligible for agency payment to the facility for institutional hospice services and institutional MN spenddown; and

(b) The agency or its designee determines eligibility for MN spenddown under chapter 182-519 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1315 ((Eligibility for long-term care (institutional, waiver, and hospice) services.)) General eligibility requirements for long-term care (LTC) programs. ((This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state-funded long-term care services program described in subsection (11)).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 182-503-0505 (2) and (3)(a) through (g);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for home and community services (HCS) waiver and nursing facility coverage; or

(d) Meet criteria for division of developmental disabilities (DDD) assessment under chapter 388-828 WAC for DDD waiver or institutional services;

(e) Not have a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365;

(f) Not have equity interest in their primary residence greater than the home equity standard described in WAC 388-513-1350; and

(g) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC:

(i) This is required for all institutional or waiver services and includes those individuals receiving supplemental security income (SSI).

(ii) A signed and completed eligibility review for long-term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the supplemental security income (SSI) program as described in WAC 182-512-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

(b) Be approved and receiving aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC 388-424-0010; or

(c) Be eligible for CN apple health for kids described in WAC 182-505-0210; or CN family medical described in WAC 182-505-0240; or family and children's institutional medical described in WAC 182-514-0230 through 182-514-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services for noncitizen children require prior approval by aging and disability services administration (ADSA) under the state-funded nursing facility program described in WAC 182-507-0125; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC 182-512-0050 are not eligible for waiver services.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC 388-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPES, New Freedom, PACE, and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers.

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 182-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI-related clients with income over the effective one person MNIL and gross income at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC 182-514-0230, 182-514-0255, or 182-514-0260; or

(b) Related to the SSI program as described in WAC 182-512-0050 and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI-related program described in WAC 182-512-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI-related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 388-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC 388-513-1350; and

(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365.

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 for:

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

(11) The department determines eligibility for state funded programs under the following rules:

(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.

(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.

(c) A noncitizen client who is not eligible under subsections (11)(a) or (b) and needs long term care services may be eligible under WAC 182-507-0110 and 82-507-0125. This program must be pre-approved by aging and disability services administration (ADSA).

(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is under the age of twenty one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

(14) If an individual under age twenty one is not eligible for medicaid under SSI-related in WAC 182-512-0050 or ABD cash assistance described in WAC 388-400-0060 or MCS described in WAC 182-508-0005, consider eligibility under WAC 182-514-0255 or 182-514-0260.

(15) Noncitizen clients under age nineteen can be considered for the apple health for kids program described in WAC 182-505-0210 if they are admitted to a medical institution for less than thirty days. Once a client resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 182-514-0260 and must be preapproved for coverage by ADSA as described in WAC 182-507-0125.

(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 182-507-0125. These clients must be preapproved by ADSA.

(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;

(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;

(c) For clients receiving DDD CN waiver services see WAC 388-515-1514; or

(d) For TANF related clients residing in a medical institution see WAC 182-514-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and

~~board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN medicaid. These groups are described in WAC 182-512-0880-)) This section lists the sections in this chapter that describe how the agency determines a person's eligibility for long-term care services. These sections are:~~

(1) WAC 182-513-1316 General eligibility requirements for long-term care (LTC) programs.

(2) WAC 182-513-1317 Income and resource criteria for an institutionalized person.

(3) WAC 182-513-1318 Income and resource criteria for home and community based (HCB) waiver programs and hospice.

(4) WAC 182-513-1319 State-funded programs for non-citizens who are not eligible for a federally funded program.

NEW SECTION

WAC 182-513-1316 General eligibility requirements for long-term care (LTC) programs. (1) To be eligible for long-term care (LTC) services, a person must:

(a) Meet the general eligibility requirements for medical programs under WAC 182-503-0505, except:

(i) An adult age nineteen or older must meet citizenship and immigration status requirements under WAC 182-503-0535 (2)(a) or (b);

(ii) A person under age nineteen must meet citizenship and immigration status requirements under WAC 182-503-0535 (2)(a), (b), (c), or (d); and

(iii) If a person does not meet the requirements in (a)(i) or (ii) of this subsection, the person is not eligible for medicaid and must have eligibility determined under WAC 182-513-1319.

(b) Attain institutional status under WAC 182-513-1320;

(c) Meet the functional eligibility under:

(i) Chapter 388-106 WAC for a home and community services (HCS) home and community based (HCB) waiver or nursing facility coverage; or

(ii) Chapter 388-828 WAC for developmental disabilities administration (DDA) HCB waiver or institutional services; and

(d) Meet either:

(i) SSI-related criteria under WAC 182-512-0050; or

(ii) MAGI-based criteria under WAC 182-503-0510(2), if residing in a medical institution. A person who is eligible for MAGI-based coverage is not subject to the provisions under subsection (2) of this section.

(2) A supplemental security income (SSI) recipient or a person meeting SSI-related criteria who needs LTC services must also:

(a) Not have a penalty period of ineligibility due to the transfer of assets under WAC 182-513-1363;

(b) Not have equity interest in a primary residence greater than the home equity standard under WAC 182-513-1350; and

(c) Disclose to the agency or its designee any interest the applicant or spouse has in an annuity, which must meet annuity requirements under chapter 182-516 WAC.

(3) A person who receives SSI must submit a signed health care coverage application form attesting to the provisions under subsection (2) of this section. A signed and completed eligibility review for LTC benefits can be accepted for people receiving SSI who are applying for long-term care services.

(4) To be eligible for HCB waiver services, a person must also meet the program requirements under:

(a) WAC 182-515-1505 through 182-515-1509 for HCS HCB waivers; or

(b) WAC 182-515-1510 through 182-515-1514 for DDA HCB waivers.

NEW SECTION

WAC 182-513-1317 Income and resource criteria for an institutionalized person. (1) This section provides an overview of the income and resource eligibility rules for a person who lives in an institutional setting.

(2) To determine income eligibility for an SSI-related long-term care (LTC) applicant under the categorically needy (CN) program, the agency or its designee:

(a) Determines available income under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340; and

(c) Compares remaining available income to the special income level (SIL) defined under WAC 182-513-1100. A person's available income must be equal to or less than the SIL to be eligible for CN coverage.

(3) To determine income eligibility for an SSI-related LTC client under the medically needy (MN) program, the agency or its designee follows the income standards and eligibility rules under WAC 182-513-1395.

(4) To be resource eligible under the SSI-related LTC CN or MN program, the person must:

(a) Meet the resource eligibility requirements under WAC 182-513-1350;

(b) Not have a penalty period of ineligibility due to a transfer of assets under WAC 182-513-1363;

(c) Disclose to the state any interest the person or the person's spouse has in an annuity, which must meet the annuity requirements under chapter 182-516 WAC.

(5) A resident of eastern or western state hospital is eligible for medicaid if the person:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is under age twenty-one; or

(c) Applies for or receives inpatient psychiatric treatment in the month of the person's twenty-first birthday that will likely continue through the person's twenty-first birthday, and can receive coverage until:

(i) The facility discharges the person; or

(ii) The end of the month in which the person turns age twenty-two, whichever occurs first; or

(d) Is at least age sixty-five.

(6) To determine long-term care CN or MN income eligibility for a person eligible under a MAGI-based program, the agency or its designee follows the rules under chapter 182-514 WAC.

(7) There is no asset test for MAGI-based LTC programs under WAC 182-514-0245.

(8) The agency or its designee determines a person's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For an SSI-related person residing in a medical institution, see WAC 182-513-1380;

(b) For an SSI-related person on a home and community based waiver, see chapter 182-515 WAC.

NEW SECTION

WAC 182-513-1318 Income and resource criteria for home and community based (HCB) waiver programs and hospice. (1) This section provides an overview of the income and resource eligibility rules for a person to be eligible for a categorically needy (CN) home and community based (HCB) waiver program under chapter 182-515 WAC or the hospice program under WAC 182-513-1240 and 182-513-1245.

(2) To determine income eligibility for an SSI-related long-term care (LTC) HCB waiver, the agency or its designee:

(a) Determines income available under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340;

(c) Compares remaining gross nonexcluded income to:

(i) The special income level (SIL) defined under WAC 182-513-1100; or

(ii) For HCB service programs authorized by the aging and long-term supports administration (AL TSA), a higher standard is determined following the rules under WAC 182-515-1508 if a client's income is above the SIL but net income is below the medically needy income level (MNIL).

(3) A person who receives MAGI-based coverage is not eligible for HCB waiver services unless found eligible based on program rules in chapter 182-515 WAC.

(4) To be resource eligible under the HCB waiver program, the person must:

(a) Meet the resource eligibility requirements and standards under WAC 182-513-1350;

(b) Not be in a period of ineligibility due to a transfer of asset penalty under WAC 182-513-1363;

(c) Disclose to the state any interest the person or that person's spouse has in an annuity and meet the annuity requirements under chapter 182-516 WAC.

(5) The agency or its designee determines a person's responsibility to pay toward the cost of care for LTC services as follows:

(a) For people receiving HCS HCB waiver services, see WAC 182-515-1509;

(b) For people receiving DDA HCB waiver services, see WAC 182-515-1514.

(6) To be eligible for the CN hospice program, see WAC 182-513-1240.

(7) To be eligible for the MN hospice program in a medical institution, see WAC 182-513-1245.

NEW SECTION

WAC 182-513-1319 State-funded programs for non-citizens who are not eligible for a federally funded pro-

gram. (1) This section describes the state-funded programs available to a person who does not meet the citizenship and immigration status criteria under WAC 182-513-1316 for federally funded coverage.

(2) If a person meets the eligibility and incapacity criteria of the medical care services (MCS) program under WAC 182-508-0005, the person may receive nursing facility care or state-funded residential services in an alternate living facility (ALF).

(3) Noncitizens age nineteen or older may be eligible for the state-funded long-term care services program under WAC 182-507-0125. A person must be preapproved by the aging and long-term support administration (AL TSA) for this program due to enrollment limits.

(4) Noncitizens under age nineteen who meet citizenship and immigration status under WAC 182-503-0535 (2)(e) are eligible for:

(a) Nursing facility services if the person meets nursing facility level of care; or

(b) State-funded personal care services if functionally eligible based on a department assessment under chapter 388-106 or 388-845 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1320 Determining institutional status for long-term care (LTC) services. ~~((1) Institutional status is an eligibility requirement for long-term care services (LTC) and institutional medical programs. To attain institutional status, you must:~~

~~(a) Be approved for and receiving home and community based waiver services or hospice services; or~~

~~(b) Reside or based on a department assessment is likely to reside in a medical institution, institution for mental diseases (IMD) or inpatient psychiatric facility for a continuous period of:~~

~~(i) Thirty days if you are an adult eighteen and older;~~

~~(ii) Thirty days if you are a child seventeen years of age or younger admitted to a medical institution; or~~

~~(iii) Ninety days if you are a child seventeen years of age or younger receiving inpatient chemical dependency or inpatient psychiatric treatment.~~

~~(2) Once the department has determined that you meet institutional status, your status is not affected by:~~

~~(a) Transfers between medical facilities; or~~

~~(b) Changes from one kind of long-term care services (waiver, hospice or medical institutional services) to another.~~

~~(3) If you are absent from the medical institution or you do not receive waiver or hospice services for at least thirty consecutive days, you lose institutional status-)) (1) To attain institutional status outside a medical institution, a person must be approved for and receive:~~

~~(a) Home and community based (HCB) waiver services under chapter 182-515 WAC;~~

~~(b) Roads to community living (RCL) services under WAC 182-513-1235;~~

~~(c) Program of all-inclusive care for the elderly (PACE) under WAC 182-513-1230;~~

~~(d) Hospice services under WAC 182-513-1240(3); or~~

(e) State-funded long-term care service under WAC 182-507-0125.

(2) To attain institutional status in a medical institution, a person must reside in a medical institution thirty consecutive days or more, or based on a department assessment, be likely to reside in a medical institution thirty consecutive days or more.

(3) Once a person meets institutional status, the person's status is not affected if the person:

(a) Transfers between medical facilities; or

(b) Changes between any of the following programs: HCB waiver, RCL, PACE, hospice or services in a medical institution.

(4) A person loses institutional status if the person is absent from a medical institution, or does not receive HCB waiver, RCL, PACE, or hospice services, for more than twenty-nine consecutive days.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services ~~((institutional, waiver or hospice))~~. This section describes income the ~~((department considers))~~ agency or its designee determines available when ~~((determining))~~ evaluating an SSI-related single client's eligibility for long-term care (LTC) services ~~((institutional, waiver or hospice))~~.

(1) ~~((Refer to WAC 388 513 1330))~~ See WAC 182-513-1330 for rules related to available income for legally married couples.

(2) The ~~((department must apply))~~ agency or its designee applies the following rules when determining income eligibility for SSI-related LTC services:

(a) WAC 182-512-0600 SSI-related medical—Definition of income;

(b) WAC 182-512-0650 SSI-related medical—Available income;

(c) WAC 182-512-0700 SSI-related medical—Income eligibility;

(d) WAC 182-512-0750 SSI-related medical—Countable unearned income;

(e) WAC ~~((182-514-0840(3)))~~ 182-512-0840(3) self-employment income-allowable expenses~~((;~~

~~((f) WAC 388-513-1315(15), Eligibility for long-term care (institutional, waiver, and hospice) services)); and~~

~~((g) WAC 388-450-0155, 388-450-0156, 388-450-0160 and 182-509-0155))~~ (f) WAC 182-512-0785, 182-512-0790, and 182-512-0795 for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

(3) In initial categorically needy income eligibility for LTC, the agency does not allow any deductions listed in 1612(b) of the Social Security Act, for example:

(a) Twenty dollars per month income exclusion under WAC 182-512-0800;

(b) The first \$65 and the remaining one-half earned income work incentive under WAC 182-512-0840; and

(c) Impairment related work expense or blind work expense under WAC 182-512-0840.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the ~~((department considers))~~ agency or its designee determines available when ~~((determining))~~ evaluating a legally married ~~((client's))~~ person's eligibility for LTC services.

(1) The ~~((department must apply))~~ agency or its designee applies the following rules when determining income eligibility for LTC services:

(a) WAC 182-512-0600 SSI-related medical—Definition of income (SSI-related medical);

(b) WAC 182-512-0650 SSI-related medical—Available income;

(c) WAC 182-512-0700 SSI-related medical—Income eligibility;

(d) WAC 182-512-0750 SSI-related medical—Countable unearned income;

(e) WAC 182-512-0840(3), self-employment income-allowance expenses;

(f) WAC 182-512-0960(~~((;))~~) SSI-related medical ((clients; and

~~((g) WAC 388-513-1315, Eligibility for long-term care (institutional, waiver, and hospice) services.~~

(2) ~~For))~~—Allocating income—Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS).

(2) In initial categorically needy income eligibility for LTC, the agency does not allow any deductions listed in 1612(b) of the Social Security Act, for example:

(a) Twenty dollars per month income exclusion under WAC 182-512-0800;

(b) The first \$65 and the remaining one-half earned income work incentive under WAC 182-512-0840; and

(c) Impairment related work expense or blind work expense under WAC 182-512-0840.

(3) The following income is available to an institutionalized ~~((client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available))~~ spouse, unless subsections ~~((4))~~ (4) and (6) apply:

(a) Income received in the ~~((client's))~~ institutionalized spouse's name;

(b) Income paid to a representative on the ~~((client's))~~ institutionalized spouse's behalf; and

(c) One-half of the income received in the names of both spouses~~((; and~~

~~((d) Income from a trust as provided by the trust)).~~

~~((3))~~ (4) The ~~((department considers the))~~ following income is unavailable to an institutionalized ~~((client))~~ spouse:

(a) Separate ~~((or community))~~ income received in the name of the community spouse; and

(b) Income established as unavailable through a court order.

~~((4))~~ (5) For the determination of eligibility only, if available income ~~((described in))~~ under subsection~~((s-2))~~ (3)(a) through ~~((f))~~ (c) of this section, minus income exclusions ~~((described in WAC 388-513-1340))~~ under WAC 182-513-1340, exceeds the special income level (SIL), ~~((then))~~

defined under WAC 182-513-1100, the agency or its designee:

(a) ~~((The department))~~ Follows Washington state community property law when determining ownership of income;

(b) Presumes all income received after the marriage by either ~~((or both))~~ spouse~~((s))~~ to be community income; ~~((and))~~

(c) Considers one-half of all community income available to the institutionalized ~~((client))~~ spouse.

~~((4))~~ ~~(6)~~ If the total of subsection ~~((4))~~ ~~(5)(c)~~ of this section plus the ~~((client's own))~~ institutionalized spouse's separate income is over the SIL, ~~((follow))~~ determine available income using subsection ~~((2))~~ ~~(3)~~ of this section.

~~((5))~~ ~~The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.~~

~~(6)~~ ~~The department considers~~) ~~(7)~~ A stream of income, not generated by a transferred resource, is available to the ~~((client not generated by a transferred resource available to the client))~~ institutionalized spouse, even ~~((when the client))~~ if the institutionalized spouse transfers or assigns the rights to the stream of income to one of the following:

(a) The community spouse; or

(b) A trust for the benefit of ~~((their))~~ the community spouse.

~~((8))~~ ~~The department evaluates the transfer of a resource described in subsection (5) according to WAC 388-513-1363, 388-513-1364, and 388-513-1365 to determine whether a penalty period of ineligibility is required.)~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the ~~((department))~~ agency or its designee excludes when determining a ~~((client's))~~ person's eligibility and participation in the cost of care for long-term care (LTC) services ~~((with the exception described in subsection (31))~~.

(1) When determining a person's eligibility and participation in the cost of care for LTC services, the agency excludes:

~~(a)~~ Crime victim's compensation;

~~((2))~~ ~~(b)~~ Earned income tax credit (EITC) for twelve months after the month of receipt;

~~((3))~~ ~~(c)~~ American Indian/Alaskan native benefits excluded by federal statute (refer to WAC ~~((388-450-0040))~~ 182-512-0770);

~~((4))~~ ~~(d)~~ Tax rebates or special payments excluded by other statutes;

~~((5))~~ ~~(e)~~ Any public agency's refund of taxes paid on real property and/or on food;

~~((6))~~ ~~(f)~~ Supplemental security income (SSI) and certain state public assistance based on financial need;

~~((7))~~ ~~(g)~~ The amount a representative payee charges to provide services when the services are a requirement for the ~~((client))~~ person to receive the income;

~~((8))~~ ~~(h)~~ The amount of expenses necessary for a ~~((client))~~ person to receive compensation, e.g., legal fees necessary to obtain settlement funds;

~~((9))~~ ~~Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution))~~ ~~(i)~~ Education benefits under WAC 182-509-0335;

~~((10))~~ ~~(j)~~ Child support payments received from ~~((an absent))~~ a noncustodial parent for a child living in the home are ~~((considered))~~ the income of the child;

~~((11))~~ ~~(k)~~ Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);

~~((12))~~ ~~(l)~~ Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;

~~((13))~~ ~~(m)~~ Assistance (other than wages or salary) received under the Older Americans Act;

~~((14))~~ ~~(n)~~ Assistance (other than wages or salary) received under the foster grandparent program;

~~((15))~~ ~~(o)~~ Certain cash payments a ~~((client))~~ person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

~~((16))~~ ~~(p)~~ Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;

~~((17))~~ ~~(q)~~ Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;

~~((18))~~ ~~(r)~~ Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

~~((19))~~ ~~(s)~~ Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

~~((20))~~ ~~(t)~~ Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

~~((21))~~ ~~(u)~~ Payments made under the Energy Employees Occupational Illness Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;

~~((22))~~ ~~(v)~~ Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

~~((23))~~ ~~(w)~~ Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

~~((24))~~ ~~(x)~~ Payments made from *Susan Walker v. Bayer Corporation, et. al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

~~((25))~~ ~~(y)~~ Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

~~((26))~~ ~~(z)~~ Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

~~((27))~~ ~~(aa)~~ Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

~~((28))~~ ~~(bb)~~ Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

~~((29))~~ ~~(cc)~~ Interest or dividends received by the ~~((client))~~ institutionalized individual is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital

investments such as stocks, bonds, or savings accounts. Institutional status is defined in WAC ~~((388-513-1320))~~ 182-513-1320;

~~((30))~~ (dd) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible ~~((client))~~ person, e.g., chore services;

~~((31))~~ (2) The agency or its designee treats Department of Veterans Affairs (VA) benefits ~~((designated for))~~ as follows:

~~((The veteran's dependent when determining LTC eligibility for the veteran. The))~~ Any VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

~~((Unusual medical expenses))~~ UME, aid and attendance allowance, special monthly compensation (SMC) and household allowance ~~((with the exception described in subsection (32)))~~ are third-party resources;

~~((32))~~ (c) Benefits ~~((described in subsection (31)(b)))~~ in subsection (2)(b) of this section for a ((client)) person who receives long-term care services are excluded when determining eligibility, but are ~~((considered))~~ available as a third-party resource (TPR) as defined under WAC 182-513-1100 when determining the amount the ~~((client))~~ institutionalized individual contributes in the cost of care.

(3) Any other income excluded by federal law is excluded.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program. This section describes income the ~~((department))~~ agency or its designee disregards when determining a ~~((client's))~~ person's eligibility for institutional or hospice services under the medically needy (MN) program. ~~((The department considers))~~ Disregarded income is available when determining a ~~((client's))~~ person's participation in the cost of care.

(1) The ~~((department))~~ agency or its designee disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

- (i) Twenty dollars per month if unearned; or
- (ii) Ten dollars per month if earned.

(b) The first ~~((twenty dollars))~~ \$20 per month of earned or unearned income, unless the sole source of income paid to a ~~((client))~~ person is:

- (i) Based on need; and
- (ii) Totally or partially funded by the federal government or a ~~((private))~~ nongovernmental agency.

(2) For a ~~((client))~~ person who is related to the supplemental security income (SSI) program ~~((as described in))~~ under WAC 182-512-0050(1), the first ~~((sixty five dollars))~~ \$65 per month of earned income not excluded under WAC ~~((388-513-1340))~~ 182-513-1340, plus one-half of the remainder.

(3) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and household allowance, with the exception ~~((described in))~~ under subsection (4) of this section.

(4) Benefits ~~((described in))~~ under subsection (3)(b) of this section for a ~~((client))~~ person who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) defined under WAC 182-513-1100 when determining the amount the ~~((client))~~ person contributes in the cost of care.

~~((5))~~ Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services. ~~((This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.~~

~~((1))~~ The resource standard used to determine eligibility for LTC services equals:

~~((a))~~ Two thousand dollars for:

~~((i))~~ A single client; or

~~((ii))~~ A legally married client with a community spouse, subject to the provisions described in subsections (9) through (12) of this section; or

~~((b))~~ Three thousand dollars for a legally married couple, unless subsection (4) of this section applies.

~~((2))~~ Effective January 1, 2012 if an individual purchases a qualified long-term care partnership policy approved by the Washington insurance commissioner under the Washington long-term care partnership program, the department allows the individual with the long-term care partnership policy to retain a higher resource amount based on the dollar amount paid out by a partnership policy. This is described in WAC 388-513-1400.

~~((3))~~ When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

~~((4))~~ When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

~~((5))~~ If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the stan-

dard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(6) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(7) The department applies the following rules when determining available resources for LTC services:

(a) WAC 182-512-0300, Resource eligibility;

(b) WAC 182-512-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060, Resources of an alien's sponsor.

(8) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 182-512-0350 through 182-512-0550 and resources excluded by federal law with the exception of:

(i) WAC 182-512-0550 pension funds owned by an:

(I) Ineligible spouse. Pension funds are defined as funds held in an individual retirement account (IRA) as described by the IRS code; or

(II) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(ii) WAC 182-512-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index-urban (CPIU). For current excess home equity standard starting January 1, 2011 and each year thereafter, see <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(b) For an SSI related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI related client, the department adds together the countable resources of both spouses if subsections (3), (6) and (9)(a) or (b) apply, but not if subsection (4) or (5) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the facility that the client owes the expense to.

(ii) As long as the incurred medical expenses:

(A) Were not incurred more than three months before the month of the medicaid application;

(B) Are not subject to third-party payment or reimbursement;

(C) Have not been used to satisfy a previous spend-down liability;

(D) Have not previously been used to reduce excess resources;

(E) Have not been used to reduce client responsibility toward cost of care;

(F) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, and 388-513-1365; and

(G) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or assisted living facility is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to countable income, the combined total is less than the:

(A) State medical institution rate based on the number of days in the medical institution in the month, plus the amount of recurring medical expenses; or

(B) State hospice rate based on the number of days in the medical institution in the month plus the amount of recurring medical expenses, in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(9) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

- (i) The institutionalized spouse; or
- (ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

- (i) Either spouse; or
- (ii) Both spouses.

(10) If subsection (9)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard may change annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long term care standards at <http://www1.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the first day of the month of the current period of institutional status, up to the amount described in subsection (10)(a) of this section; or

(ii) The state spousal resource standard of forty-eight thousand six hundred thirty-nine dollars (this standard may change every odd year on July 1st). This standard is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long term care standards at <http://www1.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>.

(c) Resources are verified on the first moment of the first day of the month institutionalization began as described in WAC 182-512-0300(1).

(11) The amount of the spousal share described in (10)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was

institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status:

(12) The amount of allocated resources described in subsection (10) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(13) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (6) or (14)(a), (b), or (c) of this section applies.

(14) A redetermination of the couple's resources as described in subsection (8) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status; or

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (9)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (10) or (12) to the community spouse by either:

(i) The end of the month of the first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.) (1) General information.

(a) This section describes how the agency or its designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

(2) Resource standards.

(a) The resource standard for the following people is \$2000:

(i) A single person; or

(ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is \$3000, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency or its designee applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or its designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or its designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized individual marries, the agency or its designee redetermines eligibility applying the resource and income rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or its designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.

(v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.

(b) The agency or its designee determines excluded resources based on federal law and WAC 182-512-0550, except:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) For long-term services and supports (LTSS), based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).

(c) The agency or its designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section:

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.

(B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.

(6) Allowable medical expenses.

(a) The following incurred medical expenses may be used to reduce excess resources:

(i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;

(ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;

(iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.

(b) To be allowed, the medical expense must:

(i) Have been incurred more than three months before the month of the medicaid application;

(ii) Not be subject to third-party payment or reimbursement;

(iii) Not have been used to satisfy a previous spenddown liability;

(iv) Not have been previously used to reduce excess resources;

(v) Not have been used to reduce participation;

(vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Be an amount for which the person remains liable.

(7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment under chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in a primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) that are based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, unless one of the following persons lawfully resides in the home:

(i) That person's spouse; or

(ii) That person's dependent child under age twenty-one, blind child, or disabled child.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) Effective January 1, 2016, the excess home equity limit is \$552,000. On January 1, 2017, and on January 1st of each year thereafter, this standard may change by the percentage in the consumer price index-urban.

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

NEW SECTION

WAC 182-513-1355 Allocating resources to a community spouse when determining resource eligibility for SSI-related long-term care services. (1) The agency or its designee uses this section to calculate the resource allocation from the institutionalized spouse to the community spouse for the determination of the institutionalized spouse's resource eligibility under WAC 182-513-1350 (2)(a)(ii).

(2) If the institutionalized spouse's most recent continuous period of institutionalization (MRCPI) began:

(a) Before October 1, 1989, the agency adds together one-half the total amount of countable resources, as determined under WAC 182-513-1350(4), held in the name of:

(i) The institutionalized spouse; and

(ii) Both spouses.

(b) On or after October 1, 1989, the agency or its designee adds together the total amount of countable resources, as

determined under WAC 182-513-1350(4), held in the name of:

(i) Either spouse; and

(ii) Both spouses.

(3) If subsection (2)(b) of this section applies, the agency or its designee determines the amount of resources allocated to the community spouse, before determining the amount of countable resources used to establish eligibility for the institutionalized spouse under WAC 182-513-1350:

(a) If the institutionalized spouse's MRCPI began on or after October 1, 1989, and before August 1, 2003, the agency or its designee allocates the federal spousal resource maximum;

(b) If the institutionalized spouse's MRCPI began on or after August 1, 2003, the agency or its designee allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources, up to the federal spousal resource maximum; or

(ii) The state spousal resource standard.

(4) Countable resources under subsection (3)(b) of this section determined as of the first day of the month in which MRCPI began.

(5) The agency or its designee uses a community spouse evaluation to determine the amount of the spousal share under subsection (3)(b)(i) of this section.

(6) The agency or its designee completes a community spouse resource evaluation:

(a) Upon request by the institutionalized spouse, or the institutionalized spouse's community spouse;

(b) At any time between the date that the MRCPI began and the date that eligibility for long-term care (LTC) is determined; and

(c) Upon receipt of any verification required to establish the amount of the couple's resources in the month of MRCPI.

(7) The community spouse resource evaluation can be completed prior to an application for LTC or as part of the LTC application if:

(a) The beginning of the MRCPI was prior to the month of application; and

(b) The spousal share exceeds the state spousal resource standard.

(8) The amount of allocated resources under subsection (3) of this section can be increased, but only if:

(a) A court has entered an order against the institutionalized spouse for the support of the community spouse or a dependent of either spouse; or

(b) A final order is entered under chapter 182-526 WAC, ruling that the institutionalized spouse or community spouse established that the income generated by the resources allocated under subsection (3) of this section is insufficient to raise the community spouse's income to the monthly maintenance needs allowance (MMNA) determined under WAC 182-513-1385, but only after the application of the income-first rule under 42 U.S.C. 1396r-5 (d)(6).

(9) If a final order establishes that the conditions identified in subsection (8)(b) of this section have been met, then an amount of allocated resources under subsection (3) of this section will be substituted by an amount adequate to provide such an MMNA.

(10) The institutionalized spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2000 to the community spouse.

(11) Standards in this section are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1363 Evaluating ~~((the))~~ an asset transfer ~~((of assets on or after May 1, 2006 for persons))~~ for people applying for or receiving long-term care (LTC) services. ((This section describes how the department evaluates asset transfers made on or after May 1, 2006 and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institution equivalent to nursing facility services, and home and community based services furnished under a waiver program. Program of all inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period.

~~• Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006.~~

~~• Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.~~

~~(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006 on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.~~

~~(2) The department does not apply a penalty period to transfers meeting the following conditions:~~

~~(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;~~

~~(b) The transfer is an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d);~~

~~(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:~~

~~(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.~~

~~(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer.~~

~~(iii) All assets transferred for less than fair market value have been returned to the client;~~

~~(iv) The denial of eligibility would result in an undue hardship as described in WAC 388-513-1367.~~

~~(d) The transfer of ownership of the client's home, if it is transferred to the client's:~~

~~(i) Spouse; or~~

~~(ii) Child, who:~~

~~(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or~~

~~(B) Is less than twenty-one years old; or~~

~~(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided verifiable care that enabled the individual to remain in the home. A physician's statement of needed care is required; or~~

~~(iii) Brother or sister, who has:~~

~~(A) Equity in the home, and~~

~~(B) Lived in the home for at least one year immediately before the client's current period of institutional status.~~

~~(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);~~

~~(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:~~

~~(i) To another person for the sole benefit of the spouse;~~

~~(ii) From the client's spouse to another person for the sole benefit of the spouse;~~

~~(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);~~

~~(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or~~

~~(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (2)(f), if the transfer or trust:~~

~~(a) Is established by a legal document that makes the transfer irrevocable;~~

~~(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and~~

~~(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and~~

~~(d) The requirements in subsection (2)(e) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).~~

~~(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:~~

~~(a) The transfer is in exchange for care services the family member provided the client;~~

~~(b) The client has a documented need for the care services provided by the family member;~~

~~(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;~~

~~(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;~~

~~(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;~~

~~(f) The time for which care services are claimed is reasonable based on the kind of services provided; and~~

~~(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.~~

~~(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) as the transfer of an asset without adequate consideration.~~

~~(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.~~

~~(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:~~

~~(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or~~

~~(b) For a LTC services recipient, begins the first of the month following ten day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and~~

~~(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.~~

~~(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:~~

~~(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;~~

~~(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.~~

~~(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (5) through (7).~~

~~(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:~~

~~(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;~~

~~(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and~~

~~(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).~~

~~(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services:~~

~~(a) We divide the penalty between the two spouses.~~

~~(b) If one spouse is no longer subject to a penalty (e.g. the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.~~

~~(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.~~

~~(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:~~

~~(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty;~~

~~(b) RCW 74.08.338 Real property transfers for inadequate consideration;~~

~~(c) RCW 74.08.335 Transfers of property to qualify for assistance; and~~

~~(d) RCW 74.39A.160 Transfer of assets—Penalties.)~~

~~(1) When determining a person's eligibility for long-term care (LTC) services, the agency or its designee evaluates the effect of an asset transfer made within the sixty-month period before the month that the person:~~

~~(a) Attained institutional status, or would have attained institutional status but for a period of ineligibility; and~~

~~(b) Applied for LTC services.~~

~~(2) The agency or its designee evaluates all transfers for recipients of LTC services made on or after the month the recipient attained institutional status.~~

~~(3) The agency or its designee establishes a period of ineligibility during which the person is not eligible for LTC services if the person, the person's spouse, or someone acting on behalf of either:~~

~~(a) Transfers an asset within the time period under subsection (1) or (2) of this section; and~~

~~(b) Does not receive adequate consideration for the asset, unless the transfer meets one of the conditions in subsection (4)(a) through (g) of this section.~~

~~(4) The agency or its designee does not apply a period of ineligibility for uncompensated value if:~~

~~(a) The total of all transfers in a month does not exceed the average daily private nursing facility rate in that month;~~

~~(b) The transferred resource was an excluded resource under WAC 182-513-1350 except a home, unless the transfer of the home meets the conditions under (d) of this subsection;~~

~~(c) The asset was transferred for less than fair market value (FMV), and the person can establish one of the following:~~

(i) An intent to transfer the asset at FMV. To establish such an intent, the agency or its designee must be provided with convincing evidence of the attempt to dispose the asset for FMV;

(ii) The transfer was not made to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery. Convincing evidence must be presented regarding the specific purpose of the transfer;

(iii) All assets transferred for less than FMV have been returned to the person or the person's spouse; or

(iv) The denial of eligibility would result in an undue hardship under WAC 182-513-1367;

(d) The transferred asset was a home, if the home was transferred to the person's:

(i) Spouse;

(ii) Child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iii) Child who was under age twenty-one; or

(iv) Child who lived in the home and provided care, but only if:

(A) The child lived in the person's home for at least two years;

(B) The child provided verifiable care during the time period in (d)(iv)(A) of this subsection for at least two years;

(C) The period of care under (d)(iv)(B) of this subsection was immediately before the person's current period of institutional status;

(D) The care was not paid for by medicaid;

(E) The care enabled the person to remain at home; and

(F) The person provided physician's documentation that the in-home care was necessary to prevent the person's current period of institutional status; or

(v) Sibling, who has lived in and has had an equity interest in the home for at least one year immediately before the date the person attained institutional status;

(e) The asset was transferred to the person's spouse; or to the person's child, if the child meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(f) The transfer was to a family member before the current period of institutional status, and all the following conditions are met. If all the following conditions are not met, the transfer is an uncompensated transfer, regardless of consideration received:

(i) The transfer is in exchange for care services the family member provided to the person;

(ii) The person had a documented need for the care services provided by the family member;

(iii) The care services provided by the family member are allowed under the medicaid state plan or the department's home and community based waiver services;

(iv) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(v) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(vi) The time for which care services are claimed is reasonable based on the kind of services provided; and

(vii) The assets were transferred as the care services were performed, or with no more time delay than one calendar month between the provision of the service and the transfer.

(g) The transfer meets the conditions under subsection (5) of this section, and the asset is transferred; or

(i) To another party for the sole benefit of the person's spouse;

(ii) From the person's spouse to another party for the sole benefit of the spouse;

(iii) To a trust established for the sole benefit of the person's child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c); or

(iv) To a trust established for the sole benefit of a person who is under age sixty-five who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c).

(5) An asset transfer or establishment of a trust is for the sole benefit of a person under subsection (4)(g) of this section if the document transferring the asset:

(a) Was made in writing;

(b) Is irrevocable;

(c) States that the person's spouse, blind or disabled child, or another disabled person can benefit from the transferred assets; and

(d) States that all assets involved must be spent for the sole benefit of the person over an actuarially sound period, based on the life expectancy of that person or the term of the document, whichever is less, unless the document is a trust that meets the conditions of a trust established under Section 42 U.S.C. 1396p (d)(4)(A) or Section 42 U.S.C. 1396 (d)(4)(C) as described under chapter 182-516 WAC.

(6) To calculate the period of ineligibility under subsection (3) of this section:

(a) Add together the total uncompensated value of all transfers under subsection (3) of this section; and

(b) Divide the total in (a) of this subsection by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility;

(7) The period of ineligibility under subsection (6) of this section begins:

(a) For an LTC services applicant: The date the person would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended; or

(b) For an LTC services recipient: The first of the month following ten-day advance notice of the period of ineligibility, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous period of ineligibility has ended.

(8) The period of ineligibility ends after the number of whole days, calculated in subsection (6) of this section, pass from the date the period of ineligibility began in subsection (7) of this section.

(9) If the transfer was to the person's spouse, and it includes the right to receive an income stream, the agency or its designee determines availability of the income stream under WAC 182-513-1330.

(10) If the transferred asset for which adequate consideration was not received was made to someone other than the person's spouse and included the right to receive a stream of

income not generated by the transferred asset, the length of the period of ineligibility is calculated and applied in the following way:

(a) The amount of reasonably anticipated future monthly income, after the transfer, is multiplied by the actuarial life expectancy in months of the person who owned the income. The actuarial life expectancy is based on age of the person in the month the transfer occurs;

(b) The amount in (a) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility; and

(c) The period of ineligibility begins under subsection (7) of this section and ends under subsection (8) of this section.

(11) A period of ineligibility for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses have attained institutional status. When both spouses are institutionalized, the agency or its designee divides the penalty equally between the two spouses. If one spouse is no longer subject to a period of ineligibility, the remaining period of ineligibility that applied to both spouses will be applied to the other spouse.

(12) Throughout this section, the date of an asset transfer is:

(a) For real property:

(i) The day the deed is signed by the grantor if the deed is recorded; or

(ii) The day the signed deed is delivered to the grantee;

(b) For all other assets, the day the intentional act or the failure to act resulted in the change of ownership or title.

(13) If a person or the person's spouse disagrees with the determination or application of a period of ineligibility, a hearing may be requested under chapter 182-526 WAC.

(14) Additional statutes that apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1367 Hardship waivers ~~((for long-term care (LTC) services))~~. ~~((Clients))~~ (1) People who are denied or terminated from ~~((LTC))~~ long-term services and supports (LTSS) due to a transfer of asset penalty ~~((described in WAC 388-513-1363, 388-513-1364 and 388-513-1365))~~ under WAC 182-513-1363, or having excess home equity ~~((described in WAC 388-513-1350))~~ under WAC 182-513-1350 may apply for an undue hardship waiver. The agency or its designee gives notice of the right to apply for an undue hardship waiver ~~((will be given))~~ when-

ever there is a denial or termination based on an asset transfer or excess home equity. This section:

~~((*) (a))~~ Defines undue hardship;

~~((*) (b))~~ Specifies the approval criteria for an undue hardship request;

~~((*) (c))~~ Establishes the process the ~~((department))~~ agency or its designee follows for determining undue hardship; and

~~((*) (d))~~ Establishes the appeal process for a client whose request for an undue hardship is denied.

~~((1) When does undue hardship exist?~~

~~((a)) (2) Undue hardship ~~((may exist))~~ exists:~~

~~((i) When a transfer of an asset occurs between:~~

~~((A) Registered domestic partners as described in chapter 26.60 RCW; or~~

~~((B) Same-sex couples who were married in states and the District of Columbia where same-sex marriages are legal; and~~

~~((C) The transfer would not have caused a period of ineligibility if made between an opposite sex married couple under WAC 388-513-1363.~~

~~((ii)) (a) When a ~~((client))~~ person who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian, or another person authorized to act on behalf of the person through a power of attorney document (attorney-in-fact), has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period~~((; and~~~~

~~((iii) The client) the person provides sufficient documentation to support ~~((their))~~ the efforts to recover the assets or income; or~~

~~((iv) The client) (b) The person is unable to access home equity in excess of the standard ~~((described in WAC 388-513-1350))~~ under WAC 182-513-1350; and~~

~~((v)) (c) When, without ~~((LTC))~~ LTSS benefits, the ~~((client))~~ person is unable to obtain:~~

~~((A)) (i) Medical care to the extent that ~~((his or her))~~ health or life is endangered; or~~

~~((B)) (ii) Food, clothing, shelter or other basic necessities of life.~~

~~((b)) (3) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.~~

~~((2)) (4) Undue hardship does not exist:~~

~~((a) When the transfer of asset penalty period or excess home equity provision inconveniences a ~~((client))~~ person or restricts ~~((their))~~ the person's lifestyle but does not seriously deprive ~~((him or her))~~ the person as defined in subsection ~~((1)(a)(iii))~~ (2)(c)(i) and (ii) of this section;~~

~~((b) When the resource is transferred to a person who is handling the financial affairs of the ~~((client))~~ person; or~~

~~((c) When the resource is transferred to another person by the individual that handles the financial affairs of the ~~((client))~~ person.~~

~~((d)) (5) Undue hardship may exist under subsection (4)(b) and (c) of this section if ~~((DSHS))~~ the department has found evidence of financial exploitation.~~

~~((3) How is an undue hardship waiver requested?~~

~~(a)) (6) An undue hardship waiver may be requested by:~~
~~((i)) (a) The (client) person;~~
~~((ii)) (b) The (client's) person's spouse;~~
~~((iii)) (c) The (client's) person's authorized representative;~~
~~(iv) The client's power of attorney); or~~
~~((v)) (d) With the consent of the (client or their) person, the person's guardian, or a medical institution, as defined in WAC ((482-500-0005)) 182-500-0050, in which an institutionalized (client) person resides.~~
~~((b)) (7) The hardship waiver request must:~~
~~((i)) (a) Be in writing;~~
~~((ii)) (b) State the reason for requesting the hardship waiver;~~
~~((iii)) (c) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a (client) person, then the (client's) person's name, address and telephone number must be included;~~
~~((iv)) (d) Be made within thirty days of the date of denial or termination of ((LTC services)) LTSS; and~~
~~((v)) (e) Returned to the originating address on the denial/termination letter.~~
~~((4) What if additional information is needed to determine a hardship waiver?~~
~~(a)) (8) If additional information is needed to determine a hardship waiver, the agency or its designee sends a written notice to the (client is sent) person requesting additional information within fifteen days of the request for an undue hardship waiver. The person may request additional time to provide the information (can be requested by the client.~~
~~(5) What happens if my hardship waiver is approved?);~~
~~(9) If the hardship is approved:~~
~~(a) The ((department)) agency sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.~~
~~(b) Any changes in a (client's) person's situation that led to the approval of a hardship must be reported to the ((department by the tenth of the month following)) agency or its designee within thirty days of the change per WAC ((388-418-0007)) 182-504-0110.~~
~~((6) What happens if my)) (10) If the hardship waiver is denied(?);~~
~~(a) The ((department)) agency or its designee sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.~~
~~(b) The denial notice ((will have)) has instructions on how to request an administrative hearing. The ((department)) agency or its designee must receive an administrative hearing request within ninety days of the date of the adverse action or denial.~~
~~((7) What statute or rules govern administrative hearings?~~
~~(a) An administrative hearing held under this section is governed by chapters 34.05 RCW and chapter 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.~~

~~(8) Can the department revoke an approved undue hardship waiver?~~
~~(a) The department)) (11) If there is a conflict between this section and chapter 182-526 WAC, this section prevails.~~
~~(12) The agency or its designee may revoke approval of an undue hardship waiver if any of the following occur:~~
~~((i)) (a) A (client) person, or ((his or her)) the person's authorized representative, fails to provide timely information ((and/or)) or resource verifications as it applies to the hardship waiver when requested by the ((department)) agency or its designee per WAC ((388-490-0005 and 388-418-0007 or 182-504-0125)) 182-503-0050 and 182-504-0105;~~
~~((ii)) (b) The lien or legal impediment that restricted access to home equity in excess of ((five hundred thousand dollars)) the home equity limit is removed; or~~
~~((iii)) (c) Circumstances for which the undue hardship was approved have changed.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1380 Determining a (client's) person's financial participation in the cost of care for long-term care ((LTC services)) in a medical institution. This rule describes how the ((department)) agency or its designee allocates income and excess resources when determining participation in the cost of care ((the post-eligibility process)). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

~~(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.~~

~~(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.~~

~~(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with gross income under the medicaid special income level (SIL) (three hundred percent of the federal benefit rate (FBR)), if the client is not otherwise eligible for another noninstitutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)~~

~~(4) The department)) in a medical institution.~~

~~(1) The agency or its designee defines which income and resources must be used in this process under WAC 182-513-1315.~~

~~(2) The agency or its designee allocates nonexcluded income in the following order, and the combined total of ((4)) (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):~~

~~(a) A personal needs allowance (PNA) of:~~

~~(i) ((Seventy dollars)) For the following ((clients)) people who receive a needs-based veteran's pension in excess of \$90 and live in a state veteran's home ((and receive a needs-based veteran's pension in excess of ninety dollars)), \$70:~~

(A) A veteran without a spouse or dependent child((-));
or

(B) A veteran's surviving spouse with no dependent children((-));

(ii) For people who live in a state veteran's home and receive a pension of less than \$90, the difference between ((one hundred sixty dollars)) \$160 and the needs-based veteran's pension amount ((for persons specified in subsection (4)(a)(i) of this section who receive a veteran's pension less than ninety dollars-));

(iii) ((One hundred sixty dollars)) For a ((client)) person living in a state veterans' home who does not receive a needs-based veteran's pension, \$160;

(iv) ((Forty one dollars and sixty two cents)) For all ((clients)) people in a medical institution receiving aged, blind, disabled, (ABD) or temporary assistance for needy families (TANF) cash assistance((-)), \$41.62; or

(v) For all other ((clients)) people in a medical institution ((the PNA is fifty seven dollars and twenty eight cents.

(vi) Current PNA and long term care standards can be found at <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>), \$57.28.

(b) Mandatory federal, state, or local income taxes owed by the ((client)) person.

(c) Wages for a ((client)) person who:

(i) Is related to the supplemental security income (SSI) program ((as described in)) under WAC 182-512-0050(1); and

(ii) Receives the wages as part of ((a)) an agency-approved or department-approved training or rehabilitative program designed to prepare the ((client)) person for a less restrictive placement. When determining this deduction, employment expenses are not deducted.

(d) Guardianship fees and administrative costs, including any attorney fees paid by the guardian, ((after June 15, 1998, only)) as allowed ((by chapter 388-79 WAC)) under WAC 182-513-1505 through 182-513-1525 .

((5) The department) (3) The agency or its designee allocates nonexcluded income after deducting amounts ((described in)) under subsection ((4)) (2) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is;

(i) For the current month((-
+));

(ii) For the time period covered by the PNA; and

((ii) Is) (iii) Not counted as the dependent member's income when determining the ((family)) dependent allocation amount under WAC 182-513-1385.

(b) A monthly maintenance needs allowance for the community spouse ((not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance may change each January based on the consumer price index. Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long term care standards chart at <http://www1.dshs.wa.gov/manuals/caz/>

sections/LongTermCare/LTCstandardspna.shtml. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st; and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) For each child, one hundred and fifty percent of the two person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income). This standard is called the community spouse (CS) and family maintenance standard and can be found at: <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the effective one-person MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income-) as determined using the calculation under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income to the PNA.

(c) A dependent allowance for each dependent of the institutionalized person or the person's spouse, as determined using the calculation under WAC 182-513-1385.

(d) Medical expenses incurred by the ((institutional client)) institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC ((388-513-1350)) 182-513-1350.

(e) Maintenance of the home of a single institutionalized ((client)) person or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the ((client)) person is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income ((exemption)) deduction.

((6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and is found at: <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>; and

~~(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:~~

- ~~(i) Rent;~~
- ~~(ii) Mortgage;~~
- ~~(iii) Taxes and insurance;~~
- ~~(iv) Any maintenance care for a condominium or cooperative; and~~

~~(v) The food stamp standard utility allowance described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.~~

~~(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:~~

~~(a) A court enters an order against the client for the support of the community spouse; or~~

~~(b) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.~~

~~(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.~~

~~(9)) (4) A person may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the participation.~~

(5) A person is responsible to pay only up to the state rate for the cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person pays only the difference up to the state rate cost of care.

(6) When a person lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the person has in a month.

(7) Standards ((described in)) under this section for long-term care ((can be)) are found at ((:http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml)) <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc>.

NEW SECTION

WAC 182-513-1385 Determining the community spouse monthly maintenance needs allowance and dependent allowance in post-eligibility treatment of income for long-term care (LTC) programs. (1) This section describes how to calculate the monthly maintenance needs allowance (MMNA) in post-eligibility treatment of income for long-term care (LTC) programs for a community spouse or dependent of the institutionalized individual.

(2) The community spouse MMNA standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc>, unless a greater amount is calculated under subsection (5) of this section. The MMNA standards may change each January and July based on the consumer price index.

(3) The community spouse MMNA is allowed only to the extent that the institutionalized spouse's income is made available to the community spouse, and is calculated as follows:

(a) The minimum MMNA as calculated in subsection (4)(a) of this section plus excess shelter expenses as calculated in subsection (4)(b) of this section;

(i) The total under (a) of this subsection cannot be less than the minimum MMNA; and

(ii) If the total under subsection (4)(a) of this section exceeds the maximum MMNA, the maximum MMNA is the result under subsection (4)(a) of this section; and

(b) The total under subsection (4)(a) of this section is reduced by the community spouse's gross income. The result is the MMNA.

(4) The minimum MMNA and excess shelter expense values are calculated as follows:

(a) The minimum MMNA is one hundred fifty percent of the two-person federal poverty level (FPL); and

(b) If excess shelter expenses are less than zero, the result is zero. Excess shelter expenses are calculated as follows:

(i) Add:

(A) Mortgage or rent, which includes space rent for mobile homes;

(B) Real property taxes;

(C) Homeowner's insurance;

(D) Required maintenance fees for a condominium, cooperative, or homeowner's association that are recorded in a covenant; and

(E) The food assistance standard utility allowance (SUA) under WAC 388-450-0195 minus the cost of any utilities that are included in (b)(i)(D) of this subsection.

(ii) Subtract the standard shelter allocation from the total in (b)(i) of this subsection. The standard shelter allocation is thirty percent of one hundred fifty percent of the two-person FPL. The result is the value of excess shelter expenses.

(5) The amount allocated to the community spouse may be greater than the amount determined in subsection (3) of this section, but only if:

(a) A court order has been entered against the institutionalized spouse approving a higher MMNA for the support of the community spouse; or

(b) A final order has been entered after an administrative hearing has been held under chapter 182-526 WAC ruling the institutionalized spouse or the community spouse established the community spouse needs income, above the level otherwise provided by the MMNA, due to exceptional circumstances causing significant financial duress.

(6) If a final order establishes that the conditions identified in subsection (5)(b) of this section have been met, then an amount of allocated resources under subsection (3) of this section will be substituted by an amount adequate to provide such an MMNA.

(7) The agency or its designee determines the dependent allowance for dependents of the institutionalized individual or the institutionalized individual's spouse. The amount the agency allows depends on whether the dependent resides with the community spouse.

(a) For each dependent who resides with the community spouse:

(i) Subtract the dependent's income from one hundred fifty percent of the two-person FPL;

(ii) Divide the amount determined in (a)(i) of this subsection by three;

(iii) The result is the dependent allowance for that dependent.

(b) For each dependent who does not reside with the community spouse:

(i) The agency determines the effective MNIL standard based on the number of dependent family members in the home;

(ii) Subtracts each dependent's separate income;

(iii) The result is the dependent allowance for the dependents.

(c) Child support received from a noncustodial parent is the child's income.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1395 Determining eligibility for institutional ((or hospice)) services for ((individuals)) people living in a medical institution under the SSI-related medically needy ((MN)) program. ((This section describes how the department determines a client's eligibility for institutional or hospice services in a medical institution and for facility care only under the MN program. In addition, this section describes rules used by the department to determine whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5). In addition, a client must meet program requirements described in WAC 388-513-1315; and

(a) Be an SSI-related client with countable income as described in subsection (4)(a) that is more than the special income level (SIL); or

(b) Be a child not described in subsection (1)(a) with countable income as described in subsection (4)(b) that exceeds the categorically needy (CN) standard for the children's medical program.

(2) For an SSI-related client, excess resources are reduced by medical expenses as described in WAC 388-513-1350 to the resource standard for a single or married individual.

(3) The department determines a client's countable resources for institutional and hospice services under the MN programs as follows:

(a) For an SSI-related client, the department determines countable resources per WAC 388-513-1350.

(b) For a child not described in subsection (3)(a), no determination of resource eligibility is required.

(4) The department determines a client's countable income for institutional and hospice services under the MN program as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC 388-513-1325 and 388-513-1330 by:

(i) Excluding income described in WAC 388-513-1340;

~~(ii) Disregarding income described in WAC 388-513-1345; and~~

~~(iii) Subtracting previously incurred medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.~~

~~(b) For a child not described in subsection (4)(a), the department:~~

~~(i) Follows the income rules described in WAC 182-505-0210 for the children's medical program; and~~

~~(ii) Subtracts the medical expenses described in subsection (4).~~

~~(5) If the income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 (1), is less than the department contracted rate times the number of days residing in the facility the client:~~

~~(a) Is eligible for institutional or hospice services in a medical institution, and medical assistance;~~

~~(b) Is approved for twelve months; and~~

~~(c) Participates income and excess resources toward the cost of care as described in WAC 388-513-1380.~~

~~(6) If the income remaining after the allowed deductions described in WAC 388-513-1380 plus countable resources in excess of the standard described in WAC 388-513-1350(1) is more than the department contracted rate times the number of days residing in the facility the client:~~

~~(a) Is not eligible for payment of institutional services; and~~

~~(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.~~

~~(7) If the income remaining after the allowed deductions described in WAC 388-513-1380 is more than the department contracted nursing facility rate based on the number of days the client is in the facility, but less than the private nursing rate plus the amount of medical expenses not used to reduce excess resources the client:~~

~~(a) Is eligible for nursing facility care only and is approved for a three or six month based period as described in chapter 182-519 WAC. This does not include hospice in a nursing facility; and~~

~~(i) Pays the nursing home at the current state rate;~~

~~(ii) Participates in the cost of care as described in WAC 388-513-1380; and~~

~~(iii) Is not eligible for medical assistance or hospice services unless the requirements in (6)(b) is met.~~

~~(b) Is approved for medical assistance for a three or six month base period as described in chapter 182-519 WAC, if:~~

~~(i) No income and resources remain after the post eligibility treatment of income process described in WAC 388-513-1380.~~

~~(ii) Medicaid certification is approved beginning with the first day of the base period.~~

~~(c) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income remaining after the post eligibility treatment of income process described in WAC 388-513-1380.~~

~~(i) This process is known as spenddown and is described in WAC 182-519-0100.~~

~~(ii) Medicaid certification is approved on the day the spenddown is met.~~

~~(8) If the income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 is more than the private nursing facility rate times the number of days in a month residing in the facility, the client:~~

~~(a) Is not eligible for payment of institutional services.~~

~~(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC:)) (1) For the purposes of this section only, "remaining income" means all gross non-excluded income remaining after the post-eligibility calculation under WAC 182-513-1380.~~

~~(2) General information. To be eligible for institutional services when living in a medical institution under the SSI-related medically needy (MN) program, a person must:~~

~~(a) Meet program requirements under WAC 182-513-1315;~~

~~(b) Have gross nonexcluded income in excess of the special income level (SIL) defined under WAC 182-513-1100; and~~

~~(c) Meet the financial requirements of subsection (3) or (4) of this section.~~

~~(3) Financial eligibility.~~

~~(a) The agency or its designee determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.~~

~~(b) The agency or its designee determines a person's countable income by:~~

~~(i) Excluding income under WAC 182-513-1340;~~

~~(ii) Determining available income under WAC 182-513-1325 or 182-513-1330;~~

~~(iii) Disregarding income under WAC 182-513-1345; and~~

~~(iv) Deducting medical expenses that were not used to reduce excess resources under WAC 182-513-1350.~~

~~(4) Eligibility for agency payment to the facility for institutional services and the MN program.~~

~~(a) If a person's remaining income plus excess resources is less than, or equal to, the state-contracted daily rate times the number of days the person has resided in the facility, the person:~~

~~(i) Is eligible for agency payment to the facility for institutional services and the MN program; and~~

~~(ii) Is approved for a twelve-month certification period.~~

~~(b) The person must pay income and excess resources towards the cost of care under WAC 182-513-1380.~~

~~(5) Eligibility for agency payment to the facility for institutional services and MN spenddown. If a person's remaining income is more than the state-contracted daily rate times the number of days the person has resided in the facility, but less than the private nursing facility rate for the same period, the person:~~

~~(a) Is eligible to receive institutional services at the state-contracted rate; and~~

~~(i) Is approved for a three-month or six-month base period;~~

~~(ii) Pays income and excess resources towards the state-contracted cost of care under WAC 182-513-1380; and~~

~~(b) Is eligible for the MN program for the same three-month or six-month base period when the total of additional medical expenses incurred during the base period exceeds:~~

~~(i) The total remaining income for all months of the base period;~~

~~(ii) Minus the total state-contracted rate for all months of the base period.~~

~~(6) If a person has excess resources and the person's remaining income is more than the state-contracted daily rate times the number of days the person has resided in the facility, the person is not eligible to receive institutional services and the MN program.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1396 ((Clients)) People living in a fraternal, religious, or benevolent nursing facility. ~~((This section describes how the department determines eligibility for institutional services and noninstitutional medical assistance for a client living in a fraternal, religious, or benevolent nursing facility.~~

~~(1) For a client living in a licensed nursing facility operated by a fraternal, religious, or benevolent organization who meets all other eligibility requirements, the department approves institutional services and noninstitutional medical assistance, if:~~

~~(a) Any contract between the client and the facility excludes such benefits on a free or prepaid basis for life; or~~

~~(b) The facility is unable to fulfill the terms of the contract and has:~~

~~(i) Voided the contract; and~~

~~(ii) Refunded any of the client's existing assets to the client.~~

~~(2) For a client described in subsection (1), the department denies institutional services and noninstitutional medical assistance, if the client:~~

~~(a) Signs a contract with the organization that includes such benefits on a free or prepaid basis for life; and~~

~~(b) Surrenders income and/or resources to the organization in exchange for such benefits.)) (1) The agency or its designee determines applicable health coverage under noninstitutional rules for a person who meets all other eligibility requirements and lives in a licensed, but nonmedicaid-contracted facility operated by a fraternal, religious, or benevolent organization.~~

~~(2) Nothing in subsection (1) of this section prevents the agency or its designee from evaluating contracts with facilities not described in subsection (1) of this section.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1397 Treatment of entrance fees ((of individuals)) for people residing in a continuing care retirement ((communities)) community or a life care community. ~~((The following rule applies to long-term care medicaid applicants who reside in a continuing care retirement communities or life care communities that collect an entrance fee on admission from residents:~~

~~(1) Treatment of entrance fee. An individual's)~~ (1) A person's entrance fee in a continuing care retirement community or life care community is ~~((considered a))~~ an available resource ((available)) to the ~~((individual))~~ person, to the extent that:

(a) The ~~((individual))~~ person has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the ~~((individual))~~ person be insufficient to pay for care((-));

(b) The ~~((individual))~~ person is eligible for a refund of any remaining entrance ~~((free))~~ fee when the ~~((individual))~~ person dies or when the person terminates the continuing care retirement community or life care community contract and leaves the community; and

(c) The entrance ~~((free))~~ fee does not confer an ownership interest in the continuing care retirement community or life care community.

(2) Nothing in subsection (1) of this section prevents the agency or its designee from evaluating contracts with facilities not described in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1400 Long-term care (LTC) partnership program (index). Under the long-term care (LTC) partnership program, ~~((individuals))~~ people who purchase qualified long-term care partnership insurance policies can apply for long-term care medicaid under special rules for determining financial eligibility. These special rules generally allow the ~~((individual))~~ person to protect assets up to the insurance benefits received from a partnership policy so that such assets will not be taken into account in determining financial eligibility for long-term care medicaid and will not subsequently be subject to estate recovery for medicaid and long-term care services paid. The Washington long-term care partnership program is effective on December 1, 2011.

The following rules govern long-term care eligibility under the long-term care partnership program:

(1) WAC ~~((388-513-1405))~~ 182-513-1405 Definitions.

(2) WAC ~~((388-513-1410 What qualifies as a))~~ 182-513-1410 LTC partnership policy~~((?))~~ qualifications.

(3) WAC ~~((388-513-1415 What))~~ 182-513-1415 Assets that can't be protected under the LTC partnership provisions~~((?))~~.

(4) WAC ~~((388-513-1420 Who is eligible))~~ 182-513-1420 Eligibility for asset protection under a ~~((LTC))~~ partnership policy~~((?))~~.

(5) WAC ~~((388-513-1425 When would I not qualify))~~ 182-513-1425 Not qualifying for LTC medicaid if ~~((I have a))~~ an LTC partnership policy ~~((that does not have exhausted benefits?))~~ is in pay status.

(6) WAC ~~((388-513-1430 What))~~ 182-513-1430 Change of circumstances that must ~~((I report when I have a))~~ be reported when there is an LTC partnership policy paying a portion of ~~((my))~~ care~~((?))~~.

(7) WAC ~~((388-513-1435 Will))~~ 182-513-1435 When Washington recognizes ~~((a))~~ an LTC partnership policy purchased in another state~~((?))~~.

(8) WAC ~~((388-513-1440))~~ 182-513-1440 Determining how many ~~((of my))~~ assets can be protected~~((?))~~.

(9) WAC ~~((388-513-1445 How do I designate))~~ 182-513-1445 Designating a protected asset and ~~((what))~~ required proof ~~((is required?))~~.

(10) WAC ~~((388-513-1450))~~ 182-513-1450 How ~~((does))~~ the transfer of assets affects LTC partnership and medicaid eligibility~~((?))~~.

(11) WAC ~~((388-513-1455 If I have))~~ 182-513-1455 Protected assets under ~~((a))~~ an LTC partnership policy~~((? what happens))~~ after ~~((my))~~ death~~((?))~~.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1405 Definitions. For purposes of ~~((this section))~~ WAC 182-513-1400 through 182-513-1455, the following terms have the meanings ~~((given them. Additional definitions can be found at))~~ stated. See chapter ((388-500)) 182-500 WAC and WAC ~~((388-513-1301))~~ 182-513-1100 for additional definitions.

"Issuer" means any entity that delivers, issues for delivery, or provides coverage to, a resident of Washington, any policy that claims to provide asset protection under the Washington long-term care partnership act, chapter 48.85 RCW. ~~((Issuer))~~ As used in this chapter, issuer specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

"Long-term care (LTC) insurance" means a policy ~~((described in))~~ under chapter 284-83 WAC.

~~(("Long-term care services" means services received in a medical institution, or under a home and community based waiver authorized by home and community services or division of developmental disabilities. Hospice services are considered long-term care services for the purposes of the long-term care partnership when medicaid eligibility is determined under chapter 388-513 or 388-515 WAC.))~~

"Protected assets" means assets that are designated as excluded or not taken into account upon determination of long-term care medicaid eligibility ~~((described in WAC 388-513-1315))~~ under WAC 182-513-1315. The protected or excluded amount is up to the dollar amount of benefits that have been paid for long-term care services by the qualifying long-term care partnership policy on the medicaid applicant's or client's behalf. The assets are also protected or excluded for the purposes of estate recovery ~~((described in chapter 388-527))~~ under chapter 182-527 WAC, ~~((in))~~ up to the amount of benefits paid by the qualifying policy for medical and long-term care services.

"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid Services (CMS), and the health care authority (HCA) which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of ~~((an individual))~~ a person who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section

1917 (b)(1)(c)(iii) of the act. These policies are described in chapter 284-83 WAC.

"Reciprocity Agreement" means an agreement between states approved under section 6021(b) of the Deficit Reduction Act of 2005, Public Law 109-171 (DRA) under which the states agree to provide the same asset protections for qualified partnership policies purchased by ~~((an individual or))~~ a person while residing in another state and that state has a reciprocity agreement with the state of Washington.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1410 ~~((What qualifies as a))~~ LTC partnership policy(?) qualifications. A LTC partnership policy is a LTC policy that has been approved by the office of insurance commissioner as a LTC partnership policy described in chapter 284-83 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1415 ~~((What))~~ Assets that can't be protected under the LTC partnership provisions(?). The following assets cannot be protected under a LTC partnership policy.

(1) Resources in a trust ~~((described in WAC 388-561-0100))~~ under WAC 182-516-0100 (6) and (7).

(2) Annuity interests in which Washington must be named as a preferred remainder beneficiary as ~~((described in WAC 388-561-0201))~~ under WAC 182-516-0201.

(3) Home equity in excess of the standard ~~((described in WAC 388-513-1350))~~ under WAC 182-513-1350. Individuals who have excess home equity interest are not eligible for long-term care medicaid services.

(4) Any portion of the value of an asset that exceeds the dollar amount paid out by the LTC partnership policy.

(5) The unprotected value of any partially protected asset ~~((an example would be the home))~~ is subject to estate recovery described in chapter ~~((388-527))~~ 182-527 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1420 ~~((Who is eligible))~~ Eligibility for asset protection under a partnership policy(?). (1) The LTC partnership policy must meet all the requirements in chapter 284-83 WAC. For existing LTC policies which are converted to a LTC partnership policy via an exchange or through the addition of a policy rider or endorsement, the conversion must take place on or after December 1, 2011 unless the policy is paying out benefits at the time the policy is exchanged.

(2) You meet all applicable eligible requirements for LTC medicaid and:

(a) Your LTC partnership policy benefits have been exhausted and you are in need of LTC services.

(b) Your LTC partnership policy is not exhausted and is:

(i) Covering all costs in a medical institution and you are still in need for medicaid; or

(ii) Covering a portion of the LTC costs under your LTC partnership policy but does not meet all of your LTC needs.

(c) At the time of your LTC partnership policy has paid out more benefits than you have designated as protected. In this situation your estate can designate additional assets to be excluded from the estate recovery process up to the dollar amount the LTC partnership policy has paid out.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1425 ~~((When would I not qualify))~~ Not qualifying for LTC medicaid if ((I have a)) an LTC partnership policy is in pay status(?). You are not eligible for long-term care (LTC) medicaid when the following applies:

(1) The income you have available to pay toward your cost of care ~~((described in WAC 388-513-1380))~~ under WAC 182-513-1380, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate at the institution.

(2) The income you have available to pay toward your cost of care on a home and community based (HCB) waiver ~~((described in chapter 388-515))~~ under chapter 182-515 WAC, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate in a home or residential setting.

(3) You fail to meet another applicable eligibility requirement for LTC medicaid.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1430 ~~((What))~~ Change of circumstances that must ((I report)) be reported when ((I have a)) there is an LTC partnership policy paying a portion of ((my)) care(?). You must report changes described in WAC ~~((388-418-0005))~~ 182-504-0105 plus the following:

(1) You must report and verify the value of the benefits that your issuer has paid on your behalf under the long-term care (LTC) partnership policy upon request by the ~~((department))~~ agency, and at each annual eligibility review.

(2) You must provide proof when you have exhausted the benefits under your LTC partnership policy.

(3) You must provide proof if you have given away or transferred assets that you have previously designated as protected. Although, there is no penalty for the transfer of protected assets once you have been approved for LTC medicaid, the value of transferred assets reduces the total dollar amount that is designated as protected and must be verified.

(4) You must provide proof if you have sold an asset or converted a protected asset into cash or another type of asset. You will need to make changes in the asset designation and verify the type of transaction and new value of the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1435 ~~((With))~~ When Washington recognizes ((a)) an LTC partnership policy purchased in another state(?). The Washington long term care partnership program provides reciprocity with respect to qualifying

long-term care insurance policies covered under other state long-term care insurance partnerships. This allows you to purchase a partnership policy in one state and move to Washington without losing your asset protection. If your LTC policy is in pay status at the time you move to Washington and you are otherwise eligible for LTC medicaid, Washington will recognize the amount of protection you accumulated in the other state.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1440 Determining how many of my assets can be protected~~(?)~~. You can protect assets based on the amount paid by your LTC partnership policy. Assets are protected in both LTC eligibility and estate recovery. If the partnership for long-term care program is discontinued, an individual who purchased an approved plan before the date the program is discontinued remains eligible to receive dollar-for-dollar asset disregard and asset protection under the long-term care (LTC) medicaid program.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1445 (How do I designate) Designating a protected asset and (what) required proof (is required?). (1) Complete a (DSHS) department of social and health services (DSHS) 10-438 long-term care partnership (LTCP) asset designation form listing assets and the full fair market value that are earmarked as protected at the time of initial application for (LTC) long-term services and supports under medicaid.

(a) The full fair market value (FMV) of real property or interests in real property will be based on the current assessed value for property tax purposes for real property. A professional appraisal by a licensed appraiser can establish the current value if the assessed value is disputed.

(b) The value of a life estate in real property is determined using the life estate tables found (in: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCAppendix2.shtml>) at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/determining-value-life-estates>.

(c) If you own an asset with others, you can designate the value of your (pro-rata) pro rata equity share.

(d) If the dollar amount of the benefits paid under a LTCP policy is greater than the fair market value of all assets protected at the time of the application for long-term care medicaid, you may designate additional assets for protection under this section. The DSHS LTCP asset designation form must be submitted with the updated assets indicated along with proof of the current value of designated assets.

(e) The value of your assets protected for you under your LTC partnership policy do not carry over to your spouse should (they) the spouse need medicaid (long-term care) LTC services during or after your lifetime (or after your death). If your surviving spouse has (their own) an LTC partnership policy (he or she) the spouse may designate assets based on the dollar amount paid under (his or her) the spouse's own policy.

(f) Assets designated as protected under this subsection will not be subject to transfer penalties (described in WAC 388-513-1363) under WAC 182-513-1363.

(2) Proof of the current fair market value of all protected assets is required at the initial application and each annual review.

(3) Submit current verification from the issuer of the LTCP policy of the current dollar value paid toward (long-term care) LTC benefits. This verification is required at application and each annual eligibility review.

(4) Any (individual) person or the personal representative of the (individual's) person's estate who asserts that an asset is protected has the initial burden of:

(a) Documenting and proving by (clear and) convincing evidence that the asset or source of funds for the asset in question was designated as protected;

(b) Demonstrating the value of the asset and the proceeds of the asset beginning from the time period the LTC partnership has paid out benefits to the present; and

(c) Documenting that the asset or proceeds of the asset remained protected at all times.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1450 How (does) the transfer of assets affects LTC partnership and medicaid eligibility~~(?)~~. (1) If you transfer an asset within the sixty months prior to the medicaid application or after medicaid eligibility has been established, (we) the agency will evaluate the transfer based on WAC (388-513-1363) 182-513-1363 and determine if a penalty period applies unless:

(a) You have already been receiving institutional services;

(b) Your LTC partnership policy has paid toward institutional services for you; and

(c) The value of the transferred assets has been protected under the LTC partnership policy.

(2) The value of the transferred assets that exceed your LTC partnership protection will be evaluated for a transfer penalty.

(3) If you transfer assets (whose) with values that are protected, you lose that value as future protection unless all the transferred assets are returned.

(4) The value of your protected assets less the value of transferred assets equals the adjusted value of the assets you are able to protect.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1455 (If I have) What happens to protected assets under a LTC partnership policy (what happens) after (my) death~~(?)~~. Assets designated as protected prior to death are not subject to estate recovery for medical or long-term care (LTC) services paid on your behalf (as described in chapter 388-527) under chapter 182-527 WAC as long as the following requirements are met:

(1) A personal representative who asserts an asset is protected under this section has the initial burden of providing

proof ~~((as described in chapter 388-527))~~ under chapter 182-527 WAC.

(2) A personal representative must provide verification from the LTC insurance company of the dollar amount paid out by the LTC partnership policy.

(3) If the LTC partnership policy paid out more than was previously designated, the personal representative has the right to assert that additional assets should be protected based on the increased protection. The personal representative must use the DSHS LTCP asset designation form and send it to the office of financial recovery.

(4) The amount of protection available to you at death through the estate recovery process is decreased by the FMV of any protected assets that were transferred prior to death.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-513-1300 Payment standard for persons in medical institutions.
- WAC 182-513-1301 Definitions related to long-term care (LTC) services.
- WAC 182-513-1305 Determining eligibility for noninstitutional medical assistance in an alternate living facility (ALF).
- WAC 182-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services.
- WAC 182-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 and before April 1, 2003 for long-term care (LTC) services.
- WAC 182-513-1366 Evaluating the transfer of an asset made before March 1, 1997 for long-term care (LTC) services.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1505 ~~((Long term care))~~ Home and community based (HCB) waiver services authorized by home and community services (HCS) ~~((and hospice))~~. ~~((H))~~ This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) waiver services ~~((administered))~~ authorized by home and community services (HCS) ~~((and hospice services administered by the health care authority (HCA)))~~. The definitions in WAC 182-513-1100 and chapter 182-500 WAC apply throughout this chapter.

~~((2))~~ (1) ~~((HCB service programs))~~ HCS waivers are:

- (a) Community options program entry system (COPES);
- (b) ~~((Program of all inclusive care for the elderly (PACE)));~~
- (c) ~~Washington medicaid integration partnership (WMIP); or~~

~~((d))~~ New Freedom consumer-directed services (New Freedom)~~((-~~

~~(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty five days upon discharge from a medical institution.~~

~~(4) Hospice services if you don't reside in a medical institution and:~~

~~(a) Have gross income at or below the special income level (SIL); and~~

~~(b) Aren't eligible for another CN or medically needy (MN) medicaid program.~~

~~(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.~~

~~(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for medicaid using noninstitutional CN rules.~~

~~(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN medicaid described in WAC 388-515-1507(1).~~

~~(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for medicaid under a CN program listed in WAC 388-515-1507(1). This is also called client participation or post eligibility); and~~

~~(c) Residential support waiver (RSW).~~

(2) WAC 182-515-1506 describes the general eligibility requirements for HCB waiver services authorized by HCS.

(3) WAC 182-515-1507 describes financial requirements for eligibility for HCB waiver services authorized by HCS when a person is eligible for a noninstitutional SSI-related categorically needy (CN) medicaid program.

(4) WAC 182-515-1508 describes the financial eligibility requirements for HCB waiver services authorized by HCS when a person is not eligible for SSI-related noninstitutional CN medicaid under WAC 182-515-1507.

(5) WAC 182-515-1509 describes the rules used to determine a person's responsibility for the cost of care and room and board for HCB waiver services if the person is eligible under WAC 182-515-1508.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1506 ~~((What are the general eligibility requirements for))~~ Home and community based (HCB) waiver services authorized by home and community services (HCS) ~~((and hospice?))~~—General eligibility. (1) To be eligible for home and community based (HCB) waiver services ~~((and hospice you))~~ a person must:

(a) Meet the program and age requirements for the specific program:

~~((per))~~ (i) Community options program entry system (COPES),

~~((per))~~ under WAC 388-106-0310;

~~((per))~~ (ii) PACE, per WAC 388-106-0705;

~~((per))~~ (iii) WMIP waiver services, per WAC 388-106-0750;

~~((per))~~ (iv) Residential support waiver (RSW), under WAC

388-106-0310; or

~~((per))~~ (v) New Freedom, ~~((per))~~ under WAC ~~((388-106-1410;~~

(v) Hospice, per chapter 182-551 WAC; or
 (vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260)) 388-106-0338.

(b) Meet the disability criteria for the supplemental security income (SSI) program ((as described in)) under WAC 182-512-0050;

(c) Require the level of care provided in a nursing facility ((described in)) under WAC 388-106-0355;

(d) ((Be residing)) Reside in a medical institution as defined in WAC 182-500-0050, or be likely to be placed in one within the next thirty days without HCB waiver services provided under one of the programs listed in ((subsection (4))) (a) of this subsection;

(e) ((Have attained)) Attain institutional status ((as described in WAC 388-513-1320)) under WAC 182-513-1320;

(f) ((Be determined in need of)) Assessed for HCB waiver services ((and)), be approved for a plan of care ((as described in subsection (1)(a))), and receiving an HCB waiver service under (a) of this subsection;

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted((-

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365;

(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services)) alternate living facility under WAC 182-513-1100.

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; or

(b) Has a home with equity in excess of the requirements under WAC 182-513-1350.

(3) See WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care (LTC) services.

((3)) (4) Current income and resource standards ((charts)) are ((located)) found at((+http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html)) http://www.hca.wa.gov/frec-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1507 ((What are the financial requirements for)) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((when you are))—Financial eligibility if a person is eligible for ((a)) an SSI-related noninstitutional cate-

gorically needy (CN) medicaid program((?)), (((1)) You are eligible for medicaid under one of the following programs:

(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;

(b) SSI-related CN medicaid described in WAC 182-512-0100 (2)(a) and (b);

(c) SSI-related health care for workers with disabilities program (HWD) described in WAC 182-511-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC 182-511-1250;

(d) Aged, blind, or disabled (ABD) cash assistance described in WAC 388-400-0060 and are receiving CN medicaid.

(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365. This does not apply to PACE or hospice services.

(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).

(5) You do not pay (participate) toward the cost of your personal care services.

(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.

(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty two dollars and seventy nine cents and use your income to pay up to the room and board standard.

(b) If subsection (6)(a) applies and you are receiving HWD described in WAC 182-511-1000, you are responsible to pay your HWD premium as described in WAC 182-511-1250, in addition to the ADSA room and board standard.

(7) If you are eligible for aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under WAC 388-478-0033;

(b) When you live in an AFH, you keep a PNA of thirty eight dollars and eighty four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive an ABD cash grant of thirty eight dollars and eighty four cents as described in WAC 388-478-0045, which you keep for your PNA.

(8) Current resource and income standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

((9)) (1) A person is financially eligible for home and community based (HCB) waiver services if:

(a) The person is receiving coverage under one of the following supplemental security income (SSI)-related categorically needy (CN) medicaid programs:

(i) SSI program under WAC 182-510-0001. This includes SSI clients under Section 1619(b) of the Social Security Act;

(ii) SSI-related noninstitutional CN program under chapter 182-512 WAC; or

(iii) Health care for workers with disabilities program (HWD) under chapter 182-511 WAC.

(b) The person does not have a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; and

(c) The person does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A person eligible under this section does not pay toward the cost of care, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A person eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100 and does not receive a cash grant from the department of social and health services under WAC 388-400-0060:

(a) Keeps a personal needs allowance (PNA) of \$62.79; and

(b) Pays towards room and board up to the room and board standard with the remaining income. The room and board standard is the federal benefit rate (FBR) minus \$62.79.

(4) A person who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board, if residing in an ALF.

(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay toward the cost of care and keeps:

(a) The cash grant amount authorized under WAC 388-478-0033 if living at home;

(b) A PNA of \$38.84, but must pay towards room and board with the remaining income and ABD cash grant up to the room and board standard if living in an adult family home (AFH). The room and board standard is the federal benefit rate (FBR) minus \$62.79; or

(c) The cash grant of \$38.84 under WAC 388-478-0006 if living in an assisted living facility.

(6) Current resource, income, PNA, and ((ADSA)) room and board standards are ((located)) found at(~~:-~~ <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LtcstandardsPNAchartsSubfile.shtml>) <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1508 ((How does the department determine if you are financially eligible for)) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((and hospice if you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)?))—Finan-

cial eligibility using SSI-related institutional rules. (1) If ((you are)) a person is not eligible for ((medicaid under)) a categorically needy (CN) program ((listed in)) under WAC ((388-515-1507(1))) 182-515-1507, the ((department must)) agency determines ((your)) eligibility for home and community based (HCB) waiver services authorized by home and community services (HCS) using institutional medicaid rules. This section explains how ((you)) a person may qualify using institutional ((medicaid)) rules.

(2) ((You)) A person must meet ((the));

(a) General eligibility requirements ((described in WAC 388-513-1315 and 388-515-1506.

(3) You must meet the following resource requirements:

(a) Resource limits described in WAC 388-513-1350.

(b) If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 if you verify these expenses.

(4) You must meet)) under WAC 182-513-1315 and 182-515-1506;

(b) The resource requirements under WAC 182-513-1350;

(c) The following income requirements:

((a) Your gross nonexcluded)) (i) Available income must be at or below the special income level (SIL) ((which is three hundred percent of the federal benefit rate (FBR))), defined under WAC 182-513-1100; or

((b) For home and community based (HCB) service programs authorized by HCS your gross nonexcluded income is:

(i) Above the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and))

(ii) ((Net)) If available income is above the SIL, net available income is no greater than the effective one-person medically needy income level (MNIL). Net income is calculated by reducing ((gross nonexcluded)) available income by:

(A) Medically needy (MN) disregards found ((in WAC 388-513-1345)) under WAC 182-513-1345; ((and))

(B) The average monthly nursing facility state rate ((is five thousand six hundred and twenty six dollars. This rate will be updated annually starting October 1, 2012 and each year thereafter on October 1. This standard will be updated annually in the long-term care standard section of the EAZ manual described at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardsPNA.shtml>.

(5) The department follows the rules in WAC 388-515-1325, 388-513-1330, and 388-513-1340 to determine available income and income exclusions.

(6));

(C) Health insurance premiums, other than medicare; and

(D) Outstanding medical bills, prorated monthly over a twelve-month certification period, that meet the requirements of WAC 182-513-1350.

(3) The agency determines available income and income exclusions under WAC 182-513-1325, 182-513-1330, and 182-513-1340.

(4) A person eligible under this section is responsible to pay toward the cost of care and room and board, as described under WAC 182-515-1509.

(5) Current resource ~~((and))~~, income standards ~~((including the SIL, MNIL and FBR))~~, and the average state nursing facility rate for long-term care are found at ~~(: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml)~~ <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1509 ~~((How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508?))~~ Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility. ~~((If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon the following:~~

~~(1) If you are))~~ (1) A person eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a person's responsibility towards cost of care.

(b) Room and board is a term that refers to a person's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a person must pay toward the cost of care for HCB waiver services authorized by HCS when living at home:

(a) A single ~~((and living))~~ person who lives at home (as defined in WAC 388-106-0010)~~((; you))~~ keeps ~~((all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA))~~) a personal needs allowance (PNA) of up to the federal poverty level (FPL) and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

~~((2) If you are))~~ (b) A married ~~((living))~~ person who lives with the person's spouse at home ~~((as defined in WAC 388-106-0010, you keep all your income up to the effective one person medically needy income level (MNIL) for your PNA if your spouse lives at home with you. If you are married and living apart from your spouse, you're allowed to keep your income up to the FPL for your PNA.~~

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross nonexcluded income. The PNA is sixty two dollars and seventy nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the ADSA room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called

your participation. Income that remains after the PNA and any room and board deduction)) (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the person's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married person who lives at home and apart from the person's spouse keeps a PNA of up to the FPL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each person receives HCB waiver services is each allowed to keep a PNA of up to the FPL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living at home where each person receives HCB waiver services, one person authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The person authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The person authorized by HCS retains the federal poverty level (FPL) and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a person must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100 a person:

(a) Keeps a PNA of \$62.79;

(b) Pays room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus \$62.79; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by ~~((allowable))~~ deductions in the following order:

(a) ~~((If you are working, the department allows))~~ An earned income deduction of the first ~~((sixty five dollars))~~ \$65 plus one-half of the remaining earned income~~((;))~~;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed ~~((by chapter 388-79 WAC))~~ under WAC 182-513-1505 through 182-513-1525;

(c) Current or back child support garnished or withheld from ~~((your))~~ the person's income according to a child support order in the month of the garnishment if it is for the current month. If the ~~((department))~~ agency allows this as a deduction from ~~((your))~~ income, the ~~((department will))~~ agency does not count it as ~~((your))~~ the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for ~~((your))~~ the community spouse ~~((not to exceed that in WAC 388-513-~~

1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, plus;

(V) The food assistance standard utility allowance (SUA) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(VII) Is reduced by your community spouse's gross countable income.

(iii) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress, as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the person's income to the person's PNA, as calculated under WAC 182-513-1385;

(c) A monthly maintenance-needs (amount) allowance for each (minor or dependent child, dependent parent, or dependent sibling of your community or institutionalized spouse. The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income.) dependent of the institutionalized person, or the person's spouse, as calculated under WAC 182-513-1385;

(f) ((Your unpaid)) Incurred medical expenses which have not been used to reduce excess resources. Allowable

medical expenses are ((described in WAC 388-513-1350)) under WAC 182-513-1350.

((g)) (5) The total of the following deductions cannot exceed the ((SIL (three hundred percent of the FBR))) special income level (SIL) defined under WAC 182-513-1100:

((i) Personal needs allowance)) (a) The PNA allowed in subsection((s(1), (2) and (3)(a) and (b))) (2) or (3) of this section, including room and board; ((and

((ii)))

(b) The earned income deduction ((of the first sixty-five dollars plus one-half of the remaining earned income)) in subsection (4)(a) of this section; and

((iii)) (c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A person may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

((5) You)) (7) A person must pay ((your provider the combination)) the person's provider the sum of the room and board amount, and the cost of ((personal)) care ((services)) after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

((6) You may have to pay third party resources described in WAC 182-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.)

(8) ((If you are)) A person on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a person lives in multiple living arrangements in a month ((an example is a move from an adult family home to a home setting on HCB services)), the ((department)) agency allows ((you)) the highest PNA available based on all the living arrangements and services ((you have)) the person has received in a month.

((9) Current PNA and ADSA room and board)) (10) Standards described in this section are ((located)) found at(= <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltstandardsPNAchartsfile.shtml>) <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1510 ((Division of)) Home and community based (HCB) waiver services authorized by the developmental disabilities ((DDD) home and community based services waivers)) administration (DDA). ((The four sections that follow)) This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) waivers authorized by the ((division of)) developmental disabilities ((DDD) home and community based services (HCBS) waivers)) administration (DDA). The definitions in WAC 182-513-

1100 and chapter 182-500 WAC apply throughout this chapter.

(1) The DDA waiver programs are:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

~~((1) WAC 388-515-1511))~~ (2) WAC 182-515-1511 describes the general eligibility requirements ~~((under the DDD HCBS))~~ for HCB waiver ~~((s))~~ services authorized by DDA.

~~((2) WAC 388-515-1512))~~ (3) WAC 182-515-1512 describes the financial requirements for ~~((the DDD waivers if you are))~~ eligibility for HCB waiver services authorized by DDA if a person is eligible for ~~((medicaid under the noninstitutional categorically needy))~~ a noninstitutional SSI-related CN program ~~((CN))~~.

~~((3) WAC 388-515-1513))~~ (4) WAC 182-515-1513 describes the ~~((initial))~~ financial eligibility requirements for ~~((the DDD))~~ HCB waiver ~~((s if you are))~~ services authorized by DDA when a person is not eligible for ~~((medicaid under a categorically needy))~~ an SSI-related noninstitutional CN program ~~((CN listed in))~~ under WAC ~~((388-515-1512(1)))~~ 182-515-1512.

~~((4) WAC 388-515-1514))~~ (5) WAC 182-515-1514 describes the ~~((post eligibility financial requirements for the DDD waivers if you are not eligible for medicaid under a categorically needy program CN listed in))~~ rules used to determine a person's responsibility in the cost of care and room and board for HCB waiver services authorized by DDA if the person is eligible under WAC ~~((388-515-1512(4)))~~ 182-515-1512.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1511 ~~((What are the general eligibility requirements for))~~ **Home and community based (HCB) waiver services** ~~((under the division of))~~ **authorized by the developmental disabilities** ~~((DDD home and community based services (HCBS) waivers?))~~ **administration (DDA)—General eligibility.** ~~((1) This section describes the general eligibility requirements for waiver services under the DDD home and community based services (HCBS) waivers.~~

(2) The requirements for services for DDD HCBS waivers are described in chapter 388-845 WAC. The department establishes eligibility for DDD HCBS waivers.) (1) To be eligible ~~((, you))~~ for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA), a person must:

(a) Meet specific program requirements under chapter 388-845 WAC;

(b) Be an eligible client of the ~~((division of developmental disabilities (DDD)))~~ DDA;

~~((b))~~ (c) Meet the disability criteria for the supplemental security income (SSI) program ~~((as described in))~~ under WAC 182-512-0050;

~~((e) Require))~~ (d) Need the level of care provided in an intermediate care facility for the intellectually disabled (ICF/ID);

~~((d))~~ (e) Have attained institutional status ~~((as described in WAC 388-513-1320))~~ under WAC 182-513-1320;

~~((e))~~ (f) Be able to reside in the community and choose to do so as an alternative to living in an ICF/ID;

~~((f) Need waiver services as determined by your plan of care or individual support plan))~~ (g) Be assessed for HCB waiver services, be approved for a plan of care, and receive HCB waiver services under (a) of this subsection, and:

(i) Be able to live at home with HCB waiver services; or

(ii) Live in a department-contracted facility ~~((, which includes))~~ with HCB waiver services, such as:

(A) A group home;

(B) A group training home;

(C) A child foster home, group home, or staffed residential facility;

(D) An adult family home (AFH); or

(E) An adult residential care (ARC) facility.

(iii) Live in ~~((your))~~ the person's own home with supported living services from a certified residential provider; or

(iv) Live in the home of a contracted companion home provider ~~((, and~~

~~((g) Be both medicaid eligible under the categorically needy program (CN) and be approved for services by the division of developmental disabilities)).~~

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; or

(b) Has a home with equity in excess of the requirements under WAC 182-513-1350.

(3) See WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care (LTC) services.

(4) Current income and resource standard charts are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1512 ~~((What are the financial requirements for the DDD waiver services if I am eligible for medicaid under the noninstitutional categorically needy program (CN)?))~~ **Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility if a person is eligible for a noninstitutional SSI-related categorically needy (CN) program.** ~~((1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for medicaid under a categorically needy program (CN) under one of the following programs:~~

(a) ~~Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility~~

determined and maintained by the Social Security Administration;

(b) Health care for workers with disabilities (HWD) described in WAC 182-511-1000 through 182-511-1250;

(c) SSI-related (CN) medicaid described in WAC 182-512-0100 (2)(a) and (b) or meets the requirements in WAC 182-512-0880 and is (CN) eligible after the income disregards have been applied;

(d) CN medicaid for a child as described in WAC 182-505-0210 (1), (2), (7) or (8); or

(e) Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.

(2) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.

(3) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a CN medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1507. Room and board and long term care standards are located at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty two dollars and seventy nine cents.

(5) If you are eligible for a premium based medicaid program such as health care for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN P program.) (1) A person is financially eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) if:

(a) The person is receiving coverage under one of the following SSI-related categorically needy (CN) medicaid programs:

(i) Supplemental security income (SSI) program under WAC 182-510-0001. This includes SSI clients under 1619(b) status; or

(ii) Health care for workers with disabilities (HWD) under chapter 182-511 WAC; or

(iii) SSI-related noninstitutional (CN) program under chapter 182-512 WAC; or

(iv) The foster care program under WAC 182-505-0211 and the person meets disability requirements under WAC 182-512-0050.

(b) The person does not have a penalty period of ineligibility for the transfer of an asset as under WAC 182-513-1363; and

(c) The person does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A person eligible under this section does not pay toward the cost of care, but must pay room and board if living

in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A person eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100:

(a) Keeps a personal needs allowance (PNA) of \$62.79; and

(b) Pays towards room and board up to the room and board standard with remaining income. The room and board standard is the federal benefit rate (FBR) minus \$62.79.

(4) A person who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board if residing in an ALF.

(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay participation toward the cost of care and keeps the following:

(a) The cash grant amount authorized under WAC 388-478-0033 if living at home;

(b) A PNA of \$38.84, but must pay towards room and board with the remaining income and ABD cash grant for the cost of room and board up to the room and board standard if living in an adult family home (AFH). The room and board standard is the federal benefit rate (FBR) minus \$62.79; or

(c) The cash grant of \$38.84 authorized under WAC 388-478-0006 when living in an assisted living or DDA group home.

(6) Current resource, income, PNA and room and board standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1513 ((How does the department determine if I am financially eligible for DDD waiver service medical coverage if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?) Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility using SSI-related institutional rules. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.

(1) Resource limits are described in WAC 388-513-1350. If you have resources which are higher than the standard allowed, we may be able to reduce resources by your unpaid medical expenses described in WAC 388-513-1350.

(2) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through 388-513-1365.

(d) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(3) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.

(4) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards for long term care services.

(5) Current income and resources standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.) (1) If a person is not eligible for a categorically needy (CN) program under WAC 182-515-1512, the agency determines eligibility for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) using institutional medicaid rules. This section explains how a person may qualify using institutional rules.

(2) A person must meet:

(a) General eligibility requirements under WAC 182-513-1315 and 182-515-1511;

(b) Resource requirements under WAC 182-513-1350; and

(c) Have available income at or below the special income level (SIL) defined under WAC 182-513-1100.

(3) The agency determines available income and income exclusions according to WAC 182-513-1325, 182-513-1330, and 182-513-1340.

(4) A person eligible under this section is responsible to pay income toward the cost of care and room and board, as described under WAC 182-515-1514.

(5) Current resource, income standards are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1514 ((How does the department determine how much of my income I must pay towards the cost of my DDD waiver services if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?) Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA);

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and

(b) Pay for your room and board up to the ADSA room and board rate described in <http://www.dshs.wa.gov/>

[manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml](http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml).

(3) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative plus;

(V) The food assistance standard utility allowance (SUA) provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(VII) Is reduced by your community spouse's gross countable income.

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of

your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income);

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350;

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b);

(4) If you are eligible for aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the ABD cash program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard described in <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>; or

(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty four cents which you keep for your PNA;

(5) You may have to pay third party resourcees (TPR) described in WAC 182-501-0200 in addition to room and board and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.)) (1) A person eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) under WAC 182-515-1513 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a person's responsibility towards cost of care.

(b) Room and board is a term that refers to a person's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a person must pay toward the cost of care for home and community based (HCB) waiver services authorized by the DDA when the person is living at home, as follows:

(a) A single person who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the special income level (SIL) defined under WAC 182-513-1100.

(b) A single person who lives at home on the roads to community living program authorized by DDA keeps a PNA up to the SIL but must pay any remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(c) A married person who lives with the person's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL but must pay any remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each person receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The person authorized by DDA keeps a PNA of up to the SIL but must pay any remaining available income toward the person's cost of care after allowable deductions in subsection (4) of this section; and

(ii) The person authorized by HCS pays toward the cost of care under WAC 182-515-1507 or 182-515-1509.

(3) The agency determines how much a person must pay toward the cost of care for HCB waiver services authorized by DDA and room and board when the person is living in a department-contracted ALF defined under WAC 182-513-1100. A person:

(a) Keeps a PNA of \$62.79;

(b) Pays room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus \$62.79; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) An earned income deduction of the first \$65, plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under WAC 182-513-1505 through 182-513-1525;

(c) Current or back child support garnished or withheld from the person's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse under WAC 182-513-1385. If the community spouse is on long-term care services, the allocation is limited to an amount that brings the person's income to the person's PNA;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized person, or the person's spouse, as calculated under WAC 182-513-1385; and

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the SIL defined under WAC 182-513-1100:

(a) The PNA described in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A person may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A person must pay the person's provider the sum of the room and board amount, the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A person on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a person lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the person has received in a month.

(10) Standards described in this section are found at <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-515-1500 Payment standard for persons in certain group living facilities.

WSR 16-24-090 PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 7, 2016, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-104.

Title of Rule and Other Identifying Information: Chapter 392-160 WAC, Special service program—Transitional bilingual.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Olympia, WA 98501, on January 11, 2017, at 10:00 a.m.

Date of Intended Adoption: January 13, 2017.

Submit Written Comments to: Jenny Choi, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail jenny.choi@k12.wa.us, fax (360) 664-0256, by January 11, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy by January 4, 2017, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules is to adopt the recommendations of the transitional bilingual instructional program (TBIP) accountability task force, authorized in ESSB 6002, section 501(y) (2015), and of the OSPI bilingual education advisory committee. Among other things, the proposed rules clarify that school districts must communicate with parents of students in the bilingual program in a language the parent can understand; they eliminate the requirement that districts must determine if the disability of a student with an individualized education program is the determinant factor in the student's English language deficiency; and they provide that all students identified as being eligible for TBIP and any other categorical program must enter and exit TBIP through the state standardized entrance and exit procedures used for all English language learners.

Reasons Supporting Proposal: The task force and advisory committee recommended the proposed changes in chapter 392-160 WAC to align state policies with federal law.

Statutory Authority for Adoption: RCW 28A.180.060.

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

Name of Agency Personnel Responsible for Drafting: Jenny Choi, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-4477; Implementation and Enforcement: Mea Moore, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

December 2, 2016

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 08-19-039, filed 9/10/08, effective 10/11/08)

WAC 392-160-010 School district board of directors duties. Consistent with the provisions of this chapter, every school district board of directors:

(1) Shall make available to each eligible student a transitional bilingual instructional program or, if the use of two languages is not practicable as provided in WAC 392-160-040, an alternative instructional program;

(2) Shall communicate(~~(, whenever feasible,)~~) with parents of students in the bilingual program, or alternative instruction program in a language they can understand; and

(3) Shall provide effective professional development training of sufficient duration and depth for administrators, teachers, counselors, and other staff on bilingual program models, and/or district's alternative instructional program, appropriate use of instructional strategies and assessment results, and curriculum and instructional materials for use with culturally and linguistically diverse students.

AMENDATORY SECTION (Amending WSR 08-09-071, filed 4/16/08, effective 5/17/08)

WAC 392-160-045 Students with disabilities(~~— Conditions for transitional bilingual entitlement~~)). (1) Students identified as being eligible for both the state transitional bilingual instructional program (TBIP) and special education program will participate in the TBIP to the same degree and consideration given to every other child in the TBIP.

(2) ~~((The district, in consultation with the student's IEP team shall determine whether the child's disability is the determinant factor for the child's English language skill deficiency.~~

(3) ~~If it is determined that the child's disability is the determinant factor for the English language skill deficiency, the child shall not be eligible for the TBIP.~~

(4) ~~If it is determined that the child's disability is not the determinant factor for the English language skill deficiency, the child shall be eligible for the TBIP.~~

(5) ~~If it cannot be determined whether or not the child's disability is the determinant factor for the child's English language skill deficiency, the child shall be eligible for TBIP and the special education program. The child's district, in consultation with the student's IEP team shall assess annually whether or not the child's disability is the determinant factor for the child's English language skill deficiency. If the district and IEP team determine that the child's disability is the determinant factor for the child's English language skill deficiency then the child shall not be eligible for the TBIP.~~

(6)) A child who is participating in both the TBIP and the special education program under this chapter shall be subject to all conditions of participation (~~provided in this~~) in the TBIP chapter.

(3) All students identified as being eligible for the TBIP and any other categorical program will enter and exit TBIP through the standardized entrance and exit procedures used for all English learners described in WAC 392-160-015 and 392-160-035.

WSR 16-24-092

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 7, 2016, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-20-108.

Title of Rule and Other Identifying Information: Chapter 16-233 WAC, Worker protection standard, the department is proposing to adopt the revised federal worker protection standard specified in 40 C.F.R. §170 (Worker Protection Standard).

Hearing Location(s): Washington Department of Agriculture, 222 North Havana, Conference Room 202, Spokane, WA 99202, on January 10, 2017, at 1:00 p.m.; at the Washington Department of Agriculture, 21 North First Avenue, Conference Room 238, Yakima, WA 98902, on January 11, 2017, at 11:00 a.m.; and at the Washington Department of

Transportation, 4100 Cedardale Road, Main Conference Room, Mt. Vernon, WA 98274, on January 13, 2017, at 11:00 a.m.

Date of Intended Adoption: January 27, 2017.

Submit Written Comments to: Henri Gonzales, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, e-mail wsdarulescomments@agr.wa.gov, fax (360) 902-2094, by January 13, 2017.

Assistance for Persons with Disabilities: Contact agency receptionist by January 4, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On November 2, 2015, the U.S. Environmental Protection Agency (EPA) updated their Worker Protection Standard (WPS) (40 C.F.R. §170). This regulation specifies workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies. This regulation is intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments. Most of the new federal regulation goes into effect January 2017; with four provisions going into effect January 2018. Some of the revisions to the new regulation include provisions regarding: Training, posting and recordkeeping of safety data sheets, notification of treated areas for restricted-entry intervals, minimum age for handlers and early-entry workers, application exclusion zones, display of basic pesticide safety information, personal protective equipment, emergency eye flushing, and information to be provided to medical personnel treating victims.

On March 31, 2016, the department requested equivalency from EPA in an area of WPS regarding decontamination water for handlers and early-entry workers. WAC 16-233-150(4) and 16-233-250(6) currently requires employers to provide at least ten gallons of water for one employee (handlers or early-entry workers) and twenty gallons of water for two or more employees (handlers or early-entry workers) at sites that do not have running water. The revised federal WPS requires employers to provide at least three gallons of water for each early-entry worker and handler. EPA approved the department's request for equivalency on October 27, 2016.

Reasons Supporting Proposal: RCW 17.21.440 (2)(b) requires the department to adopt rules for safety and health standards that are at-least-as-effective-as the federal standard. Revising chapter 16-233 WAC to adopt the new federal WPS is necessary to remain uniform with current federal regulations. Although, agricultural employers are still required to follow the new federal regulation whether we adopt it or not because it is incorporated onto pesticide labeling through reference. Both state and federal regulations prohibit the use of a product inconsistent with its labeling.

Statutory Authority for Adoption: RCW 15.58.040, 17.21.030, and chapter 34.05 RCW.

Statute Being Implemented: Chapters 15.58 and 17.21 RCW.

Rule is necessary because of federal law, 40 C.F.R. §170.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joel Kangiser, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-2013; and Enforcement: Alberto Isiordia, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-2036.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment is adopting the updated federal WPS specified in 40 C.F.R. §170. Per RCW 19.85.061 an agency is not required to complete a small business economic impact statement when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

December 7, 2016
Brent L. Barnes
Assistant Director

AMENDATORY SECTION (Amending WSR 09-15-139, filed 7/21/09, effective 8/21/09)

WAC 16-233-001 Federal worker protection standards—Washington state department of labor and industries. This chapter contains the federal Environmental Protection Agency (EPA) worker protection standards as listed in 40 C.F.R., Part 170. Revisions to the federal language have been incorporated into this chapter in order to be consistent with other requirements of Washington state law. These rules are adopted in conjunction with rules adopted by the Washington state department of labor and industries in chapter 296-307 WAC, Part I.

NEW SECTION

WAC 16-233-006 Scope and purpose—40 C.F.R., § 170.301. This regulation is primarily intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments. It requires agricultural employers and commercial pesticide handler employers to provide specific information and protections to workers, handlers and other persons when pesticides are used on agricultural establishments in the production of agricultural plants. It also requires handlers to wear the labeling-specified clothing and personal protective equipment when performing handler activities, and to take measures to protect workers and other persons during pesticide applications.

NEW SECTION

WAC 16-233-011 Applicability—40 C.F.R., § 170.303. (1) This regulation applies whenever a pesticide product bearing a label requiring compliance with this chapter is used in the production of agricultural plants on an agricultural establishment, except as provided in subsections (2) and (3) of this section.

(2) This regulation does not apply when a pesticide product bearing a label requiring compliance with this chapter is used on an agricultural establishment in any of the following circumstances:

(a) As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

(b) On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

(c) For control of vertebrate pests, unless directly related to the production of an agricultural plant.

(d) As attractants or repellents in traps.

(e) On the harvested portions of agricultural plants or on harvested timber.

(f) For research uses of unregistered pesticides.

(g) On pasture and rangeland where the forage will not be harvested for hay.

(h) In a manner not directly related to the production of agricultural plants including, but not limited to, structural pest control and control of vegetation in noncrop areas.

(3) Where a pesticide product's labeling-specific directions for use or other labeling requirements are inconsistent with requirements of this chapter, users must comply with the pesticide product labeling, except as provided for in WAC 16-233-301, 16-233-306, and 16-233-316.

NEW SECTION

WAC 16-233-016 Definitions—40 C.F.R., § 170.305.

Terms used in this chapter have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this chapter, shall have the following meanings:

(1) "Agricultural employer" means any person who is an owner of, or is responsible for the management or condition of, an agricultural establishment, and who employs any worker or handler.

(2) "Agricultural establishment" means any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants. An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

(3) "Agricultural plant" means any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. Agricultural plant includes, but is not limited to, grains; fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. Agricultural plant does not include pasture or rangeland used for grazing.

(4) "Application exclusion zone" means the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.

(5) "Chemigation" means the application of pesticides through irrigation systems.

(6) "Closed system" means an engineering control used to protect handlers from pesticide exposure hazards when mixing and loading pesticides.

(7) "Commercial pesticide handler employer" means any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, is not a commercial pesticide handler employer.

(8) "Commercial pesticide handling establishment" means any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments.

(9) "Crop advisor" means any person who is assessing pest numbers, damage, pesticide distribution, or the status or requirements of agricultural plants and who holds a current Washington state department of agriculture commercial consultant license in the agricultural areas in which they are advising.

(10) "Designated representative" means any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by WAC 16-233-021(8) in accordance with WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018).

(11) "Early entry" means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

(12) "Employ" means to obtain, directly or through a labor contractor, the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.

(13) "Enclosed cab" means a cab with a nonporous barrier that totally surrounds the occupant(s) of the cab and prevents dermal contact with pesticides that are being applied outside of the cab.

(14) "Enclosed space production" means production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering and that is large enough to permit a person to enter.

(15) "Fumigant" means any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

(16) "Hand labor" means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues, except that hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing crop advisor tasks.

(17) "Handler" means any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:

(a) Mixing, loading, or applying pesticides.

(b) Disposing of pesticides.

(c) Handling opened containers of pesticides, emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions, or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions.

(d) Acting as a flagger.

(e) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(f) Assisting with the application of pesticides.

(g) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established in WAC 16-233-111 (2)(c) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation.

(h) Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation.

(i) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established in WAC 16-233-111 (2)(c) or the pesticide product labeling has been met.

(18) "Handler employer" means any person who is self-employed as a handler or who employs any handler.

(19) "Immediate family" is limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. "First cousin" means the child of a parent's sibling, *i.e.*, the child of an aunt or uncle.

(20) "Labor contractor" means a person, other than a commercial pesticide handler employer, who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

(21) "Outdoor production" means production of an agricultural plant in an outside area that is not enclosed or covered in any way that would obstruct the natural air flow.

(22) "Owner" means any person who has a present possessory interest (*e.g.*, fee, leasehold, rental, or other) in an

agricultural establishment. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this chapter.

(23) "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(24) "Restricted-entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

(25) "Safety data sheet" has the same meaning as the definition in 29 C.F.R. Sec. 1910.1200(c).

(26) "Treated area" means any area to which a pesticide is being directed or has been directed.

(27) "Use," *as in "to use a pesticide"* means any of the following:

(a) Pre-application activities including, but not limited to:

(i) Arranging for the application of the pesticide.

(ii) Mixing and loading the pesticide.

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(b) Application of the pesticide.

(c) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early-entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(d) Other pesticide-related activities including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(28) "Worker" means any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

(29) "Worker housing area" means any place or area of land on or near an agricultural establishment where housing or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.

NEW SECTION

WAC 16-233-021 Agricultural employer duties—40 C.F.R., § 170.309. Agricultural employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on the agricultural establishment.

(2) Ensure that each worker and handler subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler and any early entry worker is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any workers or handlers information and directions sufficient to ensure that each worker and handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any workers or handlers to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this chapter.

(6) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during his or her employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(7) Ensure that workers or other persons employed by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer must provide all of the following information to such person:

(a) Pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(8) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with WAC 16-233-026 (effective prior to January 1, 2018) or WAC 16-233-027 (effective after January 1, 2018) if workers or handlers are on the establishment and within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(9) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(10) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(11) Ensure that whenever handlers employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler employer is provided information about, or is aware of, the specific location and description of any treated areas on the agricultural establishment where a restricted-entry interval is in effect that the handler may be in (or may walk within 1/4 mile of), and any restrictions on entering those areas.

(12) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018), and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

(13) Provide any records or other information required by this section for inspection and copying upon request by an employee of EPA, or any duly authorized representative of the Washington state department of agriculture.

NEW SECTION

WAC 16-233-026 Display requirements for pesticide safety information and pesticide application and hazard information effective prior to January 1, 2018—40 C.F.R., § 170.311. (1) *Display of pesticide safety information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under WAC 16-233-021(8), pesticide safety information must be displayed in accordance with this subsection.

(a) *General.* The pesticide safety information must be conveyed in a manner that workers and handlers can understand.

(b) The safety information must include all of the following points:

(i) Help keep pesticides from entering your body. Avoid getting on your skin or into your body any pesticides that may

be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(viii) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(ix) There are federal rules to protect workers and handlers, including a requirement for safety training.

(c) *Changes to pesticide safety information.* The agricultural employer must update the pesticide safety information display within twenty-four hours of notice of any changes to the information required in (b)(viii) of this subsection.

(d) *Location.* The pesticide safety information must be displayed at each of the following sites on the agricultural establishment:

(i) The site selected pursuant to (b) of this subsection for display of pesticide application and hazard information.

(ii) Anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to WAC 16-233-126, 16-233-221 or 16-233-311, but only when the decontamination supplies are located at permanent sites or being provided at locations and in quantities to meet the requirements for eleven or more workers or handlers.

(e) *Accessibility.* When pesticide safety information is required to be displayed, workers and handlers must be allowed access to the pesticide safety information at all times during normal work hours.

(f) *Legibility.* The pesticide safety information must remain legible at all times when the information is required to be displayed.

(2) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under WAC 16-233-021(8), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this subsection.

(a) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide product applied:

(i) A copy of the safety data sheet.

(ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.

(iii) The crop or site treated and the location and description of the treated area.

(iv) The date(s) and times the application started and ended.

(v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(b) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(c) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours.

(d) *Legibility.* The pesticide application and hazard information must remain legible at all times when the information is required to be displayed.

(e) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than twenty-four hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least thirty days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

(f) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with of this subsection, the agricultural employer must retain the pesticide application and hazard information described in (a) of this subsection on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted.

(g) *Access to pesticide application and hazard information by a worker or handler.*

(i) If a person is or was employed as a worker or handler by an establishment during the period that particular pesticide application and hazard information was required to be displayed and retained for two years in accordance with (e) and (f) of this subsection, and the person requests a copy of such application and/or hazard information, or requests access to such application and/or hazard information after it is no longer required to be displayed, the agricultural employer must provide the worker or handler with a copy of or access to all of the requested information within fifteen days of the receipt of any such request. The worker or handler may make the request orally or in writing.

(ii) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the record.

(h) *Access to pesticide application and hazard information by treating medical personnel.* Any treating medical personnel, or any person acting under the supervision of treating medical personnel, may request, orally or in writing, access to or a copy of any information required to be retained for two years by (f) of this subsection in order to inform diagnosis or treatment of a worker or handler who was employed on the

establishment during the period that the information was required to be displayed. The agricultural employer must promptly provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment after receipt of the request.

(i) *Access to pesticide application and hazard information by a designated representative.*

(i) Any worker's or handler's designated representative may request access to or a copy of any information required to be retained for two years in (f) of this subsection on behalf of a worker or handler employed on the establishment during the period that the information was required to be displayed. The agricultural employer must provide access to or a copy of the requested information applicable to the worker's or handler's time of employment on the establishment within fifteen days after receiving any such request, provided the request meets the requirements specified in subsection (2)(i)(ii) of this section.

(ii) A request by a designated representative for access to or a copy of any pesticide application and/or hazard information must be in writing and must contain all of the following:

(A) The name of the worker or handler being represented.

(B) A description of the specific information being requested. The description should include the dates of employment of the worker or handler, the date or dates for which the records are requested, type of work conducted by the worker or handler (*e.g.*, planting, harvesting, applying pesticides, mixing or loading pesticides) during the period for which the records are requested, and the specific application and/or hazard information requested.

(C) A written statement clearly designating the representative to request pesticide application and hazard information on the worker's or handler's behalf, bearing the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.

(D) If the worker or handler requests that the pesticide application and/or the hazard information be sent, direction for where to send the information (*e.g.*, mailing address or e-mail address).

(iii) If the written request from a designated representative contains all of the necessary information specified in subsection (2)(i)(ii) of this section, the employer must provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment to the designated representative within fifteen days of receiving the request.

(iv) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the designated representative for additional copies of the record.

NEW SECTION

WAC 16-233-027 Display requirements for pesticide safety information and pesticide application and hazard

information effective after January 1, 2018—40 C.F.R., § 170.311. (1) *Display of pesticide safety information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under WAC 16-233-021(8), pesticide safety information must be displayed in accordance with this subsection.

(a) *General.* The pesticide safety information must be conveyed in a manner that workers and handlers can understand.

(b) The pesticide safety information must include all of the following points:

(i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(vii) Follow directions about keeping out of treated areas and application exclusion zones.

(viii) Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides.

(ix) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(x) The name, address, and telephone number of the Washington state department of agriculture.

(c) *Changes to pesticide safety information.* The agricultural employer must update the pesticide safety information display within twenty-four hours of notice of any changes to the information required in (b)(ix) of this subsection.

(d) *Location.* The pesticide safety information must be displayed at each of the following sites on the agricultural establishment:

(i) The site selected pursuant to subsection (2)(b) of this section for display of pesticide application and hazard information.

(ii) Anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to WAC 16-233-126, 16-233-221 or 16-233-311, but only when the decontamination supplies are located at permanent sites or being provided at locations and in quantities to meet the requirements for eleven or more workers or handlers.

(e) *Accessibility.* When pesticide safety information is required to be displayed, workers and handlers must be

allowed access to the pesticide safety information at all times during normal work hours.

(f) *Legibility.* The pesticide safety information must remain legible at all times when the information is required to be displayed.

(2) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under WAC 16-233-021(8), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this subsection.

(a) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide product applied:

(i) A copy of the safety data sheet.

(ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.

(iii) The crop or site treated and the location and description of the treated area.

(iv) The date(s) and times the application started and ended.

(v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(b) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(c) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours.

(d) *Legibility.* The pesticide application and hazard information must remain legible at all times when the information is required to be displayed.

(e) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than twenty-four hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least thirty days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

(f) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with this subsection, the agricultural employer must retain the pesticide application and hazard information described in (a) of this subsection on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted.

(g) *Access to pesticide application and hazard information by a worker or handler.*

(i) If a person is or was employed as a worker or handler by an establishment during the period that particular pesticide application and hazard information was required to be displayed and retained for two years in accordance with (e) and (f) of this subsection, and the person requests a copy of such application and/or hazard information, or requests access to

such application and/or hazard information after it is no longer required to be displayed, the agricultural employer must provide the worker or handler with a copy of or access to all of the requested information within fifteen days of the receipt of any such request. The worker or handler may make the request orally or in writing.

(ii) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the record.

(h) *Access to pesticide application and hazard information by treating medical personnel.* Any treating medical personnel, or any person acting under the supervision of treating medical personnel, may request, orally or in writing, access to or a copy of any information required to be retained for two years in (f) of this subsection in order to inform diagnosis or treatment of a worker or handler who was employed on the establishment during the period that the information was required to be displayed. The agricultural employer must promptly provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment after receipt of the request.

(i) *Access to pesticide application and hazard information by a designated representative.*

(i) Any worker's or handler's designated representative may request access to or a copy of any information required to be retained for two years in (f) of this subsection on behalf of a worker or handler employed on the establishment during the period that the information was required to be displayed. The agricultural employer must provide access to or a copy of the requested information applicable to the worker's or handler's time of employment on the establishment within fifteen days after receiving any such request, provided the request meets the requirements specified in subsection (2)(i)(ii) of this section.

(ii) A request by a designated representative for access to or a copy of any pesticide application and/or hazard information must be in writing and must contain all of the following:

(A) The name of the worker or handler being represented.

(B) A description of the specific information being requested. The description should include the dates of employment of the worker or handler, the date or dates for which the records are requested, type of work conducted by the worker or handler (*e.g.*, planting, harvesting, applying pesticides, mixing or loading pesticides) during the period for which the records are requested, and the specific application and/or hazard information requested.

(C) A written statement clearly designating the representative to request pesticide application and hazard information on the worker's or handler's behalf, bearing the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.

(D) If the worker or handler requests that the pesticide application and/or the hazard information be sent, direction

for where to send the information (*e.g.*, mailing address or e-mail address).

(iii) If the written request from a designated representative contains all of the necessary information specified in subsection (2)(i)(ii) of this section, the employer must provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment to the designated representative within fifteen days of receiving the request.

(iv) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the designated representative for additional copies of the record.

NEW SECTION

WAC 16-233-031 Commercial pesticide handler employer duties—40 C.F.R., § 170.313. Commercial pesticide handler employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.

(2) Ensure each handler employed by the commercial pesticide handling establishment and subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler employed by the commercial pesticide handling establishment is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this chapter.

(6) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(7) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(8) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(9) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(a) Specific location(s) and description of the area(s) to be treated.

(b) The date(s) and start and estimated end times of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) The labeling-specified restricted-entry interval applicable for the application.

(e) Whether posting, oral notification or both are required under WAC 16-233-121.

(f) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(10) If there are any changes to the information provided in subsection (9)(a), (d), (e), and (f) of this section or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to subsection (9) of this section, the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(11) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during his or her employment by the commercial pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(12) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a

handler under WAC 16-233-201. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer must provide all of the following information to such persons:

(a) Notice that the pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(13) Provide any records or other information required by this chapter for inspection and copying upon request by an employee of EPA or any duly authorized representative of the Washington state department of agriculture.

NEW SECTION

WAC 16-233-036 Prohibited actions—40 C.F.R., § 170.315. No agricultural employer, commercial pesticide handler employer, or other person involved in the use of a pesticide to which this chapter applies, shall intimidate, threaten, coerce, or discriminate against any worker or handler for complying with or attempting to comply with this chapter, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or any duly authorized representative of the Washington state department of agriculture regarding conduct that the worker or handler reasonably believes violates this chapter, has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter, or has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the worker or handler reasonably believed to be in violation of this chapter. Any such intimidation, threat, coercion, or discrimination violates the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 12 (a)(2)(G), 7 U.S.C. 136j (a)(2)(G).

NEW SECTION

WAC 16-233-041 Violations of this chapter—40 C.F.R., § 170.317. (1) RCW 15.58.150 (2)(c) provides that it is unlawful for any person "... to use or cause to be used any pesticide contrary to label directions ..." When 40 C.F.R., Part 170 is referenced on a label, users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling, except as provided for in WAC 16-233-301, 16-233-306, and 16-233-316.

(2) A person who has a duty under this chapter, as referenced on the pesticide product labeling, and who fails to perform that duty, violates RCW 15.58.330 and 17.21.315, FIFRA Section 12 (a)(2)(G), and is subject to civil penalties under RCW 15.58.335, 15.58.260, and 17.21.315.

(3) FIFRA Section 14 (b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by

or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships including, but not limited to, labor contractors.

(4) The requirements of this chapter, including the decontamination requirements, must not, for the purposes of Title 29 U.S.C. Sec. 653 (b)(1), be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the WISHA Field Sanitation Standard, WAC 296-307-095, OSHA Field Sanitation Standard, 29 C.F.R. Sec. 1928.110, or other agricultural nonpesticide hazards.

REQUIREMENTS FOR PROTECTION OF AGRICULTURAL WORKERS

NEW SECTION

WAC 16-233-101 Training requirements for workers—40 C.F.R., § 170.401. (1) *General requirement.* Before any worker performs any task in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following workers need not be trained under this section:

(a) A worker who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A worker who has satisfied the handler training requirements in WAC 16-233-201.

(c) A worker who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230: Provided, That a requirement for such certification or licensing is pesticide safety training that includes all the topics in WAC 16-233-201 (3)(b) or (c) as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. The training must be conducted by a person who meets the worker trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to workers' questions.

(b) The training must include, at a minimum, all of the following topics:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this section designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty-one days after a notice of availability of such training materials appears in the FEDERAL REGISTER, but no earlier than January 1, 2018, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xxiii) of this subsection instead of the topics listed in (b)(i) through (xi) of this subsection.

(i) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(ii) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(iv) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Routes through which pesticides can enter the body.

(vii) Signs and symptoms of common types of pesticide poisoning.

(viii) Emergency first aid for pesticide injuries or poisonings.

(ix) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if

pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(x) How and when to obtain emergency medical care.

(xi) When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(xii) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(xiii) Potential hazards from pesticide residues on clothing.

(xiv) Wash work clothes before wearing them again and wash them separately from other clothes.

(xv) Do not take pesticides or pesticide containers used at work to your home.

(xvi) Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(A) Display safety data sheets for all pesticides used on the establishment.

(B) Provide workers and handlers information about the location of the safety data sheets on the establishment.

(C) Provide workers and handlers unimpeded access to safety data sheets during normal work hours.

(xvii) This section prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(xviii) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be eighteen years old to perform early-entry activities.

(xix) Potential hazards to children and pregnant women from pesticide exposure.

(xx) Keep children and nonworking family members away from pesticide treated areas.

(xxi) After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xxii) How to report suspected pesticide use violations to the Washington state department of agriculture.

(xxiii) This section prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this chapter, or because the worker or handler provided, caused to be provided or is about to provide information to the employer, the EPA or its agents, or any duly authorized representative of the Washington state department of agriculture regarding conduct that the employee reasonably believes violates this chapter, and/or made a complaint, testified, assisted, or par-

ticipated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter.

(d) The person who conducts the training must meet one of the following criteria:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) For each worker required to be trained under subsection (1) of this section, the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker's training including all of the following:

(i) The trained worker's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The agricultural employer's name.

(b) An agricultural employer who provides, directly or indirectly, training required under subsection (1) of this section must provide to the worker upon request a copy of the record of the training that contains the information required under (a) of this subsection.

NEW SECTION

WAC 16-233-106 Establishment-specific information for workers—40 C.F.R., § 170.403. Before any worker performs any activity in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed of, in a manner the worker can understand, all of the following establishment-specific information:

(1) The location of pesticide safety information required in WAC 16-233-026(1) (effective prior to January 1, 2018) or WAC 16-233-027(1) (effective after January 1, 2018).

(2) The location of pesticide application and hazard information required in WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018).

(3) The location of decontamination supplies required in WAC 16-233-126.

NEW SECTION

WAC 16-233-111 Entry restrictions associated with pesticide applications—40 C.F.R., § 170.405. (1) *Outdoor production pesticide applications.*

(a) The application exclusion zone is defined as follows:

(i) The application exclusion zone is the area that extends one hundred feet horizontally from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

- (A) Aerially.
- (B) Air blast application.
- (C) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).
- (D) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends twenty-five feet horizontally from the application equipment in all directions during application when the pesticide is applied not as in (a)(i)(A) through (D) of this subsection and is sprayed from a height of greater than twelve inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).

(iii) There is no application exclusion zone when the pesticide is applied in a manner other than those covered in (a)(i) and (ii) of this subsection.

(b) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete.

(c) After the application is complete, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116 is the treated area.

(2) Enclosed space production pesticide applications.

(a) During any enclosed space production pesticide application described in column 1 of the table under (d) of this subsection, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the area specified in column 2 of the table under (d) of this subsection during the application and until the time specified in column 3 of the table under (d) of this subsection has expired.

(b) After the time specified in column 3 of the table under (d) of this subsection has expired, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116 is the area specified in column 4 of the table under (d) of this subsection.

(c) When column 3 of the table under (d) of this subsection specifies that ventilation criteria must be met, ventilation must continue until the air concentration is measured to be equal to or less than the inhalation exposure level required by the labeling. If no inhalation exposure level is listed on the labeling, ventilation must continue until after one of the following conditions is met:

- (i) Ten air exchanges are completed.
- (ii) Two hours of ventilation using fans or other mechanical ventilating systems.
- (iii) Four hours of ventilation using vents, windows, or other passive ventilation.

(iv) Eleven hours with no ventilation followed by one hour of mechanical ventilation.

(v) Eleven hours with no ventilation followed by two hours of passive ventilation.

(vi) Twenty-four hours with no ventilation.

(d) The following table applies to (a), (b), and (c) of this subsection.

Table - Entry Restrictions During Enclosed Space Production Pesticide Applications

1. When a pesticide is applied:	2. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in:	3. Until:	4. After the expiration of time specified in column 3, the area subject to the restricted-entry interval is:
(a) As a fumigant	Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area	The ventilation criteria of subsection (2)(c) of this section are met	No post-application entry restrictions required by WAC 16-233-116 after criteria in column 3 are met
(b) As a (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns)	Entire enclosed space	The ventilation criteria of subsection (2)(c) of this section are met	Entire enclosed space
(c) Not as in (a) or (b), and for which a respiratory protection device is required for application by the pesticide product labeling	Entire enclosed space	The ventilation criteria of subsection (2)(c) of this section are met	Treated area
(d) Not as in (a), (b) or (c), and: (i) From a height of greater than 12 inches from the planting medium, or	Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space	Application is complete	Treated area

1. When a pesticide is applied:	2. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in:	3. Until:	4. After the expiration of time specified in column 3, the area subject to the restricted-entry interval is:
(ii) As a spray using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater)			
(e) Otherwise	Treated area	Application is complete	Treated area

NEW SECTION

WAC 16-233-116 Worker entry restrictions after pesticide applications—40 C.F.R., § 170.407. (1) After the application of any pesticide to an area of outdoor production, the agricultural employer must not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted in WAC 16-233-306.

(2) After the application of any pesticide to an area of enclosed space production, the agricultural employer must not allow or direct any worker to enter or to remain in the areas specified in column 4 of the table in WAC 16-233-111 (2)(d), before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted in WAC 16-233-306.

(3) When two or more pesticides are applied to a treated area at the same time, the applicable restricted-entry interval is the longest of all applicable restricted-entry intervals.

NEW SECTION

WAC 16-233-121 Oral and posted notification of worker entry restrictions—40 C.F.R., § 170.409. (1) *General requirement.* The agricultural employer must notify workers of all entry restrictions required in WAC 16-233-111 and 16-233-116 in accordance with this section.

(a) *Type of notification required:*

(i) *Double notification.* If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with subsection (2) of this section and must also provide oral notification of the application to workers in accordance with subsection (3) of this section.

(ii) *Outdoor production areas subject to restricted-entry intervals greater than forty-eight hours.* If a pesticide with product labeling that requires a restricted-entry interval

greater than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(iii) *Outdoor production areas subject to restricted-entry intervals equal to or less than forty-eight hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(iv) *Enclosed space production areas subject to restricted-entry intervals greater than four hours.* If a pesticide with product labeling that requires a restricted-entry interval greater than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(v) *Enclosed space production areas subject to restricted-entry intervals equal to or less than four hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(b) *Exceptions.* Notification does not need to be given to a worker if the agricultural employer can ensure that one of the following is met:

(i) From the start of the application in an enclosed space production area until the end of any restricted-entry interval, the worker will not enter any part of the entire enclosed structure or space.

(ii) From the start of the application to an outdoor production area until the end of any restricted-entry interval, the worker will not enter, work in, remain in, or pass on foot through the treated area or any area within 1/4 mile of the treated area on the agricultural establishment.

(iii) The worker was involved in the application of the pesticide as a handler, and is aware of all information required in subsection (3)(a) of this section.

(2) *Requirements for posted warning signs.* If notification by posted warning signs is required pursuant to subsection (1) of this section, the agricultural employer must, unless otherwise prescribed by the label, ensure that all warning signs meet the requirements of this subsection. When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry is prohibited for the entire area while the signs are posted, except for entry permitted in WAC 16-233-306.

(a) *General.* The warning signs must meet all of the following requirements:

(i) Be one of the three sizes specified in (c) of this subsection and comply with the posting placement and spacing requirements applicable to that sign size.

(ii) Be posted prior to but no earlier than twenty-four hours before the scheduled application of the pesticide.

(iii) Remain posted throughout the application and any restricted-entry interval.

(iv) Be removed or covered within three days after the end of the application or any restricted-entry interval, whichever is later, except that signs may remain posted after the restricted-entry interval has expired as long as all of the following conditions are met:

(A) The agricultural employer instructs any workers on the establishment that may come within 1/4 mile of the treated area not to enter that treated area while the signs are posted.

(B) The agricultural employer ensures that workers do not enter the treated area while the signs remain posted, other than entry permitted in WAC 16-233-306.

(v) Remain visible and legible during the time they are required to be posted.

(b) *Content.*

(i) The warning sign must have a white background. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," must be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" must be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in white. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the size and appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size and color requirements, follows:



(ii) The agricultural employer may replace the Spanish language portion of the warning sign with equivalent terms in an alternative non-English language if that alternative language is the language read by the largest group of workers at that agricultural establishment who do not read English. The

alternative language sign must be in the same format as the original sign and conform to all other requirements of (b)(i) of this subsection.

(c) *Size and posting.*

(i) The standard sign must be at least fourteen inches by sixteen inches with letters at least one inch in height.

(ii) When posting an outdoor production area using the standard sign, the signs must be visible from all reasonably expected points of worker entry to the treated area, including at least each access road, each border with any worker housing area within one hundred feet of the treated area and each footpath and other walking route that enters the treated area. Where there are no reasonably expected points of worker entry, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iii) When posting an enclosed space production area using the standard sign and the entire structure or space is subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116, the signs must be posted so they are visible from all reasonably expected points of worker entry to the structure or space. When posting treated areas in enclosed space production using the standard sign and the treated area only comprises a subsection of the structure or space, the signs must be posted so they are visible from all reasonably expected points of worker entry to the treated area including each aisle or other walking route that enters the treated area. Where there are no reasonably expected points of worker entry to the treated area, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iv) If a smaller warning sign is used with "DANGER" and "PELIGRO" in letters at least 7/8 inch in height and the remaining letters at least 1/2 inch in height and a red circle at least three inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than fifty feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(v) If a smaller sign is used with "DANGER" and "PELIGRO" in letters at least 7/16 inch in height and the remaining letters at least 1/4 inch in height and a red circle at least one and a half inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than twenty-five feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(vi) A sign with "DANGER" and "PELIGRO" in letters less than 7/16 inch in height or with any words in letters less than 1/4 inch in height or a red circle smaller than one and a half inches in diameter containing an upraised hand and a stern face will not satisfy the requirements of this chapter.

(3) *Oral warnings - Requirement.* If oral notification is required pursuant to subsection (1) of this section, the agricultural employer must provide oral warnings to workers in a manner that the workers can understand. If a worker will be on the establishment when an application begins, the warning must be given before the application begins. If a worker arrives on the establishment while an application is taking place or a restricted-entry interval for a pesticide application is in effect, the warning must be given at the beginning of the

worker's work period. The warning must include all of the following:

(a) The location(s) and description of any treated area(s) subject to the entry restrictions during and after application specified in WAC 16-233-111 and 16-233-116.

(b) The dates and times during which entry is restricted in any treated area(s) subject to the entry restrictions during and after application specified in WAC 16-233-111 and 16-233-116.

(c) Instructions not to enter the treated area or an application exclusion zone during application, and that entry to the treated area is not allowed until the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

NEW SECTION

WAC 16-233-126 Decontamination supplies for workers—40 C.F.R., § 170.411. (1) *Requirement.* The agricultural employer must provide decontamination supplies for routine washing and emergency decontamination in accordance with this section for any worker on an agricultural establishment who is performing an activity in an area where a pesticide was applied and who contacts anything that has been treated with the pesticide including, but not limited to, soil, water, and plants.

(2) *Materials and quantities.* The decontamination supplies required in subsection (1) of this section must include at least one gallon of water per worker at the beginning of each worker's work period for routine washing and emergency decontamination, soap, and single-use towels. The supplies must meet all of the following requirements:

(a) *Water.* At all times when this part requires agricultural employers to make water available to workers, the agricultural employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) *Soap and single-use towels.* The agricultural employer must provide soap and single-use towels for drying in quantities sufficient to meet the workers' reasonable needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(3) *Timing.*

(a) If any pesticide with a restricted-entry interval greater than four hours was applied, the decontamination supplies must be provided from the time workers first enter the treated area until at least thirty days after the restricted-entry interval expires.

(b) If the only pesticides applied in the treated area are products with restricted-entry intervals of four hours or less, the decontamination supplies must be provided from the time

workers first enter the treated area until at least seven days after the restricted-entry interval expires.

(4) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to the workers. The decontamination supplies must not be more than 1/4 mile from where workers are working, except that where workers are working more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

REQUIREMENTS FOR PROTECTION OF AGRICULTURAL PESTICIDE HANDLERS

NEW SECTION

WAC 16-233-201 Training requirements for handlers—40 C.F.R., § 170.501. (1) *General requirement.* Before any handler performs any handler activity involving a pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following handlers need not be trained under this section:

(a) A handler who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A handler who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in subsection (3)(b) or (c) of this section as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. The training must be conducted by a person who meets the handler trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to handlers' questions.

(b) The pesticide safety training materials must include, at a minimum, all of the following topics:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

- (vi) How to obtain emergency medical care.
 - (vii) Routine and emergency decontamination procedures.
 - (viii) Need for and appropriate use of personal protective equipment.
 - (ix) Prevention, recognition, and first-aid treatment of heat-related illness.
 - (x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
 - (xi) Environmental concerns such as drift, runoff, and wildlife hazards.
 - (xii) Warnings about taking pesticides or pesticide containers home.
 - (xiii) Requirements of this section that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.
- (c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty days after a notice of availability of such training materials appears in the FEDERAL REGISTER, but no earlier than January 1, 2018, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xiv) of this subsection instead of the points listed in (b)(i) through (xiii) of this subsection.
- (i) All the topics required in WAC 16-233-101 (3)(c).
 - (ii) Information on proper application and use of pesticides.
 - (iii) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.
 - (iv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.
 - (v) Need for and appropriate use and removal of all personal protective equipment.
 - (vi) How to recognize, prevent, and provide first-aid treatment for heat-related illness.
 - (vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
 - (viii) Environmental concerns, such as drift, runoff, and wildlife hazards.
 - (ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.
 - (x) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.
 - (xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.
 - (xii) Handlers must be at least eighteen years old.

(xiii) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(xiv) The responsibility of agricultural employers to post treated areas as required by this chapter.

(d) The person who conducts the training must have one of the following qualifications:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture under chapter 15.58 or 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency having jurisdiction.

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) Handler employers must maintain records of training for handlers employed by their establishment for two years after the date of the training. The records must be maintained on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The handler employer's name.

(b) The handler employer must, upon request by a handler trained on the establishment, provide to the handler a copy of the record of the training that contains the information required under (a) of this subsection.

NEW SECTION

WAC 16-233-206 Knowledge of labeling, application-specific, and establishment-specific information for handlers—40 C.F.R., § 170.503. (1) *Knowledge of labeling and application-specific information.*

(a) The handler employer must ensure that before any handler performs any handler activity involving a pesticide product, the handler either has read the portions of the labeling applicable to the safe use of the pesticide or has been informed in a manner the handler can understand of all labeling requirements and use directions applicable to the safe use of the pesticide.

(b) The handler employer must ensure that the handler has access to the applicable product labeling at all times during handler activities.

(c) The handler employer must ensure that the handler is aware of requirements for any entry restrictions, application exclusion zones and restricted-entry intervals as described in WAC 16-233-111 and 16-233-116 that may apply based on the handler's activity.

(2) *Knowledge of establishment-specific information.* Before any handler performs any handler activity on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for

such pesticide has been in effect, the handler employer must ensure that the handler has been informed, in a manner the handler can understand, all of the following establishment-specific information:

(a) The location of pesticide safety information required in WAC 16-233-026(1) (effective prior to January 1, 2018) or WAC 16-233-027(1) (effective after January 1, 2018).

(b) The location of pesticide application and hazard information required in WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018).

(c) The location of decontamination supplies required in WAC 16-233-221.

NEW SECTION

WAC 16-233-211 Requirements during applications to protect handlers, workers, and other persons effective prior to January 1, 2018—40 C.F.R., § 170.505. (1) *Prohibition from contacting workers and other persons with pesticides during application.* The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

(2) *Handlers using highly toxic pesticides.* The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

(3) *Fumigant applications in enclosed space production.* The handler employer must ensure all of the following:

(a) Any handler in an enclosed space production area during a fumigant application maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(b) The handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for applicators in the event that entry becomes necessary for rescue.

NEW SECTION

WAC 16-233-212 Requirements during applications to protect handlers, workers, and other persons effective after January 1, 2018—40 C.F.R., § 170.505. (1) *Prohibition from contacting workers and other persons with pesticides during application.* The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

(2) *Suspending applications.* The handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the application exclusion zone described in WAC 16-233-111 (1)(a) or the area specified in column 2 of the table in WAC 16-233-111 (2)(d).

(3) *Handlers using highly toxic pesticides.* The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

(4) *Fumigant applications in enclosed space production.* The handler employer must ensure all of the following:

(a) Any handler in an enclosed space production area during a fumigant application maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(b) The handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for applicators in the event that entry becomes necessary for rescue.

NEW SECTION

WAC 16-233-216 Personal protective equipment—40 C.F.R., § 170.507. (1) *Handler responsibilities.* Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in WAC 16-233-316.

(2) *Employer responsibilities for providing personal protective equipment.* The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment is clean and in proper operating condition. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(a) If the pesticide product labeling requires that "chemical-resistant" personal protective equipment be worn, it must be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) If the pesticide product labeling requires that "waterproof" personal protective equipment be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) If the pesticide product labeling requires that a "chemical-resistant suit" be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) If the pesticide product labeling requires that "coveralls" be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(e) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling spe-

cifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than ten hours of use or within twenty-four hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(f) If the pesticide product labeling requires that "chemical-resistant footwear" be worn, one of the following types of footwear must be worn:

- (i) Chemical-resistant shoes.
- (ii) Chemical-resistant boots.
- (iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) If the pesticide product labeling requires that "protective eyewear" be worn, one of the following types of eyewear must be worn:

- (i) Goggles.
- (ii) Face shield.
- (iii) Safety glasses with front, brow, and temple protection.
- (iv) Full-face respirator.

(h) If the pesticide product labeling requires that a "chemical-resistant apron" be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(i) If the pesticide product labeling requires that "chemical-resistant headgear" be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(j) The respirator specified by the pesticide product labeling must be used. If the label does not specify the type of respirator to be used, it shall meet the requirements of chapter 296-307 WAC, Part Y-5. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of (j)(i) through (iii) of this subsection are met before the handler performs any handler activity where the respirator is required to be worn. The respiratory protection requirements of chapter 296-307 WAC, Part Y-5, shall apply. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of (j)(i) through (iii) of this subsection.

(i) The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter 296-307 WAC, Part Y-5.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 C.F.R. Sec. 1910.134(k)(1)(i) through (vi).

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health

care professional that conforms to the provisions of 29 C.F.R. Sec. 1910.134 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(3) *Use of personal protective equipment.*

(a) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(4) *Cleaning and maintenance.*

(a) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word "DANGER" or "WARNING" on the label must not be reused and must be disposed of as specified in this subsection. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this subsection wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(c) The handler employer must ensure that contaminated personal protective equipment is kept separate from noncontaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(d) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(e) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer must ensure that when filtering facepiece respirators are used, they are replaced when one of the following conditions is met:

- (i) When breathing resistance becomes excessive.
- (ii) When the filter element has physical damage or tears.
- (iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.
- (iv) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(g) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

- (i) At the first indication of odor, taste, or irritation.
- (ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of 29 C.F.R. Sec. 1910.134 (d)(3)(iii)(B)(2).
- (iii) When breathing resistance becomes excessive.
- (iv) When required according to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.
- (v) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(h) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

- (i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.
- (ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.
- (iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(i) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

- (i) Store personal clothing not worn during handling activities.
- (ii) Put on personal protective equipment at the start of any exposure period.
- (iii) Remove personal protective equipment at the end of any exposure period.
- (j) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(5) *Heat-related illness.* Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must take appropriate measures to prevent heat-related illness.

NEW SECTION

WAC 16-233-221 Decontamination and eye flushing supplies for handlers—40 C.F.R., § 170.509. (1) *Requirement.* The handler employer must provide decontamination and eye flushing supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required in WAC 16-233-216 (4)(i).

(2) *General conditions.* The decontamination supplies required in subsection (1) of this section must include: At least ten gallons of water for one employee and twenty gallons of water for two or more employees at the beginning of each handler's work period for routine washing and potential emergency decontamination; soap, single-use towels, and clean clothing for use in an emergency. The decontamination

and eye flushing supplies required in subsection (1) of this section must meet all of the following requirements:

(a) *Water.* At all times when this section requires handler employers to make water available to handlers for routine washing, emergency decontamination or eye flushing, the handler employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination or eye flushing supplies, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) *Soap and single-use towels.* The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) *Clean change of clothing.* The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(3) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to each handler during the handler activity. The decontamination supplies must not be more than 1/4 mile from the handler, except that where the handler activity is more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(a) *Mixing sites.* Decontamination supplies must be provided at any mixing site.

(b) *Exception for pilots.* Decontamination supplies for a pilot who is applying pesticides aerially must be in the aircraft or at the aircraft loading site.

(c) *Exception for treated areas.* The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless the soap, single-use towels, water and clean change of clothing are protected from pesticide contamination in closed containers.

(4) *Emergency eye-flushing.*

(a) Whenever a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure, the handler employer must provide at each mixing/loading site immediately available to the handler, at least one system that is capable of delivering gently running water at a rate of at least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about fifteen minutes.

(b) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

EXEMPTIONS, EXCEPTIONS AND EQUIVALENCYNEW SECTION**WAC 16-233-301 Exemptions—40 C.F.R., § 170.601.**

(1) *Exemption for owners of agricultural establishments and their immediate families.*

(a) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment are not required to provide the protections of the following sections to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this chapter on their own agricultural establishment.

- (i) WAC 16-233-021(3).
- (ii) WAC 16-233-021 (6) through (10).
- (iii) WAC 16-233-026 (effective prior to January 1, 2018) or WAC 16-233-027 (effective after January 1, 2018).
- (iv) WAC 16-233-101.
- (v) WAC 16-233-106.
- (vi) WAC 16-233-121.
- (vii) WAC 16-233-126 and 16-233-221.
- (viii) WAC 16-233-201.
- (ix) WAC 16-233-206.
- (x) WAC 16-233-211 (2) and (3) (effective prior to January 1, 2018) or WAC 16-233-212 (3) and (4) (effective after January 1, 2018).
- (xi) WAC 16-233-216 (3) through (5).
- (xii) WAC 16-233-311 (1) through (3) and (5) through (10).

(b) The owners of agricultural establishments must provide all of the applicable protections required by this chapter for any employees or other persons on the establishment that are not members of their immediate family.

(2) *Exemption for certified crop advisors.* Certified crop advisors may make their own determination for the appropriate personal protective equipment for entry into a treated area during a restricted-entry interval and substitute their self-determined set of personal protective equipment for the labeling-required personal protective equipment, and the requirements of WAC 16-233-021 (5) and (6), 16-233-031(11), 16-233-206(1), 16-233-216, and 16-233-221 do not apply to certified crop advisors provided the application is complete and all of the following conditions are met:

- (a) The crop advisor is certified or licensed as a crop advisor by the Washington state department of agriculture.
- (b) The certification or licensing program requires pesticide safety training that includes all the information in WAC 16-233-201 (3)(b) or (c) as applicable depending on the date of training.
- (c) The crop advisor who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

NEW SECTION**WAC 16-233-306 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., § 170.603.**

An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, provided that the agricultural employer ensures all of the applicable conditions of this section and WAC 16-233-311 are met.

(1) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer ensures that all of the following conditions are met:

(a) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies including, but not limited to, soil, water, air, or surfaces of plants. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(b) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(2) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities, if the agricultural employer ensures that all of the following requirements are met:

- (a) No hand labor activity is performed.
- (b) The time in treated areas where a restricted-entry interval is in effect does not exceed one hour in any twenty-four-hour period for any worker.
- (c) No such entry is allowed during the first four hours after the application ends.
- (d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(3) *Exception for an agricultural emergency.*

(a) An agricultural emergency means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, that requires entry into a treated area during a restricted-entry interval, and when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. Losses resulting from mismanagement cannot be included when determining whether a loss is substantial.

(b) A worker may enter a treated area where a restricted-entry interval is in effect in an agricultural emergency to perform tasks necessary to mitigate the effects of the agricultural emergency, including hand labor tasks, if the agricultural employer ensures that all the following criteria are met:

(i) The Washington state department of agriculture declares an agricultural emergency that applies to the treated area, or agricultural employer has determined that the circumstances within the treated area are the same as circumstances the Washington state department of agriculture has previously determined would constitute an agricultural emergency.

(ii) The agricultural employer determines that the agricultural establishment is subject to the circumstances that result in an agricultural emergency meeting the criteria of (a) of this subsection.

(iii) If the labeling of any pesticide product applied to the treated area requires workers to be notified of the location of treated areas by both posting and oral notification, then the agricultural employer must ensure that no individual worker spends more than four hours out of any twenty-four-hour period in treated areas where such a restricted-entry interval is in effect.

(iv) No such entry is allowed during the first four hours after the application ends.

(v) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(vi) A decontamination site has been provided in accordance with WISHA regulations.

(4) *Exceptions for limited contact and irrigation activities.* A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) No worker is allowed in the treated area for more than eight hours in a twenty-four-hour period.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(e) The task is one that, if not performed before the restricted-entry interval expires, would cause substantial economic loss, and there are no alternative tasks that would prevent substantial loss.

(f) With the exception of irrigation tasks, the need for the task could not have been foreseen.

(g) The worker has no contact with pesticide-treated surfaces other than minimal contact with feet, lower legs, hands, and forearms.

(h) The labeling of the pesticide product that was applied does not require that workers be notified of the location of treated areas by both posting and oral notification.

NEW SECTION

WAC 16-233-311 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval—40 C.F.R., § 170.605. If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

(1) The agricultural employer must ensure that the worker is at least eighteen years old.

(2) Prior to early entry, the agricultural employer must provide to each early-entry worker the information described in (a) through (h) of this subsection. The information must be provided orally in a manner that the worker can understand.

(a) Location of early-entry area where work activities are to be performed.

(b) Pesticide(s) applied.

(c) Dates and times that the restricted-entry interval begins and ends.

(d) Which exception in WAC 16-233-306 is the basis for the early entry, and a description of tasks that may be performed under the exception.

(e) Whether contact with treated surfaces is permitted under the exception.

(f) Amount of time the worker is allowed to remain in the treated area.

(g) Personal protective equipment required by the pesticide product labeling for early entry.

(h) Location of the pesticide safety information required in WAC 16-233-026(1) (effective prior to January 1, 2018) or WAC 16-233-027(1) (effective after January 1, 2018) and the location of the decontamination supplies required in subsection (8) of this section.

(3) Prior to early entry, the agricultural employer must ensure that each worker either has read the applicable pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.

(4) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal protective equipment must conform to the standards in WAC 16-233-216 (2)(a) through (i).

(5) The agricultural employer must maintain the personal protective equipment in accordance with WAC 16-233-216 (3) and (4).

(6) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

(7) The agricultural employer must instruct each worker on the proper use and removal of the personal protective equipment, and as appropriate, on its cleaning, maintenance and disposal. The agricultural employer must not allow or direct any worker to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(8) During any early-entry activity, the agricultural employer must provide decontamination supplies in accordance with WAC 16-233-221, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to workers performing early-entry tasks.

(9) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural

employer must provide at least one pint of water per worker in portable containers for eyeflushing that is immediately available to each worker who is performing early-entry activities.

(10) At the end of any early-entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and an adequate amount of water so that the workers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees shall be provided at early entry sites that do not have running water.

NEW SECTION

WAC 16-233-316 Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., § 170.607. (1) *Body protection.*

(a) A chemical-resistant suit may be substituted for coveralls. If a chemical-resistant suit is substituted for coveralls, any labeling requirement for an additional layer of clothing beneath the coveralls is waived.

(b) A chemical-resistant suit may be substituted for coveralls and a chemical-resistant apron.

(2) *Boots.* If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(3) *Gloves.* If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during activities with plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they must be worn only with chemical-resistant liners and they must not be worn for any other use.

(4) *Closed systems.*

(a) When pesticides are being mixed or loaded using a closed system that meets all of the requirements in (b) of this subsection, and the handler employer meets the requirements in (c) of this subsection, the following exceptions to labeling-specified personal protective equipment are permitted:

(i) Handlers using a closed system to mix or load pesticides with a signal word of "DANGER" or "WARNING" may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Handlers using a closed system to mix or load pesticides other than those specified in (a)(i) of this subsection may substitute protective eyewear, long-sleeved shirt, long pants, and shoes and socks for the labeling-specified personal protective equipment.

(b) The exceptions in (a) of this subsection apply only in the following situations:

(i) Where the closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the system.

(ii) When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.

(c) The exceptions in (a) of this subsection apply only where the handler employer has satisfied the requirements in WAC 16-233-031 and all of the following conditions:

(i) Each closed system must have written operating instructions that are clearly legible and include: Operating procedures for use, including the safe removal of a probe; maintenance, cleaning and repair; known restrictions or limitations relating to the system, such as incompatible pesticides, sizes (or types) of containers or closures that cannot be handled by the system; any limits on the ability to measure a pesticide; and special procedures or limitations regarding partially filled containers.

(ii) The written operating instructions for the closed system must be available at the mixing or loading site and must be made available to any handlers who use the system.

(iii) Any handler operating the closed system must be trained in its use and operate the closed system in accordance with its written operating instructions.

(iv) The closed system must be cleaned and maintained as specified in the written operating instructions and as needed to make sure the system functions properly.

(v) All personal protective equipment specified in the pesticide product labeling is immediately available to the handler for use in an emergency.

(vi) Protective eyewear must be worn when using closed systems operating under pressure.

(5) *Enclosed cabs.*

(a) If a handler applies a pesticide from inside a vehicle's enclosed cab, and if the conditions listed in (b) of this subsection are met, exceptions to the personal protective equipment requirements specified on the product labeling for applicators are permitted as provided in (c) of this subsection.

(b) All of the personal protective equipment required by the pesticide product labeling for applicators must be immediately available and stored in a sealed container to prevent contamination. Handlers must wear the applicator personal protective equipment required by the pesticide product labeling if they exit the cab within a treated area during application or when a restricted-entry interval is in effect. Once personal protective equipment is worn in a treated area, it must be removed before reentering the cab to prevent contamination of the cab.

(c) Handlers may substitute a long-sleeved shirt, long pants, shoes and socks for the labeling-specified personal protective equipment for skin and eye protection. If a filtering facepiece respirator (NIOSH approval number prefix TC-84A) or dust/mist filtering respirator is required by the pesticide product labeling for applicators, then that respirator need not be worn inside the enclosed cab if the enclosed cab has a properly functioning air ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions. If any other type of respirator is

required by the pesticide labeling for applicators, then that respirator must be worn.

(6) *Aerial applications.*

(a) *Use of gloves.* The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(b) *Open cockpit.* Handlers applying pesticides from an open cockpit aircraft must use the personal protective equipment specified in the pesticide product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A helmet with a face shield lowered to cover the face may be substituted for protective eyewear.

(c) *Enclosed cockpit.* Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(7) *Crop advisors.*

(a) Provided the conditions in (b) through (d) of this subsection are met, crop advisors and their employees entering treated areas to perform crop advising tasks while a restricted-entry interval is in effect may substitute either of the following sets of personal protective equipment for the personal protective equipment specified on the pesticide labeling for handler activities:

(i) The personal protective equipment specified on the pesticide product labeling for early entry.

(ii) Coveralls, shoes plus socks and chemical-resistant gloves made of any waterproof material, and eye protection if the pesticide product labeling applied requires protective eyewear for handlers.

(b) The application has been complete for at least four hours.

(c) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(d) The crop advisor or crop advisor employee who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-233-005 Scope and purpose—Worker protection standards—40 C.F.R., § 170.1.
- WAC 16-233-010 Definitions—Worker protection standards—40 C.F.R., § 170.3.
- WAC 16-233-020 General duties and prohibited actions—Worker protection standards—40 C.F.R., § 170.7.
- WAC 16-233-025 Violations of this chapter—Worker protection standards—40 C.F.R., § 170.9.

- WAC 16-233-100 Applicability of this chapter—Standards for workers—40 C.F.R., § 170.102.
- WAC 16-233-105 Exceptions—Standards for workers—40 C.F.R., § 170.103.
- WAC 16-233-110 Exemptions—Standards for workers—40 C.F.R., § 170.104.
- WAC 16-233-115 Restrictions associated with pesticide applications—Standards for workers—40 C.F.R., § 170.110.
- WAC 16-233-120 Entry restrictions—Standards for workers—40 C.F.R., § 170.112.
- WAC 16-233-125 Notice of applications—Standards for workers—40 C.F.R., § 170.120.
- WAC 16-233-130 Providing specific information about applications—Standards for workers—40 C.F.R., § 170.122.
- WAC 16-233-135 Notice of applications to handler employers—Standards for workers—40 C.F.R., § 170.124.
- WAC 16-233-140 Pesticide safety training—Standards for workers—40 C.F.R., § 170.130.
- WAC 16-233-145 Posted pesticide safety information—Standards for workers—40 C.F.R., § 170.135.
- WAC 16-233-150 Decontamination—Standards for workers—40 C.F.R., § 170.150.
- WAC 16-233-155 Emergency assistance—Standards for workers—40 C.F.R., § 170.160.
- WAC 16-233-200 Applicability of this subpart—Standards for pesticide handlers—40 C.F.R., § 170.202.
- WAC 16-233-205 Exemptions—Standards for handlers—40 C.F.R., § 170.204.
- WAC 16-233-210 Restrictions during applications—Standards for pesticide handlers—40 C.F.R., § 170.210.
- WAC 16-233-215 Providing specific information about applications—Standards for pesticide handlers—40 C.F.R., § 170.222.
- WAC 16-233-220 Notice of applications to agricultural employers—Standards for pesticide handlers—40 C.F.R., § 170.224.
- WAC 16-233-225 Pesticide safety training—Standards for pesticide handlers—40 C.F.R., § 170.230.
- WAC 16-233-230 Knowledge of labeling and site-specific information—Standards for pesticide handlers—40 C.F.R., § 170.232.

- WAC 16-233-235 Safe operation of equipment—Standards for pesticide handlers—40 C.F.R., § 170.234.
- WAC 16-233-240 Posted pesticide safety information—Standards for pesticide handlers—40 C.F.R., § 170.235.
- WAC 16-233-245 Personal protective equipment—Standards for pesticide handlers—40 C.F.R., § 170.240.
- WAC 16-233-250 Decontamination—Standards for pesticide handlers—40 C.F.R., § 170.250.
- WAC 16-233-255 Emergency assistance—Standards for pesticide handlers—40 C.F.R., § 170.260.

WSR 16-24-094**PROPOSED RULES****LIQUOR AND CANNABIS BOARD**

[Filed December 7, 2016, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-117 and 16-08-127.

Title of Rule and Other Identifying Information: New WAC 314-55-0995 Laboratory certification and accreditation requirements, 314-55-1025 Proficiency testing, 314-55-1035 Laboratory certification—Suspension and revocation, 314-55-108 Pesticide action levels; and amending WAC 314-55-101 Sampling protocols, 314-55-102 Quality assurance testing, and 314-55-103 Good laboratory practice checklist.

Hearing Location(s): Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on January 11, 2016 [2017], at 10:00 a.m.

Date of Intended Adoption: On or after January 25, 2017.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by January 11, 2016 [2017].

Assistance for Persons with Disabilities: Contact Joanna Eide by January 4, 2016 [2017], (360) 664-1622.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to make necessary rule changes for laboratory certification requirements, proficiency testing (PT), pesticide action levels, requirements to promote lab accuracy and consistency, and quality assurance (QA) requirements.

Reasons Supporting Proposal: Rule changes are needed to protect consumer safety through ensuring laboratories employ appropriate testing methodologies and achieve accurate testing results for marijuana. Creating PT requirements to achieve and maintain certification and parameters for laboratories will promote accuracy and accountability in marijuana testing by certified laboratories. Additionally, current

permanent rules provide how a laboratory may be certified by WSLCB, but do not contain provisions on what a laboratory must do to remain certified or how WSLCB may suspend or revoke the certification of a laboratory. WSLCB needs the authority to suspend or revoke the certification of a laboratory that does not follow rule requirements for testing or for those laboratories that do not consistently achieve accurate testing results. Rules for pesticide action levels are needed for pesticides not allowable for use in the production of marijuana. Currently, permanent rules contain a zero tolerance for disallowed pesticides, which is unworkable and virtually untestable. WSLCB needs action levels for pesticides to determine when a sample should fail QA testing and when a recall should be initiated.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

Statute Being Implemented: RCW 69.50.342 and 69.50.345.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622; Implementation: Marijuana Examiners Unit, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1600; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

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

Small Business Economic Impact Statement

Chapter 19.85 RCW, Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated businesses. Preparation of a small business economic impact statement (SBEIS) is required when proposed rules will impose more than minor costs on businesses.

"Minor cost" means a cost that is less than one percent of annual payroll or the greater of either .3 percent of annual revenue or \$100.

"Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

Describe the Proposed Rule Changes, Including a Brief History of the Issue and an Explanation of Why the Proposed Rule Change is Needed:

Rule changes are needed regarding laboratory certification requirements, PT, pesticide action levels, requirements to promote lab accuracy and consistency, and QA requirements. Rule changes are needed to protect consumer safety through ensuring laboratories employ appropriate testing methodologies and achieve accurate testing results for marijuana. Creating PT requirements to achieve and maintain certification and parameters for laboratories will promote accuracy and accountability in marijuana testing by certified laboratories. Additionally, current permanent rules provide how a laboratory may be certified by WSLCB, but do not contain provisions on what a laboratory must do to remain certified or how WSLCB may suspend or revoke the certification of a laboratory. WSLCB needs the authority to suspend or revoke

the certification of a laboratory that does not follow rule requirements for testing or for those laboratories that do not consistently achieve accurate testing results.

Rules for pesticide action levels are needed for pesticides not allowable for use in the production of marijuana. Currently, permanent rules contain a zero tolerance for disallowed pesticides, which is unworkable and virtually untestable. WSLCB needs action levels for pesticides to determine when a sample should fail QA testing and when a recall should be initiated.

WSLCB convened an informal work group to gather information and receive recommendations for the changes proposed in this rule making. The work group was comprised of WSLCB staff, certified labs, marijuana businesses, WSLCB's certifying and auditing vendor, and other state agencies, including the department of health, the department of agriculture, and the department of ecology. Several meetings were held over a period of six months to gather information and suggestions for this rule making in addition to the comments and recommendations received as part of the rule-making process.

Identify which Businesses are Required to Comply with the Proposed Rule Changes. How many businesses of each type are involved? (Use the North American Industry Classification System (NAICS) codes where possible): There are no NAICS codes for marijuana production, processing, or retail businesses. There is no current data on payroll for marijuana production, processing, retail, or testing businesses. Certified labs and licensed producers and processors will be required to adhere to the proposed rule changes.

The following numbers are based on information pulled on December 6, 2016.

Certified Laboratories:	18
Licensed Producers/Processors:	917
Licensed Producers:	174
Licensed Processors:	141
Producers by Tier:	
Tier 1 (up to 2,000 sq. ft.):	198
Tier 2 (2,000 - 10,000 sq. ft.):	480
Tier 3 (10,000 - 30,000 sq. ft.):	415

Summary of the Compliance Requirements Included in the Proposed Rule Changes: The proposed rules include the following compliance requirements:

- Increases and adjustments to QA testing requirements.
- Additions, including recordkeeping and testing methodology adjustments, to the good laboratory practice checklist in WAC 314-55-103, incorporating 5.4 of ISO 17025.
- PT requirements for labs seeking certification and for certified labs to maintain certification.
- Pesticide action levels to detect compliance with restrictions on the use of pesticides.
- Adjustments to sample deduction by licensed producers and processors with increases in sample numbers and size of sample from one gram to two grams per sample.

Sample labeling requirements are adjusted to clearly mark samples with all necessary information for identification.

Analyze the Probable Cost of Compliance. Identify the probable costs to comply with the proposed rule changes, 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: Lab equipment cost estimates for testing water activity rate (new): \$1200-\$4000. These equipment costs are one-time costs. Ongoing costs are estimated at ten percent of the initial equipment cost per year, at a rate of \$120-\$400.

Lab equipment costs for mycotoxin testing (new): Mycotoxin testing can be accomplished with a liquid chromatography system with a mass spectrometer (LC/MS) or by purchasing enzyme-linked immunosorbent assay (ELISA) kits. It is estimated that about half of the certified labs could use existing equipment to perform these new testing requirements.

Increased inspections for auditing of certified labs due to changes with the good laboratory practice checklist in WAC 314-55-103. These changes also include increased record-keeping requirements and may require increased training of employees of certified labs.

Increased residual solvent testing requirements will also result in some additional administrative and operational costs for certified labs.

Producers and processors will have administrative costs to adjust to the proposed changes in sample deduction. This will vary depending on the producer. Adjustments are intended to reduce self-selection bias with sample deduction. Changes include requirements for each sample to be packaged in a separate container to increase accurate assessment of lots and batches. Labs may collect samples if they choose, which may result in an increased cost to producers and processors should they agree to this, but would be an optional cost.

Some labs estimate the need for all additional equipment to adjust to the changes in the proposed rules will cost around \$500,000. If this is true, they estimate that if sample volumes increase at a rate of fifty percent per year and assume that labs intend to aim for a twenty-four month return on investment for purchasing that equipment, the five labs that do the majority of the QA testing in Washington will need to increase average per sample price for QA testing by \$17.42 to meet that return on investment goal. However, WSLCB's certifying and auditing vendor believes that around half of the currently certified labs already have the equipment to comply with the majority of the proposed changes in this rule making.

Professional services: Labs will need to use professional services of WSLCB approved PT providers. PT - currently required by emergency rule. This rule making will make those requirements permanent. Under these proposed rules, labs must successfully complete PT for each field of testing the lab seeks to be certified for. Certified labs must participate in two rounds of PT per year for each field of testing and maintain a passing score on an ongoing basis, in a minimum of two out of three successive rounds of PT. Currently, there

are three PT programs available: Potency analysis, microbial analysis, and residual solvents. As more PT programs for other fields of testing become available, certified labs will be required to complete those programs for the fields of testing that the lab is certified for. Costs for compliance should decrease over time as more PT programs become available on the market and competition increases. Examples of PT testing costs range from \$75 for one calibration to \$575 for a blind PT for THC and cannabinol. Many PT rounds are priced around \$250 per round, though some are higher.

Marijuana producers and processors will have to continue to use the services of one or more certified labs to provide required QA tests under current rules and the proposed changes to rules in this rule making.

Whether the increased costs will result in lost sales or revenue: Licensed marijuana businesses may see a small loss comparative to overall wholesale value of lots in sales due to increased sampling amounts as proposed in the rule changes. However, these losses can be made up by passing costs along to the ultimate consumer at retail. Increased testing costs and administrative costs for certified lab compliance with the changes may be offset by increases to testing charges to licensed marijuana producers and processors. These increased costs again can be passed on to consumers at retail.

Analyze Whether the Proposed Rule Changes May Impose More Than Minor Costs on Businesses in the Industry: "Minor cost" means a cost that is less than one percent of annual payroll or the greater of either .3 percent of annual revenue or \$100. Based upon the available data, costs of compliance and administrative costs, increases to sample quantities and amounts, and increases to testing requirements, WSLCB concludes that the proposed rule changes will result in more than minor costs to businesses in the marijuana industry.

Average wholesale price per gram of marijuana was \$2.98 over the past year (2016). The current average retail price of marijuana per gram, including excise tax, was \$8.61 in the month of October 2016. On average, the price per gram of marijuana from October 2015 to October 2016 was approximately \$8.67/gram. These average values inform a conclusion that the adjustments to sampling numbers and sizes will result in the following costs to producers and processors in losses to wholesale sales:

Lot Size	Total Lot Wholesale Value	# of Samples	Total Grams	Costs (Wholesale Sales)
Up to 5 lbs. (2268 grams)	\$6,758.64	3	6	\$17.88
5-10 lbs. (4536 grams)	\$13,517.28	4	8	\$23.84
10-15 lbs. (6804 grams)	\$20,275.92	5	10	\$29.80

The amount of costs incurred will depend on the amount of marijuana produced or processed by licensees, which varies by licensee.

According to industry and through researching pricing for QA tests that currently certified labs offer, pricing estimated averages for QA testing under current rules and the proposed changes in this rule making are as follows:

Test	Current Rules Costs	Proposed Rules Costs
Potency	\$40.00	\$40.00 x 3 (potential volume discounts)
Microbial	\$40.00	\$40.00
Mycotoxin	N/A	\$20.00
Residual Solvent	\$40.00	\$60.00

Some industry members noted that the proposed requirements for three separate potency tests may not result in price increases as labs may choose to offer volume discounts for potency tests. Additionally, many labs include moisture testing without increased costs when testing for the full battery of other tests required. How much increased costs for testing incurred depends on the individual licensee production amounts and processed material amounts and type of product. For producers, this will be dependent on the tier level the producer falls under and whether the producer harvests year-round or on a seasonal basis (indoor grow vs. outdoor grows). For processors, this is dependent on the amount and type of products processed. Four thousand two hundred forty-three samples were tested by certified labs in June 2016.

Costs will likely be passed along to the ultimate consumer at retail. Some retailers have stated screening marijuana products for toxins is a selling point and converts customers to the regulated marijuana market rather than the illicit market.

Determine Whether the Proposed Rule May Have a Disproportionate Impact on Small Businesses as Compared to the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rule: It is likely that the QA testing changes will disproportionately impact smaller producers and processors. Smaller harvests will be subject to the increased sampling sizes and increased testing requirements, and the sample amounts will maximize cost-savings when larger lots (fifteen lbs.) are used. Smaller harvests of five lbs. or less will not be able to take advantage of the cost-savings measures with sampling at larger lot sizes. Increased sample size amounts will also result in higher costs for compliance since that will take material out of the market (otherwise could be sold) for testing purposes.

It is estimated that virtually all of the certified labs qualify as small businesses. For this reason, all changes to rule requirements will impact those small businesses.

If the Proposed Rule Changes Have 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 or the justification for not reducing costs: The WSLCB initially considered adopting a requirement that labs seeking certification to test marijuana and current certified labs achieve ISO 17025 accreditation as a condition of acquiring and maintaining WSLCB certification. The costs associated with achieving ISO accreditation would have been quite substantial and ongoing and labs expressed concerns relative to that. Instead, WSLCB worked with its certifying

and auditing vendor to incorporate certain provisions (section 5.4 - Test and Calibration Methods and Method Validation) from ISO accreditation into its good laboratory standards checklist, rather than requiring ISO accreditation. This change was also recommended by certified labs that participated in informal work group discussions. This change will help to achieve the goals of promoting good laboratory practices, sound testing methodologies, consistency, and accuracy while avoiding the higher costs of ISO accreditation in addition to lab certification costs. The new items in the good laboratory standards checklist in WAC 314-55-103 will increase costs and compliance requirements for labs, including increased auditing costs, but at a lesser expense than ISO accreditation.

Increased sample sizes and number of samples required for testing, specifically for potency testing may result in initial losses of wholesale sales, but may ultimately be made up through adjustments to pricing based on increased costs and passed along to the consumer at retail. Given that the average price per gram at retail is currently \$8.67, the increased price at wholesale and at retail should be comparatively low. Some industry members estimated that this increase at wholesale could be around \$0.10 per gram. Additionally, larger lot sizes may make inventory management easier for those producers who have harvests large enough to create larger lots. If this occurs, it could mean reductions to operational and administrative costs, which could result in more mitigating cost savings. Even smaller producers and processors may benefit in potential cost savings due to the increased flexibility in lot sizing depending on business decisions made.

Added mycotoxin testing as a required QA test. This change is proposed as a response to removal of certain microbiological test requirements. This adjustment does not result in a net increase to testing costs, and some industry members estimate that licensed marijuana producers in Washington could collectively save upwards of \$30 million due to the adjustments in the microbiological limits tests. However, due to other changes in QA testing requirements, specifically with the requirement of three potency tests rather than one, industry members estimate a twenty-five percent increase to testing costs. This estimate may be higher than actual cost impacts due to mitigating factors, such as the removal of some testing requirements, flexibility of lot sizes, and ability to pass along additional costs to consumers. Some industry members have expressed that the monetary benefit of the proposed rules to the marijuana producers may "far outweigh any costs associated with enhanced quality assurance."

Adjustments to when testing must be performed are proposed to allow for greater flexibility while still ensuring the proper tests are performed prior to products being sold at retail. This change was made to promote flexibility aimed at cost savings. Specifically, it will avoid having to test certain products (concentrates) twice prior to being sold at retail.

Costs will likely be passed along to consumers at retail, which is a mitigating factor. The additional costs associated with the increased testing, PT, and good laboratory practice checklist enhancements are necessary to promote accurate testing and information for consumers. Many of the changes proposed in this rule making are to include standards that are common for environmental labs which are similar to certified

labs that test cannabis in Washington and are necessary to promote consistency, accuracy, and the proper information provided to consumers at retail.

Though these proposed rule changes will mean increased costs for businesses in the marijuana industry, these costs are justifiable. Rule changes are needed to protect consumer safety and convey accurate information to consumers through ensuring laboratories employ appropriate testing methodologies and achieve accurate testing results for marijuana. Creating PT requirements to achieve and maintain certification and parameters for laboratories will promote accuracy and accountability in marijuana testing by certified laboratories.

Describe How Small Businesses Were Involved in the Development of the Proposed Rule: WSLCB staff held several meetings with industry members, certified labs, WSLCB's certifying and auditing vendor, and other state agencies to inform the proposed rule changes in this CR-102 and to gather information relating to costs and effectiveness of potential rule changes. WSLCB staff collected comments both in writing and verbally from industry members as part of the rule-making process and informal work group meetings. Many of the changes included in this rule making are directly in response to requests from certified labs and the cannabis industry, as well as recommendations from partner science agencies. Additionally, the Cannabis Alliance in conjunction with the Washington Cannabis Laboratory Association conducted a survey of marijuana licensees at each level of the cannabis market which it shared with WSLCB to assist in the development of this SBEIS. WSLCB will continue to receive and assess comments as part of the formal comment process as this rule making progresses.

Identify the Estimated Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule Changes: It is possible that these proposed rule changes could increase jobs in laboratories as additional tests would be required, which may create a need to hire additional staff. It is unclear whether the proposed changes will cause job losses as increased costs may be offset by [being] passing along to the consumer at retail.

A copy of the statement may be obtained by contacting Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, phone (360) 664-1622, fax (360) 664-9689, e-mail Joanna.Eide@lcb.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.328 because the proposed new rule does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05328(5) [34.05.328 (5)].

December 7, 2016
Jane Rushford
Chair

NEW SECTION

WAC 314-55-0995 Laboratory certification and accreditation requirements. The following requirements apply to third-party labs seeking certification by the WSLCB or its designee to do quality assurance testing on marijuana

and marijuana products in Washington state, and for certified third-party laboratories (certified labs) to remain certified by the WSLCB. The requirements provided in this section are continuing requirements, and must be adhered to and maintained for a third-party lab to remain certified. The WSLCB may summarily suspend a lab's certification if a certified lab is found out of compliance with the requirements of this chapter.

(1) A third-party laboratory must be certified by the WSLCB or their vendor as meeting the WSLCB's accreditation and other requirements prior to conducting quality assurance tests required under this chapter. Certified labs must conspicuously display the certification letter received by the WSLCB upon certification at the lab's premises in a conspicuous location where a customer may observe it unobstructed in plain sight.

(2) A person with financial interest in a certified lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests. A person with direct or indirect financial interest in a certified lab must disclose to the WSLCB by affidavit any direct or indirect financial interest in a licensed marijuana producer or processor.

(3) The following provisions are conditions of certification for third-party testing labs. Failure to adhere to the below requirements may result in the suspension or revocation of certification.

(a) Each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director must possess the following minimum qualifications:

(i) A doctorate in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of two years' post-degree laboratory experience;

(ii) A master's degree in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of four years' of post-degree laboratory experience; or

(iii) A bachelor's degree in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of six years of post-education laboratory experience.

(b) Certified labs must follow the analytical requirements most current version of the *Cannabis Inflorescence and Leaf Monograph* published by the *American Herbal Pharmacopoeia* or notify the WSLCB or its designee what alternative scientifically valid testing methodology the lab is following for each quality assurance test. Third-party validation by the WSLCB or its designee is required for any monograph or analytical method followed by a certified lab to ensure the methodology produces scientifically accurate results prior to use of alternative testing methods to conduct required quality assurance tests.

(c) The WSLCB may require third-party validation and ongoing monitoring of a certified lab's basic proficiency to correctly execute the analytical methodologies employed by the certified lab. The WSLCB may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The certified lab must pay all vendor fees for

validation and ongoing monitoring directly to the WSLCB's vendor.

(4) Certified labs must allow the WSLCB or the WSLCB's vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

(5) Labs must adopt and follow minimum good lab practices (GLPs) as provided in WAC 314-55-103, and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the WSLCB. The WSLCB or authorized third-party organization (WSLCB's designee) may conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(6) The WSLCB or its designee will take immediate disciplinary action against any certified lab that fails to comply with the provisions of this chapter or falsifies records related to this section including, without limitation, revoking the certification of the certified lab.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-101 Quality assurance sampling protocols. (1)~~((a))~~ To ensure ~~((that))~~ quality assurance samples submitted to certified third-party ~~((labs))~~ laboratories (certified labs) are representative from the lot or batch from which they were sampled as required in RCW 69.50.348, licensed producers, licensed processors, certified ~~((third-party laboratories))~~ labs, and their employees must adhere to the ~~((following))~~ minimum sampling protocols as provided in this section.

~~((b))~~ **(2) Sampling protocols for all marijuana product lots and batches:**

(a) Samples must be deducted in a way that is most representative of the lot or batch and maintains the structure of the marijuana sample. Licensees, certified ~~((third-party laboratories))~~ labs, and their employees may not adulterate or change in any way the representative sample from a lot or batch before submitting the sample to certified ~~((third-party laboratories))~~ labs. This includes adulterating or changing the sample in any way as to inflate the level of potency, or to hide any microbiological contaminants from the required microbiological screening such as, but not limited to:

(i) Adulterating the sample with kief, concentrates, or other extracts;

(ii) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This ~~((is not meant to be construed as prohibiting))~~ subsection does not prohibit the treatment of failed lots or batches with methods approved by the WSLCB; ~~((and))~~ or

(iii) Pregrinding a flower lot sample.

~~((2))~~ **Sampling protocols for all marijuana product lots and batches:** The deduction of all quality assurance samples must adhere to the following sampling protocols:

~~((a))~~ (b) All samples must be taken in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Wash-

ington state department of agriculture under chapters 16-165 and 16-167 WAC.

~~((b))~~ (c) Persons ~~((taking))~~ collecting samples must wash their hands prior to ~~((deducting samples))~~ collecting a sample from a lot or batch, wear sterile gloves while preparing or deducting the lot or batch for ~~((sampling))~~ sample collection, and must use ~~((sanitary))~~ sterile utensils and storage devices when collecting samples.

~~((e))~~ (d) Samples must be placed in a sterile ~~((plastic or glass))~~ container, and stored in a location that prevents the propagation of pathogens and other contaminants~~((This includes low light levels, mild temperatures, and low humidity environments.~~

~~((d))~~, such as a secure, low-light, cool and dry location.

(e) The licensee ~~((shall))~~ must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.

(f) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:

(i) The sixteen digit identification number generated by the traceability system;

(ii) The license number and name of the certified lab receiving the sample;

(iii) The license number and trade name of the licensee sending the sample;

(iv) The date the sample was collected; and

(v) The weight of the sample.

(3) Additional sampling protocols for flower lots:

(a) Licensees or certified ~~((third-party labs are required to deduct four))~~ labs must collect a minimum of three separate samples from each marijuana flower lot ~~((in order to ensure representativeness of the lot. The four))~~ up to five pounds. An additional sample must be collected for every five pound increment in lot weight, up to a maximum lot size of fifteen pounds. Flower lots that are more than five pounds, but less than ten pounds, require four samples. Flower lots more than ten pounds up to fifteen pounds require five samples. Licensees or certified labs may collect more samples than this minimum, but must not collect less. The samples must be of roughly equal weight ~~((;))~~ not less than ~~((one))~~ two grams each ~~((, and the cumulative weight of the four samples may not be more than the maximum allowed in WAC 314-55-102)).~~

(b) The ~~((four separate))~~ samples must be taken from different ~~((quadrants))~~ sections of the flower lot. A ~~((quadrant))~~ section is the division of a lot into ~~((four))~~ equal parts ~~((This may be done visually or physically, but))~~ in the same number as the number of samples to be collected. Dividing a lot into sections prior to collecting samples must be done in a manner that ensures the samples ~~((were deducted))~~ are collected from ~~((four))~~ evenly distributed areas of the flower lot and may be done visually or physically.

(c) The ~~((four separate samples may be placed together in a))~~ samples must be packaged in separate containers ~~((that conforms to))~~ conforming to the packaging and labeling requirements in subsection (2) of this section for storage and transfer to a certified ~~((third-party))~~ lab.

(4) Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab. Certified labs may also return any unused portion of the samples.

(5) Certified ~~((third-party laboratories))~~ labs may reject or fail a sample if ~~((they))~~ the lab has reason to believe the sample was not collected in the manner required by this section, ~~((has been))~~ adulterated in any way, contaminated with known or unknown solvents, or ~~((was))~~ manipulated in a ~~((way))~~ manner that violates the sampling protocols, limit tests, or action levels.

~~((5))~~ (6) The WSLCB or its designee will take immediate disciplinary action against any licensee or certified ~~((third-party lab which))~~ lab that fails to comply with the provisions of this section or falsifies records related to this section including, without limitation, revoking the license ~~((or certificate of))~~ the licensed producer or processor, or certification of the certified ~~((third-party))~~ lab.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-102 Quality assurance testing. ~~((H))~~ A third-party testing lab must be certified by the WSLCB or ~~((their))~~ the WSLCB's vendor as meeting the WSLCB's accreditation and other requirements prior to conducting ~~((required))~~ quality assurance tests ~~((Certified labs will receive a certification letter from the WSLCB and must conspicuously display this letter in the lab in plain sight of the customers. The WSLCB can summarily suspend a lab's certification if a lab is found out of compliance with the requirements of this chapter.~~

~~((2))~~ A person with financial interest in a certified third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests. A person with direct or indirect financial interest in a certified third-party testing lab must disclose to the WSLCB by affidavit any direct or indirect financial interest in a licensed marijuana producer or processor.

~~((3))~~ As a condition of certification, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(4) As a condition of certification, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the WSLCB what alternative scientifically valid testing methodology the lab is following for each qual-

ity assurance test. The WSLCB may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(5) ~~As a condition of certification, the WSLCB may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. The WSLCB may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The lab shall pay all vendor fees for validation and ongoing monitoring directly to the vendor.~~

(6) ~~The lab must allow the WSLCB or their vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.~~

(7) ~~Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the WSLCB. The WSLCB or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.~~

(8) ~~The WSLCB or its designee will take immediate disciplinary action against any certified third-party lab which fails to comply with the provisions of this chapter or falsifies records related to this section including, without limitation, revoking the certificate of the certified third-party lab.~~

(9) ~~The general body of required quality assurance tests for marijuana flowers and infused products may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.~~

(10) ~~Table of required quality assurance tests defined in the most current version of the *Cannabis Inflorescence and Leaf* monograph published by the American Herbal Pharmacopoeia.~~

~~(a)) required under this section.~~

(1) **Quality assurance fields of testing.** Certified labs must be certified to the following fields of testing by the WSLCB or its designee and must adhere to the guidelines for each quality assurance field of testing listed below. Labs may become certified by the WSLCB or its designee to test for heavy metal and pesticide residue screening, but must become certified in those fields of testing prior to conducting any testing or screening.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the WSLCB when testing for potency:

- (A) THCA;
- (B) THC;
- (C) Total THC;
- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA:

$M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA}).$

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA}).$

(ii) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) **Potency analysis for flower lots.**

(i) Certified labs must test and report the individual results and averages for the number of required flower lot samples as described in WAC 314-55-101(3) for the following required cannabinoids:

- (A) THCA;
- (B) THC;
- (C) Total THC;
- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA}).$

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA}).$

(c) Certified labs may combine in equal parts multiple samples from the same flower lot for the purposes of the following tests after the individual samples described in WAC 314-55-101(3) have been tested for potency analysis.

(i) **Moisture analysis.** The sample and related lot or batch fails quality assurance testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65 a_w ; and
- (B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality assurance testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3mm or more in diameter; and
- (B) Two percent of seeds or other foreign matter.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality assurance testing for microbiological screening if the results exceed the following limits:

	<u>Enterobacteria (bile-tolerant gram-negative bacteria)</u>	<u><i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i></u>
<u>Unprocessed Plant Material</u>	<u>10^2</u>	<u>Not detected in 1g</u>
<u>Extracted or processed Botanical Product</u>	<u>10^3</u>	<u>Not detected in 1g</u>

(iv) **Mycotoxin screening.** The sample and related lot or batch fail quality assurance testing for mycotoxin screening if the results exceed the following limits:

- (A) Total of Aflatoxin B1, B2, G1, G2: 20 $\mu\text{g/kg}$ of substance; and
- (B) Ochratoxin A: 20 $\mu\text{g/kg}$ of substance.

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality assurance testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality assurance testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

<u>Solvent*</u>	<u>ppm</u>
<u>Acetone</u>	<u>5,000</u>
<u>Benzene</u>	<u>2</u>
<u>Butanes</u>	<u>5,000</u>
<u>Cyclohexane</u>	<u>3,880</u>
<u>Chloroform</u>	<u>2</u>
<u>Dichloromethane</u>	<u>600</u>
<u>Ethanol</u>	<u>2,500</u>
<u>Ethyl acetate</u>	<u>5,000</u>
<u>Heptanes</u>	<u>5,000</u>
<u>Hexanes</u>	<u>290</u>
<u>Isopropanol (2-propanol)</u>	<u>5,000</u>
<u>Methanol</u>	<u>3,000</u>
<u>Pentanes</u>	<u>5,000</u>

<u>Solvent*</u>	<u>ppm</u>
<u>Propane</u>	<u>5,000</u>
<u>Toluene</u>	<u>890</u>
<u>Xylene**</u>	<u>2,170</u>

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(2) **Quality assurance testing required.** The following quality assurance tests are the minimum required tests for each of the following marijuana products, respectively. Licensees and certified labs may elect to do additional testing if desired.

(a) **General quality assurance testing requirements for certified labs.**

(i) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the WSLCB seed to sale traceability system. Certified labs must also verify if any unused portion of the sample was destroyed or returned to the licensee after the completion of required testing.

(ii) Certified labs must report quality assurance test results directly to the WSLCB traceability system when quality assurance tests for the field of testing are required within twenty-four hours of completion.

(iii) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this section.

(b) **Marijuana flower lots and other material lots.** Marijuana flower lots or other material lots require the following quality assurance tests:

<u>Product</u>	<u>Test(s) Required</u>	<u>((Maximum Sample Size))</u>
	<u>((Flower Lots and Other Material Lots))</u>	
Lots of marijuana flowers or other material that will not be extracted	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening	((7 grams))

((b)) (c) **Intermediate products.** Intermediate products must meet the following requirements related to quality assurance testing:

- (i) All intermediate products must be homogenized prior to quality assurance testing;
- (ii) ((A batch)) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;
- (iii) A batch of marijuana mix may not exceed ((five)) fifteen pounds and must be chopped or ground so no particles are greater than 3 mm; and
- (iv) All batches of intermediate products require the following quality assurance tests:

<u>Product</u>	<u>Test(s) Required Intermediate Products</u>	<u>((Maximum Sample Size))</u>
Marijuana mix	1. Moisture content* 2. Potency analysis 3. Foreign matter inspection* 4. Microbiological screening 5. Mycotoxin screening	((7 grams))

Product	Test(s) Required Intermediate Products	((Maximum Sample Size))
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. ((Microbiological screening (only if using flowers and other plant material that has not passed QA testing))) <u>Mycotoxin screening*</u> 3. Residual solvent test	((2 grams))
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. ((Microbiological screening (only if using flowers and other plant material that has not passed QA testing))) <u>Mycotoxin screening*</u> 3. Residual solvent test	((2 grams))
Concentrate or extract made with ethanol	1. Potency analysis 2. ((Microbiological screening (only if using flowers and other plant material that has not passed QA testing))) <u>Mycotoxin screening*</u> 3. Residual solvent test	((2 grams))
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening ((only if using flowers and other plant material that has not passed QA testing))) * 3. <u>Mycotoxin screening*</u> 4. Residual solvent test	((2 grams))
Concentrate or extract (nonsolvent) such as kief, ((hashish)) <u>hash, rosin</u> , or bubble hash	1. Potency analysis 2. Microbiological screening 3. <u>Mycotoxin screening</u>	((2 grams))
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening ((only if using flowers and other plant material that has not passed QA testing))) * 3. <u>Mycotoxin screening*</u>	((2 grams))

* Field of testing is only required if using lots of marijuana flower and other plant material that has not passed QA testing.

~~((e))~~ **(d) End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality assurance tests:

Product	Test(s) Required End Products	((Maximum Sample Size))
Infused solid edible	((+)) Potency analysis	((1 unit))
Infused liquid (like a soda or tonic)	((+)) Potency analysis	((1 unit))
Infused topical	((+)) Potency analysis	((1 unit))
Marijuana mix packaged (loose or rolled)	((+)) Potency analysis	((2 grams))
Marijuana mix infused (loose or rolled)	((+)) Potency analysis	((2 grams))
Concentrate or marijuana-infused product for inhalation	((+)) Potency analysis	((1 unit))

~~((d))~~ **(e)** End products consisting of only one intermediate product that has not been changed in any way ~~((is))~~ are not subject to potency analysis.

~~((11))~~ Certified third-party labs may request additional sample material in excess of amounts listed in the table in subsection (10) of this section for the purposes of completing required quality assurance tests. Labs certified as meeting the WSLCB's accreditation requirements may retrieve samples

from a marijuana licensee's licensed premises and transport the samples directly to the lab and return any unused portion of the samples.

(12) Labs certified as meeting the WSLCB's accreditation requirements are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but they must have records to

prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(13) At the discretion of the WSLCB, a producer or processor must provide an employee of the WSLCB or their designee samples in the amount listed in subsection (10) of this section or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the WSLCB. All costs of this testing will be borne by the producer or processor.

(14)) (3) No lot of usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may be sold or transported until the completion ~~((of all required))~~ and successful passage of quality assurance testing ~~((-))~~ as required in this section, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under ~~((their))~~ the same UBI number prior to quality assurance testing ~~((-~~

(15) Any usable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" usable marijuana or marijuana-infused product will be allowed to be sold.

(16)); and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality assurance testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to subsection (5) of this section.

(4) Samples, lots, or batches that fail quality assurance testing.

(a) Upon approval ~~((of))~~ by the WSLCB, ~~((a lot that fails a quality assurance test and the associated trim, leaf and other usable material))~~ failed lots or batches may be used to create extracts ~~((using hydrocarbon or CO₂ closed loop system))~~. After processing, the ~~((CO₂ or hydrocarbon based))~~ extract must ~~((still))~~ pass all ~~((required))~~ quality assurance tests ~~((in WAC 314-55-102))~~ required in this section before it may be sold.

~~((17))~~ (b) **Retesting.** At the request of the producer or processor, the WSLCB may authorize a retest to validate a

failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor ~~((-~~

(18) Labs must report all required quality assurance test results directly into the WSLCB's seed to sale traceability system within twenty-four hours of completion. Labs must also record in the seed to sale traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the licensee ~~((-))~~ requesting the retest.

(c) **Lot remediation.** Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed processor the producer or producer/processor transfers the products to; a licensed retailer carrying marijuana products derived from the remediated harvest, lot, or batch; or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section.

(5) **Referencing.** Certified labs may reference fields of testing to other certified labs by subcontracting fields of testing identified in this section. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.

(6) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but they must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this section.

(7) Upon the request of the WSLCB or its designee, a licensee or a certified lab must provide an employee of the WSLCB or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of heavy metals, and used for other quality assurance tests deemed necessary by the WSLCB.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-103 Good laboratory practice checklist. A third-party testing lab must be certified by the WSLCB or its vendor as meeting the WSLCB's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the WSLCB or its vendor to certify third-party testing labs:

ORGANIZATION Completed by: Reviewed by:	Document Reference	Y	N	NA	Comments
1. The laboratory or the organization of which it is a part of shall be an entity that can be held legally responsible.	-	-	-	-	-

ORGANIZATION Completed by: Reviewed by:	Document Reference	Y	N	NA	Comments
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.	-	-	-	-	-
If the laboratory is part of an organization performing activities other than testing ((and/or calibration)), the responsibilities of key personnel in the organization that have an involvement or influence on the testing ((and/or calibration)) activities of the laboratory shall be defined in order to identify potential conflicts of interest.	-	-	-	-	-
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.	-	-	-	-	-
4. The laboratory is responsible for all costs of initial certification and ongoing site assessments.	-	-	-	-	-
5. The laboratory must agree to site assessments every ((two)) <u>year for the first three years to maintain certification. Beginning year four of certification, on-site assessments will occur every two years to maintain certification.</u>	-	-	-	-	-
6. The laboratory must allow WSLCB staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.	-	-	-	-	-
7. The laboratory must report all test results directly into WSLCB's traceability system within twenty-four hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.	-	-	-	-	-
HUMAN RESOURCES Completed by: Reviewed by:	Document Reference	Y	N	NA	Comments
8a. Job descriptions for owners and all employees (= Key staff) . <u>A written and documented system detailing the qualifications of each member of the staff including any specific training requirements applicable to analytical methods.</u>	-	-	-	-	-
b. <u>Specialized training such as by vendors, classes granting CEUs, etc., shall be documented in each training file.</u>	-	-	-	-	-
9. Qualifications of owners and staff: CVs for staff on file.	-	-	-	-	-
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.	-	-	-	-	-
b. Documentation that the scientific director meets the requirements of WSLCB rules.	-	-	-	-	-
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.	-	-	-	-	-

HUMAN RESOURCES Completed by: Reviewed by:	Document Reference	Y	N	NA	Comments
d. <u>Written documentation of delegation of responsibilities in the absence of the scientific director and management staff (assigned under chapter 314-55 WAC as related to quality assurance testing) ((to qualified personnel, signed and dated by the laboratory director)).</u>	-	-	-	-	-
e. Documentation of employee competency (DOC): Prior to independently analyzing samples, and on an annual, ongoing basis, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.	-	-	-	-	-
f. <u>The laboratory management shall ensure the competence of all who operate specific equipment, perform tests and/or calibrations, evaluate results, and sign test reports and calibration certificates.</u>	=	=	=	=	=
g. <u>When using staff who are undergoing training, appropriate supervision shall be provided.</u>	=	=	=	=	=
h. <u>Personnel performing specific tasks shall be qualified on the basis of appropriate education, training, experience and/or demonstrated skills, as necessary.</u>	=	=	=	=	=
i. <u>The management shall authorize specific personnel to perform particular types of sampling, test and/or calibration, to issue test reports and calibration certificates, to give opinions and interpretations and to operate particular types of equipment.</u>	=	=	=	=	=
j. <u>The laboratory shall maintain records of the relevant authorization(s), competence, educational and professional qualifications, training, skills and experience of all technical personnel, including contracted personnel.</u>	=	=	=	=	=
k. <u>Successful training (in-house courses are acceptable) in specific methodologies used in the laboratory shall be documented.</u>	=	=	=	=	=
l. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.	-	-	-	-	-
((10. Written and documented system detailing the qualifications of each member of the staff.	-	-	-	-	-
The need to require formal qualification or certification of personnel performing certain specialized activities shall be evaluated and implemented where necessary.	-	-	-	-	-
11. Standard operating procedure manual that details records of internal training provided by facility for staff. Laboratory director must approve, sign and date each procedure.	-	-	-	-	-))
m. <u>The laboratory shall delegate responsibilities for key managerial personnel to be acted upon in cases of absence or unavailability.</u>	=	=	=	=	=

HUMAN RESOURCES Completed by: Reviewed by:	Document Reference	Y	N	NA	Comments
n. <u>The laboratory shall provide adequate supervision of testing and calibration staff, including trainees, by persons familiar with methods and procedures, purpose of each test and/or calibration, and with the assessment of the test or calibration results.</u>	-	-	-	-	-
10. <u>Standard operating procedure for the following:</u>	-	-	-	-	-
a. Instructions on regulatory inspection and preparedness.	-	-	-	-	-
b. Instruction on law enforcement interactions.	-	-	-	-	-
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.	-	-	-	-	-
d. Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS or SDS sheets and the use of appropriate PPE.	-	-	-	-	-
e. Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.	-	-	-	-	-
f. Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.	-	-	-	-	-
g. Biosafety at a <u>minimum covering sterilization and disinfection procedures</u> and sterile technique training.	-	-	-	-	-

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
((12-)) As appropriate, laboratory operations covered by procedures <u>11.</u> shall include, but not be limited to, the following:	-	-	-	-	-
a. Environmental, safety and health activities;	-	-	-	-	-
b. Sample shipping and receipt;	-	-	-	-	-
c. Laboratory sample chain of custody and material control;	-	-	-	-	-
d. Notebooks/logbooks;	-	-	-	-	-
e. Sample storage;	-	-	-	-	-
f. Sample preparation;	-	-	-	-	-
g. Sample analysis;	-	-	-	-	-
h. Standard preparation and handling;	-	-	-	-	-
i. Postanalysis sample handling;	-	-	-	-	-
j. Control of standards, reagents and water quality;	-	-	-	-	-
k. Cleaning of glassware;	-	-	-	-	-
l. Waste minimization and disposition.	-	-	-	-	-
((13-)) The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested: <u>12.</u>	-	-	-	-	-
a. Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy);	-	-	-	-	-
b. Unique terminology used;	-	-	-	-	-

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
c. Summary of method;	-	-	-	-	-
d. Interferences/limitations;	-	-	-	-	-
e. Approaches to address background corrections;	-	-	-	-	-
f. Apparatus and instrumentation;	-	-	-	-	-
g. Reagents and materials;	-	-	-	-	-
h. Hazards and precautions;	-	-	-	-	-
i. Sample preparation;	-	-	-	-	-
j. Apparatus and instrumentation setup;	-	-	-	-	-
k. Data acquisition system operation;	-	-	-	-	-
l. Calibration and standardization;	-	-	-	-	-
m. Procedural steps;	-	-	-	-	-
n. QC parameters and criteria;	-	-	-	-	-
o. Statistical methods used;	-	-	-	-	-
p. Calculations;	-	-	-	-	-
q. Assignment of uncertainty;	-	-	-	-	-
r. Forms used in the context of the procedure.	-	-	-	-	-
s. <u>Document control with master list identifying the current revision status of documents.</u>	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
((14-)) Allocation of space: Adequate for number of personnel and <u>13.</u> appropriate separation of work areas.	-	-	-	-	-
((15-)) Arrangement of space. <u>14.</u>	-	-	-	-	-
a. Allows for appropriate work flow, sampling, lab space separate from office and break areas.	-	-	-	-	-
b. Employee bathroom is separate from any laboratory area.	-	-	-	-	-
((16-)) Adequate eyewash/safety showers/sink. <u>15.</u>	-	-	-	-	-
((17-)) Procurement controls. <u>16.</u>	-	-	-	-	-
a. The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures <u>covering reagents and laboratory consumables</u> shall exist for the purchase, receipt (and), storage (of reagents and laboratory consumable materials relevant for the tests and calibrations), and <u>disposition of expired materials.</u>	-	-	-	-	-
b. The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.	-	-	-	-	-
c. Prospective suppliers shall be evaluated and selected on the basis of specified criteria.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
d. Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.	-	-	-	-	-
((e. When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.	-	-	-	-	-))
17. <u>Subcontracting.</u>	=	=	=	=	=
a. <u>The laboratory shall advise the customer of the subcontract arrangement in writing, including the subcontractors' accreditation credentials under chapters 69.50 RCW and 314-55 WAC.</u>	=	=	=	=	=
b. <u>The laboratory shall maintain a register of all subcontractors that it uses for tests and/or calibrations and a record of the evidence of compliance with chapter 314-55 WAC for the work in question.</u>	=	=	=	=	=
c. <u>When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.</u>	=	=	=	=	=
18. Utilities <u>(items verified upon on-site inspection).</u>	-	-	-	-	-
a. Electrical:	-	-	-	-	-
i. Outlets: Adequate, unobstructed, single-use, ((no)) multiplug adaptors <u>with surge control</u> ;	-	-	-	-	-
ii. ((No)) <u>Single-use</u> extension cords;	-	-	-	-	-
iii. Ground fault circuit interrupters near wet areas.	-	-	-	-	-
b. Plumbing:	-	-	-	-	-
i. Appropriateness of sink usage: Separate <u>sinks</u> for work/personal use;	-	-	-	-	-
ii. Adequate drainage from sinks or floor drains;	-	-	-	-	-
iii. Hot and cold running water.	-	-	-	-	-
c. Ventilation:	-	-	-	-	-
i. Areas around solvent use or storage of <u>solvents</u> or waste solvents;	-	-	-	-	-
ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet <u>as applicable.</u>	-	-	-	-	-
iii. <u>Fume hood with appropriate ventilation.</u>	=	=	=	=	=
d. Vacuum: Appropriate utilities/traps for prevention of contamination <u>(as applicable).</u>	-	-	-	-	-
e. Shut-off controls: Located outside of the laboratory.	-	-	-	-	-
19. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097 Marijuana waste disposal—Liquids and solids.	-	-	-	-	-
20. Equipment ((list)) . <u>Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include:</u>	-	-	-	-	-
((Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include:	-	-	-	-	-))
a. Name;	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
b. Serial number or unique identification <u>from name plate</u> ;	-	-	-	-	-
c. Date received and placed in service;	-	-	-	-	-
d. Current location;	-	-	-	-	-
e. Condition at receipt;	-	-	-	-	-
f. Manufacturer's instructions;	-	-	-	-	-
g. Date of calibration or date of next calibration;	-	-	-	-	-
h. Maintenance;	-	-	-	-	-
i. History of malfunction.	-	-	-	-	-
21. Maintenance.	-	-	-	-	-
a. ((Regular)) Documented evidence of routine preventive maintenance <u>and calibration</u> of equipment ((demonstration in log-book)) including, but not limited to: Thermometer ((calibration)) , pipette ((calibrations)) , analytical balances, and <u>additional</u> analytical equipment. ((Documentation of a schedule and reviewed by the laboratory director.))	-	-	-	-	-
((b-)) <u>Calibration programs shall be established for key quantities or values of the instruments where these properties have a significant effect on the results.</u>	=	=	=	=	=
ii. <u>Before being placed into service, equipment, including equipment used for sampling, shall be calibrated or checked to establish that it meets the laboratory's specification requirements and complies with the relevant standard specifications.</u>	=	=	=	=	=
iii. <u>Equipment that has been subjected to overloading or mishandling, gives suspect results, or has been shown to be defective or outside of specified limits, shall be taken out of service. Such equipment shall be isolated to prevent its use or clearly labeled or marked as being out-of-service until it has been repaired and shown by calibration or test to perform correctly.</u>	=	=	=	=	=
b. <u>Documentation of a schedule and reviewed by the laboratory director.</u>	=	=	=	=	=
i. <u>Calibration procedures shall specify frequency of calibration checks.</u>	=	=	=	=	=
ii. <u>Instruments that are routinely calibrated shall be verified daily or prior to analyzing samples (as applicable).</u>	=	=	=	=	=
iii. <u>Acceptance criteria shall be determined, documented and used.</u>	=	=	=	=	=
iv. <u>When possible, any external calibration service (metrological laboratory) used shall be a calibration laboratory accredited to ISO/IEC 17025:2005 by a recognized accreditation body.</u>	=	=	=	=	=
v. <u>Laboratories shall demonstrate, when possible, that calibrations of critical equipment and hence the measurement results generated by that equipment, relevant to their scope of accreditation, are traceable to the SI through an unbroken chain of calibrations.</u>	=	=	=	=	=
vi. <u>External calibration services shall, wherever possible, be obtained from providers accredited to ISO/IEC 17025 by an ILAC recognized signatory, a CIPM recognized National Metrology Institute (NMI), or a state weights and measures facility that is part of the NIST laboratory metrology program.</u>	=	=	=	=	=

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
<u>Calibration certificates shall be endorsed by a recognized accreditation body symbol or otherwise make reference to accredited status by a specific, recognized accreditation body, or contain endorsement by the NMI. Certificates shall indicate traceability to the SI or reference standard and include the measurement result with the associated uncertainty of measurement.</u>					
vii. <u>Where traceability to the SI is not technically possible or reasonable, the laboratory shall use certified reference materials provided by a competent supplier.</u>	-	-	-	-	-
viii. <u>Calibrations performed in-house shall be documented in a manner that demonstrates traceability via an unbroken chain of calibrations regarding the reference standard/material used, allowing for an overall uncertainty to be estimated for the in-house calibration.</u>	-	-	-	-	-
ix. <u>Calibrations shall be repeated at appropriate intervals, the length of which can be dependent on the uncertainty required, the frequency of use and verification, the manner of use, stability of the equipment, and risk of failure considerations.</u>	-	-	-	-	-
x. <u>Periodic verifications shall be performed to demonstrate the continued validity of the calibration at specified intervals between calibrations. The frequency of verifications can be dependent on the uncertainty required, the frequency of use, the manner of use, stability of the equipment, and risk of failure considerations.</u>	-	-	-	-	-
c. Documentation of curative maintenance in logbook, signed and dated by laboratory director.	-	-	-	-	-
((e- Temperature maintenance logbook for refrigerators.	-	-	-	-	-))
d. <u>Evidence of temperature monitoring for equipment requiring specific temperature ranges.</u>	-	-	-	-	-
e. <u>Test and calibration equipment, including both hardware and software, shall be safeguarded from adjustments which would invalidate the test and/or calibration results.</u>	-	-	-	-	-
f. Decontamination and cleaning procedures for:	-	-	-	-	-
i. Instruments;	-	-	-	-	-
ii. Bench space; <u>and</u>	-	-	-	-	-
iii. Ventilation hood/ <u>microbial hood.</u>	-	-	-	-	-
(e-) Documentation of adequacy of training of personnel and g. responsibility for each maintenance task.	-	-	-	-	-
((f-)) The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.	-	-	-	-	-
22. Computer systems (<u>items verified upon on-site inspection</u>).	-	-	-	-	-
a. Adequate for sample tracking.	-	-	-	-	-
b. Adequate for analytical equipment software.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.	-	-	-	-	-
d. In addition, procedures for software control shall address the security systems for the protection of applicable software.	-	-	-	-	-
e. For laboratory-developed software, a copy of the original program code shall be:	-	-	-	-	-
i. Maintained;	-	-	-	-	-
ii. All changes shall include a description of the change, authorization for the change;	-	-	-	-	-
iii. Test data that validates the change.	-	-	-	-	-
f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.	-	-	-	-	-
g. Software testing ((may consist of)) shall include performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.	-	-	-	-	-
h. The version and manufacturer of the software shall be documented.	-	-	-	-	-
i. Commercially available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.	-	-	-	-	-
23. Security.	-	-	-	-	-
a. Written facility security procedures during operating and non-working hours.	-	-	-	-	-
b. Roles of personnel in security.	-	-	-	-	-
i. <u>Reagents and standards shall be inspected, dated and initialed upon receipt, and upon opening.</u>	=	=	=	=	=
ii. <u>Calibration standards and analytical reagents shall have an expiration or reevaluation date assigned.</u>	=	=	=	=	=
iii. <u>Solutions shall be adequately identified to trace back to preparation documentation.</u>	=	=	=	=	=
c. SOP for controlled access areas and personnel who can access.	-	-	-	-	-
((d. Secured areas for log-in of sample, and for short and long term storage of samples.	-	-	-	-	-))
24. <u>Control of records.</u>	=	=	=	=	=
a. <u>The laboratory shall establish and maintain procedures for identification, collection, indexing, access, filing, storage, maintenance and disposal of quality and technical records.</u>	=	=	=	=	=
b. <u>All records shall be legible and shall be stored and retained in such a way that they are readily retrievable in facilities that provide a suitable environment to prevent damage or deterioration and to prevent loss.</u>	=	=	=	=	=
c. <u>Records must be retained for a period of three years.</u>	=	=	=	=	=
d. <u>All records shall be held secure and in confidence.</u>	=	=	=	=	=

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
e. <u>The laboratory shall have procedures to protect and back-up records stored electronically and to prevent unauthorized access to or amendment of these records.</u>	-	-	-	-	-
f. <u>The laboratory shall retain records of original observations, derived data and sufficient information to establish an audit trail, calibration records, staff records and a copy of each test report or calibration certificate issued, for a defined period.</u>	-	-	-	-	-
g. <u>The records for each test or calibration shall contain sufficient information to facilitate, if possible, identification of factors affecting the uncertainty and to enable the test or calibration to be repeated under conditions as close as possible to the original.</u>	-	-	-	-	-
h. <u>The records shall include the identity of personnel responsible for the sampling, performance of each test and/or calibration and checking of results.</u>	-	-	-	-	-
i. <u>Observations, data and calculations shall be recorded at the time they are made and shall be identifiable to the specific task.</u>	-	-	-	-	-
j. <u>When mistakes occur in records, each mistake shall be lined out, not erased or made illegible or deleted, and the correct value entered alongside.</u>	-	-	-	-	-
k. <u>All such alterations or corrections to records shall be signed or initialed and dated by the person making the correction.</u>	-	-	-	-	-
l. <u>In the case of records stored electronically, equivalent measures shall be taken to avoid loss or change of original data.</u>	-	-	-	-	-
m. <u>All entries to hard copy laboratory records shall be made using indelible ink. No correction fluid may be used on original laboratory data records.</u>	-	-	-	-	-
n. <u>Laboratories shall establish and maintain a data review process beginning at sample receipt and extending through the report process. The data review process shall be an independent review, conducted by a qualified individual other than the analyst.</u>	-	-	-	-	-
o. <u>The review process shall be documented before data are reported.</u>	-	-	-	-	-
25. Storage.	-	-	-	-	-
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.	-	-	-	-	-
b. Adequate storage of chemical reference standards.	-	-	-	-	-
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.	-	-	-	-	-
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
((25-)) 26. Sampling/sample protocols ((:)) must be consistent with chapter 314-55 WAC, written and approved by the laboratory director, and must include documented training.	-	-	-	-	-
a. Demonstrate adequacy of the chain-of-custody, including: Tracking upon receipt of sample including all personnel handling the sample and documenting condition of the sample through a macroscopic and foreign matter inspection.	-	-	-	-	-
b. ((Sampling method (representative of an entire batch) including, but not limited to, homogenization, weighing, labeling, sample identifier (source, lot), date and tracking.	-	-	-	-	-
e. Condition of the sample:)) Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.	-	-	-	-	-
((d-)) c. Failed inspection of product: Tracking and reporting.	-	-	-	-	-
((e-)) d. Return of failed product documentation and tracking.	-	-	-	-	-
((f-)) e. Disposal of used/unused samples documentation.	-	-	-	-	-
((g-)) f. Sample preparation, extraction and dilution SOP.	-	-	-	-	-
((h-)) g. Demonstration of recovery for samples in various matrices (SOPs):	-	-	-	-	-
i. Plant material - Flower;	-	-	-	-	-
ii. Edibles (solid and liquid meant to be consumed orally);	-	-	-	-	-
iii. Topical;	-	-	-	-	-
iv. Concentrates.	-	-	-	-	-
((26-)) 27. Data protocols.	-	-	-	-	-
a. Calculations for quantification of cannabinoid content in various matrices - SOPs.	-	-	-	-	-
b. Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.	-	-	-	-	-
c. Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.	-	-	-	-	-
d. <u>Each test report or calibration certificate shall include at least the following information, unless the laboratory has valid reasons for not doing so:</u>	=	=	=	=	=
i. <u>A title (e.g., "Test Report" or "Calibration Certificate");</u>	=	=	=	=	=
ii. <u>The name and address of the laboratory, and the location where the tests and/or calibrations were carried out, if different from the address of the laboratory;</u>	=	=	=	=	=

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
iii. <u>Unique identification of the test report or calibration certificate (such as the serial number), and on each page an identification in order to ensure that the page is recognized as a part of the test report or calibration certificate, and a clear identification of the end of the test report or calibration certificate;</u>	-	-	-	-	-
iv. <u>The name and address of the customer;</u>	-	-	-	-	-
v. <u>Identification of the method used;</u>	-	-	-	-	-
vi. <u>A description of, the condition of, and unambiguous identification of the item(s) tested or calibrated;</u>	-	-	-	-	-
vii. <u>The date of receipt of the test or calibration item(s) where this is critical to the validity and application of the results, and the date(s) of performance of the test or calibration;</u>	-	-	-	-	-
viii. <u>Reference to the sampling plan and procedures used by the laboratory or other bodies where these are relevant to the validity or application of the results;</u>	-	-	-	-	-
ix. <u>The test or calibration results with, where appropriate, the units of measurement;</u>	-	-	-	-	-
x. <u>The name(s), function(s) and signature(s) or equivalent identification of person(s) authorizing the test report or calibration certificate; and</u>	-	-	-	-	-
xi. <u>Where relevant, a statement to the effect that the results relate only to the items tested or calibrated.</u>	-	-	-	-	-
e. <u>Material amendments to a test report or calibration certificate after issue shall be made only in the form of a further document, or data transfer, which includes the statement: "Supplement to Test Report (or Calibration Certificate), serial number... (or as otherwise identified)," or an equivalent form of wording.</u>	-	-	-	-	-
f. <u>When it is necessary to issue a complete new test report or calibration certificate, this shall be uniquely identified and shall contain a reference to the original that it replaces.</u>	-	-	-	-	-
g. <u>If the laboratory chooses to include a reference to their I-502 certification on their test report, any test results not covered under I-502 certification shall be clearly identified on the report.</u>	-	-	-	-	-
h. Documentation that the value reported in the CA is within the range and limitations of the analytical method.	-	-	-	-	-
((e-)) i. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.	-	-	-	-	-
((f-)) j. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.	-	-	-	-	-
((g-)) k. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.	-	-	-	-	-
((27-)) 28. Chemical assay procedure/methodology.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
((28. Proficiency:	-	-	-	-	-))
29. Quality Control (QC):	=	=	=	=	=
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.	-	-	-	-	-
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.	-	-	-	-	-
i. <u>Reference materials shall, where possible, be traceable to SI units of measurement, or to certified reference materials. Internal reference materials shall be checked for accuracy as far as is technically and economically practicable.</u>	=	=	=	=	=
ii. <u>The laboratory shall create and follow procedures for safe handling, transport, storage and use of reference standards and reference materials in order to prevent contamination or deterioration and in order to protect their integrity.</u>	=	=	=	=	=
iii. <u>Reference materials shall have a certificate of analysis that documents traceability to a primary standard or certified reference material and associated uncertainty, when possible. When applicable, the certificate must document the specific NIST SRM® or NMI certified reference material used for traceability.</u>	=	=	=	=	=
c. Demonstration of calibration curve r ² value of no less than 0.995 with a minimum of four points (within) <u>which bracket the expected sample concentration range.</u>	-	-	-	-	-
((d. Documentation of any proficiency testing as it becomes available. Laboratory director must review, evaluate and report to the WSLCB any result that is outside the stated acceptable margin of error.	-	-	-	-	-))
i. <u>The calibration curve shall be verified by preparing an independently prepared calibration standard (from neat materials) or with a standard from an independent source. Acceptance criteria for the standard calibration curve and the independent calibration verification standard shall be documented.</u>	=	=	=	=	=
ii. <u>Instrument calibration/standardization shall be verified each 24-hour period of use, or at each instrument start-up if the instrument is restarted during the 24-hour period, by analysis of a continuing calibration verification standard. Acceptance criteria shall be documented.</u>	=	=	=	=	=
iii. <u>Calibration or working quantification ranges shall encompass the concentrations reported by the laboratory. Continuing calibration verification standards and continuing calibration blanks shall be analyzed in accordance with the specified test methods. Acceptance criteria shall be documented.</u>	=	=	=	=	=
d. <u>Assuring the quality of test results.</u>	=	=	=	=	=
i. <u>The laboratory shall have quality control procedures for monitoring the validity of tests and calibrations undertaken.</u>	=	=	=	=	=
ii. <u>The resulting data shall be recorded in such a way that trends are detectable and, where practicable, statistical techniques shall be applied to the reviewing of the results.</u>	=	=	=	=	=

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
iii. <u>This monitoring shall be planned and reviewed and may include, but not be limited to, the following:</u>	-	-	-	-	-
A. <u>Regular use of certified reference materials and/or internal quality control using secondary reference materials:</u>	-	-	-	-	-
B. <u>Participation in interlaboratory comparison or proficiency-testing programs;</u>	-	-	-	-	-
C. <u>Replicate tests or calibrations using the same or different methods;</u>	-	-	-	-	-
D. <u>Retesting or recalibration of retained items;</u>	-	-	-	-	-
E. <u>Correlation of results for different characteristics of an item.</u>	-	-	-	-	-
iv. <u>Quality control data shall be analyzed and, where they are found to be outside predefined criteria, planned actions shall be taken to correct the problem and to prevent incorrect results from occurring.</u>	-	-	-	-	-
v. <u>The laboratory shall determine, where feasible, the accuracy and precision of all analyses performed.</u>	-	-	-	-	-
vi. <u>Acceptance limits for each method shall be established based on statistical evaluation of the data generated by the analysis of quality control check samples, unless specific acceptance limits are established by the method.</u>	-	-	-	-	-
vii. <u>Control charts or quality control data bases shall be used to record quality control data and compare them with acceptance limits.</u>	-	-	-	-	-
viii. <u>Procedures shall be used to monitor trends and the validity of test results.</u>	-	-	-	-	-
30. <u>Proficiency.</u>	-	-	-	-	-
a. <u>Participation in approved PT programs for each field of testing.</u>	-	-	-	-	-
b. <u>Passing PT results for two consecutive PTs.</u>	-	-	-	-	-
c. <u>Documentation of investigation for all failed PTs.</u>	-	-	-	-	-
((29-)) Method validation: Scientifically valid testing methodology: 31. ((Either)) AHP monograph compliant, other third-party validation((;)) <u>or the current version of a standard method. The following requirements are applied to other third-party validation:</u>	-	-	-	-	-
((30- Level II validation of methodology used for quantification of THC, THCA and CBD for total cannabinoid content (if reporting other cannabinoids, the method must also be validated for those compounds):	-	-	-	-	-
a. Single lab validation parameters are demonstrated for GC, HPLC data review:	-	-	-	-	-
i. Linearity of reference standards;	-	-	-	-	-
ii. Use of daily standard curve;	-	-	-	-	-
iii. Accuracy;	-	-	-	-	-
iv. Precision;	-	-	-	-	-
v. Recovery (5 determinations not less than 90%);	-	-	-	-	-
vi. Reproducibility over time within a relative standard deviation of 5%.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
b. <u>Dynamic range of the instrumentation: Limits of quantification (LOQ) and limits of detection (LOD):</u>	-	-	-	-	-
e-)) <u>The laboratory shall validate nonstandard methods, laboratory-</u> a. <u>designed/developed methods, standard methods used outside their intended scope, and amplifications and modifications of standard methods to confirm that the methods are fit for the intended use.</u>	-	-	-	-	-
b. <u>The validation shall be as extensive as is necessary to meet the needs of a given application or field of application.</u>	-	-	-	-	-
c. <u>The laboratory shall record the results obtained, the procedure used for the validation, and a statement as to whether the method is fit for the intended use.</u>	-	-	-	-	-
d. <u>The customer shall be informed as to the method chosen.</u>	-	-	-	-	-
e. <u>The laboratory shall confirm that it can properly operate standard methods before introducing the tests or calibrations. If the standard method changes, the confirmation shall be repeated.</u>	-	-	-	-	-
f. <u>Deviation from test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the customer.</u>	-	-	-	-	-
g. <u>Validation shall be documented and include the following elements as applicable:</u>	-	-	-	-	-
i. <u>Minimum acceptance criteria;</u>	-	-	-	-	-
ii. <u>Analyte specificity;</u>	-	-	-	-	-
iii. <u>Linearity;</u>	-	-	-	-	-
iv. <u>Range;</u>	-	-	-	-	-
v. <u>Accuracy;</u>	-	-	-	-	-
vi. <u>Precision;</u>	-	-	-	-	-
vii. <u>Detection limit;</u>	-	-	-	-	-
viii. <u>Quantification limit;</u>	-	-	-	-	-
ix. <u>Stability of samples and reagents interlaboratory precision;</u>	-	-	-	-	-
x. <u>Analysis robustness;</u>	-	-	-	-	-
xi. <u>Presence of QC samples;</u>	-	-	-	-	-
xii. <u>Use of appropriate internal reference standard;</u>	-	-	-	-	-
xiii. <u>Daily monitoring of the response of the instrument;</u>	-	-	-	-	-
h. <u>Validation shall be performed for matrix extensions for each type of product tested, including data review of recovery for:</u>	-	-	-	-	-
i. <u>Solvent-based extract;</u>	-	-	-	-	-
ii. <u>CO₂ extraction or other "hash oil";</u>	-	-	-	-	-
iii. <u>Extract made with food grade ethanol;</u>	-	-	-	-	-
iv. <u>Extract made with food grade glycerin or propylene glycol;</u>	-	-	-	-	-
v. <u>Infused liquids;</u>	-	-	-	-	-
vi. <u>Infused solids;</u>	-	-	-	-	-
vii. <u>Infused topical preparations;</u>	-	-	-	-	-
viii. <u>Other oils, butter or fats.</u>	-	-	-	-	-
((d. <u>Presence of QC samples and recording of daily testing.</u>	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
e. <u>Appropriate use of an internal reference standard.</u>	-	-	-	-	-
f. <u>Daily monitoring of the response of the instrument detection system.</u>	-	-	-	-	-
31.) <u>32. Estimation of uncertainty of measurement.</u>	=	=	=	=	=
a. <u>Testing laboratories shall have and shall apply procedures for estimating uncertainty of measurement. The laboratory shall at least attempt to identify all the components of uncertainty and make a reasonable estimation, and shall ensure that the form of reporting of the result does not give a wrong impression of the uncertainty. Reasonable estimation shall be based on knowledge of the performance of the method and on the measurement scope and shall make use of, for example, previous experience and validation data.</u>	=	=	=	=	=
b. <u>In those cases where a well-recognized test method specifies limits to the values of the major sources of uncertainty of measurement and specifies the form of presentation of calculated results, the laboratory is considered to have satisfied this clause by following the test method and reporting instructions.</u>	=	=	=	=	=
c. <u>When estimating the uncertainty of measurement, all uncertainty components which are of importance in the given situation shall be taken into account using appropriate methods of analysis.</u>	=	=	=	=	=
d. <u>Sources contributing to the uncertainty include, but are not necessarily limited to, the reference standards and reference materials used, methods and equipment used, environmental conditions, properties and condition of the item being tested or calibrated, and the operator.</u>	=	=	=	=	=
e. <u>Test methods are classified as either qualitative or quantitative. Qualitative tests are defined as having nonnumerical results. Although estimation of measurement uncertainty is not needed for these tests, laboratories are expected to have an understanding of the contributors to variability of the results. For quantitative tests, laboratories shall determine measurement uncertainty using appropriate statistical techniques.</u>	=	=	=	=	=
f. <u>Laboratories shall make independent estimations of uncertainty for tests performed on samples with significantly different matrices.</u>	=	=	=	=	=
g. <u>Laboratories are required to re-estimate measurement uncertainty when changes to their operations are made that may affect sources of uncertainty.</u>	=	=	=	=	=
h. <u>When reporting measurement uncertainty, the test report shall include the coverage factor and confidence level used in the estimations (typically k = approximately 2 at the 95% confidence level).</u>	=	=	=	=	=
33. <u>Other methods.</u>	-	-	-	-	-
a. <u>Validated microbiological methods fit for purpose.</u>	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
b. Microbial contaminants within limits ((of those listed in the most recent AHP monograph and otherwise)) as directed by WSLCB.	-	-	-	-	-
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: ((Either)) AHP monograph compliant, or other third-party validation.	-	-	-	-	-
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed 500 parts per million (PPM) per one gram of solvent based product and are to be tested.	-	-	-	-	-
e. Any other QA/QC methods is proven to be fit for purpose.	-	-	-	-	-
((32-)) Laboratory ((notebooks)) records. <u>34.</u>	-	-	-	-	-
a. Legible and in ink (or computerized system).	-	-	-	-	-
b. Signed and dated.	-	-	-	-	-
c. Changes initialed and dated.	-	-	-	-	-
d. ((Periodically reviewed)) Evidence of periodic review and signed by a management representative.	-	-	-	-	-
((33-)) Preventive/corrective action. <u>35.</u>	-	-	-	-	-
The laboratory shall ((have a process in place to document quality affecting preventive/corrective actions through resolution)) establish a policy and procedure and shall designate appropriate authorities for implementing corrective action when nonconforming work or departures from the policies and procedures in the management system or technical operations are identified.	-	-	-	-	-
a. <u>The procedure for corrective action shall start with an investigation to determine the root cause(s) of the problem.</u>	=	=	=	=	=
b. <u>Where corrective action is needed, the laboratory shall identify potential corrective actions. It shall select and implement the action(s) most likely to eliminate the problem and to prevent recurrence.</u>	=	=	=	=	=
c. <u>The laboratory shall document and implement any required changes resulting from corrective action investigations.</u>	=	=	=	=	=
d. <u>Any PT round that leads to the nonproficient status of a laboratory shall be addressed by the corrective action process.</u>	=	=	=	=	=
e. <u>The laboratory shall monitor the results to ensure that the corrective actions taken have been effective.</u>	=	=	=	=	=
f. <u>When improvement opportunities are identified or if preventive action is required, action plans shall be developed, implemented and monitored to reduce the likelihood of the occurrence of such nonconformities and to take advantage of the opportunities for improvement.</u>	=	=	=	=	=
<u>36. Complaints.</u>	=	=	=	=	=
a. <u>The laboratory shall have a policy and procedure for the resolution of complaints received from customers or other parties.</u>	=	=	=	=	=

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
b. <u>Records shall be maintained of all complaints and of the investigations and corrective actions taken by the laboratory.</u>	=	=	=	=	=
c. <u>Test reports.</u>	=	=	=	=	=
d. <u>Each test report or calibration certificate shall include at least the following information, unless otherwise justified:</u>	=	=	=	=	=
i. <u>A title (e.g., "Test Report" or "Calibration Certificate");</u>	=	=	=	=	=
ii. <u>The name and address of the laboratory, and the location where the tests and/or calibrations were carried out, if different from the address of the laboratory;</u>	=	=	=	=	=
iii. <u>Unique identification of the test report or calibration certificate (such as the serial number), and on each page an identification in order to ensure that the page is recognized as a part of the test report or calibration certificate, and a clear identification of the end of the test report or calibration certificate;</u>	=	=	=	=	=
iv. <u>The name and address of the customer;</u>	=	=	=	=	=
v. <u>Identification of the method used;</u>	=	=	=	=	=
vi. <u>A description of, the condition of, and unambiguous identification of the item(s) tested or calibrated;</u>	=	=	=	=	=
vii. <u>The date of receipt of the test or calibration item(s) where this is critical to the validity and application of the results, and the date(s) of performance of the test or calibration;</u>	=	=	=	=	=
viii. <u>Reference to the sampling plan and procedures used by the laboratory or other bodies where these are relevant to the validity or application of the results;</u>	=	=	=	=	=
ix. <u>The test or calibration results with, where appropriate, the units of measurement;</u>	=	=	=	=	=
x. <u>The name(s), function(s) and signature(s) or equivalent identification of person(s) authorizing the test report or calibration certificate; and</u>	=	=	=	=	=
xi. <u>Where relevant, a statement to the effect that the results relate only to the items tested or calibrated.</u>	=	=	=	=	=
((34-)) 37. Periodic management review <u>and internal audit.</u>	-	-	-	-	-
a. Laboratory management shall ((periodically)) <u>annually</u> review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.	-	-	-	-	-
b. <u>Periodically and in accordance with a predetermined schedule perform an internal audit of laboratory operations to verify compliance to the GLP checklist.</u>	=	=	=	=	=

NEW SECTION

WAC 314-55-1025 Proficiency testing. (1) For the purposes of this section, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the com-

position of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a

laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the WSLCB to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) The WSLCB or its vendor determines the sufficiency of PTs and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from WSLCB or WSLCB's vendor prior to conducting PT. The WSLCB may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT and achieve a passing score for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing the lab seeks to be certified for and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If the laboratory fails to achieve a passing score on at least eighty percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed eighty percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

(7) If a laboratory fails a round of PT or reports a false negative on a micro PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the WSLCB or WSLCB's vendor upon request.

(8) Laboratories are responsible for obtaining PT samples from vendors approved by WSLCB or WSLCB's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(10) The laboratory must authorize the PT provider to release all results used for certification and/or remediation of failed studies to WSLCB or WSLCB's vendor.

(11) The WSLCB may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(12) The WSLCB may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by WSLCB.

(13)(a) The WSLCB will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The WSLCB may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider, so long as the supplemental PT studies are performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The WSLCB will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. WSLCB may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the WSLCB a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(14) If a laboratory fails to remediate and have its certification reinstated under subsection (13)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(15) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

NEW SECTION

WAC 314-55-1035 Laboratory certification—Suspension and revocation. (1) The board may summarily suspend or revoke the certification of any lab certified under WAC 314-55-0995 for any of the following reasons:

(a) The laboratory owner or science director violates any of the requirements of chapter 314-55 WAC relating to the operations of the laboratory.

(b) The laboratory owner or science director aids, abets, or permits the violation of any provision of chapters 314-55 WAC, 69.50 RCW, 69.51A RCW, or Title 9 or 9A RCW related to the operations of the laboratory, or the laboratory owner or science director permits laboratory staff to do so.

(c) Evidence the certificate holder or owner made false statements in any material regard:

(i) On the application for certification;

(ii) In submissions to the board relating to receiving or maintaining certification; or

(iii) Regarding any testing performed or results provided to WSLCB or the marijuana licensee by the certificate holder or owner pursuant to WAC 314-55-102.

(d) The laboratory owner or science director is convicted of any crime substantially related to the qualifications or duties of that owner and related to the functions of the laboratory, including a conviction for falsifying any report or that relates to a laboratory analysis. For purposes of this subsection, a "conviction" means a plea or finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended.

(e) The laboratory submits proficiency test sample results generated by another laboratory as its own.

(f) The laboratory staff denies entry to any employee of the WSLCB or WSLCB's vendor during normal business hours for an on-site assessment or inspection, as required by WAC 314-55-0995, 314-55-102, 314-55-1025, or 314-55-103.

(2)(a) The following violations are subject to the penalties as provided in (b) of this subsection:

(i) The laboratory fails to submit an acceptable corrective action report in response to a deficiency report, and failure to implement corrective action related to any deficiencies found during a laboratory assessment.

(ii) The laboratory fails to report proficiency testing results pursuant to WAC 314-55-1025.

(iii) The laboratory fails to remit certification fees within the time limit established by a certifying authority.

(iv) The laboratory fails to meet recordkeeping requirements as required by chapter 314-55 WAC unless the failure to maintain records is substantial enough to warrant a suspension or revocation under subsection (1) of this section.

(b) The penalties for the violations in (a) of this subsection are as follows:

(i) First violation: Ten-day suspension of the lab's certification or until the lab corrects the violation leading to the suspension, whichever is longer.

(ii) Second violation within a three-year period: Thirty-day suspension of laboratory certification or until the laboratory corrects the violation leading to the suspension, whichever is longer.

(iii) Third violation within a three-year period: Revocation of the lab's certification.

(3) A certified lab may also be subject to a suspension of certification related to proficiency testing requirements under WAC 314-55-1025.

(4) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension or revocation as provided in chapter 34.05 RCW.

NEW SECTION

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of marijuana, and they must be registered by the Washington state department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if the WSLCB, WSDA, other designee of the WSLCB, or certified lab iden-

tifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsection (3) of this section, that lot or batch from which the sample was deducted has failed quality assurance testing and may be subject to a recall as provided in WAC 314-55-225.

(3) The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not allowed under subsection (1) of this section or listed in the table below is 0.1 ppm.

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Fonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	1
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4

Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Malathion	121-75-5	0.2
Metaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins*	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins**	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

*Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8 respectively).

**Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-1-2 respectively).

(4) Except as otherwise provided in this section, licensed marijuana producer or processor that provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087.

(5) Except as otherwise provided in this section, a licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC

314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087.

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest.

(7) Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed retailer or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section and WAC 314-55-102.

(8) Pursuant to WAC 314-55-102, upon request a marijuana licensee must disclose and make available all quality assurance tests and retest results for the lot or batch of usable marijuana, marijuana concentrates, or marijuana-infused products to the marijuana licensee or retail customer who is considering purchasing the usable marijuana, marijuana concentrates, or marijuana-infused products.