WSR 18-03-150
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)
[Filed January 22, 2018, 1:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-24-073.

Title of Rule and Other Identifying Information: The department is proposing to repeal existing sections and create new sections in chapter 388-61A WAC, Domestic violence victim services and prevention efforts.

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than March 14, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., March 13, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by February 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to repeal existing sections and create new sections in chapter 388-61A WAC in order to incorporate new and revised requirements mandated by chapter 70.123 RCW and the federal Family Violence Prevention and Services Act grant. A crosswalk table of existing and new WAC sections is available upon request.

Reasons Supporting Proposal: These changes are being proposed in order to comply with statutory changes to chapter 70.123 RCW and new requirements in the federal Family Violence Prevention and Services Act grant administered by DSHS.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Statute Being Implemented: Chapter 70.123 RCW.

Rule is necessary because of federal law, 45 C.F.R. Part 1370.4 (g)(1).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Hannibal, P.O. Box 45710, Olympia, WA 98504-5710, 360-902-8493.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Hannibal, P.O. Box 45710, Olympia, WA 98405-5710, phone 360-902-8493, email hsus300@dshs.wa.gov.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Citation and description 45 C.F.R. Part 1370.4 (g)(1).

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

January 18, 2018
Katherine I. Vasquez
Rules Coordinator

Chapter 388-61A WAC

DEFINITIONS

NEW SECTION

WAC 388-61A-1000 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) **"Advocacy"** means that the client is involved with an advocate in individual or group sessions with a primary focus of safety planning, empowerment, and education of the client through reinforcement of the client's autonomy and self-determination. Advocacy also means speaking and acting for change or justice with, or on behalf of, another person or cause. Advocacy is survivor-centered and uses non-victim blaming methods that include:

(a) Identifying barriers and strategies to enhance safety, including safety planning;

(b) Clarifying and increasing awareness of the power and control associated with domestic violence and the options one may have to obtain resources while staying safe; and

(c) Supporting independent decision making based on the unique needs and circumstances of each individual.

(2) **"Advocate"** means a trained staff person who works in a domestic violence program and provides advocacy to clients.

(3) **"Child care"** means the temporary care of a client's child or children by domestic violence program staff at the program's location or another location where the client is receiving confidential or individual services from the domestic violence program or is participating in activities sponsored by the domestic violence program, other than employment, and so long as the client remains on the premises.

(4) **"Children/youth activities"** means age-appropriate activities other than children/youth advocacy, such as recreational and educational activities.

(5) **"Children/youth advocacy"** means age-appropriate supportive services that strive to assist children/youth to express feelings about their exposure to domestic violence. It is an educational, rather than a therapeutic service and is focused on providing education about domestic violence, safety planning, and developing or enhancing problem solving skills. Advocacy can be provided on an individual basis and in group settings.

(6) **"Client"** means a victim of domestic violence who is accessing services at a domestic violence program. A client

may also be referred to as a survivor, service recipient, or resident.

(7) **"Community advocate"** means a person employed or supervised by a domestic violence program who is trained to provide ongoing assistance and advocacy for victims of domestic violence in assessing and planning for safety needs, making appropriate social service, legal, and housing referrals, providing community education, maintaining contacts necessary for prevention efforts, and developing protocols for local systems coordination.

(8) **"Community-based domestic violence program"** or **"CBDVP"** means a nonprofit program or organization that provides, as its primary purpose, assistance and advocacy for domestic violence victims. Domestic violence assistance and advocacy includes crisis intervention, individual and group support, information and referrals, and safety assessment and planning. Domestic violence assistance and advocacy may also include, but is not limited to: provision of shelter, emergency transportation, self-help services, culturally specific services, legal advocacy, economic advocacy, and accompaniment and advocacy through medical, legal, immigration, human services, and financial assistance systems. CBDVPs also provide community education and prevention efforts. Domestic violence programs that are under the auspices of, or the direct supervision of, a court, law enforcement or prosecution agency, or the child protective services section of the department as defined in RCW 26.44.-020, are not considered CBDVPs.

(9) **"Community education"** refers to information that is provided in community settings about domestic violence and services related to victims of domestic violence. Community education activities include: training, presentations, outreach to specific communities or geographic areas, community events, and media events.

(10) **"Confidential communication"** means all information, oral, written, or nonverbal, that is transmitted between a victim of domestic violence and an employee or volunteer of a domestic violence program in the course of their relationship and in confidence, which means that the employee or volunteer will not disclose the information to a third person unless authorized in writing by the victim.

(11) **"Confidential information"** includes, but is not limited to, any information, advice, notes, reports, statistical data, memoranda, working papers, records, or the like, made or given during the relationship between a victim of domestic violence and a domestic violence program, however maintained. Confidential information includes personally identifying information as defined in this chapter, and any other information that would personally identify a victim of domestic violence who seeks or has received services from a domestic violence program.

(12) **"Crisis hotline or helpline"** means a designated telephone line of the domestic violence program that operates twenty-four hours a day, three hundred sixty-five days a year. A hotline/helpline provides crisis intervention, safety planning, information, and referral services.

(13) **"Crisis intervention"** means services provided to an individual in crisis to stabilize the individual's emotions, clarify issues, and provide support and assistance to help explore options for resolution of the individual's immediate crisis and needs.

(14) **"Culturally specific supportive services and prevention efforts"** means services and prevention efforts created by and for specific cultural populations that have been historically underserved or unserved. Services and prevention efforts are typically designed by and with individuals from the specific culture who are cognizant of the specific community generated risks and protective characteristics and often utilize the language and settings familiar to the population served.

(15) **"Department"** means the department of social and health services (DSHS).

(16) **"Domestic violence"** means the infliction or threat of physical harm against an intimate partner, and includes physical, sexual, and psychological abuse against the partner, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner. It may include, but is not limited to, a categorization of offenses as defined in RCW 10.99.020, committed by one intimate partner against another.

(17) **"Domestic violence program"** means an agency, organization, or program with a primary purpose and history of effective work in providing advocacy, safety assessment and planning, and self-help services for domestic violence victims in a supportive environment, and includes, but is not limited to, a CBDVP, emergency shelter, or domestic violence transitional housing program.

(18) **"Emergency shelter"** means a place of supportive services and safe, temporary lodging offered on a twenty-four hour, seven days per week basis to victims of domestic violence and their children. Domestic violence programs may use hotels and motels for victims who need safe shelter, but the domestic violence program must also have an emergency shelter that meets the requirements of this chapter. The mere act of making a referral to emergency shelter is not itself considered provision of emergency shelter.

(19) **"Intimate partner"** means a person who is or was married, in a state registered domestic partnership, or in an intimate or dating relationship with another person at the present or at some time in the past. An intimate partner is also any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time.

(20) **"Job shadowing"** means a work experience where an individual observes and learns about a job, activity, or activities by walking through the work day as a shadow to a skilled and competent employee. The experience is planned for and structured with the goal of observing behavior and situations, engaging in interactive questions and answers, and experiencing the link between learning and practice. Job shadowing may be anywhere from a few hours, to a day, week, or more, depending on the job or activity.

(21) **"Legal advocacy"** means personal support and assistance with victims of domestic violence to ensure their interests are represented and their rights upheld within the civil and criminal legal systems and administrative hearings. It includes:

(a) Educating and assisting victims in navigating legal systems;

(b) Assisting victims in evaluating advantages and disadvantages of participating in legal processes;

(c) Facilitating victims' access and participation in legal systems; and

(d) Promoting victims' choices and rights to individuals within legal systems.

(22) **"Legal advocate"** means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the civil and criminal legal systems and administrative hearings, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(23) **"Live training"** means events that are held at a specific time and not prerecorded, where participants have the opportunity to ask questions and hear the questions of others in real time. Examples of live training include events that are in person, teleconferences, and interactive.

(24) **"Lodging unit"** means one or more rooms used for a victim of domestic violence including rooms used for sleeping or sitting.

(25) **"Personally identifying information"** is individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including, but not limited to:

(a) First and last name;

(b) Home or other physical address;

(c) Contact information (including postal, email or internet protocol address or telephone or facsimile number);

(d) Social security number;

(e) Driver's license number, passport number, or student identification number;

(f) Religious affiliation;

(g) Date of birth;

(h) Nine digit postal (ZIP) code;

(i) Physical appearance of;

(j) Case file or history; and

(k) Other information that would personally identify a victim of domestic violence who seeks or has received services from a domestic violence program, or such other information which, taken individually or together with other identifying information, could identify a particular individual.

(26) **"Prevention"** means efforts that are designed to ultimately eradicate domestic violence through the promotion of healthy, respectful, and nonviolent relationships. Successful domestic violence prevention efforts address change at both the individual and community levels, and tailor messages to diverse populations. Characteristics of promising prevention practices include working to decrease risk factors for perpetration of abuse as well as victimization while at the same time promoting positive factors that protect individuals from perpetrating or experiencing abuse. Domestic violence prevention includes strategies, policies, and programs that focus on at least one of the following:

(a) Increasing community dialogue about the root causes of intimate partner violence;

(b) Shifting cultural norms;

(c) Building skills for healthy relationships;

(d) Promoting respectful and healthy relationships.

(27) **"Resident"** means a client of the domestic violence program who is residing in an emergency shelter as defined in this chapter.

(28) **"Restroom facility"** means a bathroom with at least a common-use indoor flush-type toilet, one nearby sink for hand washing, and a bathtub or shower facility.

(29) **"Safety planning"** is a process of thinking through with the victim how to increase safety for both the victim of domestic violence and any children of the victim. Safety planning addresses both immediate and long-term risks, barriers, or concerns regarding the victim and any children in the context of their communities and in relationship with the domestic violence perpetrator. It is based on knowledge about the specific pattern of the domestic violence perpetrator's tactics and the protective factors of the victim and any children. Safety planning may be done formally, informally, in writing or orally, or in any other conversational process between the victim and advocate.

(30) **"Secretary"** means the department secretary or the secretary's designee.

(31) **"Self-study"** is a form of study in which one is, to a large extent, responsible for one's own instruction. Examples of self-study include reading articles, books, academic journals, training materials, engaging in online learning opportunities, and prerecorded webinars. Self-study content must be current or have historical relevance to the domestic violence advocacy field.

(32) **"Shelter"** means temporary lodging and supportive services offered by a CBDVP to victims of domestic violence and their children.

(33) **"Staff"** means trained persons who are part of a domestic violence program and are paid or volunteer to provide services to clients.

(34) **"Support group"** means an interactive group session of two or more victims of domestic violence that is facilitated by trained staff on a regular basis. Participants share experiences, offer mutual support, and receive information and education around a specific topic of common interest. Support groups validate the experiences of victims, explore options, build on strengths, and respect participants' rights to make their own decisions. A shelter or house meeting where, for example, chores are discussed, and there is no advocacy provided, is not a support group.

(35) **"Supportive services"** means assistance and advocacy for victims of domestic violence and their children that are designed to meet the needs of victims and children and provided in accordance with the service model defined in this chapter. Supportive services include, but are not limited to, activities described in the definition of CBDVP.

(36) **"Underserved or unserved populations"** means populations who face barriers in accessing and using victim services, including populations underserved or unserved because of religion, sexual orientation, gender identity or expression, underserved or unserved racial and ethnic populations, and populations underserved or unserved because of special needs including language barriers, disabilities, immigration status, and age.

(37) **"Victim"** means an intimate partner who has been subjected to domestic violence.

(38) **"We," "us," or "our"** refers to the department and its employees.

(39) **"You," I," or "your"** refers to the domestic violence program.

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

Chapter 388-61A WAC

SERVICE STANDARDS

NEW SECTION

WAC 388-61A-1005 What is the legal basis for establishing minimum standards for domestic violence programs? Chapter 70.123 RCW authorizes the department to establish minimum standards for programs that receive funding from the department to provide supportive services and prevention efforts.

NEW SECTION

WAC 388-61A-1010 What is the purpose of this chapter? The rules of this chapter are to establish minimum uniform statewide standards for domestic violence supportive services, emergency shelters, and prevention efforts funded by the department.

NEW SECTION

WAC 388-61A-1015 What service model must be used to provide the services required by this chapter? Supportive services and emergency shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm. Research demonstrates that access to supportive services that increase a survivor's knowledge of safety planning and awareness of community resources leads to increased safety and well-being over time. Consequently, the model for providing services must incorporate all the following practices and minimum standards:

(1) Services provided to victims must include access to safety, advocacy, information about options, and referrals to helping resources.

(2) Services must use a survivor-centered and empowerment service model that:

(a) Promotes safety for all victims of intimate partner violence and their children;

(b) Is survivor-centered and treats victims with dignity and respect;

(c) Builds on the strengths and resources of individuals and families, respecting their autonomy and self-determination;

(d) Supports the relationship between victims and their children;

(e) Offers options and support for autonomous decision making that is based on the needs and circumstances of each victim and their family;

(f) Assists individuals and families in accessing protection and services that are respectful and inclusive of cultural and community characteristics;

(g) Ensures program accountability by involving victims in evaluating the services they receive from the domestic violence program; and

(h) Supports engagement and collaboration with other community agencies and systems for the purpose of developing a comprehensive response system for victims and their children.

(3) The program must refrain from engaging in activities that compromise the safety of victims or their children.

(4) The program must not provide services that blame the victim for the abuse or do not hold the abuser accountable for the violence. Such services are ineffective and will likely result in further harm to the victim, up to and including death.

NEW SECTION

WAC 388-61A-1020 Is the department required to provide funding to any program that requests funding? (1) We are not obligated to disburse funds to all domestic violence programs that meet the minimum standards set forth in this chapter. Our goals are to:

(a) Provide for a statewide network of supportive services, including emergency shelter, and advocacy for victims of domestic violence and their children;

(b) Provide for culturally specific and appropriate services for victims of domestic violence and their children from populations that have been historically underserved or unserved; and

(c) Assist communities in efforts to increase public awareness about, and prevention of, domestic violence.

(2) Funding for this program is intended to develop and maintain domestic violence programs that are:

(a) Focused on victim advocacy, safety, empowerment, maintaining confidentiality, and safety planning;

(b) Inclusive and responsive to the ethnic, cultural, racial, and socioeconomic diversity of the state; and

(c) Flexible and designed to meet the needs of domestic violence victims at the local level.

(3) If an organization applies for funding, we will consider such things as:

(a) Geographic location;

(b) Population density;

(c) Specific population needs, including urban and rural areas, and the need for culturally and linguistically appropriate services and prevention efforts;

(d) Availability and existence of domestic violence outreach and prevention efforts;

(e) An applicant's demonstrated history and experience in providing domestic violence services and its ability to provide services that comply with the minimum standards of this chapter;

(f) The availability of other domestic violence programs in a community and the level of collaboration between and among existing programs; and

(g) The amount of funding we have available to maintain stability and support for domestic violence programs currently funded by the department under this chapter.

NEW SECTION

WAC 388-61A-1025 What services must a department-funded domestic violence program provide? (1) Supportive services provided by the domestic violence program must align with the survivor-centered and empowerment service model described in this chapter, and must also:

(a) Include a discussion of safety and options with each victim of domestic violence seeking assistance;

(b) Be respectful, respond to each client's life situation, and respect each person's right to self-determination;

(c) Be provided in a safe and supportive environment that offers the client the opportunity to examine the events that led to the need for domestic violence services; and

(d) Be provided in a private setting for the comfort of the client and to protect the client's right to confidentiality.

(2) Domestic violence programs must provide the following:

(a) A location with a private setting to meet and assist victims of domestic violence who have a need for community advocacy or supportive services;

(b) A dedicated telephone line that serves as the contact number for the domestic violence program;

(c) Language and disability access;

(d) Crisis intervention;

(e) Safety planning;

(f) Individual advocacy, including legal advocacy;

(g) Support groups;

(h) Child care assistance during individual advocacy sessions and support groups for the adult victim;

(i) Emergency transportation assistance or access to transportation;

(j) Information and referral; and

(k) Community education and prevention efforts.

NEW SECTION

WAC 388-61A-1030 What are the requirements for providing emergency shelter? (1) Programs that we contract with for emergency shelter must also provide:

(a) A crisis hotline or helpline;

(b) A place of temporary lodging that complies with the service and facility requirements of this chapter;

(c) A day program or drop in service for victims who have a need for supportive services but do not need emergency shelter;

(d) Resident access to a trained staff person twenty-four hours a day, three hundred sixty-five days a year;

(e) The opportunity for residents to receive and participate in supportive services during their stay in emergency shelter; and

(f) Age-appropriate supportive services and resources for children/youth residing in emergency shelter.

(2) Programs must not require that clients participate in supportive services as a condition of residing in emergency shelter.

(3) Your program must have written procedures regarding your emergency shelter intake process. Victims who are at immediate risk of harm or who are in immediate danger due to domestic violence must be given priority for emergency shelter.

(4) You must have a staff person available twenty-four hours a day, three hundred sixty-five days a year, who is able to assess requests for emergency shelter and arrange for immediate intake into your shelter or a hotel or motel.

(5) Where an individual is eligible for emergency shelter:

(a) A staff person must be present to admit a service recipient into the emergency shelter; and

(b) Your program must make reasonable efforts to have a staff person present to admit a service recipient into a hotel or motel.

(6) Hotels or motels may be used as a temporary emergency sheltering option but must not be used in place of an emergency shelter that meets the standards set forth in this chapter. Individuals placed in a hotel or motel or other temporary shelter option must be provided with supportive services during the time they are in emergency shelter.

(7) You must provide an individual with referrals to other services or domestic violence agencies when:

(a)Your emergency shelter is full;

(b)A client residing in emergency shelter must be transferred to another domestic violence program for client safety reasons;

(c) The person seeking emergency shelter is ineligible for your services;

(d) An inappropriate referral was made to your domestic violence program; or

(e) The person seeking emergency shelter has problems that require services of another program or programs before they receive domestic violence services.

NEW SECTION

WAC 388-61A-1035 What services and resources must be available to children/youth residing in emergency shelter? (1) With the parent's or guardian's permission, you must offer children/youth the opportunity to receive and participate in the following age-appropriate supportive services during their emergency shelter residency:

(a) Orientation to the emergency shelter;

(b) Information about domestic violence;

(c) Individual or group advocacy and support; and

(d) Information and referral to other supportive services.

(2) You must provide a safe and secure play area for children/youth residing in the emergency shelter.

(3) You must provide information to the client about resources for indoor and outdoor recreational activities in the community for children/youth residing in emergency shelter, such as outings to parks, playgrounds, movies, libraries, sports activities, youth clubs and other similar activities.

NEW SECTION

WAC 388-61A-1040 What are the requirements for a crisis hotline or helpline? (1) Emergency shelters must provide a crisis hotline/helpline telephone number for accessing the services of the domestic violence program. The telephone number must be widely distributed throughout the service area covered by the domestic violence program and be identified as the crisis hotline/helpline of the program.

(2) The crisis hotline/helpline service must comply with the following minimum requirements:

(a) It must operate twenty-four hours a day, three hundred sixty-five days a year;

(b) It must be a dedicated telephone line that serves as the crisis hotline or helpline;

(c) Staff that answer the hotline/helpline must be trained in, periodically review, and be familiar with, the crisis helpline/hotline written procedures and all referral and intake practices of the domestic violence program;

(d) In most cases, callers to the hotline/helpline must be able to speak, within fifteen minutes, to a trained staff person who can help the caller obtain services, including access to emergency shelter;

(e) Staff must have access to a telecommunications device for the deaf (TDD) or similar technology, and they must be trained in its use; and

(f) Staff must address safety in every call.

(3) You must have crisis hotline/helpline written procedures that address the following:

(a) How crisis hotline staff will meet the needs of non English speaking and hearing impaired callers;

(b) Steps staff must take when a caller requests emergency shelter; and

(c) If you use an answering service or another similar system, how you will provide training to the staff of the answering service and monitor the services they provide to your program.

(4) If you use a call forwarding system for your domestic violence program's hotline/helpline, answering service, or any other similar system, you must guarantee that the caller's first contact is supportive.

(5) You may use an answering machine, voice mail, or similar recording device as a back up means of responding to calls to your program's crisis hotline/helpline. However, these devices must not be used as your program's primary method of answering crisis hotline/helpline calls. Messages left on your program's answering machine, voice mail, or similar recording device must be returned within the timeframe described in this section.

Chapter 388-61A WAC

PREVENTION STANDARDS

NEW SECTION

WAC 388-61A-1045 What prevention efforts must you provide? Prevention is changing the social norms that allow and perpetuate domestic violence. The core strategy for preventing domestic violence is the promotion of healthy, respectful, nonviolent relationships by shifting attitudes, behaviors, and social norms at the individual, relationship, community, and societal levels. While prevention activities will vary by community and population, programs that we contract with must design and engage in efforts that:

(1) Promote attitudes, behaviors, and social conditions aimed at preventing domestic violence before it happens;

(2) Attempt to decrease risk factors for perpetration of abuse as well as victimization while also promoting positive factors that protect individuals from perpetrating or experiencing abuse;

(3) Include strategies that use varied teaching methods to address multiple learning processes;

(4) Are age and developmentally appropriate;

(5) Are culturally and linguistically applicable to the specific community;

(6) Engage with a subsection of the broader community, reaching beyond the program's community of clients;

(7) Emphasize multi-session, comprehensive activities with small, defined communities; and

(8) Include strategies, policies, and programs that are concentrated, can be sustained and expanded over time, and focus on at least one of the following:

(a) Increasing community dialogue about the root causes of intimate partner violence;

(b) Shifting cultural norms;

(c) Building skills for healthy relationships;

(d) Promoting respectful and healthy relationships.

NEW SECTION

WAC 388-61A-1050 What activities are not considered prevention? While valuable, we do not consider certain activities to be prevention. Examples of these activities include, but are not limited to:

(1) Community education as defined in this chapter;

(2) Transformative and restorative justice efforts;

(3) Single session or one-time activities, such as trainings, presentations, or events;

(4) Activities that focus on defining domestic violence, or teaching data, dynamics, and the impacts of domestic violence;

(5) Providing information on how to access domestic violence services or how to help others in accessing services;

(6) Support groups as defied in this chapter (support groups are considered a supportive service); and

(7) Activities that focus on improving responsiveness to domestic violence survivors by community members or system partners.

Chapter 388-61A WAC

ADMINISTRATIVE STANDARDS

NEW SECTION

WAC 388-61A-1055 What information must be in a client's file? (1) You must have a written file for each client served by your domestic violence program. Client files must:

(a) Include an intake that clearly documents the client's eligibility for domestic violence services;

(b) Include copies of all required releases and client notices;

(c) Be brief in documenting the services provided to the client; and

(d) Document only sufficient information to identify the service provided, and do not include any of the following:

(i) References to service recipient feelings, emotional or psychological assessments, diagnoses, or similar subjective observations or judgments;

(ii) Direct quotes from the client.

(2) Where supportive services are provided to the child/youth of clients, your domestic violence program must:

(a) Maintain separate documentation for each child/youth who receives supportive services and do not include it in the parent/guardian's file;

(b) Be brief in documenting the supportive services provided to the child/youth;

(c) Document only sufficient information to identify the service provided, and do not include any of the following:

(i) References to the child/youth's feelings, emotional or psychological assessments, diagnoses, or similar subjective observations or judgments;

(ii) Direct quotes from the child/youth.

NEW SECTION

WAC 388-61A-1060 What information must the domestic violence program keep confidential? (1) Agents, employees, and volunteers of a domestic violence program must maintain the confidentiality of all personally identifying information, confidential communications, and all confidential information as defined in this chapter. Information that individually or together with other information could identify a particular victim of domestic violence must also be kept confidential.

(2) Any reports, records, working papers, or other documentation, including electronic files that are maintained by the domestic violence program and information provided to the domestic violence program on behalf of the client, must be kept confidential. Any information considered privileged by statute, rule, regulation, or policy that is shared with the domestic violence program on behalf of the client must not be divulged without a valid written waiver of the privilege that is based on informed consent, or as otherwise required by law.

(3) You must comply with the provisions of this section regarding confidential communications concerning clients regardless of when the client received the services of the domestic violence program.

NEW SECTION

WAC 388-61A-1065 What information may be disclosed? (1) You may disclose confidential information only when one or more of the following is met:

(a) The client provides informed, written consent to the waiver of confidentiality that relates only to the client or the client's dependent children;

(b) Your failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the client or other person;

(c) Disclosure is required under chapter 26.44 RCW;

(d) Release of information is otherwise required by law, court order, or following in camera review pursuant to RCW 70.123.075, with the following additional requirements:

(i) The domestic violence program must make reasonable attempts to provide notice to the person affected by the disclosure of the information; and

(ii) If personally identifying information is or will be disclosed, the domestic violence program must take steps necessary to protect the privacy and safety of the persons affected by the disclosure of information.

(2) Any disclosure of confidential information subject to any of the exceptions set forth in subsection (1) of this section must be limited to the minimum necessary to meet the requirement of the exception, and any disclosure does not void the client's right to confidentiality and privilege on any other confidential communication between the client and the domestic violence program.

(3) In the case of an unemancipated minor, the minor and the parent or guardian must provide the written consent to disclose confidential information. Consent to disclose confidential information must not be given by a parent who has abused the minor or the minor's other parent. In the case of a disabled adult who has been appointed a guardian pursuant to Title 11 RCW, the guardian must consent to disclosure of confidential information if so authorized in the order appointing him or her as guardian, unless the guardian is the abuser of the disabled adult.

(4) To comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements, a domestic violence program may disclose aggregated, nonpersonally identifying data about services provided to their clients and nonpersonally identifying demographic information.

(5) You must provide copy of the disclosed information to the client if the client requests it.

NEW SECTION

WAC 388-61A-1070 What are the requirements for a written waiver of confidentiality? (1) To be valid, a written waiver of confidentiality must:

(a) Be voluntary;

(b) Relate only to the client or the client's dependent children;

(c) Clearly describe the scope and any limitations of the information to be released;

(d) Include an expiration date for the release; and

(e) Inform the client that consent may be withdrawn at any time whether it is made orally or in writing.

(2) If the written waiver of confidentiality does not include an expiration date, it expires ninety days after the date it was signed.

NEW SECTION

WAC 388-61A-1075 What must you provide to clients about their right to confidentiality? (1) You must provide each client with a written "notice of rights" at the time of the initial intake and any subsequent intake into the domestic violence program. At a minimum, the notice of rights must inform clients of the following:

(a) The client's right to privacy and confidentiality of the information shared with the domestic violence program;

(b) Exceptions to confidentiality as described in this chapter;

(c) That if the client signs a written waiver of confidentiality that allows their information to be shared with others, the client does not give up their right to have that information protected under other statutes, rules, or laws;

(d) That the client has the right to withdraw a written waiver of confidentiality at any time; and

(e) That the domestic violence program will not condition the provision of services to the client based on a requirement that the client sign one or more releases of confidential information.

(2) Information on the "notice of rights" must be explained to the client at the time of intake into the domestic violence program and then again at the time the client is considering whether to sign a written waiver of confidentiality.

NEW SECTION

WAC 388-61A-1080 What type of training is required for staff of the domestic violence program? Initial and continuing education training of domestic violence program staff is critically important. In addition, quality supervision is an integral component for the provision of excellent advocacy and in supporting staff. Advocates and advocate supervisors must be able to demonstrate an understanding of the nature and scope of domestic violence as defined by this chapter, as well as the historical and societal attitudes in which domestic violence is rooted. Training must be current and relevant to the provision of empowerment based advocacy. Domestic violence agencies should also strive to ensure that staff incorporate training on services to underserved populations as part of each advocate's annual continuing education hours. In furtherance of these goals, domestic violence program staff must meet the following minimum training requirements.

Initial training

(1) Staff providing supportive services and prevention efforts, and supervisors of staff must obtain a minimum of twenty hours of initial basic training that covers all the following topics and skills:

(a) Theory and implementation of empowerment based advocacy;

(b) The history of the domestic violence movement;

(c) Active listening skills;

(d) Legal, medical, social service, and systems advocacy;

(e) Anti-oppression and cultural competency theory and practice;

(f) Confidentiality and ethics;

(g) Safety planning skills and barriers to safety;

(h) Planning, clarifying issues and options, and crisis intervention;

(i) Providing services and advocacy to individuals from culturally specific populations; and

(j) Policies and procedures of the domestic violence program.

(2) Staff who will be engaged in prevention efforts must incorporate training on prevention as part of, or in addition to, the initial training requirements.

(3) Initial training must be completed prior to providing supportive services to clients or their children.

(4) The recommended format for initial trainings is live and in-person group sessions. Structured job shadowing and self-study may be included as part of the overall initial training. All domestic violence program in-house training must be based on a written training plan that covers one or more of the required initial training topics.

Continuing education and supervisor training

(5) Staff who provide either supportive services or are engaged in prevention efforts, or both, and staff supervisors must obtain an annual minimum of twenty hours of continuing education training beginning in the state fiscal year after they completed their initial training, and in every year thereafter. Staff who will be engaged in prevention efforts must incorporate training on prevention as part of, or in addition to, the annual continuing education requirements.

(6) A minimum of ten hours must be live training on topics specifically focused on either serving victims of domestic violence and their children, or prevention efforts, or both.

(7) The remaining ten hours of training may be satisfied through self-study on topics specifically focused on serving victims of domestic violence and their children, or prevention efforts, or both.

(8) Within six months of being hired as an advocate supervisor and for each year thereafter, the supervisor must obtain a minimum of five hours of training on supervision. Supervision training can be counted toward the twenty hours of annual continuing education training hours required by this chapter. Examples of supervision training topics include leadership skills, job coaching and staff evaluation, multicultural supervision, and how to foster professional development of, and self-care with, advocates. While live, in-person training is the preferred method for supervision training, all methods of live and self-study training are acceptable.

Training for staff not providing supportive services or prevention activities

(9) Domestic violence program staff are not required to obtain initial and continuing education training as described in this section if they do not:

(a) Provide supportive services to clients or their children; or

(b) Conduct prevention efforts.

(10) Examples of staff who are included in this category are emergency shelter housekeeping staff, individuals providing child care assistance as defined in this chapter, and bookkeeping and accounting staff. We recommend, however, that staff who may come into contact with clients and their children, but who do not provide supportive services or conduct prevention efforts, receive training on the following:

(a) Confidentiality;

(b) Relevant policies and procedures of the domestic violence program; and

(c) Mandated reporting of child abuse/neglect as required by chapter 26.44 RCW.

NEW SECTION

WAC 388-61A-1085 How should training be documented? Initial, continuing education, and supervisor training must be documented as required by the department.

NEW SECTION

WAC 388-61A-1090 Must supervisors of domestic violence program staff have specific experience and training? Supervisors of staff providing supportive services to domestic violence clients must have the following minimum experience and training requirements prior to being hired as a supervisor:

(1) At least two years of experience providing advocacy to victims of domestic violence within a domestic violence program; and

(2) A minimum of fifty hours of training on domestic violence issues and advocacy within three years prior to being hired as a supervisor.

NEW SECTION

WAC 388-61A-1095 What written policies or procedures do you need to have? The domestic violence program must have written policies or procedures on the following:

(1) Programs that provide emergency shelter must have procedures for the intake process, including that victims who are at immediate risk of harm or in immediate danger due to domestic violence must be given priority for emergency shelter;

(2) Confidentiality and protection of client records and communication;

(3) Nondiscrimination relating to staff, clients, and provision of services;

(4) The provision of bilingual and interpreter services to clients;

(5) Responding to calls from non English speaking and hearing impaired callers;

(6) Programs that are required to have a crisis hotline/helpline and use an answering service, or any other similar system to answer calls, must have procedures for providing training to the answering service staff and how you will monitor the services the answering service provides to your program;

(7) Responding to subpoenas and warrants;

(8) Reporting of child abuse as legally mandated;

(9) Client access to their files;

(10) Grievance procedure for clients;

(11) Prohibiting harassment of service recipients based on race, sexual orientation, gender identity (or expression), religion, and national origin, and procedures for addressing violations;

(12) Emergency procedures in the event of fire, disaster, and first aid, medical, or law enforcement intervention;

(13) Responding to disruptive or dangerous contact from abusers and other possible intruders or uninvited individuals requesting or seeking access to the domestic violence program;

(14) Records retention;

(15) Accounting procedures; and

(16) Personnel policies and procedures that include the following:

(a) Recruitment of staff and volunteers, including that programs recruit, to the extent feasible:

(i) Persons who are former victims of domestic violence; and

(ii) Persons from relevant communities to provide culturally and linguistically appropriate services;

(b) Hiring;

(c) Promotion and termination of staff;

(d) Grievance procedure for staff; and

(e) Maintaining personnel and training files, including job descriptions for paid staff and volunteers.

Chapter 388-61A WAC

FACILITY STANDARDS FOR EMERGENCY SHELTER

NEW SECTION

WAC 388-61A-1100 What safety requirements are emergency shelters required to meet? You must keep your equipment and the physical structures in the emergency shelter, including furniture and appliances, safe and clean for the clients you serve. You must:

(1) Maintain the emergency shelter, premises, equipment, and supplies in a clean, safe and sanitary condition, free of hazards, and in good repair;

(2) Provide guard or handrails, as necessary, for stairways, porches, and balconies;

(3) Have a method for securing all windows, doors, and other building accesses to prevent the entry of intruders;

(4) Make sure that clients residing in emergency shelter are able to immediately enter the shelter if they do not have the ability to independently access the facility with their own key, key card, door code, or other device;

(5) Provide adequate lighting of exterior areas to ensure the safety of clients residing in emergency shelter and staff during the night;

(6) Provide a way for staff to enter any area occupied by clients should there be an emergency;

(7) Secure all unused refrigerators and freezers accessible to children in such a way that prevents them from climbing in and becoming trapped;

(8) Request an annual fire and life safety inspection from the local fire department or fire marshal and:

(a) Document and maintain the request and any report issued as a result of the inspection; and

(b) Immediately correct any violations noted by the inspector;

(9) Have at least one program staff present or on-call to go to the emergency shelter twenty-four hours a day, seven days per week when clients are residing in shelter;

(10) Provide residents with contact numbers and instructions, in the resident's primary language, on how they can access domestic violence program staff; and

(11) Make sure that emergency shelter residents have, or have access to in the shelter, at least one telephone for incoming and outgoing calls.

NEW SECTION

WAC 388-61A-1105 What are the requirements for bedrooms? The minimum requirements for bedrooms are as follows:

(1) A bed for each resident that is in good condition, with a clean and comfortable mattress;

(2) A minimum ceiling height of seven and one-half feet; and

(3) At least fifty square feet of usable floor area per bed and floor area where the ceiling is less than five feet is not considered usable floor area.

NEW SECTION

WAC 388-61A-1110 What are the requirements for cribs or bassinets? If the emergency shelter provides cribs or bassinets, the shelter must comply with the crib safety standards issued by the United States Consumer Product Safety Commission.

NEW SECTION

WAC 388-61A-1115 What kind of diaper changing area must I provide? You must provide a sanitary diaper changing area. In addition, you must develop and post in view of the changing area hygienic procedures for handling and storing diapers and sanitizing the changing area. These procedures must also be provided in writing to all residents with infants.

NEW SECTION

WAC 388-61A-1120 What are the kitchen requirements? The following are the minimum general requirements for kitchen facilities:

(1) A sink for washing dishes;

(2) A refrigerator or other storage equipment capable of maintaining a consistent temperature of forty five degrees Fahrenheit or lower;

(3) A range or stove;

(4) Covered garbage container;

(5) Eating and cooking utensils that are clean and in good repair; and

(6) Counter surfaces that are clean and resistant to moisture.

NEW SECTION

WAC 388-61A-1125 What are the requirements for providing food to clients residing in emergency shelter? (1) Your domestic violence program must provide food and beverages for the basic sustenance of clients residing in emergency shelter, unless other resources are immediately available.

(2) You must store food and beverages, including infant formula, at the emergency shelter to provide to clients residing in shelter when other resources are not immediately available, and for emergency shelter residents who are unable to safely access other food resources.

(3) Milk and infant formula must be available at all times for children residing in the emergency shelter.

(4) You must purchase and provide only food and beverages that are of safe quality to clients residing in emergency shelter. Storage, preparation, and serving techniques must ensure that nutrients are retained and spoilage is prevented.

(5) Food and beverages prepared for clients residing in emergency shelter must be prepared, served, and stored safely and in a sanitary manner.

(6) Food must be available to prepare school lunches, if lunch is not otherwise available to the children of emergency shelter residents.

(7) Clients residing in emergency shelter must be provided, or have immediate access to, food that is in accordance with their religious or cultural beliefs and personal practices.

(8) When staff prepare and serve food to clients in communal emergency shelters, the food must be prepared in compliance with chapter 246-215 WAC, Food Service.

NEW SECTION

WAC 388-61A-1130 What are the requirements for providing clothing to clients residing in emergency shelter? (1) If an adult or child comes into emergency shelter without adequate clothing, you must assist them with access to clean, well fitting clothing appropriate to the season, and the individual's age, gender, and particular needs.

(2) Clothing that you provide must be clean and have been stored in a sanitary manner.

(3) Clothing that is provided to an individual becomes that person's personal property and must not be retrieved from the client when they leave the emergency shelter.

NEW SECTION

WAC 388-61A-1135 What personal hygiene items do I need to provide to clients residing in emergency shelter? All clients residing in emergency shelter must be provided with personal hygiene products during their residency, such as soap, hair care products, toothbrush and paste, and deodorant. Particular attention must be paid to providing items for individuals that have special needs because of their ethnicity, disability, or medical condition.

NEW SECTION

WAC 388-61A-1140 What are the requirements for toilets, sinks, and bathing facilities? You must meet the following requirements for toilets, sinks, and bathing facilities:

(1) You must provide at least one indoor flush-type toilet, one nearby sink for hand washing, and a bathtub or shower facility. These facilities must be located within the emergency shelter building premises.

(2) Communal emergency shelters must provide at a minimum, one restroom facility (as defined under WAC 388-61A-1000 (28)) for every fifteen residents who do not have access to private restroom facilities. For example, communal emergency shelters must provide one restroom facility for one to fifteen residents, two for sixteen to thirty residents, and so on.

(3) You must comply with all of the following requirements for toilet and bathing facilities:

(a) Toilet and bathing facilities must allow for privacy of emergency shelter residents;

(b) The floors of all toilet and bathing facilities must be resistant to moisture;

(c) Toilets, urinals, and hand washing sinks must be the appropriate height for the children served, or have a safe and easily cleaned step stool or platform that is water resistant;

(d) Facilities for hand washing and bathing must be provided with hot and cold running water and hot water must not exceed one hundred and twenty degrees Fahrenheit;

(e) Potty chairs and toilet training equipment for toddlers must be regularly maintained, disinfected, and kept in a sanitary condition and when in use, you must put potty chairs on washable, water resistant surfaces; and

(f) You must provide soap and clean washcloths and towels, disposable towels, or other hand drying devices to emergency shelter residents.

NEW SECTION

WAC 388-61A-1145 What types of linen do I need to provide to clients? You must provide bed linen, towels, and washcloths that are clean and in good repair. After use by a client, bed linen, towels, and washcloths must be laundered prior to use by another client.

NEW SECTION

WAC 388-61A-1150 What are the requirements for laundry facilities? The requirements for laundry facilities are as follows:

(1) You must provide adequate laundry and drying equipment or make other arrangements for getting laundry done on a regular basis. Laundry facilities in the emergency shelter must be provided free to shelter residents.

(2) You must handle and store laundry in a sanitary manner.

NEW SECTION

WAC 388-61A-1155 What are the requirements for drinking water? Water supplies that are used for human consumption must be from a water system that has been approved by the local health authority or department as safe for human consumption. This refers to both public water systems and individual systems.

NEW SECTION

WAC 388-61A-1160 What are the requirements for sewage and liquid wastes? You must discharge sewage and liquid wastes into a public sewer system or septic system that has been approved by the local health authority or department.

NEW SECTION

WAC 388-61A-1165 What kind of heating is required? (1) Rooms used by clients in the emergency shelter must be equipped with a safe and adequate source of heat that can keep the room at a healthful temperature during the time the room is occupied.

(2) The use of gas or oil fired space heaters is prohibited.

NEW SECTION

WAC 388-61A-1170 How must I ventilate the emergency shelter? You must ensure that your emergency shelter is ventilated for the health and comfort of the clients residing in shelter by meeting the following requirements:

(1) A mechanical exhaust to the outside must ventilate toilets and bathrooms that do not have windows opening to the outside;

(2) In order to prevent objectionable odors and condensation, all bathrooms, toilet rooms, laundry rooms, and other enclosed space containing wet mops and brushes, must have natural or mechanical ventilation;

(3) Bedrooms and communal living areas must have a window or opening to the outdoors that can be locked or secured from the inside; and

(4) Gas or oil fired water heaters and forced air systems must be safely vented to the outside.

NEW SECTION

WAC 388-61A-1175 How much lighting is required in the emergency shelter? You must locate light fixtures and provide lighting that promotes good visibility and comfort for clients residing in emergency shelter.

NEW SECTION

WAC 388-61A-1180 What are the requirements about pets in the emergency shelter? Pets are prohibited from the kitchen during food preparation.

NEW SECTION

WAC 388-61A-1185 What first aid supplies must I provide? You must keep first aid supplies on hand and accessible to clients residing in emergency shelter for immediate use. In instances where an adult or child has ingested a potentially poisonous chemical or substance, you must call the Washington Poison Center for further instruction. Instructions for contacting the Washington Poison Center must be included with either the first aid supplies or visibly posted for residents, or both.

NEW SECTION

WAC 388-61A-1190 What are the requirements for storing medications? (1) Clients residing in emergency shelter must be provided with a means to safely and securely store, and have direct and immediate access to, their medications such as individual lock boxes, lockers with a key or combination lock, or a similar type of secure storage.

(2) All medications, including pet medications and herbal remedies, must be stored in a way that is inaccessible to children.

NEW SECTION

WAC 388-61A-1195 What measures must I take for pest control? You must make reasonable attempts to keep the emergency shelter free from pests, such as rodents, flies, cockroaches, fleas, and other insects.

NEW SECTION

WAC 388-61A-1200 What are the requirements for labeling and storing chemicals and toxic materials? (1) Containers of chemical cleaning agents and other toxic materials must:

(a) Be clearly labeled with the contents; and

(b) Include the manufacturer's instructions and precautions for use.

(2) You must store the following items in a place that is not accessible to children:

(a) Chemical cleaning supplies;

(b) Toxic substances;

(c) Poisons;

(d) Aerosols; and

(e) Items with warning labels.

(3) You must store chemical cleaning supplies, toxic substances, and poisons separately from food items, clothing, and bedding in order to prevent contamination.

NEW SECTION

WAC 388-61A-1205 Where do I keep firearms and other dangerous weapons? (1) If a resident has a firearm or other dangerous weapon, you must secure it in a locked storage container, gun safe, or another storage area made of strong, unbreakable material. Stored firearms must be unloaded.

(2) If a storage container for firearms has a glass or another breakable front, you must secure firearms with a locked cable or chain placed through the trigger guards.

(3) You must store ammunition in a place that is separate from the firearms or locked in a gun safe.

(4) You must allow access to firearms, weapons, and ammunition only to authorized persons.

Chapter 388-61A WAC

COMPLIANCE WITH STANDARDS

NEW SECTION

WAC 388-61A-1210 Will the department evaluate its contractors? The department will evaluate its contractors as follows:

(1) To measure compliance with our requirements we will conduct a biennial evaluation of each contractor;

(2) Emergency shelters will be inspected during on-site evaluations of contractors to measure compliance with our facility requirements; and

(3) If a lodging unit of the emergency shelter is occupied at the time of an on-site evaluation, the contractor must give the client an opportunity to leave the unit prior to the arrival of the evaluator.

NEW SECTION

WAC 388-61A-1215 What will happen if I am out of compliance with the minimum standards or my contract? (1) If we find that the contractor is out of compliance with the standards specified in this chapter or the terms of the contract, we will give you written notice of the deficiencies. You must correct the deficiencies according to a plan of correction we approve.

(2) We may suspend, revoke, or terminate the funding of a contractor if it is out of compliance with this chapter or the contract.

NEW SECTION

WAC 388-61A-1220 What will happen if there is a complaint to the department about the contractor? (1) If we receive information, or have reason to believe, that a contractor may be out of compliance with this chapter or the contract, we may initiate an investigation.

(2) If the investigation requires that we be on-site at your emergency shelter, you must give clients residing in lodging units an opportunity to leave the unit during the inspection.

(3) If we find that you are out of compliance with the standards specified in this chapter or the terms of the contract, we will give you written notice of the deficiencies. You must satisfactorily correct the deficiencies according to a plan of correction we approve.

(4) We may suspend, revoke, or terminate the funding of a contractor if it is out of compliance with this chapter or the contract.

NEW SECTION

WAC 388-61A-1225 May the department waive any of the minimum standards of this chapter? Under certain conditions we may waive some of the rules contained in this chapter.

(1) To request a waiver you must submit a written request that:

(a) Clearly describes the minimum standards(s) for which the waiver is requested;

(b) Describes the reason(s) why your program is unable to meet the requirements of this chapter without the waiver;

(c) Identifies whether there are other resources or services that can adequately compensate for the minimum standard(s) for which the waiver is requested;

(d) Demonstrates that granting of the waiver will not jeopardize the safety or health of clients; and

(e) Shows that the absence of granting the waiver will have a detrimental effect on the provision of services.

(2) If the written waiver request proposes any substitutions of procedures, materials, service, or equipment from those specified in this chapter, the substitutions must be at least equivalent to those required.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-61A-0200	What is the legal basis for the domestic violence shelter program?
WAC 388-61A-0210	What is the purpose of having minimum standards for domestic violence shelters and supportive services?

WAC 388-61A-0220	What definitions apply to this chapter?
WAC 388-61A-0230	What service model must be used to provide the services required by these rules?
WAC 388-61A-0240	Is DSHS required to provide funding to any domestic violence agency that requests funding?
WAC 388-61A-0250	What are the requirements for domestic violence agencies?
WAC 388-61A-0260	What supportive services must a domestic violence agency provide?
WAC 388-61A-0270	What services and resources must be available to children/youth residing in emergency domestic violence shelter?
WAC 388-61A-0280	What are the requirements for the crisis hotline or helpline?
WAC 388-61A-0290	What are the requirements for accessing emergency domestic violence shelter?
WAC 388-61A-0300	What information must be in a client's file?
WAC 388-61A-0310	What information must the domestic violence agency keep confidential?
WAC 388-61A-0320	What information can be disclosed?
WAC 388-61A-0330	What information must be included in a written waiver of confidentiality?
WAC 388-61A-0340	What information must be provided to clients about their right to confidentiality?
WAC 388-61A-0350	What type of training is required for staff of the domestic violence agency?
WAC 388-61A-0360	How should training be documented?
WAC 388-61A-0370	Must supervisors of domestic violence agency staff have specific experience and training?
WAC 388-61A-0380	What written policies or procedures do you need to have?
WAC 388-61A-0390	What safety requirements are shelters required to meet?
WAC 388-61A-0400	What are the requirements for bedrooms?
WAC 388-61A-0410	What are requirements for cribs or bassinets?
WAC 388-61A-0420	What kind of diaper changing area must I provide?
WAC 388-61A-0430	What are kitchen requirements?
WAC 388-61A-0440	What are the requirements for providing food to clients residing in shelter?
WAC 388-61A-0450	What are the requirements for providing clothing to clients residing in shelter?
WAC 388-61A-0460	What personal hygiene items do I need to provide to clients residing in shelter?
WAC 388-61A-0470	What are the requirements for toilets, sinks, and bathing facilities?
WAC 388-61A-0480	What types of linen do I need to provide to clients?
WAC 388-61A-0490	What are the requirements for laundry facilities?
WAC 388-61A-0500	Are there requirements for drinking water?
WAC 388-61A-0510	What are the requirements for sewage and liquid wastes?
WAC 388-61A-0520	What kind of heating system is required?
WAC 388-61A-0530	How must I ventilate the shelter?
WAC 388-61A-0540	How much lighting is required in the shelter?
WAC 388-61A-0550	Are there any requirements about pets in the shelter?
WAC 388-61A-0560	What first-aid supplies must I provide?
WAC 388-61A-0570	What are the requirements for storing medications?
WAC 388-61A-0580	What measures must I take for pest control?
WAC 388-61A-0590	What are the requirements for labeling and storing chemicals and toxic materials?
WAC 388-61A-0600	Where do I keep firearms and other dangerous weapons?
WAC 388-61A-0620	What are the additional standards for shelter homes?
WAC 388-61A-0630	What are the additional standards for safe homes?
WAC 388-61A-0640	Will DSHS do an evaluation of the domestic violence agency?
WAC 388-61A-0650	What will happen if I am out of compliance with the minimum standards or my contract?

WAC 388-61A-0660	What will happen if there is a complaint to DSHS about the domestic violence agency?
WAC 388-61A-0670	Can DSHS waive any of the minimum standards of this chapter?

WSR 18-04-014
PROPOSED RULES
GAMBLING COMMISSION
[Filed January 26, 2018, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-070.

Title of Rule and Other Identifying Information: WAC 230-05-102 All licensed organizations report activity quarterly beginning with the July 1, 2018, through September 30, 2018, quarter, 230-07-155 Reporting annual activities for raffles, enhanced raffles, amusement games, Class A, B or C bingo, or combination licenses, 230-07-160 Reporting annual activity for agricultural fairs, 230-09-056 Activity reports for fund-raising events, 230-10-040 Disposable bingo cards—Additional requirements, 230-10-180 Electronic bingo card daubers requirements, 230-10-457 Activity reports for linked bingo prize providers, 230-13-169 Annual activity reports for commercial amusement game licensees, 230-16-160 I.D. stamps for gambling equipment, 230-16-165 Obtaining I.D. stamps, 230-16-175 Placing I.D. stamps and records entry labels, and 230-16-180 Records retention for I.D. stamp records.

Hearing Location(s): On March 15, 2018, at 1:00 p.m., at the Hampton Inn and Suites, 4301 Martin Way East, Olympia, WA 98516. Hearing will take place at the March commission meeting. The meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov about seven days before the meeting, select "March Commission meeting" to confirm the hearing date, location, and start time.

Date of Intended Adoption: March 15, 2018.

Submit Written Comments to: Rules Coordinator, P.O. Box 42400, Olympia, WA 985041-2400 [98504-2400], email rules.coordinator@wsgc.wa.gov, fax 360-486-3624, by March 1, 2018.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, by March 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The key rules in this fourth rule package sets the filing deadlines for quarterly activity reporting, and revises the requirements on I.D. stamps under the new license fee structure.

The key changes to activity reporting and I.D. stamps in this fourth package:

Clarifies that annual activity report filers will report their gambling activity for their license year through June 30, 2018, on July 30, 2018. All licensees will begin reporting their activity quarterly beginning with the July 1-September 30 quarter. These rules were included in rule package #2 and have been moved to package #4.

Addresses I.D. stamps: I.D. stamps will only be required for punchboards/pull-tabs; and the commission will provide I.D. stamps to punchboards/pull-tab manufacturers at no cost.

Reasons Supporting Proposal: The commissioners began considering changing the fee structure in 2014. The current fee structure was created over forty years ago. It began with twenty-five fees. Today the gambling commission has approximately one hundred ninety-four different fees for commercial and nonprofit organizations and individuals. This fee schedule is typically based on a "class" system, which can be cumbersome for licensees and agency staff. The gambling commission is looking to simplify this current system and its reporting requirements to allow it to be easier to navigate and have a licensing fee schedule that is more predictable for both the agency and its licensees. It is also looking to simplify its I.D. stamp rules.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Tina Griffin, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Implementation: David Trujillo, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

January 26, 2018
Brian J. Considine
Legal and Legislative Manager

NEW SECTION

WAC 230-05-102 All licensed organizations report activity quarterly beginning with the July 1, 2018, through September 30, 2018, quarter. (1) Beginning July 1, 2018, all licensed organizations must submit activity reports quarterly, regardless of whether they previously submitted reports annually, quarterly, or semi-annually and regardless of when their permit or license year ends.

(2) This includes gambling service suppliers and any other licensed organizations that did not previously submit activity reports.

(3) Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, licensed organizations that report annually will report quarterly as set forth in this section.

(4) The activity reports must be in the format we require and must:

Cover the period:	Be received by us no later than:
July 1 through September 30	October 30
October 1 through December 31	January 30
January 1 through March 31	April 30
April 1 through June 30	July 30

(5) All licensed organizations must submit quarterly license fees to us for each licensed gambling activity after the first quarter of their license year that begins on or after July 1, 2018, as set forth in WAC 230-05-124.

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-07-155 Reporting annual activity for raffles, enhanced raffles, amusement games, Class A, B, or C bingo, or combination licenses. (1) Raffle, enhanced raffle, amusement game, Class A, B, or C bingo, or combination licensees must submit an annual report of all their activities in the format we require.

(2) We must receive the completed report in our office postmarked no later than thirty days following the expiration of their license(s). Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102.

(3) The highest ranking officer or his/her designee must sign the report.

(4) If the licensee has someone else prepare the report, then the preparer must include his/her name and phone number on the report.

(5) Licensees that operate retail sales activities in conjunction with bingo games must report the net income from those retail sales activities.

AMENDATORY SECTION (Amending WSR 07-10-032, filed 4/24/07, effective 1/1/08)

WAC 230-07-160 Reporting annual activity for agricultural fairs. (1) Charitable or nonprofit licensees who operate bingo, raffles, and/or amusement games only at agricultural fairs and other special properties and permittees as defined in WAC 230-03-015 who operate bingo under another's license at agricultural fairs and other special properties must submit an annual report of all their activities in the format we require.

(2) We must receive the completed report in our office postmarked no later than thirty days following the expiration of the license year. Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102.

(3) Permittees operating under another's license must provide the licensee with all information about the permitted operation that is needed by the licensee to complete the annual activity report not less than ten days before the time that we require the licensee to file his or her report.

(4) The highest ranking officer or his or her designee must sign the report. If the licensee has someone else prepare the report, then the preparer must include his or her name and phone number on the report.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-09-056 Activity reports for fund-raising events. Fund-raising event licensees must submit an activity report to the commission concerning the operation of the licensed activities of each event. Licensees must complete the report in the format we require and the report must be:

(1) Received at our administrative office or postmarked no later than thirty days after the end of the authorized operating day or days((~~; and~~)). Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102.

(2) Signed by the licensee's highest ranking executive officer or designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and phone number on the report.

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

WAC 230-10-040 Disposable bingo cards—Additional requirements. (1) Disposable bingo cards must:

(a) Meet all bingo card requirements; and

(b) Be imprinted with a unique set and configuration of numbers on each card; and

(c) Not duplicate cards within a specific product line; and

(d) Include a control system in each set which:

(i) Identifies that specific set and each specific card within that set; and

(ii) Allows tracking of the transfer of cards from the point of manufacture to the operator; and

(iii) Facilitates sale by the operator to the player((~~; and~~

~~(e) Have an identification and inspection stamp from us sold to the licensed manufacturer or to the operator and~~

~~attached to the series by the licensed manufacturer, the operator, or us~~)).

(2) Bingo licensees using the combination receipting method may divide sets or collations of cards into no more than ten subgroups. Licensees must follow disposable bingo card inventory control requirements for each subgroup.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-180 Electronic bingo card daubers requirements. (1) Electronic bingo card daubers must:

(a) Be manufactured by licensed manufacturers; and

(b) Be sold, leased, and serviced by licensed distributors or manufacturers. Operators may perform routine maintenance; and

(c) ((~~Have an I.D. stamp from us that was sold to the licensed manufacturer or the operator and attached by the licensed manufacturer, the operator, or us; and~~

~~(d)~~)) Be unable to modify the computer program which operates the dauber units or the electronic database which stores the bingo cards; and

((~~(e)~~)) (d) Store preprinted bingo cards a player purchases. The electronic images of cards stored in daubers are for player convenience only and are not bingo cards for purposes of this title; and

((~~(f)~~)) (e) Use cards that meet all requirements of bingo cards and electronic bingo cards; and

((~~(g)~~)) (f) Allow players to input the numbers called; and

((~~(h)~~)) (g) Compare input numbers to bingo cards stored in an electronic database; and

((~~(i)~~)) (h) Identify to the player those stored bingo cards that contain the input numbers.

(2) Operators providing electronic daubers must have the cards printed, placed in a master index, and available for onsite inspection at the request of law enforcement agencies, customers, or us.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-10-457 Activity reports for linked bingo prize providers. Linked bingo prize providers must submit activity reports to us twice a year for their sales and services. The activity reports must be in the format we require and must:

(1) Cover the periods:

(a) January 1 through June 30; and

(b) July 1 through December 31; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period. Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the licensee or an employee prepares the report, the preparer must print his or her name and business telephone number on the report; and

(4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew.

AMENDATORY SECTION (Amending WSR 08-20-007, filed 9/18/08, effective 1/1/09)

WAC 230-13-169 Annual activity reports for commercial amusement game licensees. Commercial amusement game licensees must submit an annual activity report to us in the format we require and must:

(1) Cover the license year of one calendar year or less; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period. Licensed organizations that report annually must submit an activity report from the beginning of their license year through June 30, 2018, by July 30, 2018. These reports are due July 30, 2018.

Beginning July 1, 2018, reports required by this section must be submitted quarterly, as set forth in WAC 230-05-102; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the commercial amusement game licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew their license; and

(5) Complete the report according to the instructions furnished with the report.

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-160 I.D. stamps for gambling equipment. ((~~(1) If gambling equipment requires our approval, manufacturers and distributors must not attach I.D. stamps to the equipment until we approve it.~~

~~(2)~~)) Manufacturers must permanently and prominently attach our I.D. stamps to their gambling equipment. Once attached, no one may remove or tamper with the I.D. stamps. Manufacturers must attach I.D. stamps to:

((~~(a)~~)) (1) Punch boards; and

((~~(b)~~)) (2) Pull-tab flares((~~; and~~

~~(c) Pull-tab dispensers; and~~

~~(d) Disposable bingo card packing slips; and~~

~~(e) Coin or token activated amusement games operated at locations with a Class A license; and~~

~~(f) Electronic bingo card daubers; and~~

~~(g) Electronic card facsimile tables; and~~

~~(h) Other items specified by the director~~)).

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-165 ((~~Purchasing~~)) Obtaining I.D. stamps. (1) Manufacturers must ((~~purchase~~)) obtain I.D.

stamps from us and attach them to the equipment specified in this chapter.

(2) Any manufacturer may return damaged stamps to us with a detailed listing of the damaged stamps ((~~and must pay a service charge~~)). We will then replace the I.D. stamps.

((~~(3) Owners of gambling equipment which require annual I.D. stamps must purchase I.D. stamps from us and attach them to their gambling equipment. Annual I.D. stamps expire on December 31 each year, even if the equipment was placed out for play mid-year.~~

~~(4) Owners of pull-tab dispensers must purchase I.D. stamps to replace worn I.D. stamps on pull-tab dispensers. The owner must send us:~~

~~(a) A copy of the invoice for the purchase of the dispenser from the manufacturer, distributor, or operator; or~~

~~(b) A complete description of the pull-tab dispenser, serial number, manufacturer, and the previous I.D. stamp number, if known.~~))

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-175 Placing I.D. stamps and records entry labels. ((~~(1)~~)) Manufacturers must attach I.D. stamps and records entry labels to approved gambling equipment in the following way:

((~~(a)~~)) (1) **Punch boards -** On the reverse side of the board in an area that will not obstruct removal of punches. If sufficient space is not available on the reverse side, licensees may wrap the records entry labels around or partially attach them to the edge of the punch board as long as this does not obstruct display of prizes available or other information we require.

((~~(b)~~)) (2) **Pull tabs -** On the face or reverse side of the flare. If placed on the face, the I.D. stamps and records entry labels must not obstruct prizes available or other information we require.

((~~(c)~~ ~~**Disposable bingo cards -**~~ ~~On the packing label on the outside of the shipping carton. Manufacturers must attach records entry labels to the packing slip. When they pack a set or collation of cards in more than one shipping container, manufacturers may attach the I.D. stamp to the first container and print the I.D. stamp number on all remaining shipping containers.~~

~~(2)~~ ~~**Electronic pull-tab dispensers, electronic bingo card daubers, and electronic facsimile card tables -**~~ ~~Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull-tabs available for play, the bingo cards, or the card facsimiles.~~

~~(3)~~ ~~**Electromechanical and mechanical pull-tab dispensers -**~~ ~~Manufacturers or owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the pull-tabs available for play or the card facsimiles. Licensees may discard records entry labels.~~

~~(4)~~ ~~**Amusement games -**~~ ~~Owners must attach I.D. stamps on the outside of the main body, in an area that is not normally removed and replaced, and in a way that does not obstruct the view of the amusement game prizes.~~))

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

WAC 230-16-180 Record retention for I.D. stamp records. Manufacturers must keep records that provide an accountability trail for all I.D. stamps ((~~purchased~~)).

(1) For I.D. stamps attached to gambling equipment and sold, manufacturers must keep the I.D. stamps records for at least three years and include, at least:

(a) The name of the purchaser;

(b) The date of the sale; and

(c) The invoice number recording the sale.

(2) For all unused or damaged I.D. stamps, manufacturers must indefinitely retain the I.D. stamps or provide records that include enough detail to allow us to account for all I.D. stamps.

WSR 18-04-021
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed January 29, 2018, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-149.

Title of Rule and Other Identifying Information: WAC 182-531-1500 Sleep studies.

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than March 14, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by March 13, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by March 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to revise the requirements for a sleep center to become an agency-approved center of excellence. The agency plans to reduce the number of documents that must be submitted for each sleep center. The agency will instead use the sleep center's certification by the American Academy of Sleep Medicine, which requires the same documentation as listed in the current rule.

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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Joan Chappell, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1071.

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

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

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

January 29, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-13-158, filed 6/22/16, effective 7/23/16)

WAC 182-531-1500 Sleep studies. (1) Purpose. For the purposes of this section, sleep studies include polysomnography (PSG), unattended home sleep test (HST), and multiple sleep latency testing (MSLT). The medicaid agency covers attended, full-channel, PSG, MSLT, and unattended HSTs when:

(a) Ordered by the client's physician;

(b) Performed by an agency-designated center of excellence (COE) that is an independent diagnostic testing facility, sleep laboratory, or outpatient hospital; and

(c) Results are used to:

(i) Establish a diagnosis of narcolepsy or sleep apnea; or

(ii) Evaluate a client's response to therapy, such as continuous positive airway pressure (CPAP).

(2) Definitions. The following definitions, those found in chapter 182-500 WAC, and definitions found in other sections of this chapter, apply to this section:

(a) "American Academy of Sleep Medicine" or "AASM" - The only professional society dedicated exclusively to the medical subspecialty of sleep medicine. AASM sets standards and promotes excellence in health care, education, and research. Members specialize in studying, diagnosing, and treating disorders of sleep and daytime alertness such as insomnia, narcolepsy, and obstructive sleep apnea.

(b) "Continuous positive airway pressure" or "CPAP" - See WAC 182-552-0005.

(c) "Core provider agreement" or "CPA" - The basic contract the agency holds with providers serving medical assistance clients.

(d) "Multiple sleep latency test" or "MSLT" - A sleep disorder diagnostic tool used to measure the time elapsed from the start of a daytime nap period to the first signs of sleep, called sleep latency. The MSLT is used extensively to test for narcolepsy, to distinguish between physical tiredness and true excessive daytime sleepiness, or to assess whether treatments for breathing disorders are working.

(e) "Obstructive sleep apnea" or "OSA" - See WAC 182-552-0005.

(f) "Polysomnogram" - The test results from a polysomnography.

(g) "Polysomnography" - A multiparametric test that electronically transmits and records specific physical activities while a person sleeps. The recordings become data that are analyzed by a qualified sleep specialist to determine whether or not a person has a sleep disorder.

(h) "PSG" - The abbreviation for both "polysomnography" and "polysomnogram."

(i) "Registered polysomnographic technologist" or "RPSGT" - A sleep technologist credentialed by the board of registered polysomnographic technologists to assist sleep specialists in the clinical assessment, physiological monitoring and testing, diagnosis, management, and prevention of sleep-related disorders with the use of various diagnostic and therapeutic tools. These tools include, but are not limited to, polysomnograph, positive airway pressure devices, oximeter, capnograph, actigraph, nocturnal oxygen, screening devices, and questionnaires. To become certified as a registered polysomnographic technologist, a sleep technologist must have the necessary clinical experience, hold CPR certification or its equivalent, adhere to the board of registered polysomnographic technologists standards of conduct, and pass the registered polysomnographic technologist examination for polysomnographic technologists.

(3) Client eligibility. Clients in the following agency programs are eligible to receive sleep studies as described in this section:

(a) Categorically needy (CN);

(b) Apple health for kids and other children's medical assistance programs as defined in WAC 182-505-0210;

(c) Medical care services as described in WAC 182-508-0005 (within Washington state or border areas only); and

(d) Medically needy (MN) only when the client is either:

(i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis, and treatment program as described in chapter 182-534 WAC; or

(ii) Receiving home health care services as described in chapter 182-551 WAC, subchapter II.

(4) Provider requirements. To be paid for providing sleep studies as described in this section to eligible clients, the facility must:

(a) Be a sleep study COE. Refer to subsection (5) of this section for information on becoming an agency-approved sleep study COE;

(b) Be currently accredited by AASM and continuously meet the accreditation standards of AASM;

(c) Have at least one physician on staff who is board certified in sleep medicine; and

(d) Have at least one registered polysomnographic technologist (RPSGT) in the sleep lab when studies are being performed.

(5) Documentation.

(a) To become an agency-approved COE, a sleep center must send the following documentation to the Health Care

Authority, c/o Provider Enrollment, P.O. Box 45510, Olympia, WA 98504-5510:

(i) A completed CPA; and

(ii) ((~~Copies~~)) A copy of the ((~~following:~~

~~(A) The~~)) sleep center's current accreditation certificate by AASM((~~;~~

~~(B) Either of the following certifications for at least one physician on staff:~~

~~(I) Current certification in sleep medicine by the American Board of Sleep Medicine (ABSM); or~~

~~(II) Current subspecialty certification in sleep medicine by a member of the American Board of Medical Specialties (ABMS); and~~

~~(C) The certification of an RPSGT who is employed by the sleep center~~)).

(b) Facilities accredited by the AASM must be in compliance with all accreditation standards at the time of application and throughout the accreditation period.

(c) Sleep centers must request reaccreditation from AASM in time to avoid expiration of COE status with the agency.

((~~(c)~~)) (d) At least one physician on staff at the sleep center must be board certified in sleep medicine. If the only physician on staff who is board certified in sleep medicine resigns, the sleep center must ensure another physician on staff at the sleep center obtains board certification or another board-certified physician is hired. The sleep center must then send provider enrollment a copy of the physician's board certification.

((~~(d)~~)) (e) If a certified medical director leaves a COE, the COE status does not transfer with the medical director to another sleep center.

((~~(e)~~)) (f) The COE must maintain a record of the physician's order for the sleep study.

(6) Coverage.

(a) The agency pays for only medically necessary sleep studies. The need for the sleep study must be confirmed by medical evidence (e.g., physician examination and laboratory tests).

(b) For clients age twenty-one and older, the agency covers:

(i) An unattended home sleep test (HST) as follows:

(A) Using one of the following HST devices:

(I) Type II home sleep monitoring device;

(II) Type III home sleep monitoring device; or

(III) Type IV home sleep monitoring device that measures at least three channels.

(B) To confirm obstructive sleep apnea (OSA) in an individual with signs or symptoms consistent with OSA (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.).

(ii) Full-night, in-laboratory PSG for either of the following:

(A) Confirmation of obstructive sleep apnea (OSA) in an individual with signs or symptoms consistent with OSA (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.); or

(B) Titration of positive airway pressure therapy when initial PSG confirms the diagnosis of OSA, and positive airway pressure is ordered; or

(iii) Split-night, in-laboratory PSG in which the initial diagnostic portion of the PSG is followed by positive airway pressure titration when the PSG meets either of the following criteria:

(A) The apnea-hypopnea index (AHI) or respiratory disturbance index (RDI) is greater than or equal to fifteen events per hour; or

(B) The AHI or RDI is greater than or equal to five and less than or equal to fourteen events per hour with documentation of either of the following:

(I) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(II) Hypertension, ischemic heart disease, or history of stroke.

(c) The agency considers any of the following indications medically necessary for clients age twenty and younger:

(i) OSA suspected based on clinical assessment;

(ii) Obesity, Trisomy 21, craniofacial abnormalities, neuromuscular disorders, sickle cell disease, or mucopolysaccharidosis (MPS), prior to adenotonsillectomy in a child;

(iii) Residual symptoms of OSA following mild preoperative OSA;

(iv) Residual symptoms of OSA in a child with preoperative evidence of moderate to severe OSA, obesity, craniofacial anomalies that obstruct the upper airway, or neurologic disorder following adenotonsillectomy;

(v) Titration of positive airway pressure in a child with OSA;

(vi) Suspected congenital central alveolar hypoventilation syndrome or sleep related hypoventilation due to neuromuscular disorder or chest wall deformities;

(vii) Primary apnea of infancy;

(viii) Evidence of a sleep-related breathing disorder in an infant who has experienced an apparent life threatening event;

(ix) Child being considered for adenotonsillectomy to treat OSA; or

(x) Clinical suspicion of an accompanying sleep-related breathing disorder in a child with chronic asthma, cystic fibrosis, pulmonary hypertension, bronchopulmonary dysplasia, or chest wall abnormality.

(7) Noncoverage. The agency does not cover sleep studies:

(a) When documentation for a repeat study does not indicate medical necessity (e.g., no new clinical documentation indicating the need for a repeat study); or

(b) For the following indications, except when an underlying physiology exists (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.):

(i) Chronic insomnia; and

(ii) Snoring.

WSR 18-04-033
PROPOSED RULES
CRIMINAL JUSTICE TRAINING COMMISSION
[Filed January 30, 2018, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-094.

Title of Rule and Other Identifying Information: WAC 139-10-211 Backgrounding requirement for admission to basic corrections officers academy.

Hearing Location(s): On Wednesday, March 14, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission (WSCJTC), 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: March 14, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email speterson@cjtc.state.wa.us, by March 7, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email speterson@cjtc.state.wa.us, by March 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This criminal records check will ensure that applicants to the basic corrections academy have undergone a search of state and national criminal history records information.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 43.101.080.

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

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Lacey, Washington, 360-486-2431.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

January 30, 2018
Sonja Peterson
Rules Coordinator

NEW SECTION

WAC 139-10-211 Backgrounding requirement for admission to basic corrections officers academy. For the purposes of this chapter, it is the responsibility of each sponsoring or applying agency to conduct a complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies.

Each application for academy attendance must be accompanied by a written attestation by the applying agency that:

(1) The criminal records check has been completed; and

(2) There are no disqualifying convictions.

WSR 18-04-056
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed February 1, 2018, 11:05 a.m.]

Supplemental Notice to WSR 17-24-087.

Preproposal statement of inquiry was filed as WSR 16-19-045.

Title of Rule and Other Identifying Information: WAC 182-513-1505 Purpose, 182-513-1510 Definitions, 182-513-1515 Maximum fees and costs, 182-513-1520 Procedure to revise award letter after June 15, 1998, but before September 1, 2003, 182-513-1525 Procedure for allowing fees and costs from client participation after September 1, 2003, and 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participation or room or board on or after June 1, 2018.

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, 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 www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than March 14, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by March 13, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by March 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency previously held a hearing on the rules on January 9, 2018. The agency is filing this second CR-102 to clarify the purpose and effects of the proposed rules. The agency has considered all comments and testimony received from the prior hearing date. At this time, **the only change to the rules** from the previous public hearing **is the effective date,** which has changed from May 1, 2018, to **June 1, 2018.** The agency has not made any other revisions to the rule text to reflect changes that the agency may be considering.

The purpose of WAC 182-513-1505, 182-513-1510, 182-513-1515, 182-513-1520, and 182-513-1525 is to create a process that allows a medicaid client to keep more of their income that would otherwise have been paid towards the client's cost of care, in order to compensate and reimburse their guardian. The purpose of new WAC 182-513-1530 is to combine the former WAC sections and modify the existing process into one WAC section. The proposal clarifies that the decision about how much of a deduction should be made

from a medicaid client's participation or from the client's room and board is a decision that should be made by the agencies that administer medicaid. The proposed rules do not set a maximum amount that the court can award for guardianship fees, but as of June 1, 2018, limit the guardianship fees and costs deduction from a client's participation and room and board to the maximum amount set by the agencies in the proposal.

The effects of this proposal: (1) Repeal WAC sections that are no longer applicable; (2) increase the amount of income a medicaid client can keep in order to compensate and reimburse their guardian; (3) establish a cutoff date where previously approved court orders are subject to current WAC (i.e. court orders approved before the effective date of new WAC 182-513-1530 are grandfathered in under the current scheme); (4) make clear that the court determines just and reasonable fees and costs for the guardian and the agency determines the amount a medicaid client may retain of their own income; and (5) after June 1, 2018, the agency will no longer require advance notice of court proceedings regarding guardianship fees, because the rule will no longer allow for adjustment of clients' participation for guardianship fees based on determinations by the court that fees in "excess" above the regulatory maximum are "just and reasonable."

Changes that this proposal would include: (1) Increasing the amount a medicaid client can keep of their own income by increasing the limit of fees and costs for guardians' compensation and reimbursement; (2) allowing a deduction to a medicaid client's room and board liability, if needed, for guardianship fees and costs; (3) specifically limiting these rules solely to medicaid eligibility groups that are required to contribute towards their care or shelter; and (4) clearly stating the medicaid agency or the agency's designee determine the amount retained by the client for guardianship fees and costs, not the court.

Reasons Supporting Proposal: Repealed WAC 182-513-1505, 182-513-1510, and 182-513-1520 are no longer needed because the information they contain is either found elsewhere in the amended rules or in other WAC chapters, or the applicable dates have passed. Amendments to WAC 182-513-1515 and 182-513-1525: (1) Remove processes that are no longer required after new WAC 182-513-1530 is effective; and (2) make clear that court orders approved prior to the effective date of new WAC 182-513-1530 are still regulated under the current scheme with no substantial changes.

New WAC 183-513-1530 is proposed: (1) Because the regulatory scheme was last amended in 2003, and costs for guardianships have increased; (2) to be specific on what medicaid eligibility groups the rules applies to and whether "participation" or "room and board" deductions are allowed; (3) because it is inappropriate for the agency or the agency's designee to interfere with the courts and guardians in determining what is just and reasonable under RCW 11.92.180; and (4) because it is the medicaid agency that determines the amounts a medicaid client retains that would have otherwise been contributed towards their cost of care.

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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

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

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

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

February 1, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1515 Maximum guardianship fees and related costs before June 1, 2018. ((~~The superior court may allow guardianship fees and administrative costs in an amount set out in an order.~~)) (1) This section sets the maximum guardianship fees and related costs when:

(a) The court order was entered before June 1, 2018; and

(b) The client under guardianship was receiving medicaid-funded long-term care before June 1, 2018.

(2) For court orders entered ((~~after June 15, 1998~~)) before June 1, 2018, where the order establishes or continues a legal guardianship for a ((~~department client, and requires a future review or accounting; then unless otherwise modified by the process described in WAC 388-79-040:~~

~~(1) The amount of~~)) client:

(a) Guardianship fees ((~~shall~~)) must not exceed ((~~one hundred seventy-five dollars~~)) $175 per month;

((~~(2) The amount of administrative~~)) (b) Costs directly related to establishing a guardianship for a ((~~department~~)) client ((~~shall~~)) must not exceed ((~~seven hundred dollars~~)) $700; and

((~~(3) The amount of administrative costs shall~~)) (c) Costs to maintain the guardianship must not exceed ((~~a total of six hundred dollars~~)) $600 during any three-year period.

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1525 Procedure for allowing guardianship fees and related costs from client participation ((~~after September 1, 2003~~)) before June 1, 2018. (1) ((~~After September 1, 2003, where a client is subject to a guardianship the department shall be entitled to notice of proceedings as described in RCW 11.92.150.~~

~~(2) The notice must be served to the department's regional administrator of the program that is providing ser-~~

~~vices to the client. A list of the regional administrators will be furnished upon request.~~

~~(3) If the fees and costs requested and established by the order are equal to or less than the maximum amounts allowed under WAC 388-79-030, then the department will~~)) This section describes the procedure for allowing guardianship fees and related costs from client participation when:

(a) A court order was entered before June 1, 2018; and

(b) The client under guardianship was receiving medicaid-funded long-term care before June 1, 2018.

(2) The medicaid agency or the agency's designee, after receiving the court order, adjusts the client's current participation to reflect the amounts, as allowed ((~~upon receipt by the department of the court order setting the monthly amounts.~~

~~(4) Should fees and costs in excess of the amounts allowed in WAC 388-79-030 be requested:~~

~~(a) At least ten days before filing the request with the court, the guardian must present the request in writing to the appropriate regional administrator to allow the department an opportunity to consider whether the request should be granted on an exceptional basis.~~

~~(b) In considering a request for extraordinary fees or costs, the department must consider the following factors:~~

~~(i) The department's obligation under federal and state law to ensure that federal medicaid funding is not jeopardized by noncompliance with federal regulations limiting deductions from the client's participation amount;~~

~~(ii) The usual and customary guardianship services for which the maximum fees and costs under WAC 388-79-030 must be deemed adequate for a medicaid client, including but not limited to:~~

~~(A) Acting as a representative payee;~~

~~(B) Managing the client's financial affairs;~~

~~(C) Preserving and/or disposing of property;~~

~~(D) Making health care decisions;~~

~~(E) Visiting and/or maintaining contact with the client;~~

~~(F) Accessing public assistance programs on behalf of the client;~~

~~(G) Communicating with the client's service providers; and~~

~~(H) Preparing any reports or accountings required by the court.~~

~~(iii) Extraordinary services provided by the guardian, such as:~~

~~(A) Unusually complicated property transactions;~~

~~(B) Substantial interactions with adult protective services or criminal justice agencies;~~

~~(C) Extensive medical services setup needs and/or emergency hospitalizations; and~~

~~(D) Litigation other than litigating an award of guardianship fees or costs.~~

~~(c) Should the court determine after consideration of the facts and law that fees and costs in excess of the amounts allowed in WAC 388-79-030 are just and reasonable and should be allowed, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.~~

~~(5) In no event may a client's~~)) under WAC 182-513-1380, 183-515-1509, or 183-515-1514.

(3) A client's participation cannot be prospectively or retrospectively reduced to pay guardianship fees and related costs incurred:

(a) Before ((~~the effective date of~~)) the client's long-term care medicaid eligibility effective date; ((~~or~~))

(b) During any ((~~subsequent~~)) time ((~~period~~)) when the client was not eligible for((~~,~~)) or did not receive long-term care services; or

(c) After the client has died. ((~~There is no client participation towards DDD certified and contracted supported living services under chapter 388-820 WAC, so the department has no responsibility to reimburse the client for guardianship fees when those fees result in the client having insufficient income to pay their living expenses.~~

~~(6) If~~))

(4) The fees and costs allowed by the court at the final accounting must not exceed the amounts advanced and paid to the guardian from the client's participation if:

(a) The court, at a prior accounting, ((~~has~~)) allowed the guardian to receive guardianship fees and related costs from the client's ((~~monthly income~~)) participation in advance of services rendered by the guardian((~~,~~)); and

(b) The client dies before the next accounting((~~, the fees and costs allowed by the court at the final accounting may be less than, but may not exceed, the amounts advanced and paid to the guardian from the client's income.~~

~~(7) Guardians must furnish the regional administrator with complete packets to include all documents filed with the court and with formal notice clearly identifying the amount requested~~)).

NEW SECTION

WAC 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participation or room and board on or after June 1, 2018. (1) General information.

(a) This section sets the maximum guardianship fee and related cost deductions when:

(i) A court order was entered on or after June 1, 2018; or

(ii) The client under guardianship began receiving medicaid-funded long-term services and supports on or after June 1, 2018.

(b) This section only applies to a client who is:

(i) Eligible for and receives institutional services under chapter 182-513 WAC or home and community-based waiver services under chapter 182-515 WAC, and who is required to pay participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Eligible for long-term services and supports under chapter 182-513 or 182-515 WAC, and who is required to pay only room and board.

(c) All requirements of this section remain in full force whether or not the agency appears at a guardianship proceeding.

(d) In this section, the agency does not delegate any authority in determining eligibility or post-eligibility for medicaid clients.

(i) Under the authority granted by RCW 11.92.180, the agency does not deduct more than the amounts allowed by this section from participation or room and board.

(ii) The eligibility rules under Title 182 WAC remain in full force and effect.

(e) The agency does not reduce a client's participation or room and board under this section for guardianship fees or related costs accumulated during any month that a client was not required to pay:

(i) Participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Room and board under chapter 182-513 or 182-515 WAC.

(f) If the client has another fiduciary, payee, or other principal-agency relationship and the agent is allowed compensation, any monthly guardianship fee approved under this section is reduced by the agent's compensation.

(2) Maximum guardianship fee and related cost deductions.

(a) The maximum guardianship fee and related cost deductions under this section include all guardianship services provided to the client, regardless of the number of guardians appointed to a client during a period of time, or whether the client has multiple guardians appointed at the same time.

(b) Maximum guardianship fees and related cost deductions are as follows:

(i) The total deduction for costs directly related to establishing a guardianship for a client cannot exceed $1,400;

(ii) The total deduction for guardianship-related costs cannot exceed $1,200 during any three-year period; and

(iii) The amount of the monthly deduction for guardianship fees cannot exceed $225 per month.

(3) For people under subsection (1)(b)(i) of this section - Participation deductions.

(a) After receiving the court order, the agency or its designee adjusts the client's current participation to reflect the deductions under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(b) The amounts of the participation deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

(c) For clients who pay room and board in addition to participation, if the client's amount of participation is insufficient to allow for the amounts under subsection (2) of this section, then, regardless of any provision of chapter 182-513 or 182-515 WAC, the client's room and board will be adjusted to allow the amounts under subsection (2) of this section.

(4) For people under subsection (1)(b)(ii) of this section - Room and board deductions.

(a) The agency adjusts the client's room and board after receiving the court order, regardless of any provision of chapter 182-513 or 182-515 WAC.

(b) The amounts of the room and board deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-513-1505	Purpose.
WAC 182-513-1510	Definitions.
WAC 182-513-1520	Procedure to revise award letter after June 15, 1998, but before September 1, 2003.

WSR 18-04-060
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed February 1, 2018, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-035.

Title of Rule and Other Identifying Information: Chapter 182-04 WAC, Public records.

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, 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 www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than March 14, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by March 13, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by March 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments is to streamline chapter 182-04 WAC and to revise the chapter to conform with EHB 1595 (65th legislature, 2017, regular session). The proposed rules:

- Clarify the ways the public may make requests and how the agency sends the requested records.
- Provide that the agency must identify how specific exemptions cited apply to denials of public records.
- Allow the requestor to give factors for waiving or reducing copy costs.
- Require that an agency employee is present during records inspections.
- Specify denial notices include information about the requestor's right to a review.
- Remove current costs for copying public records and state the agency charges for copies under the default fees in RCW 42.56.120.
- Require the agency to provide a requestor with copies of records at no charge when access is restricted.

- Specify the agency provide an estimate of costs and allow the requestor to limit the number of copies.
- Clarify the agency may deny part or all of a record and upon review, may affirm part or all of the denial.

As part of its streamlining, the agency repealed several sections because the content of those rules is now addressed in other sections of the proposed rules.

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, chapter 42.56 RCW.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Catherine Taliaferro, P.O. Box 42704, Olympia, WA 98504-2704, 360-725-1730.

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

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

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

February 1, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-010 Purpose. ((~~The purpose of~~)) This chapter ((~~shall be to insure compliance by~~)) provides rules for the Washington state health care authority ((~~(HCA) with~~)) (agency) to comply with the provisions of chapter 42.56 RCW ((~~dealing with~~)) for access to public records.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-015 Definitions. The following definitions ((~~shall~~)) apply to this chapter:

(1) ((~~"HCA"~~)) "Agency" means the Washington state health care authority((~~, created pursuant to chapter 41.05 RCW~~)).

(2) "Public record" ((~~is defined in~~)) - See RCW 42.56.010. ((~~Except as otherwise provided by law, public records include any written or recorded communication containing information relating to the conduct of the HCA or the performance of any governmental or proprietary function prepared, owned, used, or retained by the HCA.~~))

(3) "Writing" ((~~is defined in~~)) - See RCW 42.56.010. ((~~It includes handwriting, typewriting, printing, photostatting, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.~~))

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-020 ((~~Whom should I contact about a~~)) Public records ((~~request?~~)) officer. The ((~~HCA~~)) agency's public records officer ((~~is in charge of responding to all records requests made to the HCA. The public records officer is responsible for overseeing~~)) oversees:

(1) Responses to all requests for agency public records;

(2) The release of public records ((~~and coordinating HCA public disclosure~~)); and

(3) The coordination of agency public records staff.

NEW SECTION

WAC 182-04-023 Public records—How to submit. (1) Public records requests should be made in writing. The agency accepts public records requests:

(a) Made orally by telephone or in person; or

(b) Sent by email, fax, mail, hand delivery, or commercial delivery.

(2) A public records request form is available on the agency web site or by contacting the agency's public records officer.

(3) If the agency's form is not used, the public records request should include:

(a) The requestor's name and contact information;

(b) The date of the request;

(c) A detailed description of an identifiable record, as described in RCW 42.56.080(1);

(d) The requestor's preferred format and delivery method for the requested records; and

(e) Any factors the requestor would like the agency to consider when deciding whether not to charge for or reduce the costs to copy and deliver the records.

(4) The agency may ask a person requesting a public record for personal identification when a law allows a record to be disclosed only to a specific person.

(5) The public records officer or designee assists requestors with identifying the public records requested, if necessary.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-025 ((~~How will the HCA respond~~)) Response to ((~~my~~)) public records ((~~request?~~)) requests. (1) Except as provided by law, ((~~all~~)) the agency makes public records ((~~of the HCA as defined in WAC 182-04-015(2) will be made~~)) available ((~~upon~~)) following a public records request for inspection ((~~and~~)), or copying, or both.

(2) The agency provides a written response within five business days ((after)) of receiving a request for public records.

(a) A business day is 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Saturday, Sunday, and recognized holidays described in WAC 357-31-005.

(b) The agency treats a request received on a Saturday, Sunday, recognized holiday, or after 5:00 p.m. on any other day as received on the next business day.

(3) When responding to the requestor, the ((HCA)) agency's public ((disclosure)) records officer, or designee ((will)):

(a) Provides the ((record(s))) requested records;

(b) Acknowledges ((your)) the request and gives ((you)) a reasonable estimate of ((how long)) the ((HCA will need)) time needed to provide the records. If the request is not ((clear)) for an identifiable record, the public ((disclosure)) records officer ((may)) or designee asks ((you)) for more information. (See WAC 182-04-027.)((.)) If ((you fail to clarify)) the requestor does not respond to the agency's request for clarification, the public ((disclosure)) records officer or designee need not respond to ((it)) the public records request and may consider the request closed; or

(c) ((Deny)) Denies all or part of the public records request in writing ((with the reason(s) for the denial (see WAC 182-04-050 and 182-04-053).

(3) At his or her discretion,)) as required by RCW 42.56.070(1), to include:

(i) The specific exemption authorizing the agency to withhold part or all of the record;

(ii) A brief explanation of how the exemption applies to the records or parts of the records withheld; and

(iii) The right to request agency review of the denial and information about how to make that request.

(4) At the public records ((officer)) officer's discretion, the agency may send the requested records ((to you)) by email, fax, or regular mail. The ((records may be delivered on computer or compact disks, or by use of other methods of transmittal or storage)) agency sends the requested records as hard copies or in an electronic format. The agency works with the requestor to send records in a method and format requested by the requestor that is used by the agency.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-027 ((Why might the HCA need to extend the)) Additional time to respond to a public records request((?)). The ((HCA)) agency may ((need to)) extend the time to respond to a public records request when necessary to:

(1) ((Locate)) Identify and gather the ((information)) records requested;

(2) Notify ((an individual)) a person or organization affected by the request;

(3) Perform a comprehensive review to determine whether all or portions of the ((information requested is)) responsive records are exempt from disclosure ((and whether all or part of the public record requested can be released)); or

(4) Contact ((you)) the requestor to clarify ((the intent, scope or specifics)) part or all of the request. ((If you fail to clarify the request, the HCA may not have to respond to your request.))

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-029 ((What records can I request and/or copy?)) Inspection of public records. ((You may inspect or get copies of)) (1) All of the agency's public records are available for inspection and copying unless they are ((exempted)) exempt from disclosure by chapter 42.56, ((19.183 or)) 70.02 RCW, or other applicable law.

(2) People may inspect public records with an agency employee present at the agency's offices between 9:00 a.m. and 12:00 p.m. and between 1:00 p.m. and 4:00 p.m. during business days as defined in WAC 182-04-025 (2)(a). Records are not available for inspection if the agency is closed during a business day for reasons such as inclement weather or emergencies.

(3) During inspection, public records must:

(a) Not be removed from the agency's offices.

(b) Not be marked, torn, or otherwise damaged.

(c) Be kept as they are filed or in a chronological manner.

(d) Not be taken apart except for copying by an agency employee.

(4) The agency restricts access to file cabinets and other places where public records are kept.

(5) The agency reserves the right to restrict access to public records if the agency determines it is necessary to preserve the integrity of the public records or prevent interference with the agency's essential business functions. This does not limit the agency's duty to provide public records to the requestor. If the agency restricts access to requested public records, the agency promptly provides the requestor with:

(a) Written notice of the restriction, including the reason for restricting access; and

(b) Copies of the restricted records at no charge.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-041 Preserving requested records. If ((a public record request is made at a time when such)) the agency receives a public records request when the record exists but is scheduled for destruction in the near future, the public ((disclosure)) records officer ((will)) or designee retains ((possession of)) the record((,)) and ((will)) does not destroy or erase the record until the request is resolved.

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-045 Copying costs. (1) ((No fee is charged for the inspection of)) The agency does not charge a fee to inspect public records.

(2) ((The HCA collects the following fees to reimburse the HCA for its actual costs incident to providing copies of public records:

~~(a) Fifteen cents per page for black and white photocopies; and~~

~~(b) The cost of postage, if any.~~

~~(3) Copies of some records may be provided electronically or on disk to the requestor at no charge.~~

~~(4) The public disclosure officer is authorized to waive the foregoing costs.~~)) Under RCW 42.56.120 (2)(b), the agency does not calculate all actual costs to copy records as it would be unduly burdensome because:

(i) The agency does not have the resources to conduct a study to determine all its actual copying costs;

(ii) To conduct such a study would interfere with other essential agency functions; and

(iii) Through the 2017 legislative process, the public and requestors commented on and were informed of authorized fees and costs, including those for electronic records, described in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The agency charges for copies of records under the default fees in RCW 42.56.120 (2)(b) and (c).

(4) The agency charges for customized services under RCW 42.56.120(3).

(5) Under RCW 42.56.130, the agency may charge other copy fees authorized by statutes outside of chapter 42.56 RCW.

(6) The agency may enter into a contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee agreement for copying charges under RCW 42.56.120(4).

(7) Before copying any records, the agency provides the requestor with the estimated copying charge. The requestor may revise the request to limit the number of records copied and the applicable copying charges.

(8) The agency may waive the costs to copy or deliver requested records, including any charges for customized services under RCW 42.56.120(4).

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

AMENDATORY SECTION (Amending WSR 10-18-051, filed 8/27/10, effective 9/27/10)

WAC 182-04-055 ((~~Will the HCA~~)) Agency review ((~~the denial of my~~)) of a denied request((~~?~~)). (1) If the ((~~HCA~~)) agency denies ((~~your~~)) all or part of a public records request, ((~~you may ask the HCA to~~)) the requestor may ask, in writing, that the agency review the denial((~~. To request a review, you must make your request in writing~~)).

((~~Following receipt of a written~~)) (2) After receiving a written request ((~~for~~)) to review ((~~of~~)) a decision denying all or part of a public records request, the ((~~disclosure officer will~~)) agency considers the matter and either affirms or reverses the denial, or affirms part of the denial and reverses the remaining part of it. This ((~~shall constitute~~)) decision is the agency's final ((~~HCA~~)) action for the purposes of judicial review((~~, pursuant to~~)) under RCW 42.56.520.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-04-035	When can I inspect or obtain copies of documents?
WAC 182-04-040	How do I make a public record request?
WAC 182-04-050	What happens if the record I requested is exempt from disclosure?
WAC 182-04-060	Protection of public records.
WAC 182-04-070	Request for inspection of records.

WSR 18-04-065
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed February 1, 2018, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-021.

Title of Rule and Other Identifying Information: WAC 182-503-0515 Washington apple health—Social Security number requirements.

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, 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 www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than March 14, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by March 13, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by March 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This section is being revised to:

(1) Clarify when a valid Social Security number (SSN) or proof of application for an SSN is not required to be provided to be eligible for apple health or tailored supports for older adults.

(2) Clarify requirements for exceptions to not providing an SNN [SSN].

(3) Clarify the requirement for confirming with the agency that the exception to providing an SSN still applies.

(4) Clarify what must be provided if an SSN is not known or has not been issued.

(5) Clarify that if a household member is required to provide an SSN and fails to do so, it may result in denial or termination.

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: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Rebecca Janeczko, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0752.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making applies to client eligibility and does not affect small businesses.

February 1, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-503-0515 Washington apple health—Social Security number requirements. (1) To be eligible for Washington apple health ((~~(WAH)~~)) (medicaid), or tailored supports for older adults (TSOA) described in WAC 182-513-1610, you (the applicant or recipient) must provide your valid Social Security number (SSN) or proof of application for an SSN to the medicaid agency or the agency's designee, except as provided in subsections ((~~(5)~~)) (2) and (6) of this section.

(2) ((~~If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:~~

~~(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and~~

~~(b) The SSN when you receive it.~~

~~(3) Your WAH coverage will not be delayed, denied or terminated while waiting for SSA to send you your SSN.~~

~~(4) If you do not provide your SSN, then you will not receive WAH coverage except if you:~~

~~(a) Refused to apply for or provide your SSN for religious reasons;~~

~~(b) Claim good cause for not providing your SSN because of domestic violence;~~

~~(c) Have a newborn as described in WAC 182-505-0210(1). A newborn is eligible for WAH coverage until the baby's first birthday.~~

~~(5) There is no SSN requirement for the following:~~

~~(a) WAH refugee medical;~~

~~(b) WAH alien emergency medical;~~

~~(c) WAH programs for children and pregnant women who do not meet citizenship criteria described in WAC 182-503-0535;~~

~~(d) A household member who is not applying for WAH coverage.~~

~~(6) If you are a "qualified" or "nonqualified" alien as defined in WAC 182-503-0530 who is not authorized to work in the U.S., you do not have to apply for a nonwork SSN.~~)) An SSN is not required if you are:

(a) Not eligible to receive an SSN or may only be issued an SSN for a valid nonwork reason described in 20 C.F.R. 422.104;

(b) A household member who is not applying for apple health coverage, unless verification of that household member's resources is required to determine the eligibility of the client;

(c) Refusing to obtain an SSN for well-established religious objections as defined in 42 C.F.R. 435.910 (h)(3); or

(d) Not able to obtain or provide an SSN because you are a victim of domestic violence.

(3) If you are receiving coverage because you meet an exception under either subsection (2)(c) or (d) of this section, we (the agency) will confirm with you at your apple health renewal, consistent with WAC 182-503-0050, that you still meet the exception.

(4) If we ask for confirmation that you continue to meet an exception in subsection (2) of this section and you do not respond in accordance with subsection (3) of this section, or if you no longer meet an exception and do not provide your SSN, we will terminate your apple health coverage according to WAC 182-518-0025.

(5) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(i) Your apple health coverage will not be delayed, denied, or terminated while waiting for SSA to send you your SSN. If you need help applying for an SSN, assistance will be provided to you.

(ii) We will ask you every ninety days if your SSN has been issued.

(6) An SSN is not required for the following apple health programs:

(a) Refugee medical assistance program described in WAC 182-507-0130;

(b) Alien medical programs described in WAC 182-507-0115, 182-507-0120, and 182-507-0125;

(c) Newborn medical program described in WAC 182-505-0210 (2)(a);

(d) Foster care program for a child age eighteen and younger as described in WAC 182-505-0211(1); or

(e) Medical programs for children and pregnant women who do not meet citizenship or immigration status described in WAC 182-503-0535 (2)(e)(ii) and (iii).

(7) If you are a household member required under subsection (2)(b) of this section to provide an SSN (such as a spouse, community spouse, parent, or sponsor), and you do not meet any other exception under subsection (2) of this sec-

tion, failure to provide your SSN may result in denial or termination because we cannot verify your household's resource eligibility.

WSR 18-04-067
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed February 1, 2018, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-10-057.

Title of Rule and Other Identifying Information: WAC 182-502A-0201 Program integrity—Definitions, 182-502A-0301 Program integrity—Authority to conduct program integrity activities, 182-502A-0401 Program integrity activities, 182-502A-0601 Program integrity—Extrapolation, 182-502A-0701 Program integrity activity—Agency outcomes, 182-502A-0801 Program integrity—Dispute resolution process, and 182-502A-0901 Program integrity activity—Adjudicative proceedings; and new WAC 182-502A-1001 Program integrity activity—Metrics.

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than March 14, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by March 13, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by March 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending sections of chapter 182-502A WAC, Program integrity, to add and update definitions, references, and processes. The agency is adding new WAC 182-502A-1001 Program integrity activity—Metrics, to explain the process of annual reporting of program integrity metrics.

Reasons Supporting Proposal: Changes were made to comply with new legislative requirements under RCW 74.09.195 and SHB 1314, for clarification, and for housekeeping purposes. New WAC 182-502A-1001 Program integrity activity—Metrics, is being added to comply with RCW 74.09.195 (2)(b) and SHB 1314, section 1, chapter 242, Laws of 2017.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 74.09.195; SHB 1314, chapter 242, Laws of 2017, 65th legislature, 2017 regular session.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 74.09.195; SHB 1314, chapter 242, Laws of 2017, 65th legislature, 2017 regular session.

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: Lisa DeLaVergne, P.O. Box 45503, Olympia, WA 98504-5503, 360-725-1705.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The majority of the changes are being made to comply with HB [SHB] 1314, chapter 242, Laws of 2017, and RCW 74.09.195. The other changes are being made for clarity or housekeeping purposes and do not impose more-than-minor costs on businesses.

February 1, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0201 Program integrity—Definitions. The definitions in this section and those found in chapter 182-500 WAC apply throughout this chapter.

Adverse determination means a finding of an overpayment identified in a program integrity activity.

Agency means the Washington state health care authority and includes the agency's designees.

Algorithm means the set of rules applied to claim or encounter data to identify overpayments.

Audit means an examination of claims data, an entity's records, or both, to determine whether the entity has complied with applicable laws, rules, regulations, and agreements.

Audit, on-site means an audit conducted partially at an entity's place of business.

Audit, self means an audit conducted by the entity and reviewed by the agency.

Contractor ((~~includes regional support networks (RSNs) as defined in WAC 182-500-0095,~~)) is any person contracted by the agency to oversee how health benefits are provided or to administer health benefits to clients on the agency's behalf. A contractor includes, but is not limited to:

• A behavioral health organization (BHO) as defined in WAC 182-500-0015;

• A behavioral health administrative service organization (BH-ASO) as defined in WAC 182-538C-050;

• A managed care organization((~~s~~)) (MCO((~~s~~))) as defined in WAC 182-538-050((~~, and any other organization that oversees how health benefits are provided to clients on the agency's behalf~~)); or

• An accountable community of health.

Credible allegation of fraud means the agency has investigated an allegation of fraud and concluded that the existence of fraud is more probable than not.

Data mining means using software to detect patterns or aberrancies in a data set.

Designee means a person the agency has designated to perform program integrity activities on its behalf.

Educational intervention means agency-provided education to an entity prior to or following an agency-initiated program integrity activity that has identified an adverse determination. Educational intervention includes, but is not limited to, any notice of adverse determinations issued by the agency or any agency training that has failed to correct the level of payment error.

Encounter includes any service provided by a federally qualified health center, rural health clinic, or tribe, which is paid an enhanced rate; and any service provided to a Washington apple health client who is covered by an MCO or other contractor, and reported to the agency.

Entity includes current and former contractors, providers, and their subcontractors.

Extrapolation means a method of estimating an unknown value by projecting the results of a sample to the universe from which the sample was drawn.

Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to oneself or some other person. This includes any act that constitutes fraud under applicable federal or state law. See 42 C.F.R. 455.2.

Improper payment means any payment by the agency that was more than or less than the sum to which the payee was legally entitled.

Metrics mean the quantifiable measures used to track and assess the status of program integrity activities and entity performance. Metrics include, but are not limited to:

- Adverse determinations;
- Identified improper payments;
- Cost avoidance;
- Payments; and
- Recoveries.

Net payment error rate means the calculated percentage of the improper payment amount identified in the sample of claims for the audit period divided by the total payment amount sampled claims for the audit period.

Overpayment see RCW 41.05A.010, including any subsequent amendments.

Payee includes providers who are reimbursed by agency-contracted managed care organizations.

Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, public corporation, or any other legal or commercial entity.

Program integrity activities means those activities conducted by the ((~~agency's office of program integrity or its~~)) agency or the agency's designees to determine compliance with ((~~any~~)) applicable laws, rules, ((~~or~~)) regulations, and agreements.

Program integrity compliance plan means a document issued by the agency outlining the importance of ethical behavior on the part of the agency's contracted entities, as well as identified monitoring, auditing, and educational obligations an entity must comply with to remain an agency-contracted entity.

Record means any document or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the entity into a reasonably usable form.

Risk assessment means to identify potential risk of fraud, waste and abuse, and improper payments within all Washington apple health programs.

Sustained high level of payment error means the net payment error rate is equal to or exceeds five percent for the audit period.

Universe means a defined population of claims or encounters or both.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0301 Program integrity—Authority to conduct program integrity activities. The medicaid agency may conduct program integrity activities and designate agents to do so on its behalf, on all Title XIX, Title XXI, and state-only-funded expenditures. See 42 C.F.R. 431, 433, 438, 447, 455, ((~~and~~)) 456, 457, 495, and 1001; 45 C.F.R. 92; 42 U.S.C. 1396a; and chapters 41.05, 41.05A, and 74.09 RCW.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0401 Program integrity activities. (1) **Form.** Program integrity activities include:

(a) Conducting audits;

(b) Conducting reviews;

(c) Conducting investigations;

(d) Initiating and reviewing entity self-audits under WAC 182-502A-0501;

(e) Applying algorithms to claim or encounter data;

(f) Conducting ((~~unannounced~~)) on-site inspections of entity locations (see subsection (4) of this section); and

(g) Verifying entity compliance with applicable laws, rules, regulations, and agreements.

(2) **Location.** Program integrity activities may occur:

(a) On the premises of the medicaid agency;

(b) On the premises of the entity.

(3) **Timing.** The agency may commence program integrity activities concerning any current or former agency-contracted entity or agent thereof at any time up to six years after the date of service.

(4) **Notice.**

(a) The agency provides a thirty-calendar-days' notice to entities prior to an on-site visit, except in those instances identified in (c) of this subsection.

(b) Hospitals are entitled to notice as described in RCW 70.41.045(4).

(c) The agency is not required to give notice of an on-site visit if evidence exists of danger to public health and safety or fraudulent activities.

(5) **Scope.** The agency determines the scope of a program integrity activity.

(6) **Selecting information to evaluate.**

(a) The agency may evaluate any information relevant to validating that the payee received only those funds to which it is legally entitled. In this chapter, "relevant" has a meaning identical to Federal Rule of Evidence 401.

(b) The agency may select information to evaluate by:

(i) Conducting a risk assessment of claim or encounter data;

(ii) Applying algorithms;

(((ii))) (iii) Data mining;

(((iii))) (iv) Claim-by-claim review;

(((iv))) (v) Encounter-by-encounter review;

(((v))) (vi) Stratified random sampling;

(((vi))) (vii) Nonstratified random sampling; or

(((vii))) (viii) Applying any other method, or combination of methods, designed to identify relevant information.

(((6))) (7) **Collecting records to evaluate.** The entity must submit a copy of all records requested by the agency.

(a) The entity must submit requested records to the agency within the time frame stated in the request.

(b) If an entity fails to timely comply with the request, the agency may:

(i) Deny the entity's claim under a prepay review process;

(ii) Issue a draft audit report or preliminary review notice; or

(iii) Issue a final audit report or notice of improper payment.

(c) An entity that fails to timely comply with a request under (a) of this subsection has no right to contest at an administrative hearing an agency action taken under (b)(i) of this subsection.

(d) The entity must submit records electronically, or by facsimile, unless the agency has given the entity written permission to submit the records in hard copy.

(e) Once a program integrity activity has commenced, the entity must retain all original records and supportive materials until the program integrity activity is completed and all issues resolved, even if the retention period ((of retention)) for those records and materials extends beyond ((the required six-year period)) the period otherwise required by law.

(((7))) (8) **Evaluating information.**

(a) The agency may evaluate relevant information by applying any method or combination of methods reasonably calculated to determine whether an entity has complied with an applicable law, regulation, or agreement.

(b) ((Upon request,)) A health care provider's bill for services, appointment books, accounting records, or other similar documents alone do not qualify as appropriate documentation of services rendered.

(c) The agency provides the entity ((is entitled to)) a description of the method or combination of methods used by the agency under subsection (((5))) (6) of this section.

(((8))) (9) **Nonbilled services.** Nonbilled services include any item, drug, code, or payment group that a provider does not submit on the provider's claim to the agency or contractor. When calculating improper payments, the agency does not include nonbilled services in its calculations.

(((9))) (10) **Paid-at-zero services.** The agency considers paid-at-zero services or supplies only when conducting program integrity activities involving payment groups or encounters.

(11) **Conducting on-site audits.** The agency may conduct on-site audits at any entity location.

(a) During an on-site audit, the agency may create a copy of an entity's records that are potentially relevant to the audit.

(b) Failure to grant the agency access to the premises constitutes failure to comply with a program integrity activity.

(((10))) (12) **Conducting interviews.** The agency may interview any person it reasonably believes has relevant information under subsection (((5))) (6) of this section. Interviews may consist of one or more sessions.

(((11))) (13) **Costs.** The agency does not reimburse the costs an entity incurs complying with program integrity activities.

(((12))) (14) **Conducting site visits.** The agency may conduct ((unannounced)) on-site inspections of any entity location to determine whether the entity is complying with all applicable laws, rules, regulations, and agreements. See subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0601 Program integrity—Extrapolation. (1) To determine an improper payment from a ((probability)) sample, the medicaid agency may extrapolate to the universe from which the ((probability)) sample was drawn:

(a) If the audit identifies a sustained high level of payment error involving the provider; or

(b) When the agency has documented educational intervention to the provider and the education has failed to correct the provider's level of payment error.

(2) If during the course of the audit, an entity adjusts or rebills a claim or encounter that is part of the audit sample or universe, the original claim or encounter amount remains in the audit sample or universe.

(3) When the agency uses the results of an audit sample to extrapolate the amount to be recovered, the ((entity is entitled to)) agency provides the entity with the following information ((upon request)):

(a) The sample size.

(b) The method used to select the sample.

(c) The universe from which the sample was drawn.

(d) Any formulas or calculations used to determine the amount of the improper payment.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0701 Program integrity activity—Agency outcomes. (1) Following the medicaid agency's evaluation of an entity's records, claims, encounter data, or

payments, the agency may do any combination of the following:

(a) Deny a claim.

(b) Adjust or recover an improperly paid claim.

(c) Instruct the entity to submit:

(i) Additional documentation.

(ii) A claim adjustment or a new claim. The entity must submit a claim adjustment or a new claim within sixty calendar days from the date of the agency's instruction or the agency will deny the claim adjustment or new claim ((~~will be denied~~)). An entity has no right to an adjudicative hearing for denial under this subsection.

(d) Request a refund of an improper payment to the agency by check.

(e) Refer an overpayment to the office of financial recovery for collection.

(f) Issue a draft audit report or preliminary review notice that lists preliminary findings and alleged improper payments, which the entity may dispute under WAC 182-502A-0801.

(i) If an entity agrees with the preliminary findings and alleged improper payments before the deadline noted in the report or notice, the entity must notify the agency in writing. The agency ((~~will~~)) then issues a final audit report or notice of improper payment.

(ii) If an entity does not respond by the deadline noted in the report or notice, the agency ((~~will~~)) issues a final audit report or notice of improper payment, unless the agency extends the deadline.

(g) Issue a final audit report, overpayment notice, or notice of improper payment, which the entity may appeal under WAC 182-502A-0901.

(i) The final audit report, overpayment notice, or notice of improper payment includes:

(A) The asserted improper payment amount;

(B) The reason for an adverse determination;

(C) The specific criteria and citation of legal authority used to make the adverse determination;

(D) An explanation of the entity's appeal rights;

(E) The appropriate procedure to submit a claims adjustment, if applicable; and

(F) One or more of the following:

(I) Directives;

(II) Educational intervention; or

(III) A program integrity compliance plan.

(ii) Upon request, the agency will allow an entity with an adverse determination the option of repaying the amount owed according to a negotiated repayment plan of up to twelve months. Interest may be calculated and charged on the remaining balance each month.

(h) Recover interest under RCW 41.05A.220.

(i) Impose civil penalties under RCW 74.09.210.

(j) Refer the entity to appropriate licensing authorities for disciplinary action.

(k) Refer the entity to the medical dental advisory committee for termination of the contract or core provider agreement.

(l) Determine it has sufficient evidence to make a credible allegation of fraud. The agency will then:

(i) Refer the case to the medicaid fraud control unit and any other appropriate prosecuting authority for further action; and

(ii) Suspend some or all Washington apple health payments to the entity unless the agency determines there is good cause not to suspend payments under 42 C.F.R. 455.23.

(2) The agency may assess an overpayment and terminate the core provider agreement if an entity fails to retain adequate documentation for services billed to the agency.

(3) At any time during a program integrity activity, the agency may issue a final audit report or a notice of improper payment if the entity:

(a) Stops doing business with the agency;

(b) Transfers control of the business;

(c) Makes a suspicious asset transfer;

(d) Files for bankruptcy; or

(e) Fails to comply with program integrity activities.

((~~(3)~~)) (4) The entity must repay any overpayment identified by the agency within sixty calendar days of being notified of the overpayment, except when a repayment plan is negotiated with the agency under subsection (1)(g)(ii) of this section.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0801 Program integrity—Dispute resolution process. (1) An entity may ((~~object to~~)) dispute a draft audit report or preliminary review notice. The agency must receive any dispute within thirty calendar days of the date the entity received the draft audit report or preliminary review notice. The ((~~objection~~)) dispute must be in writing and include the following:

(a) ((~~Be in writing;~~

~~(b) State each objection and identify why the entity thinks the finding is incorrect;~~

~~(c) Present supporting evidence;~~

~~(d) State the relief sought; and~~

~~(e) Be received by the agency within thirty calendar days of the date the entity received the draft audit report or preliminary review notice~~)) The supporting evidence for each disputed adverse determination; and

(b) The relief sought for each disputed adverse determination.

(2) The ((~~objection~~)) dispute may include a request for a dispute resolution conference (DRC).

(a) If the agency grants the entity's request for a DRC, the DRC must occur within sixty calendar days of the date the entity received the agency's written acceptance of the request for a DRC.

(b) At least five business days before the DRC, the entity must notify the agency of who will attend the DRC on the entity's behalf.

(3) Following the timely submission of a written ((~~objection~~)) dispute under subsection (1) of this section and completion of any DRC, the agency will address in writing each written ((~~objection~~)) dispute raised by the entity.

(4) The agency may terminate the dispute resolution process and issue a final audit report or notice of improper payment if the entity fails to submit a timely ((~~object~~)) dispute or

comply with the requirements under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0901 Program integrity activity—Adjudicative proceedings. (1) If an entity objects to any report or notice assessing an overpayment, the entity may request an adjudicative proceeding by following the procedure set out in RCW 41.05A.170.

(2) At the adjudicative proceeding, the entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

(3) The adjudicative proceeding is governed by chapter 34.05 RCW and chapter 182-526 WAC.

(4) The agency will not recoup overpayments until a decision in the adjudicative proceeding is issued and all appeals, if any, have been exhausted.

(5) Interest on overpayments continues to accrue, but it is not collected until a decision in the adjudicative proceeding is issued and all appeals, if any, have been exhausted. See RCW 74.09.220.

NEW SECTION

WAC 182-502A-1001 Program integrity activity—Metrics. Under RCW 74.09.195 (2)(b), the medicaid agency will, on an annual basis:

(1) Compile metrics of program integrity activities conducted by the agency and its entities; and

(2) Publish the metrics on the agency's web site.

WSR 18-04-085
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 15-07—Filed February 5, 2018, 3:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-01-097.

Title of Rule and Other Identifying Information: General regulations for air pollution sources, chapter 173-400 WAC establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting the federal air quality standards.

Operating permit regulation, chapter 173-401 WAC establishes a program that consolidates all air quality requirements for a large industrial facility or commercial business in a single permit.

Hearing Location(s): On March 13, 2018, at 10:00 a.m., webinar and in-person at the Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503. Presentation, question and answer session followed by the formal public hearing.

We are also holding this hearing via webinar. A webinar is an online meeting forum that you can attend from any computer using internet access.

To join the webinar, click on the following link for more information and instructions https://watech.webex.com/watech/onstage/g.php?MTID=e1e0f999e528176789e5c94a4585de486.

We recommend you provide your phone number when you join the event to receive a free call back from the system. OR for audio only, call toll-free 1-855-929-3239 and enter access code 283 512 545.

Date of Intended Adoption: May 15, 2018.

Submit Written Comments to: Elena Guilfoil, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, email use online comment form or by mail, online http://ac.ecology.commentinput.com/?id=bfe7G, by March 20, 2018.

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668 (voice), TTY 877-833-6341, email hanna.waterstrat@ecy.wa.gov, 711 relay service, by March 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes focus on the general regulations for air pollution sources, the operating permit regulation, and revising the state implementation plan (SIP). Because of federal court rulings, the Environmental Protection Agency (EPA) has officially notified Washington (and thirty-five other states) to change their current rules and update their SIPs to correct the identified deficiencies (a SIP call).

The primary purpose of this revision is to align chapter 173-400 WAC with federal court decisions[1] that emission standards apply at all times, even during periods of startup, shutdown and malfunction (SSM), and without automatic or discretionary exemptions. These decisions and EPA's SIP call require us to correct overly broad enforcement discretion and other provisions that would bar enforcement by EPA or other parties in federal court. Existing ecology rules exempt exceedances of an emission standard during SSM, or allow avoidance of enforcement actions against a company for these emissions.

[1] See court decisions listed below.

Under ecology's rule, facilities are not required to meet emission limits during periods of SSM. EPA interprets WAC 173-400-107 to bar enforcement of excess emissions during periods of SSM under the federal Clean Air Act. Additionally, the state rule includes affirmative defense and director's discretion provisions, and automatic exemptions that violate the federal Clean Air Act. We must update our rules to comply with the federal court decisions and the SIP call. This rule making removes impermissible provisions, establishes new alternative standards for opacity during startup or shutdown, and proposes a process to establish facility specific permit limits for existing sources that exceed an emissions standard in SIP.

We are also changing our public notification procedures based on a recent EPA rule that allows web posting of public notice of the start of a public comment period and draft permits in the prevention of significant deterioration and air operating permit programs. We are extending web posting to these programs and our small source preconstruction permitting program. We also propose to exclude Washington holi-

days from the day count in a thirty day public comment period. We propose to continue requiring publishing notice in a newspaper until June 30, 2019, to address concerns that some communities still rely on the one-day newspaper notice.

We are addressing stakeholder concerns about impacts from small nonroad engines (hand-held gasoline equipment such as lawnmowers, small generators, and outdoor power tools) while providing ongoing environmental protection by evaluating impacts from nonroad engines on a project-by-project basis rather than on a site basis. We believe the project basis is more representative of operations performed by non-road engines and our original intent for how the section would operate.

Other rule-making actions include:

- Outlaw wigwam and silo burners. This will eliminate more emission of toxic and criteria air pollutants from the one permitted wigwam burner that is not operating.
- Update the definition of volatile organic compounds (VOC) to reflect the current federal definition.
- Correct typos and clarify rule language without changing its effect so our rules are easier to understand. This includes deleting redundant requirements for catalytic cracking units and sulfuric acid plants. Mandatory federal requirements are either more stringent than or equal to the state standards.
- Update adoption by reference of federal rules from January 1, 2016, to January 24, 2018. We need to ensure our rules are as current as possible as we can only enforce a federal rule, including rule changes, after we have adopted the rule by reference.

Below is a summary of the proposed rule amendments:
SSM related provisions:

- Remove exemptions for emissions and replace with opacity standards.
- Create a process to establish facility specific permit limits for existing sources that exceed an emissions standard in SIP.
- Simplify the notification process related to excess emission events.
- Align unavoidable excess emission provisions with federal limitations, EPA policy, and the state law.

Other provisions:

- Require an agency to post notice of a public comment period and draft permits on its web site instead of requiring publication in a newspaper and a physical location for permit materials. This change applies to both rules.
- Outlaw existing and new wigwam and silo burners.
- Simplify application of nonroad engine requirements.
- Update the definition of VOC to reflect the current federal definition.
- Correct typos and clarify rule language without changing its effect.
- Update adoption by reference of federal rules from January 1, 2016, to January 24, 2018.

Reasons Supporting Proposal: See answer to **Purpose of the proposal and its anticipated effects, including any changes in existing rules** above. Please see the State Environmental Protection Act (SEPA) documents and the preliminary regulatory analysis for more information.

Statutory Authority for Adoption: Chapter 70.94 RCW, RCW 70.94.011, 70.94.161, 70.94.331, 70.94.431.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is necessary because of federal law and federal court decision, Clean Air Act, 42 U.S.C. Section 7401 et.seq. (1970); *Natural Resources Defense Council v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014), *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008), and settlement agreement for *Sierra Club et al. v. Jackson*, No. 3:10-cv-04060-CRB (N.D. Cal.).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Please see the SEPA documents and the preliminary regulatory analysis for more information.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Lacey, 360-407-6855; Implementation and Enforcement:

Benton Clean Air Agency	Kennewick	509-783-1304
Northwest Clean Air Agency	Mount Vernon	360-428-1617
Olympic Region Clean Air Agency	Olympia	360-539-7610
Puget Sound Clean Air Agency	Seattle	206-343-8800
Southwest Clean Air Agency	Vancouver	360-574-3058
Spokane Regional Clean Air Agency	Spokane	509-477-4727
Yakima Regional Clean Air Agency	Yakima	509-834-2050
Ecology Central Regional Office Air Quality Program	Union Gap	509-575-2490
Ecology Eastern Regional Office Air Quality Program	Spokane	509-329-3400
Ecology Headquarters Air Quality Program	Lacey	360-407-6800
Ecology Headquarters Industrial Section	Lacey	360-407-6900
Ecology Richland Nuclear Waste Office	Richland	509-372-7950

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Elena Guilfoil, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6855, TTY 877-833-6341, email elena.guilfoil@ecy.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington

state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Ecology analyzed the compliance costs of the proposed rule amendments in chapter 3 of the preliminary regulatory analyses. We determined that no small business economic impact statement (SBEIS) is required under the Regulatory Fairness Act (RFA), chapter 19.85 RCW, for the proposed rule amendments.

Based on our analysis, facilities performing soot blowing, boiler, or refractory curing activities may incur compliance costs as a result of the proposed rule amendments. We estimated potential additional employee costs of $12 to $193 per startup, shutdown, or soot blowing event, but could not confidently identify or assume how many of these events a facility would experience in a year. We also identified costs of $325 to $350 the first year, and $200 to $225 in subsequent years, for facilities not currently required to have a certified opacity reader on staff.

None of the identified covered businesses performing these activities is a small business. Consequently, ecology is not required to prepare an SBEIS under the RFA (RCW 19.85.025(4)).

The small business that owns the only standing wigwam burner in the state is not expected to incur additional compliance costs as a result of the proposed rule amendments because the burner is not currently operational. Consequently, ecology is not required to prepare an SBEIS under the RFA (RCW 19.85.030 (1)(a)).

February 5, 2018
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-025 Adoption of federal rules. Federal rules mentioned in this rule are adopted as they exist on ((~~January 1, 2016~~)) January 24, 2018. Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-030 Definitions. The definitions in this section apply statewide except where a permitting authority has redefined a specific term. Except as provided elsewhere in this chapter, the definitions in this section apply throughout the chapter:

(1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.

(3) **"Air contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 C.F.R. Part 60, 61, 62, or 63;

(b) Any applicable SIP emissions ((~~limitation~~)) standard including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable approval condition, including those with a future compliance date.

(6) **"Alternative emission limitation"** means an emission limitation that applies to a source or an emissions unit only during a specifically defined transient mode of operation. An alternative emission limitation is a component of a continuously applicable emission limit. An alternative emission limit may be a numerical limit or a design characteristic of the emission unit and associated emission controls, work practices, or other operational standard, such as a control device operating range.

(7) **"Ambient air"** means the surrounding outside air.

((~~(7)~~)) (8) **"Ambient air quality standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

((~~(8)~~)) (9) **"Approval order"** is defined in **"order of approval."**

((~~9~~)) (10) **"Attainment area"** means a geographic area designated by EPA at 40 C.F.R. Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

((~~10~~)) (11) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

((~~11~~)) (12) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emission unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

((~~12~~)) (13) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

((~~13~~)) (14) **"Best available retrofit technology (BART)"** means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

((~~14~~)) (15) **"Brake horsepower (BHP)"** means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

((~~15~~)) (16) **"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

((~~16~~)) (17) **"Capacity factor"** means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

((~~17~~)) (18) **"Class I area"** means any area designated under section 162 or 164 of the federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park;

(h) Pasayten Wilderness; and

(i) Spokane Indian Reservation.

((~~18~~)) (19) **"Combustion and incineration units"** means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes outdoor burning.

((~~19~~)) (20)(a) **"Commence"** as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

((~~20~~)) (21) **"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

((~~21~~)) (22) **"Criteria pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 C.F.R. Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O_3) sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

((~~22~~)) (23) **"Director"** means director of the Washington state department of ecology or duly authorized representative.

((~~23~~)) (24) **"Dispersion technique"** means a method that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

((~~24~~)) (25) **"Ecology"** means the Washington state department of ecology.

((~~25~~)) (26) **"Electronic means"** means email, fax, FTP site, or other electronic method approved by the permitting authority.

(27) **"Emission"** means a release of air contaminants into the ambient air.

((~~(26)~~)) (28) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

((~~(27)~~)) (29) **"Emission standard,"** ((~~and~~)) **"emission limitation"** and **"emission limit"** means a requirement established under the federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the federal Clean Air Act or chapter 70.94 RCW.

((~~(28)~~)) (30) **"Emission threshold"** means an emission of a listed air contaminant at or above the following rates:

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year
Fluorides:	3 tons per year
Hydrogen sulfide (H_2S):	10 tons per year
Lead:	0.6 tons per year
Nitrogen oxides:	40 tons per year
((~~Sulfur dioxide:~~	~~40 tons per year~~))
Particulate matter (PM):	25 tons per year of PM emissions
	((~~15 tons per year of PM-10 emissions~~)) 10 tons per year of PM-2.5
	15 tons per year of PM-10 emissions
((~~Volatile organic compounds:~~	~~40 tons per year~~
~~Fluorides:~~	~~3 tons per year~~
~~Lead:~~	~~0.6 tons per year~~))
Reduced sulfur compounds (including H_2S):	10 tons per year
Sulfur dioxide:	40 tons per year
Sulfuric acid mist:	7 tons per year
((~~Hydrogen sulfide (H_2S):~~	~~10 tons per year~~))
Total reduced sulfur (including H_2S):	10 tons per year
((~~Reduced sulfur compounds (including H_2S):~~	~~10 tons per year~~))
Volatile organic compounds:	40 tons per year

((~~(29)~~)) (31) **"Emissions unit"** or **"emission unit"** means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter 70.94 or 70.98 RCW.

((~~(30)~~)) (32) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard.

((~~(31)~~)) (33) **"Excess stack height"** means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

((~~(32)~~)) (34) **"Existing stationary facility (facility)"** is defined in WAC 173-400-151.

((~~(33)~~)) (35) **"Federal Clean Air Act (FCAA)"** means the federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

((~~(34)~~)) (36) **"Federal Class I area"** means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

(a) Alpine Lakes Wilderness;
(b) Glacier Peak Wilderness;
(c) Goat Rocks Wilderness;
(d) Mount Adams Wilderness;
(e) Mount Rainier National Park;
(f) North Cascades National Park;
(g) Olympic National Park; and
(h) Pasayten Wilderness.

((~~(35)~~)) (37) **"Federal land manager"** means the secretary of the department with authority over federal lands in the United States.

((~~(36)~~)) (38) **"Federally enforceable"** means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 C.F.R. Parts 60, 61, 62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 C.F.R. 52.21 or under a SIP approved new source review regulation, ((~~and~~)) emissions limitation orders issued under WAC 173-400-081(4), 173-400-082, or 173-400-091, and an engineering calculation methodology established under WAC 173-400-040 (7)(c).

((~~(37)~~)) (39) **"Fossil fuel-fired steam generator"** means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

((~~(38)~~)) (40) **"Fugitive dust"** means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

((~~(39)~~)) (41) **"Fugitive emissions"** means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

((~~(40)~~)) (42) **"General process unit"** means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

((~~(41)~~)) (43) **"Good engineering practice (GEP)"** refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

((~~(42)~~)) (44) **"Greenhouse gases (GHGs)"** includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

((~~(43)~~)) (45) **"Hog fuel"** means wood-waste that is reduced in size to facilitate burning.

(46) **"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

((~~44~~)) (47) **"Industrial furnace"** means enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy as defined in 40 C.F.R. 260.10.

(48) **"In operation"** means engaged in activity related to the primary design function of the source.

((~~45~~)) (49) **"Mandatory Class I federal area"** means any area defined in Section 162(a) of the federal Clean Air Act. The following areas are the mandatory Class I federal areas in Washington state:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness;

((~~46~~)) (50) **"Masking"** means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

((~~47~~)) (51) **"Materials handling"** means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

((~~48~~)) (52) **"Modification"** means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

((~~49~~)) (53) **"National Ambient Air Quality Standard (NAAQS)"** means an ambient air quality standard set by EPA at 40 C.F.R. Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

((~~50~~)) (54) **"National Emission Standards for Hazardous Air Pollutants (NESHAP((~~S~~)))"** means the federal rules in 40 C.F.R. Part 61.

((~~51~~)) (55) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 C.F.R. Part 63.

((~~52~~)) (56) **"Natural conditions"** means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

((~~53~~)) (57) **"New source"** means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the federal Clean Air Act.

((~~54~~)) (58) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 C.F.R. Part 60.

((~~55~~)) (59) **"Nonattainment area"** means a geographic area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

((~~56~~)) (60) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

((~~57~~)) (61) **"Notice of construction application"** means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

((~~58~~)) (62) **"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

((~~59~~)) (63) **"Outdoor burning"** means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners or silo burners is not considered outdoor burning.

((~~60~~)) (64) **"Order"** means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where

used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

((~~(61)~~)) (65) **"Order of approval"** or **"approval order"** means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

((~~(62)~~)) (66) **"Ozone depleting substance"** means any substance listed in Appendices A and B to Subpart A of 40 C.F.R. Part 82.

((~~(63)~~)) (67) **"Particulate matter"** or **"particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

((~~(64)~~)) (68) **"Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

((~~(65)~~)) (69) **"Parts per million (ppm)"** means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

((~~(66)~~)) (70) **"Permitting authority"** means ecology or the local air pollution control authority with jurisdiction over the source.

((~~(67)~~)) (71) **"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

((~~(68)~~)) (72) **"PM-10"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix J and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

((~~(69)~~)) (73) **"PM-10 emissions"** means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 C.F.R. Part 51 or by a test method specified in the SIP.

((~~(70)~~)) (74) **"PM-2.5"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix L and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

((~~(71)~~)) (75) **"PM-2.5 emissions"** means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51 or by a test method specified in the SIP.

((~~(72)~~)) (76) **"Portable source"** means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

((~~(73)~~)) (77) **"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

((~~(74)~~)) (78) **"Prevention of significant deterioration (PSD)"** means the program in WAC 173-400-700 to 173-400-750.

((~~(75)~~)) (79) **"Projected width"** means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

((~~(76)~~)) (80) **"Reasonably attributable"** means attributable by visual observation or any other technique the state deems appropriate.

((~~(77)~~)) (81) **"Reasonably available control technology (RACT)"** means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

((~~(78)~~)) (82) **"Regulatory order"** means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapter 70.94 RCW or rules adopted there under; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

((~~(79)~~)) (83) **"Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

((~~(80)~~)) (84) **"Shutdown"** means, generally, the cessation of operation of a stationary source or emission unit for any reason.

(85) **"Source"** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(((81))) (86) **"Source category"** means all sources of the same type or classification.

(((82))) (87) **"Stack"** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(((83))) (88) **"Stack height"** means the height of an emission point measured from the ground-level elevation at the base of the stack.

(((84))) (89) **"Standard conditions"** means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

(((85))) (90) **"Startup"** means, generally, the setting in operation of a stationary source or emission unit for any reason.

(91) **"State implementation plan (SIP)"** or **"Washington SIP"** means the Washington SIP in 40 C.F.R. Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

(((86))) (92) **"Stationary source"** means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the federal Clean Air Act.

(((87))) (93) **"Sulfuric acid plant"** means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(((88))) (94) **"Synthetic minor"** means any source whose potential to emit has been limited below applicable thresholds by means of an enforceable order, rule, or approval condition.

(((89))) (95) **"Total reduced sulfur (TRS)"** means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 in Appendix A to 40 C.F.R. Part 60 or an EPA approved equivalent method and expressed as hydrogen sulfide.

(((90))) (96) **"Total suspended particulate"** means particulate matter as measured by the method described in 40 C.F.R. Part 50 Appendix B.

(((91))) (97) **"Toxic air pollutant (TAP)"** or **"toxic air contaminant"** means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(((92))) (98) **"Transient mode of operation"** means a short-term operating period of a source or an emission unit with a specific beginning and end, such as startup, shutdown, or maintenance.

(99) **"Unclassifiable area"** means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 C.F.R. Part 81.

(((93))) (100) **"United States Environmental Protection Agency (USEPA)"** shall be referred to as EPA.

(((94))) (101) **"Useful thermal energy"** means energy (steam, hot water, or process heat) that meets the minimum operating temperature, flow, and/or pressure required by any system that uses energy provided by the affected boiler or process heater.

(102) **"Visibility impairment"** means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

(((95))) (103) **"Volatile organic compound (VOC)"** means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methyl acetate((,)); 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluo-

ropropane (HFC 227ea); methyl formate ($HCOOCH_3$); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF2OCF2H (HFE-134); HCF2OCF2OCF2H (HFE-236cal2); HCF2O CF2CF2OCF2H (HFE-338pcc13); HCF2OCF2OCF 2CF2OCF2H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2- tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane; and perfluorocarbon compounds that fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 C.F.R. Part 60 Appendix A (in effect on the date in WAC 173-400-025). Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology, the authority, or EPA the amount of negligibly reactive compounds in the source's emissions.

((~~(d) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: Tertiary-butyl acetate.~~))

(104) **"Wigwam"** or **"silo burner"** means a cone-shaped or cylindrical structure that burns wood waste for disposal. A silo burner is a cylinder and may be made with refractory material rather than metal.

(105) **"Wood-fired boiler"** means an enclosed device using controlled flame combustion of wood or wood wastes with the primary purpose of recovering thermal energy in the form of a steam or hot water boiler that burns wood or wood wastes for fuel for the primary purpose of producing hot water or steam by heat transfer. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or air feed rates are controlled.

(106) **"Wood-waste"** means solid waste that consists of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, and the handling and storage of raw materials, trees, and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-035 Nonroad engines. (1) **Applicability.** This section applies to any nonroad engines as defined in WAC 173-400-030, except for:

(a) Any nonroad engine that is:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function; or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function.

(b) Nonroad engines with a cumulative maximum rated brake horsepower of 500 BHP or less.

(c) Engines being stored in work centers, garages, or engine pool sites prior to being dispatched to the field for use and that do not provide back-up power at the work center, garage, or engine pool. Such engines may be operated at these facilities only for the purpose of engine maintenance, testing, and repair.

(d) A back-up nonroad engine demonstrated to have the same or lower emissions than the primary power nonroad engine.

(2) **Nonroad engines are not subject to:**

(a) New source review.

(b) Control technology determinations.

(c) Emission limits set by the ((~~state implementation plan,~~)) SIP.

(d) Chapter 173-460 WAC.

(3) **Fuel standards.** All nonroad engines must use ultra low sulfur diesel or ultra low sulfur ((~~bio-diesel~~)) biodiesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG). A facility that receives deliveries of only ultra low sulfur diesel or ultra low sulfur ((~~bio-diesel~~)) biodiesel is deemed to be compliant with this fuel standard.

(4) **> 500 and ≤ 2000 BHP.** This section applies to a project that requires the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 BHP and less than or equal to 2000 BHP.

(a) Notification of intent to operate is required before operations begin.

The owner or operator must notify the permitting authority of their intent to operate prior to beginning operation. The notice must contain the following information:

(i) Name and address of owner or operator;

(ii) Site address or location;

(iii) Date of equipment arrival at the site;

(iv) Cumulative engine maximum rated BHP.

(b) Recordkeeping. For each site, the owner or operator must record the following information for each nonroad engine:

(i) Site address or location;

(ii) Date of equipment arrival at the site;

(iii) Date of equipment departure from the site;

(iv) Engine function or purpose;

(v) Identification of each component as follows:

(A) Equipment manufacturer, model number and its unique serial number;

(B) Engine model year;

(vi) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(c) Record retention requirements. The owner or operator must keep the records of the current engine and equipment activity in hard copy or electronic form. These records can be maintained on-site or off-site for at least five years and must be readily available to the permitting authority on request.

(5) **> 2000 BHP.** This section applies to a project that requires the installation and operation of ((~~any~~)) nonroad engines with a cumulative maximum rated brake horsepower greater than 2000 BHP.

(a) Notification of intent to operate.

(i) Prior to operation, the owner or operator must notify the permitting authority of the intent to operate and supply sufficient information to enable the permitting authority to determine that the operation will comply with national ambient air quality standards as regulated by WAC 173-400-113 (3) and (4).

(ii) The notification must contain, at a minimum, the information in subsection (4)(a) of this section.

(b) Approval is required before operations begin. The owner or operator must obtain written nonroad engine approval to operate, from the permitting authority, prior to operation.

(c) Recordkeeping. The owner or operator must meet all of the requirements of subsection (4)(b) and (c) of this section.

((~~(d)~~)) (6) Integrated review. Applicants seeking approval to construct or modify a stationary source that requires review under WAC 173-400-110 or 173-400-560 and to operate one or more nonroad engines in conjunction with the new or modified stationary source may elect to integrate the reviews. The notification process for integrated review must comply with the new source review public involvement procedures for the stationary source as applicable (i.e., WAC 173-400-171 or 173-400-740).

((~~(e)~~)) (7) Enforcement. All persons who receive a nonroad engine approval to operate must comply with all conditions contained in the approval.

((~~(f)~~)) (8) Permitting authority review period. Within fifteen days after receiving a complete notice of intent to operate, the permitting authority must either issue the approval to operate or notify the applicant that operation must not start until the permitting authority has set specific operating conditions. The permitting authority must promptly provide copies of the final decision to the applicant.

((~~(g)~~)) (9) Conditions to assure compliance with NAAQS. Subject to the limitations of subsection (2) of this section, the permitting authority may set specific conditions for operation as necessary to ensure that the nonroad engines do not cause or contribute to a violation of National Ambient Air Quality Standards.

((~~(h)~~)) (10) Appeals. Final decisions and orders of ecology or a permitting authority may be appealed to the pollution control hearings board as provided in chapters 43.21B RCW and 371-08 WAC.

((~~(i)~~)) (11) Change of conditions. The owner or operator may request, at any time, a change in conditions of an approval to operate. The permitting authority may approve the request provided that the permitting authority finds that the operation will comply with WAC 173-400-113 (3) and (4).

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-040 General standards for maximum emissions. (1) **General requirements.**

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity ((~~except:~~)) as determined by ecology method 9A. The following are exceptions to this standard:

(a) Soot blowing or grate cleaning alternate emission standard.

(i) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. The opacity emission standard in subsection (2) of this section shall apply except when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the permitting authority must be advised of the schedule.

(ii) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to soot blowing or grate cleaning of a hog fuel or wood-fired boiler: Visible emissions (as determined by ecology method 9A) shall not exceed twenty percent opacity; except that opacity shall not exceed forty percent for up to a fifteen min-

ute period in any eight consecutive hours. For this provision to apply, the owner or operator must:

(A) Schedule the soot blowing and/or grate cleaning for the same approximate time(s) each day;

(B) Notify the permitting authority in writing of the schedule before using the forty percent standard; and

(C) Maintain contemporaneous records sufficient to demonstrate compliance. Records must include the date, start time, and stop time of each episode, and the results of opacity readings conducted during this time.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent or an alternative opacity standard established in this section.

(c) When two or more emission units are connected to a common stack, the permitting authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an ((~~alternate~~)) alternative opacity limit has been established per RCW 70.94.331 (2)(c), WAC 173-400-081(4) or 173-400-082.

(e) ((~~Exemptions from twenty percent opacity standard.~~

~~(i)~~)) Alternative emission standard for a hog fuel or wood-fired boiler in operation before January 24, 2018. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to startup or shutdown of a hog fuel or wood-fired boiler with dry particulate matter controls, an owner or operator may use the alternative standard in this subsection when all of the following requirements are met. (Note that this subsection does not apply to a combustion unit with wet particulate matter controls.)

(i)(A) At least twenty-four hours prior to the planned boiler startup or shutdown; or

(B) As early as possible, but no later than two hours after restarting the boiler after an unplanned shutdown (i.e., malfunction).

Note: A shutdown due to a malfunction is part of the malfunction.

(ii) Startup begins when fuel is ignited in the boiler fire box.

(iii) Startup ends:

(A) When the boiler starts supplying useful thermal energy; or

(B) Four hours after the boiler starts supplying useful thermal energy if the facility follows the work practices in (e)(vi)(B) of this subsection.

(iv) Shutdown begins when the boiler no longer supplies useful thermal energy, or when no fuel is being fed to the boiler or process heater, whichever is earlier.

(v) Shutdown ends when the boiler or process heater no longer supplies useful thermal energy and no fuel is being combusted in the boiler.

(vi) The facility complies with one of the following work practice requirements:

(A) Visible emissions during startup or shutdown shall not exceed forty percent opacity for more than three minutes in any hour, as determined by ecology method 9A; or

(B) During startup or shutdown, the owner or operator shall:

(I) Operate all continuous monitoring systems;

(II) Use only clean fuel in the boiler identified in 5.b. in Table 3 in 40 C.F.R. Part 63, subpart DDDDD;

(III) Once you start to feed the boiler any fuels that are not clean fuels, you must engage all applicable control devices so as to comply with the emission limits within four hours of the start of supplying useful thermal energy;

(IV) Engage and operate particulate matter control within one hour of first feeding fuels that are not clean fuels; and

(V) Develop and implement a written startup and shutdown plan. The plan must minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator shall use the recommended startup procedure for a unit of a similar design. The plan must be maintained on-site and available upon request for public inspection.

(vii) The facility maintains records sufficient to demonstrate compliance with (e)(i) through (v) of this subsection. The records must include the following:

(A) The date and time of notification of the permitting authority;

(B) The date and time when startup and shutdown began;

(C) The date and time when startup and shutdown ended;

(D) The compliance option in (e)(vi) of this subsection that was chosen (either (A) or (B)) and documentation of how the conditions of that option that were met.

(f) Furnace refractory alternative emission standard. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur during curing of furnace refractory in an existing lime kiln, industrial furnace, or boiler, visible emissions (as determined by ecology method 9A) shall not exceed forty percent opacity for more than three minutes in any hour, except when (b) of this subsection applies. For this provision to apply, the owner or operator must meet all of the following requirements:

(i) The total duration of refractory curing shall not exceed thirty-six hours; and

(ii) Use only clean fuel identified in 5.b. in Table 3 in 40 C.F.R. Part 63, subpart DDDDD; and

(iii) The owner or operator provides a copy of the manufacturer's instructions on curing refractory to the permitting authority; and

(iv) The manufacturer's instructions on curing refractory must be followed, including all instructions on temperature increase rates and holding temperatures and time; and

(v) The emission controls must be engaged as soon as possible during the curing process; and

(vi) The permitting authority must be notified at least one working day prior to the start of the refractory curing process.

(g) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used ((~~for~~)) during testing and ((~~certification of~~)) certifying visible emission((~~s~~)) readers ((~~per the~~)) are exempt from the twenty percent opacity limit. Testing must follow testing and certification requirements ((~~of~~)) in 40 C.F.R. Part 60, Appendix A, Test Method 9 (in effect on the date in WAC 173-400-025) and ecology methods 9A and 9B ((~~shall be exempt from compliance with the twenty percent opacity limitation while being~~

~~used for certifying visible emission readers~~)) (Ecology *Source Test Manual*).

((~~(ii)~~)) (h) Military training exercises. Visible emissions ((~~resulting from~~)) during military obscurant training exercises are exempt from ((~~compliance with~~)) the twenty percent opacity ((~~limitation provided~~)) limit when the following ((~~criteria~~)) requirements are met:

((~~(A)~~)) (i) No visible emissions shall cross the boundary of the military training site/reservation.

((~~(B)~~)) (ii) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

((~~(iii)~~)) (i) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities ((~~while being used to train firefighters and while complying with the requirements of~~)) occurring during the training of firefighters are exempt from the twenty percent opacity limit. Compliance with chapter 173-425 WAC is required.

(3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of her or his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes((~~, except: When the owner or operator of an emissions unit supplies emission data and can demonstrate to the permitting authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, the permitting authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to the permitting authority~~)).

(8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(9) **Fugitive dust.**

(a) The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by test method 5 in Appendix A to 40 C.F.R. Part 60, (in effect on the date in WAC 173-400-025) or approved procedures contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, ((~~as of September 20, 2004,~~)) on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, ((~~as of September 20, 2004,~~)) on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements in WAC 173-400-075 (40 C.F.R. Part 63, sub-

part EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, ((~~as of September 20, 2004,~~)) on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999.

Note: Subsection (2) of this section (a state-only provision) does not apply to a unit subject to this subsection because this section is based on federal requirements.

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, subpart Ea or subpart Eb (in effect on the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, subpart AAAA (in effect on the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), subparts Ea, Eb, and AAAA, and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on the date in WAC 173-400-025);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under subpart EEE of 40 C.F.R. Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on the date in WAC 173-400-025).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on the date in WAC 173-400-025).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 C.F.R. Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 C.F.R. Part 60, subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on the date in WAC 173-400-025).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, subpart CCCC (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875 (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

• Increments of progress towards compliance in 60.2575 through 60.2630;

• Waste management plan requirements in 60.2620 through 60.2630;

• Operator training and qualification requirements in 60.2635 through 60.2665;

• Emission limitations and operating limits in 60.2670 through 60.2685;

• Performance testing requirements in 60.2690 through 60.2725;

• Initial compliance requirements in 60.2700 through 60.2725;

• Continuous compliance requirements in 60.2710 through 60.2725;

• Monitoring requirements in 60.2730 through 60.2735;

• Recordkeeping and reporting requirements in 60.2740 through 60.2800;

• Title V operating permits requirements in 60.2805;

• Air curtain incinerator requirements in 60.2810 through 60.2870;

• Definitions in 60.2875; and

• Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999.

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal

waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, ((~~liquified~~)) <u>liquefied</u> petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on the date in WAC 173-400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, subpart AAAA (in effect on the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, subpart BBBB (in effect on the date in WAC 173-400-025) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, subpart HHH (in effect on the date in WAC 173-400-025).

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner may operate until midnight December 31, 2019, provided it complies with the following:

(a) All wigwam and silo burners designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) ((~~or~~)), 173-400-115 ((~~(~~)), or 40 C.F.R. Part ((~~60~~)) 62, subpart ((~~DDDD~~)) III in effect on the date in WAC 173-400-025((~~)~~)) as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions. ((~~An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.~~))

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1)((~~, except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes~~)).

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(c) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate an orchard-heating device that causes a visible emission exceeding twenty percent opacity as specified in WAC 173-400-040(2).

(4) **Grain elevators.**

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) ((~~**Catalytic cracking units.**~~

~~(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:~~

~~(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.~~

~~(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.~~

~~(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.~~

~~(6)~~)) **Other wood waste burners.**

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of:

(i) WAC 173-400-040((~~. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 C.F.R. Part 60, subpart DDDD in effect on the date in WAC 173-400-025) must meet all applicable provisions of those sections~~)) and 173-400-050;

(ii) 40 C.F.R. Part 60, subpart CCCC (in effect on the date in WAC 173-400-025); and

(iii) 40 C.F.R. Part 62, subpart III (in effect on the date in WAC 173-400-025).

(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.

((~~(7) **Sulfuric acid plants.**~~

~~No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H_2SO_4, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H_2SO_4.~~

~~(8)~~)) (6) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 C.F.R. Part 60 rules mean those rules in effect on the date in WAC 173-400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submittal of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 C.F.R. 60.753.

(B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a)(1) through (a)(6) to determine

whether the system is in compliance with 40 C.F.R. 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 C.F.R. 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-081 Emission limits during startup and shutdown. (1) In promulgating technology-based emission standards and ((~~making control technology determinations (e.g., BACT, RACT, LAER, BART)~~)) establishing emission limits in a permit or order the permitting ((~~authorities~~)) authority will consider any physical constraints on the ability of a source to comply with the applicable standard during startup or shutdown.

(2) ((~~Where~~)) When the permitting authority determines, as part of its control technology determination, that the source or source category, when operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with an emission limit or standard during startup or shutdown, the permitting authority must include in the ((~~standard~~)) rule, order, or permit appropriate alternative emission limitations((~~, operating parameters, or other criteria~~)) to regulate the performance of the source during startup or shutdown conditions.

(3) In modeling the emissions of a source for purposes of demonstrating attainment or maintenance of national ambient air quality standards, the permitting ((~~authorities~~)) authority shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule.

(4) ((~~Any~~)) An emission limitation or other parameter adopted under this ((~~rule~~)) section which increases allowable emissions during a startup or shutdown ((~~conditions~~)) event over levels authorized in Washington's ((~~state implementation plan~~)) SIP shall not take effect until:

(a) Approved by EPA as a SIP amendment; and

(b) The permitting authority has complied with WAC 173-400-082 (4)(c)(i)(A) and (B) and (iv) when applicable.

NEW SECTION

WAC 173-400-082 Alternative emission limit that exceeds an emission standard in the SIP. (1) Applicability. The owner or operator may request an alternative emission limit for a specific emission unit(s) that exceeds a limit in the SIP. The new limit would apply during a clearly defined transient mode of operation. An alternative emission limit estab-

lished under this section becomes a facility-specific SIP emission standard once EPA approves the new limit in the SIP. This section does not apply to the approval of a revised emission limit that does not exceed a limit in the SIP.

(2) Pollutant scope. An alternative emission limit may be established under this section for any of the following emission standards in Washington's SIP in 40 C.F.R. 52.2470:

(a) Opacity emission standard in:

(i) WAC 173-400-040(2);

(ii) WAC 173-405-040(6);

(iii) WAC 173-415-030 (3)(a); and

(iv) WAC 173-434-130(4).

(b) Sulfur dioxide emission standard in:

(i) WAC 173-400-040(7);

(ii) WAC 173-405-040(11);

(iii) WAC 173-410-040(1);

(iv) WAC 173-415-030(5); and

(v) WAC 173-434-130(3).

(c) Particulate matter emission standards in:

(i) WAC 173-400-050(1) and 173-400-060;

(ii) WAC 173-405-040 (1)(a), (2), (3)(a), and (5);

(iii) WAC 173-410-040(2);

(iv) WAC 173-415-030(2); and

(v) WAC 173-434-130(1).

(d) Emission standards or limits in a local air pollution control authority rule, order, or plan referenced in 40 C.F.R. 52.2470.

(3) Requirements for an owner or operator requesting an alternative emission limit.

(a) The owner or operator may request an alternative emission limit for a specific transient mode of operation for an emission unit that exceeds a standard in the SIP.

(b) A request for an alternative emission limit must be submitted to the permitting authority in writing. The permitting authority shall determine the adequacy of the information.

(c) A request for an alternative emission limit must provide data and documentation sufficient to:

(i) Specify which emission unit(s) and specific transient mode(s) of operation the requested alternative emission limit is to cover;

(ii) Demonstrate that the operating characteristics of the emission unit(s) prevent meeting the applicable emission standard during the specific transient mode of operation. Operating characteristics may include the operational variations in the emission unit, installed emission control equipment, work practices, or other means of emission control that could affect the frequency, or duration and quantity of emissions during the transient mode of operation;

(iii) Demonstrate why it is not technically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit to comply with the SIP emission standard, and avoid the need for an alternative emission standard;

(iv) Demonstrate that PSD increments, when applicable, and ambient air quality standards in chapter 173-476 WAC will not be exceeded by emissions from the proposed alternative limit;

(v) Determine best operational practices for the emission unit(s) involved;

(vi) Demonstrate that the frequency and duration of the specific transient mode of operation is limited to the shortest practicable amount of time;

(vii) Demonstrate the quantity and impact of the emissions resulting from the specific transient mode of operation are the lowest practicably possible; and

(viii) Demonstrate that the emissions allowed by the alternative emission limit will not exceed an applicable emission standard in 40 C.F.R. Parts 60, 61, 62, 63, or 72 (in effect on the date in WAC 173-400-025). For the purpose of this subsection, an automatic or discretionary exemption in any of these federal rules does not apply.

(4) Requirements for processing a request for an alternative emission limit.

(a) Completeness determination.

(i) Within sixty days of receiving a request, the permitting authority must:

(A) Notify the applicant that the request is complete or incomplete;

(B) Specify the reason(s) for determining the request is incomplete.

(ii) The permitting authority may request or accept additional information after determining a request complete.

(b) Denial. The permitting authority or ecology may deny a request. The denial must include the basis for the denial.

(c) Final determination.

(i) Within ninety days of receipt of a complete application, the permitting authority must:

(A) Initiate notice, a thirty-day public comment period (required by WAC 173-400-171), and a mandatory hearing (when required by RCW 70.94.380) followed as promptly as possible by a final decision; and

(B) Send the draft order and supporting materials electronically to ecology at least thirty days in advance of the public hearing.

(ii) A permitting authority may extend the deadline for making a determination due to the complexity of the request.

(iii) Ecology recommends combining the public comment period for the draft order (permitting authority responsibility) and the ecology approval and SIP hearing (ecology responsibility).

(iv) A permitting authority shall not issue a final order until ecology notifies the permitting authority in writing that the proposed alternative emission limit is consistent with the purposes of the Washington Clean Air Act as required by RCW 70.94.380. If on review, ecology denies the request, ecology will inform the permitting authority and the applicant of the reason(s) for the denial; and

(v) The final order shall not be effective until the effective date of EPA's approval of the order as a SIP amendment.

(5) The draft regulatory order must include:

(a) The name or other designation to identify the specific emission unit(s) subject to the alternative emission limit;

(b) A clearly defined specific transient mode of operation during which the alternative emission limit applies, including parameters for determining the starting and stopping point, and when the alternative emission limit applies;

(c) The emission limit for the specific transient mode of operation;

(d) A requirement that the applicable emission unit(s) be operated consistent with good operating practices for minimizing emissions during the time the alternative emission limit applies; and

(e) Monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with each condition in the order.

(6) Fees. A permitting authority may assess and collect fees for processing the request for an alternative emission limit according to its fee schedule for processing a permit application.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-107 Excess emissions. This section is in effect until the effective date of EPA's ((~~incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for this section~~)) removal of the September 20, 1993, version of this section from the SIP. This section is not effective starting on that date.

(1) The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.

(2) Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty.

(3) Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(4) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(6) Excess emissions due to upsets shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(c) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-108 Excess emissions reporting. (State-only requirement not federally enforceable.) This section takes effect on the effective date of EPA's ((~~incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107.~~

~~(1) Excess emissions must be reported to the permitting authority. Excess emissions which represent a potential threat to human health or safety must be reported as soon as possible, but in no case later than twelve hours after the excess emissions were discovered. Excess emissions which the owner or operator of the source believes to be unavoidable, per the criteria under WAC 173-400-109, must be reported to the permitting authority as soon as possible after the excess emissions were discovered. Other excess emissions must be reported to the permitting authority within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports or, for chapter 173-401 WAC sources, as provided in WAC 173-401-615.~~

~~(2) For those sources not required to report under WAC 173-401-615,~~)) removal of the September 20, 1993, version of WAC 173-400-107 from the SIP.

(1) Notify the permitting authority.

(a) When excess emissions represent a potential threat to human health or safety, the owner or operator must notify the permitting authority by phone or electronic means as soon as possible, but not later than **twelve hours** after the excess emissions were discovered.

(b) For all other excess emissions, the owner or operator must notify the permitting authority in a report as provided in subsection (2) of this section.

(2) Report. The owner or operator must report all excess emissions to the permitting authority:

(a) To claim emissions as unavoidable under WAC 173-400-109, the report must contain the information in subsection (4) of this section.

(b) Chapter 173-401 WAC source: As provided in WAC 173-401-615(3).

(c) All other sources:

(i) Within thirty days after the end of the month during which the event occurred; or

(ii) As part of the next routine emission monitoring report.

(3) The report must contain at least the following information:

(a) Date, time, duration of the episode;

(b) Known causes;

(c) For exceedances of ((nonopacity)) an emission limitation((s)) other than opacity, an estimate of the quantity of excess emissions;

(d) The corrective actions taken; ((and))

(e) The preventive measures taken or planned to minimize the chance of recurrence; and

(f) Exemption. A chapter 143-401 WAC source must report information required by WAC 173-401-615. If the source reports this information, it is exempt from (a) through (e) of this subsection. Subsection (4) of this section continues to apply.

(((3))) (4) For ((any)) an excess emission event that the owner or operator claims ((to be)) was unavoidable under WAC 173-400-109, the report must also include the following information ((in addition to that required in subsection (2) of this section)):

(a) Properly signed((,)) contemporaneous records or other relevant evidence documenting the owner or operator's actions in response to the excess emissions event;

(b) Information on whether installed emission monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage;

(c) All additional information required under WAC 173-400-109 (2), (3), (4) ((or)), (5), or (6) supporting the claim that the excess emissions were unavoidable.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-109 Unavoidable excess emissions. (State-only requirement not federally enforceable.) This section takes effect on the effective date of EPA's ((incorporation of the entirety of WAC 173-400-108 and 173-400-109 into the Washington state implementation plan as replacement for WAC 173-400-107)) removal of the September 20, 1993, version of WAC 173-400-107 from the SIP.

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, ((regulation)) rule, permit, or regulatory order. ((Unavoidable excess emissions are subject to injunctive relief but not penalty. The decision that excess emissions are unavoidable is made by the permitting authority, however, in a federal enforcement action filed under 42 U.S.C. § 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (3), (4), and (5) of this section.))

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source and the criteria in subsection (5) of this section.

(b) Excess emissions determined by the permitting authority to be unavoidable are:

(i) A violation subject to WAC 173-400-230 (3), (4), and (6); but

(ii) Not subject to civil penalty under WAC 173-400-230(2).

Note: Nothing in a state rule limits a federal court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action.

(2)(((a))) The owner or operator of a source shall have the burden of proving to the permitting authority ((or the decision-making authority)) in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsection((s (3),)) (4) ((and (5))) of this section.

(((b) Excess emissions that cause a monitored exceedance of any relevant ambient air quality standard do not qualify for relief under this section.

(c))) (3) This section does not apply to an exceedance((s)) of an emission standard((s promulgated under)) in 40 C.F.R. Parts 60, 61, 62, 63, and 72, or a permitting authority's adoption by reference of ((such)) these federal standards.

(((d) This section does not apply to exceedance of emission limits and standards contained in a PSD permit issued solely by EPA.

(3) Excess emissions due to startup or shutdown conditions will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates that:

(a) Excess emissions could not have been prevented through careful planning and design;

(b) Startup or shutdown was done as expeditiously as practicable;

(c) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(d) The emissions were minimized consistent with safety and good air pollution control practice during the startup and shutdown period;

(e) If a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage; and

(f))) (4) Excess emissions that occur due to an upset((s)) or malfunction((s)) during ((routine)) a startup or shutdown event are treated as an upset((s)) or malfunction((s)) under subsection (5) of this section.

(((4) Maintenance. Excess emissions during scheduled maintenance may be considered unavoidable if the source reports as required by WAC 173-400-108 and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.))

(5) Excess emissions due to an upset((s)) or equipment malfunction((s)) will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates to the permitting authority that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(c) When the operator knew or should have known that an emission standard or other permit condition was being exceeded, the operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action((~~, including~~)). Actions taken could include slowing or shutting down the emission unit as necessary to minimize emissions((~~, when the operator knew or should have known that an emission standard or permit condition was being exceeded; and~~));

(d) If the emitting equipment could not be shutdown during the malfunction to prevent the loss of life, prevent personal injury or severe property damage, or to minimize overall emissions, repairs were made in an expeditious fashion;

(e) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage((~~.~~));

((~~(e)~~)) (f) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible; and

(g) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-171 Public notice and opportunity for public comment. The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) **Applicability to prevention of significant deterioration, and relocation of portable sources.**

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) **Internet notice of application.**

(a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet web site.

(b) The internet posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, ((~~fax,~~)) or electronic ((~~mail~~)) means during the fifteen-day internet posting period.

(e) A public comment period must be provided for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day internet posting period.

(3) **Actions subject to a mandatory public comment period.**

The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC; or

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review under WAC 173-400-110, 173-400-113, or 173-400-117; or

(d) Any order to determine reasonably available control technology, RACT; or

(e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission ((~~limitation~~)) limit; or

(g) An order to authorize a bubble; or

(h) ((~~Any~~)) An action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) ((~~Any~~)) A regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(j) ((~~Any~~)) A notice of construction application or regulatory order used to establish a creditable emission reduction; or

(k) ((~~Any~~)) An order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

(l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

(m) ((~~Any~~)) An extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) ((~~Any~~)) An application or other action for which the permitting authority determines that there is significant public interest; or

(o) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP.

(4) **Advertising the mandatory public comment period.**

(a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must be ((~~given by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal.~~)) posted on the permitting authority web site for the duration of the public comment period.

(i) The permitting authority may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. The applicant or other initiator of the action must pay the publishing cost for all supplemental noticing.

(ii) A permitting authority must publish a notice of the public comment period in a newspaper of general circulation in the area of the proposed action until June 30, 2019. We recommend that a permitting authority continue publishing a notice in a newspaper for a project with high interest. The applicant or other initiator of the action must pay this publishing cost.

(b) This public notice can be ((~~published~~)) posted or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made.

(c) The notice must be ((~~published~~)) posted or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied. ((~~The applicant or other initiator of the action must pay the publishing cost of providing public notice.~~))

(5) **Information available for public review.**

(a) Administrative record. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection. A permitting authority may comply with this requirement by making these materials available on its web site or in at least one physical location near the proposed project.

(b) The permitting authority must post the following information on its web site for the duration of the public comment period:

(i) Public notice complying with subsection (6) of this section;

(ii) Draft permit, order, or action; and

(iii) Information on how to access the administrative record.

(c) Exemptions from this requirement include information protected from disclosure under any applicable law including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(6) **Public notice components.** Public notice must be posted by noon of the first day of the public comment period.

(a) The notice must include:

(i) The date the notice is posted;

(ii) The name and address of the owner or operator and the facility;

((~~(ii)~~)) (iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

((~~(iii)~~)) (iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

((~~(iv)~~)) (v) The location where those documents made available for public inspection may be reviewed;

((~~(v) A thirty-day period for submitting written comment to the permitting authority;~~))

(vi) Start date and end date for a thirty-day public comment period. If a Washington state holiday falls within this period, the holiday is not one of the thirty days;

(vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

((~~(vii)~~)) (viii) The name, address, and telephone number and email address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC 173-400-117, public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval.

(7) **Length of the public comment period.**

(a) The public comment period must extend at least thirty days prior to any hearing. The thirty-day period must be counted as required in subsection (6)(a)(vi) of this section.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

(8) **Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, ((~~fax,~~)) or electronic ((~~mail~~)) means. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(9) **Setting the hearing date and providing hearing notice.** If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

(10) **Notice of public hearing.**

(a) At least thirty days prior to the hearing (as counted as required in subsection (6)(a)(vi) of this section) the permitting authority will provide notice of the hearing as follows:

(i) ((~~Give public hearing notice by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal~~)) Post the public hearing notice on the permitting authority web site as directed by subsection (4) of this section;

(ii) The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the proposed source or action, or by other methods appropriate to notify the local community; and

((~~(ii) Mail~~)) (iii) Distribute by electronic means or via the United States postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) In the case of a permit action, the applicant must pay all ((~~publishing costs associated with meeting the requirements of this subsection~~)) supplemental notice costs when the permitting authority determines a supplemental notice is appropriate. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(11) **Notifying the EPA.** The permitting authority must ((~~send~~)) distribute by electronic means or via the United States postal service a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) This subsection applies to ecology only actions including:

(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;

(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

(b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least thirty days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.

(c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 (in effect on the date in WAC 173-400-025).

(13) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-740 PSD permitting public involvement requirements. (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or

(d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review of air quality impacts.

(2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Administrative record. Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Ecology may comply with this requirement by making these materials available on ecology's web site or at a physical location.

(i) Some materials comprising the administrative record (such as air quality modeling data) may be too large to post on a web site but may be made available as part of the record either in hard copy or on a data storage device.

(ii) Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(b) Notify the public ((~~by:~~

~~(i) Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4). The date the public notice is published in the newspaper starts the required thirty-day comment period.~~

~~(ii)~~)).

(i) Public notice must be posted on ecology's web site by noon of the first day of the public comment period.

(ii) The following information must be posted for the duration of the public comment period:

(A) Public notice elements in subsection (3) of this section;

(B) PSD draft permit;

(C) PSD technical support document; and

(D) Information on how to access the administrative record.

(iii) If ecology grants a request to extend the public comment period, ((the extension notice must also be published in a newspaper as noted above)) ecology must:

(A) Post the extension notice on the same web site where the original notice was posted;

(B) Specify the closing date of the extended comment period in the extension notice; and

(C) Distribute a copy of the extension notice ((sent to)) by electronic means or via the United States postal service to whomever requested the extension and the organizations and individuals listed in (c) and (d) of this subsection. ((The closing date of the extended comment period shall be as defined in the public comment period extension notification.

(iii)))

(iv) If a hearing is held, the public comment period must extend through the hearing date.

(((iv))) (v) If ecology determines a supplemental notice is appropriate, the applicant or other initiator of the action must pay the cost of providing this supplemental public notice. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(c) ((Send)) Distribute by electronic means or via the United States postal service a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) ((Send)) Distribute by electronic means or via the United States postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC; and

(v) Individuals or organizations who request a copy((; and

(vi) The location for public inspection of material required under (a) of this subsection)).

(3) **Public notice content.** The public notice shall contain at least the following information:

(a) The date the public notice is posted;

(b) The name and address of the applicant;

(((b))) (c) The location of the proposed project;

(((c))) (d) A brief description of the project proposal;

(((d))) (e) The preliminary determination to approve or disapprove the application;

(((e))) (f) How much increment is expected to be consumed by this project;

(((f))) (g) The name, address, and telephone number of the person to contact for further information;

(((g))) (h) A brief explanation of how to comment on the project;

(((h))) (i) An explanation on how to request a public hearing;

(((i) The location of the documents made available for public inspection;

(j) There is a thirty-day period from the date of publication of the notice for submitting written comment to ecology;

(k))) (j) The web site posting notice that includes the information in subsection (2)(b)(i) of this section;

(k) The start date and end date for a minimum of a thirty-day public comment period starting from the date of posting notice on the web site. If a Washington state holiday falls within this period, that holiday is not one of the thirty days;

(l) A statement that a public hearing may be held if ecology determines within a thirty-day period, as determined by (k) of this subsection, that significant public interest exists;

(((l))) (m) The length of the public comment period in the event of a public hearing; and

(((m))) (n) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same ((locations)) web site where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall post the final determination on the same web site where the draft permit and public notice was posted according to subsection (2)(b) of this section.

(c) Ecology shall ((~~mail~~)) distribute by electronic means or via the United States postal service a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal; and

(ii) Other individuals who requested notification of PSD permits.

((~~(c)~~)) (d) Ecology shall distribute a copy of the final determination ((~~shall be sent~~)) to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC; and

(vi) Any person who commented on the preliminary determination((~~; and~~

~~(vii) The location for public inspection of material required under subsection (2)(a) of this section~~)).

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

WAC 173-401-800 Public involvement. (1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.

(2) Public notice.

(a) The permitting authority shall provide public notice for the following actions:

(i) Issuance of a draft permit or permit renewal;

(ii) Intended denial of a permit application;

(iii) Issuance of a draft permit modification;

(iv) Issuance of a draft general permit;

(v) Scheduling of a public hearing under subsection (4) of this section; and

(vi) Any other related activities that the permitting authority considers to involve substantial public interest.

(b) ((~~Public notice shall be provided by the permitting authority by prominent advertisement in the area affected by the facility applying for a permit. Publication in *Ecology's Operating Permit Register* does not satisfy this requirement. Prominent advertisement may be by publication in a newspaper of general circulation in the area affected by the facility applying for a permit as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the *Ecology Permit Register*. The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.~~)) Notice shall be given by the following methods:

(i) Permitting authority web site. A permitting authority must post notice on its web site for the duration of the public comment period. Public notice must be posted by noon of the first day of the public comment period.

(ii) A permitting authority may supplement notice on an individual permit or action. Additional notice may include, but is not limited to, a newspaper of general circulation in the area of the permittee.

(iii) *Permit Register*.

(A) Ecology shall publish notice in the *Permit Register* according to WAC 173-401-805.

(B) The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive ((~~such~~)) this notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. The mailing list may be electronic or hardcopy, or both. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

(d) Public notice must include:

(i) The date the notice is posted;

(ii) The start date and end date of the thirty-day public comment period. If a Washington state holiday falls within this period, the holiday is not one of the thirty days;

(iii) Name and address of the permitting authority;

((~~(ii)~~)) (iv) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;

((~~(iii)~~)) (v) A brief description of the business conducted at the facility and activity involved in the permit action;

((~~(iv)~~)) (vi) Name, address, and telephone number of a person (or an email or web address) from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;

((~~(v)~~)) (vii) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and

((~~(vi)~~)) (viii) A description of the emission change involved in any permit modification.

(e) Availability for public inspection.

(i) The permitting authority must post the draft permit and technical support document on its web site for the duration of the public comment period.

(ii) Administrative record. The permitting authority must make the administrative record available for public inspection((~~,~~))for the duration of the public comment period. The administrative record must:

(A) Be available in at least one location near the chapter 401 source((~~,~~)). This may be at a physical location and/or posted on the permitting authority web site; and

(B) Include all nonproprietary information contained in the permit application((~~, draft permit~~)) and supporting materials. ((~~Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.~~)) Supporting materials available only in hardcopy or too large for posting on a web site must be identified and made available on request.

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section.

(a) This comment period begins on the date of ((~~publication of notice in the *Permit Register* or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, whichever is later.~~)) posting notice on the permitting authority's web site. Public notice must be posted by noon of the first day of the public comment period;

(b) No proposed permit shall be issued until the public comment period has ended and the permitting authority has prepared a response to the comments received.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The permitting authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held at a time(s) and place(s) as the permitting authority deems reasonable. The permitting authority shall provide at least thirty days prior notice of any hearing.

(5) The permitting authority shall keep a record of the commentors and issues raised during the public participation process. Such records shall be available to the public.

WSR 18-04-088
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed February 5, 2018, 3:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-073.

Title of Rule and Other Identifying Information: WAC 182-538-070 Payments to managed care organizations (MCOs).

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, 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 www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than March 14, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by March 13, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by March 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-538-070 Payments to managed care organizations (MCOs), to align language regarding enhancement payments for MCO enrollees assigned to federally qualified health centers and rural health clinics with the agency's rules found in chapters 182-548 and 182-549 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: Alison Robbins, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1634.

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

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

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

February 5, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

WAC 182-538-070 Payments to managed care organizations (MCOs). (1) The medicaid agency pays apple health managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been developed using generally accepted actuarial principles and practices;

(b) Are appropriate for the populations to be covered and the services to be furnished under the MCO contract;

(c) Have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on analysis of historical cost, rate information, or both; and

(e) Are paid based on legislative allocations.

(2) The MCO is solely responsible for payment of MCO-contracted health care services. The agency will not pay for a service that is the MCO's responsibility, even if the MCO has not paid the provider for the service.

(3) The agency pays an enhancement rate ((~~to federally qualified health care centers (FQHC) and rural health clinics (RHC)~~)) for each MCO enrollee assigned to ((~~the FQHC or RHC. The enhancement rate from the agency is in addition to the negotiated payments FQHCs and RHCs receive from the MCOs for services provided to MCO enrollees. To ensure that the appropriate amounts are paid to each FQHC or RHC, the agency performs an annual reconciliation of the enhancement payments with the FQHC or RHC~~)) a federally qualified health center (FQHC) or rural health clinic (RHC) according to chapters 182-548 and 182-549 WAC.

(4) The agency pays MCOs a delivery case rate, separate from the capitation payment, when an enrollee delivers a child(ren) and the MCO pays for any part of labor and delivery.

WSR 18-04-091
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed February 5, 2018, 4:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-085.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-406-0015 Can I get basic food right away?

Hearing Location(s): On March 13, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than March 14, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., March 13, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by February 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-406-0015 in order to provide clarity to Supplemental Nutrition Assistance Program (SNAP) recipients and prevent unnecessary overpayments regarding what resources are considered when the agency provides expedited service.

Reasons Supporting Proposal: The department is proposing to amend WAC 388-406-0015 to clarify language regarding what is considered a resource when calculating eligibility for expedited service for SNAP benefits. The proposed language also aligns WAC with federal regulations regarding this subject.

Statutory Authority for Adoption: The state legislature authorizes the department to administer SNAP and food assistance program for legal immigrants under RCW 74.04.-500, 74.04.510, and 74.08A.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA 98504, 360-725-4611.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

February 5, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-07-014, filed 3/8/11, effective 4/8/11)

WAC 388-406-0015 ((~~Can~~)) May I get basic food right away? (1) When the department gets your basic food application, we look at your circumstances at the time you applied to see if you ((~~can~~)) may get basic food benefits within seven calendar days. This is called "expedited service."

(2) To get expedited service, you must provide proof of who you are and meet one of the following conditions:

(a) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, of under one hundred fifty dollars **((~~and~~))** and have available ((~~cash of~~)) liquid resources as defined in WAC 388-470-0055 of one hundred dollars or less; ((~~or~~))

(b) Have gross monthly income (before taxes), minus exclusions as defined in WAC 388-450-0015, **((~~plus~~))** plus available ((~~cash~~)) liquid resources as defined in WAC 388-

470-0055 of less than your total shelter costs (rent or mortgage and the utility allowance you are eligible for under WAC 388-450-0195); or

(c) Be a destitute migrant or seasonal farm worker household((~~,~~)) under WAC 388-406-0021, **((~~and~~))** and your household's available ((~~cash~~)) liquid resources as defined in WAC 388-470-0055 is one hundred dollars or less.

(3) If you are eligible for expedited service and are not required to have an office interview under WAC 388-452-0005, you ((~~can~~)) may have a telephone interview and still get benefits within seven days.

(4) If you are applying for basic food, "day one" of your seven-day expedited service period starts on the:

(a) Day after the date you filed your application;

(b) Date you are released from a public institution; or

(c) Date of your interview if you:

(i) Waived your expedited interview and we decide you are eligible for expedited service during your rescheduled interview; or

(ii) Were screened as ineligible for expedited service and we later determine you are eligible for the service during your interview.

(5) If you get expedited service, we only require verification of your identity to provide your first benefit issuance within seven days. Other required verifications may be postponed.

(6) All postponed verification must be provided for your ongoing eligibility to be determined and any additional benefits to issue. If you applied:

(a) On or before the 15th of the month, we issue one month's benefits and you have up to thirty days from the date of application to give us any postponed verification; or

(b) On or after the 16th of the month, we issue two months' benefits and you have until the end of the second month to give us any postponed verification.

(7) If we ((~~can~~)) may determine ongoing eligibility at your interview and do not need to postpone any required verifications, we will assign you a regular certification period as described in WAC 388-416-0005.

(8) If you have received expedited service in the past, you can get this service again if you meet the requirements listed in subsection (2) ((~~above~~)) of this subsection and you:

(a) Gave us all the information we needed to determine ongoing eligibility for your last expedited service benefit period; or

(b) Were certified under normal processing standards after your last expedited certification.

(9) If you reapply for benefits:

(a) Before your certification period ends, you are not eligible for expedited service;

(b) After your certification period ends, your seven-day expedited service period is the same as a new application;

(c) While you receive transitional food assistance as described in chapter 388-489 WAC, you are not eligible for expedited service.

(10) If you are denied expedited service, you ((~~can~~)) may ask for a department review of our decision. We review the decision within two working days.

WSR 18-04-095
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT

[Filed February 6, 2018, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-017.

Title of Rule and Other Identifying Information: Amending chapter 82-48 WAC, relating to access to public records.

Hearing Location(s): On March 16, 2018, at 9 a.m., at 302 Sid Snyder Avenue S.W., Fourth Floor, Room 440, Olympia, WA 98501.

Date of Intended Adoption: April 6, 2018.

Submit Written Comments to: Nathan Sherrard, 302 Sid Snyder Avenue S.W., Olympia, WA 98501, email Nathan.sherrard@ofm.wa.gov, by March 14, 2018.

Assistance for Persons with Disabilities: Contact Hayden Mackley, phone 360-902-0401, email hayden.mackley@ofm.wa.gov, by March 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The office of financial management (OFM) proposes amendments to chapter 82-48 WAC because significant changes to the Public Records Act and OFM's organizational structure have occurred since these rules were last updated. The proposed changes will ensure consistency with current law, and with OFM's current organizational structure and practices.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 42.56.100, 42.56.120, and 42.56.520, and chapter 304, Laws of 2017.

Statute Being Implemented: Chapter 304, Laws of 2017.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nathan Sherrard, OFM, Insurance Building, Olympia, Washington, 360-902-0540; and Enforcement: Roselyn Marcus, OFM, Insurance Building, Olympia, Washington, 360-902-0434.

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

A cost-benefit analysis is not required under RCW 34.05.328. OFM is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted

or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

February 6, 2018
Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-010 Purpose. The purpose of this chapter is to provide rules for the office of financial management to implement the provisions of chapter ((~~42.17~~)) 42.56 RCW relating to public records.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-020 Definitions. The definitions set forth in RCW ((~~42.17.020~~)) 42.56.010 shall apply to this chapter.

(1) "OFM" or agency means the office of financial management. Where appropriate, OFM or agency also refers to the staff and employees of the office of financial management.

(2) "Director" means the director of the office of financial management.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-030 Description of the office of program planning and fiscal management. OFM is the state agency having decision-making and operational responsibilities for the financial ((~~and~~)), management, and human resources affairs of state government in accordance with chapters 43.41 and 43.88 RCW. It is organized into a budget division, an accounting division, ((~~labor relations~~)) a state human resources division, ((~~executive policy division, and a contracting,~~)) and a forecasting and ((~~risk management~~)) research division along with other divisions which support and augment these activities. OFM also provides administrative support for the governor's policy office, results Washington, serve Washington, and the office of regulatory and innovation assistance. OFM's central office is located at 302 Sid Snyder Avenue S.W. (Insurance Building on the Washington state capitol campus), Olympia, Washington. OFM has other offices also located in Olympia at 128 10th Avenue S. (the Raad building); 106 11th Avenue S.W. (the Helen Sommers building); and 1011 Plum Street S.E., Building 4.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-040 Responsibilities. The responsibilities of OFM include preparation of the governor's budget for presentation to the legislature and budget implementation monitoring ((~~through the operation of the budget and allotment systems~~)), development and maintenance of the statewide financial and administrative systems central books of account ((~~containing timely records of changes in the~~)), preparation of statewide financial ((~~status of the state and other financial databases~~)) reports, as well as budget and policy research and development of legislation to support the governor's policy goals. OFM also provides technical assistance to the governor and legislature by preparing notes and recommendations, based on information it has obtained, concerning needs and policies recommended for meeting these needs through state programs. In addition, OFM ((~~oversees statewide personal services contracting activities, provides a comprehensive risk management program for all state agencies~~)) provides population estimates, monitors changes in the state economy and labor force, and plays a critical role in statewide human resources and public employee labor management relations. Finally, the Revised Code of Washington contains statutes that assign specific duties of an advisory, supervisory, regulatory or similar nature to the agency. All of these relate either directly or indirectly to the financial affairs of the state and its agencies ((~~thereof~~)).

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-050 Method of operation. In carrying out its responsibilities, OFM receives information about the management and operation of state agencies and their programs. This information includes, but is not limited to: Budget proposals, short and long-range goals and the plans developed to meet them, present and projected workloads, capital and operating resource requirements, detailed and summary reports of current expenditures, financial commitments, etc. This information is obtained both on a routine basis and in response to requests from the executive and legislative branches. It is recorded and evaluated by OFM and becomes the basis for reports, recommendations, approval of expenditures and, in certain cases, for the establishment of firm criteria for the disbursement of state funds. ((~~An example of the latter use is the annual determination of the population of all cities and towns in the state, required by RCW 43.62.030, which is the basis for distribution of tax revenues to these communities.~~))

In obtaining the necessary data to perform these functions, OFM employs numerous methods of communication including, but not limited to: Reports submitted by state agencies, meetings with agency representatives, memoranda and informal contacts between its personnel and that of respondent agencies.

When necessary for the timely and uniform execution of its duties, OFM exercises its statutory power to place standardized reporting requirements upon other agencies of state government.

OFM has published and currently maintains the *State Administrative and Accounting Manual*, which contains policies((, regulations)) and guidance for state agencies in ((fiscally-related)) fiscally related matters.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-060 Public records available. All public records of this agency, as defined in RCW ((42.17.020)) 42.56.010, are available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter ((42.17)) 42.56 RCW, any other laws and these rules.

OFM's records are also available on the OFM web site at http://ofm.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-080 Public records officer. The public records officer((, designated)) is appointed by the director((,)) and shall be in charge of the agency's public records. The ((person so designated shall be)) public records officer is located in the office of the director. Any person wishing to request access to public records of OFM, or seeking assistance in making such a request, should contact OFM's public records officer:

Public Records Officer
Office of Financial Management
302 Sid Snyder Avenue S.W.
P.O. Box 43113
Olympia, WA 98504-3113
publicdisclosure@ofm.wa.gov

Information is also available at OFM's web site at http://www.ofm.wa.gov/publicrecords/default.asp.

The public records officer shall be responsible for implementation of the agency's rules ((and regulations)) regarding release of public records for inspection and copying, coordinating the staff of the agency in this regard, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter ((42.17)) 42.56 RCW. The public records officer may choose a designee, as may be necessary, to act in his or her absence to carry out the above-described responsibilities.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-090 ((Availability of records.)) Processing of public records requests—General. ((Public records of OFM shall be available for inspection and the preparation of requested copies in the office of the director or other agency location as applicable, during normal office hours. For the purposes of this chapter, normal office hours of OFM shall be from 8:00 a.m. until noon and from 1:00 p.m. until 5:00 p.m., Monday through Friday, excluding legal holidays.)) (1) Making a request for public records.

(a) Any person wishing to inspect or copy public records of OFM should make the request by email to publicdisclosure@ofm.wa.gov, or in writing on OFM's request form, available at http://ofm.wa.gov/publicrecords/default.asp, or by letter or fax addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including email address and telephone number;
- The date of the request; and
- Identification of the public records. Records must be sufficiently described so that OFM may identify the record. A request for all or substantially all the agency's records is not a request for an identifiable record.

(b) The public records officer may accept requests for public records that contain the above information by telephone or in person. If the public records officer accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing to the requestor.

(2) Acknowledging receipt of request. Within five business days after the day the request is received, the public records officer will do one or more of the following:

(a) Provide the requested record or a link to the record online;

(b) Provide a reasonable estimate of when records will be available;

(c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor; or

(d) Deny the request.

(3) Notification of other affected parties. In the event that the requested records name or specifically pertain to a person, or contain information that may affect the rights of others, the public records officer may, prior to providing the records, give notice to such others who are named, to whom the records pertain, or whose rights may be affected by the disclosure. The purpose of such notice is both to make persons named in a record aware that such information is being released and to make it possible for those persons, should they choose to do so, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. By law, some records are exempt or prohibited from disclosure, in whole or in part. If OFM determines that a record or part of a record is exempt or prohibited from disclosure and should be withheld, the public records officer will deny the request as to that record or portion of the record, and will identify the withheld record in general terms, state the specific exemption authorizing the withholding of the record or portion of the record, and provide a brief explanation of how the exemption applies to the record or portion of the record being withheld.

(5) Providing copies of records. Public records requested will be made available as promptly as is possible without excessive interference with the other essential functions of the agency, and in accordance with the requirement that agencies protect the requested records from damage or disorganization.

(6) Providing records in installments. When the request is for a large number of records, or if the records require substantial legal review to determine whether any exemptions apply, the public records officer may provide copies of the records in installments.

(7) Completion of request. When all requested copies of records are provided, the public records officer will indicate in writing that OFM has fulfilled its duties under the Public Records Act, and that the request is closed.

(8) Closing withdrawn or abandoned request. When the requestor withdraws the request or fails within thirty days to claim or review records or to pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that OFM has closed the request.

(9) Later discovered documents. If, after OFM has informed the requestor that it has provided all available records, it becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them, at no charge, on an expedited basis.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-100 Processing of public records requests—Inspection of public records. ((~~Public records of OFM required by any person to be disclosed in accordance with the provisions of chapter 42.17 RCW, shall be provided by the public records officer or his or her designee for inspection in the office of the director or other agency location as applicable. Persons requesting such records may not remove them from the agency office. Public records requested will be made available as promptly as is possible without excessive interference with the other essential functions of the agency, and in accordance with rules provided to protect the records so requested from damage or disorganization.~~)) (1) Requesting inspection of records. The process for requesting inspection of public records is the same as for requesting copies of public records.

(2) Providing records for inspection.

(a) Public records will be available for inspection and copying only during normal business hours of OFM, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays, and when staff are available to assist the requestor. Records must be inspected at the offices of OFM.

(b) Consistent with other demands, OFM shall endeavor to promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. Inspections will be conducted in accordance with the requirement that agencies protect the requested records from damage or disorganization. The requestor will indicate which, if any, documents he or she wishes the agency to copy.

(c) The requestor must claim or review the assembled records within thirty days of OFM's notification to him or her that the records are available for inspection or copying. If a requestor fails to claim or review the assembled records within thirty days, the public records officer will close the request and indicate to the requestor that OFM has closed the request.

(d) When the request is for a large number of records, the public records officer may provide access for inspection in installments.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-110 ((~~Copying~~)) Costs of providing copies of public records. ((~~No fee shall be charged for the inspection of public records. The agency may impose a charge for providing copies of public records. Such charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying. If it is unduly burdensome for the agency to calculate the actual cost, OFM may charge $.15 per page. No person shall be provided a copy of a public record which has been copied by the agency at the request of such person until and unless such person has tendered payment of the charge for such copying.~~)) (1) Costs of copying. OFM may charge a customized service charge, as permitted by law, for compiling or providing access to certain public records. OFM charges a fee for the copying of public records, including electronic records, as permitted by law. OFM has determined that calculating the actual costs of providing copies of records is unduly burdensome for the following reasons: (a) OFM does not have the resources to conduct a study to accurately determine the actual costs of such staff time; and (b) conducting such a study would interfere with other essential agency functions. Therefore, rather than charging the actual costs of copying paper and electronic records, OFM may charge the fees permitted by law. OFM may waive fees in accordance with its fee waiver schedule, published online at OFM's web site at http://www.ofm.wa.gov/publicrecords/default.asp.

Before making copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. Where records are provided on an installment basis, the public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

(2) Actual costs of electronic storage media and mailing. OFM may charge actual costs of mailing public records, including the cost of the shipping container. Requestors who request a specific type of postal service, such as return receipt requested, will be charged accordingly. In addition, when OFM determines that it is in its best interest to confirm that the requestor has received the records, OFM may charge the requestor for return receipt requested. OFM may also charge actual costs for providing electronic storage media such as discs or USB thumb drives.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-120 Commercial purposes. No provisions of any ((~~regulation~~)) rule contained in this chapter 82-48 WAC shall be construed as giving authority to any officer or OFM employee to give, sell, or provide access to lists of

individuals requested for commercial purposes. If a list of individuals is included in the materials requested, OFM ((~~reserves the right to request~~)) may require requestors to identify themselves and the purpose of their request, and provide a signed statement that the requestor will not use the list of individuals for commercial purposes. When OFM has some indication that a requested list of individuals might be used for commercial purposes, OFM will investigate the request further. OFM will determine on a case-by-case basis whether such further investigation is necessary, based on the identity of the requestor, the nature of the records requested, and any other information available to OFM. When OFM determines further investigation is necessary, OFM will require requestors to identify the purpose of their request.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-140 Exemptions—Court protection. OFM ((~~reserves the right to~~)) shall determine ((~~that~~)) whether a public record or portion of a public record requested in accordance with the procedures outlined in chapter 82-48 WAC is exempt or prohibited from disclosure under the provisions of chapter ((~~42.17~~)) 42.56 RCW or other applicable laws.

In addition, pursuant to RCW ((~~42.17.260~~)) 42.56.070, OFM ((~~reserves the right to~~)) shall delete identifying details when it makes available any public record in cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ((~~42.17~~)) 42.56 RCW.

((~~Responses by OFM refusing, in whole or in part, inspection or copying of any public record shall be in writing and shall include a statement of the specific exemption authorizing the withholding of the public record or part and a brief explanation of how the exemption applies to the record withheld.~~))

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-150 Review of denial of public records request. Upon denial of any request for public records, the requesting party may petition in writing (including email) to the director, with a copy to the public records officer, for review of such denial ((~~to the director~~)). The director or his or her designee shall review the denial and provide the results of such review in writing to the petitioner and the public records officer before the end of the second business day following the receipt of the request for review. This review ((~~shall~~)) will constitute final agency action for purposes of judicial review; however, under RCW 42.56.520, any person may seek judicial review upon the conclusion of two business days after the initial denial regardless of whether the internal agency review is complete.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

WAC 82-48-160 Records index. The office of financial management ((~~shall~~)) will maintain and make available for public inspection and copying an appropriate index in accordance with RCW ((~~42.17.260~~)) 42.56.070.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 82-48-130	Agency rules for inspection and copying of public records.
WAC 82-48-170	Communications with the agency.

WSR 18-04-098
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed February 6, 2018, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-115.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): On March 28, 2018, at 9:00 a.m., at the Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 1, 2018.

Submit Written Comments to: Emily Stinson, P.O. Box 44322, Olympia, WA 98504-4322, email Emily.Stinson@LNI.wa.gov, fax 360-902-4249, by March 28, 2018.

Assistance for Persons with Disabilities: Contact Emily Stinson, phone 360-902-5974, fax 360-902-4249, email Emily.Stinson@LNI.wa.gov, by March 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3), increase the RBRVS conversion factor from $63.25 to $64.74. Increase the anesthesia conversion factor from $3.44 to $3.47.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from $126.94 to $127.70.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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: Emily Stinson, Tumwater, 360-902-5974; Implementation and Enforcement: Vickie Kennedy, Tumwater, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

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

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

February 6, 2018
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-10-060, filed 5/2/17, effective 7/1/17)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of $((~~63.25~~)) 64.74. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of $((~~3.44~~)) 3.47 per minute, which is equivalent to $((~~51.60~~)) 52.05 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 17-10-060, filed 5/2/17, effective 7/1/17)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or $((~~126.94~~)) 127.70 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 17-10-060, filed 5/2/17, effective 7/1/17)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125

for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or $((~~126.94~~)) 127.70 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 18-04-103
PROPOSED RULES
SKAGIT VALLEY COLLEGE
[Filed February 6, 2018, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-72 [18-01-072].

Title of Rule and Other Identifying Information: WAC 132D-305-005—Sexual harassment policy.

Hearing Location(s): On March 13, 2018, at 2:30-3:00 p.m., at Skagit Valley College, Board Room, 2405 East College Way, Mount Vernon, WA 98273.

Date of Intended Adoption: March 13, 2018.

Submit Written Comments to: Carolyn Tucker, 2405 East College Way, Mount Vernon, WA 98273, email Carolyn.tucker@skagit.edu, fax 360-416-7773, by March 8, 2018.

Assistance for Persons with Disabilities: Contact Carolyn Tucker, phone 360-416-7679, fax 360-416-7773, email Carolyn.tucker@skagit.edu, by March 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change is needed because Skagit Valley College has already updated and clarified its sexual harassment policy in a revised policy/procedure for prevention of sexual harassment and discrimination. The college intends to permanently repeal WAC 132D-305-005 to implement the updated policy changes in line with the most recent guidance from the United States Department of Education's Office for Civil Rights, Title IX guidance letters, VAWA, and Campus SaVE.

Reasons Supporting Proposal: Skagit Valley College has already updated and clarified its sexual harassment policy in a revised policy/procedure for prevention of sexual harassment and discrimination. The college intends to permanently repeal WAC 132D-305-005 to implement the updated policy changes in line with the most recent guidance from the United States Department of Education's Office for Civil Rights, Title IX guidance letters, VAWA, and Campus SaVE.

Statutory Authority for Adoption: RCW 28B.50.140.

Rule is necessary because of federal law.

Name of Proponent: Skagit Valley College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carolyn Tucker, Skagit Valley College, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7679.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

February 6, 2018
Lisa Radeleff
Executive Assistant
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132D-305-005 Sexual harassment policy.

WSR 18-04-104
PROPOSED RULES
WESTERN WASHINGTON UNIVERSITY
[Filed February 6, 2018, 3:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-092.

Title of Rule and Other Identifying Information: WAC 516-24-130 Demonstrations.

Hearing Location(s): On March 13, 2018, at 12:00 p.m., at Western Washington University, Main Campus, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225.

Date of Intended Adoption: April 13, 2018.

Submit Written Comments to: Jennifer L. Sloan, Rules Coordinator, Western Washington University, 516 High Street, Bellingham, WA 98225-9015, email Jennifer.Sloan@wwu.edu, fax 360-650-6197, by March 12, 2018.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, phone 360-650-3117, fax 360-650-6197, email Jennifer.Sloan@wwu.edu, by February 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The manifestation of violence and intimidation observed in on-campus demonstrations in Washington state and across the United States necessitate changes to WAC 516-24-130 in order to preserve the integrity of Western Washington University's educational mission, to protect the health, safety and welfare of students, faculty and staff, and to preserve university property and scarce state resources. The following changes include: A change in title and updating language within the section to reflect the change; language that the university is committed to a safe campus and preventing loss or damage; language regarding the time and place of freedom of expression and assembly activities; replaced the word disrupt with obstruct; and added additional conduct restrictions.

Reasons Supporting Proposal: To ensure the safety of the campus community and preserve university property and scarce state resources.

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

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

Name of Proponent: Western Washington University, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Alexander, Associate Dean, Student Engagement/Director VU, VU 545, 360-650-3451; and Enforcement: Darin Rasmussen, Director of Public Safety/Chief of Police, Campus Services, 360-650-3555.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

February 6, 2018
Jennifer L. Sloan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-09-052, filed 4/13/01, effective 5/14/01)

WAC 516-24-130 ((~~Demonstrations.~~)) Freedom of expression and prohibited conduct. The value of active participation in political and social issues is recognized by Western Washington University as enhancing the education of the individual and contributing to the betterment of American society. The rights of free speech, petition and assembly are fundamental to the democratic process guaranteed under the Constitution of the United States and will be promoted and respected at all times.

The university ((~~further~~)) also recognizes that it has an obligation to maintain on campus an atmosphere that allows the institution to perform the fundamental task of providing an opportunity for all members of the community to pursue knowledge through accepted academic processes.

The university further recognizes that it is committed to a safe campus, ensuring the safety of its community members and preventing loss or damage to its facilities or property.

To achieve these objectives it is essential that ((~~demonstrations~~)) freedom of expression and assembly be orderly and conducted in a time, place, and manner that allows the orderly function of the university. Any person or group of persons shall not, by their conduct((~~, disrupt, disturb or interfere with:~~

~~(1) Classroom activities and other educational pursuits;~~

~~(2) Recognized university activities including, but not limited to, ceremonies, meetings, office functions or residence hall activities;~~

~~(3) Pedestrian and vehicular traffic;~~

~~(4) Preservation and protection of university property and personal property of individuals.~~)):

(1) Violate the prohibition of firearms, weapons, armor or armaments as set forth in WAC 516-52-020.

(2) Obstruct or interfere with classroom activities and/or other educational or employment pursuits.

(3) Obstruct or interfere with recognized university activities including, but not limited to, ceremonies, meetings, office functions or residence hall activities.

(4) Obstruct or interfere with pedestrian or vehicular traffic.

(5) Obstruct or interfere with the preservation and protection of university property and personal property of individuals.

(6) Threaten, by statement or implication, the health or safety of others.

(7) Contact or communicate in a threatening nature that harasses, would cause a reasonable person to fear for their safety, or which is so persistent, pervasive, or severe as to deny a person's ability to substantially participate in the university community.

Any person persisting in such conduct after being requested to cease by university authorities, shall be subject, as appropriate, to disciplinary proceedings, trespass, or arrest and prosecution.

WSR 18-04-105
PROPOSED RULES
WESTERN WASHINGTON UNIVERSITY

[Filed February 6, 2018, 3:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-090.

Title of Rule and Other Identifying Information: WAC 516-52-020 Firearms and dangerous weapons.

Hearing Location(s): On March 13, 2018, at 12:00 p.m., at Western Washington University, Main Campus, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225.

Date of Intended Adoption: April 13, 2018.

Submit Written Comments to: Jennifer L. Sloan, Rules Coordinator, Western Washington University, 516 High Street, Bellingham, WA 98225-9015, email Jennifer.Sloan@wwu.edu, fax 360-650-6197, by March 12, 2018.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, phone 360-650-3117, fax 360-650-6197, email Jennifer.Sloan@wwu.edu, by February 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The manifestation of violence and intimidation observed in on-campus demonstrations in Washington state and across the United States necessitate changes to WAC 516-52-020 in order to preserve the integrity of Western Washington University's educational mission, to protect the health, safety and welfare of students, faculty and staff, and to preserve university property and scarce state resources. The following changes include: Definitions for armor or armaments, a firearm, and a weapon; who may possess a firearm or weapon; and regulations and exceptions regarding weapons, firearms, and armor or armaments on campus.

Reasons Supporting Proposal: To identify and limit the possession of dangerous weapons and armaments on university property.

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

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

Name of Proponent: Western Washington University, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Darin Rasmussen, Director of Public Safety/Chief of Police, Campus Services, 360-650-3555.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

February 6, 2018
Jennifer L. Sloan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-01-080, filed 12/14/92, effective 1/14/93)

WAC 516-52-020 ((~~Firearms and dangerous~~)) Weapons and armaments prohibited. (1) Definitions. As used in this section, the following words and phrases mean:

(a) Armor or armaments. Includes, but are not limited to, shields, body armor, tactical gear, face masks, and helmets.

(b) Firearm. A weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder, whether loaded or unloaded.

(c) Weapon. Includes, but is not limited to, air guns, pellet guns, paint ball guns, or other pneumatic propellant devices, bows, crossbows, slingshots or other muscle powered projectile devices, daggers, swords, knives or other cutting or stabbing instruments with blades longer than three inches, clubs, bats, sand clubs, truncheons, metal knuckles, incendiary devices or materials, or any other objects or instruments apparently capable of producing bodily harm.

(2) Only such persons who are authorized to carry firearms, ammunition, or other weapons or armaments as duly appointed and commissioned law enforcement officers in the state of Washington, commissioned by agencies of the United States government, or authorized by contract with the university, shall possess firearms or other weapons or armaments issued for their possession by their respective law enforcement agencies or employers while on the campus or other university-controlled property, including, but not limited to, residence halls. ((~~No one may possess explosives unless licensed to do so for purposes of conducting university-authorized activities relating to building construction or demolition.~~

~~(2) Other than the law enforcement officers or other individuals referenced in subsection (1) of this section, members of the campus community and visitors who bring firearms or other weapons to campus must immediately place the firearms or weapons in the university-provided storage facility. The storage facility is located at the university public safety department and is accessible twenty-four hours per day.~~

~~(3) If any member of the campus community or visitor wishes to bring a weapon to the campus for display or demonstration purposes directly related to a class, seminar, or other educational activity, permission for such possession may be applied for at the university public safety department, which shall review any such proposal and may establish the conditions of the possession on campus.~~))

(3) Other than the law enforcement officers or other individuals referenced in subsection (2) of this section, individuals seeking to bring a firearm or other weapon onto campus, university-owned property, or a university sponsored event must obtain prior written authorization at the university public safety department, which shall have sole authority to review and approve any such request and, if approval is granted, establish conditions to the firearm or weapon authorization.

(4) Members of the campus community and visitors who bring firearms or other weapons or armaments to campus without prior authorization must immediately remove them from university property or place the firearm(s), weapon(s), or armament(s) in the university provided storage facility. The storage facility is located at the university public safety department and is accessible twenty-four hours per day.

(5) Possession of a valid concealed pistol license authorized by the state of Washington is not an exemption under this section. However, nothing in this section shall prevent an individual holding a valid concealed pistol license from securing their pistol in a vehicle as authorized under RCW 9.41.050.

(6) Except for those persons identified in subsection (2) of this section or under the circumstances described in subsection (3) or (4) of this section, possession of firearms, ammunition, fireworks, and explosives is prohibited on the university campus, university-owned property, and at university sponsored events. No one may possess fireworks or explosives unless certified or licensed to do so for purposes of conducting university-authorized activities, building construction or demolition.

(7) Some weapons including, but not limited to, sports equipment, kitchen utensils, laboratory materials and equipment, safety training equipment, and props in campus theatre productions are permitted when used for the purpose for which they are intended. Use of weapons, armor, or armaments in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons or property, or in any way to avoid apprehension for a criminal act or acts is prohibited.

(8) Violations of this section are subject to appropriate disciplinary or legal action.

WSR 18-04-107
PROPOSED RULES
DEPARTMENT OF CORRECTIONS

[Filed February 6, 2018, 4:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-008.

Title of Rule and Other Identifying Information: Chapter 137-08 WAC, Public records—Disclosure.

Hearing Location(s): On March 13, 2018, at 2-3 p.m., at the Department of Corrections, Headquarters Building, 7345 Linderson Way S.W., Room 1034, Tumwater, WA 98501. Please bring a driver's license or other state I.D. and check-in with security at the first floor reception desk.

Date of Intended Adoption: March 15, 2018.

Submit Written Comments to: Debra Eisen, Department of Corrections, Contracts and Legal Affairs, P.O. Box 41114, Olympia, WA 98504, email debra.eisen@doc.wa.gov, by March 7, 2018.

Assistance for Persons with Disabilities: Contact Debra Eisen, phone 360-725-8363, email debra.eisen@doc.wa.gov, by March 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule update is both a general update and to ensure compliance by the department of corrections with changes to the Public Records Act (PRA), chapter 42.56 RCW, effective July 23, 2017. The department has declared that it will be "unduly burdensome" to calculate actual costs associated with providing copies of requested public records and so, to be in full compliance with PRA, will utilize the statutory default fee schedule created by the legislature in the 2017 amendments. These changes will establish allowable charges for electronically provided records and lower the department's hard copy fee to align with the default fee outlined in PRA.

Reasons Supporting Proposal: Statutory compliance.

Statutory Authority for Adoption: RCW 72.01.090 Rules and regulations.

Statute Being Implemented: RCW 42.56.120 Charges for copying, PRA.

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

Name of Proponent: Washington state department of corrections, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Denise Vaughan, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-725-8854.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule change is statutorily required and will, in part, reduce fees for requesters of public records.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department utilized the statutory default fee schedule, created by the legislature, to arrive at both hard copy and electronic fees to charge requesters.

February 6, 2018
Stephen Sinclair
Secretary

AMENDATORY SECTION (Amending WSR 07-12-073, filed 6/5/07, effective 7/6/07)

WAC 137-08-010 Purpose. The purpose of this chapter ((~~shall be~~)) is to ensure compliance by the department of corrections with the provisions of the Public Records Act, chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 08-04-045, filed 1/31/08, effective 3/2/08)

WAC 137-08-060 Public records available. The department ((~~shall at all times~~)) will take the most timely ((~~possible action on requests for disclosure, and shall be required to respond~~)) action possible under the circumstances in responding to public records requests submitted to the agency. Every public records request must be provided an initial response in writing within five ((~~working~~)) business days of receipt of the request ((~~for disclosure. The department's failure to so respond shall entitle the person seeking disclosure to petition the public disclosure officer pursuant to WAC 137-08-140~~)).

AMENDATORY SECTION (Amending WSR 86-10-010, filed 4/29/86)

WAC 137-08-070 Public ((~~disclosure~~)) records officer. The department ((~~shall~~)) will designate a public ((~~disclosure~~)) records officer, ((~~located in the state administrative office,~~)) who ((~~shall~~)) will be responsible for implementing the department's rules regarding disclosure of public records, coordination of staff in this regard, and generally ((~~insuring~~)) ensuring compliance by ((~~the~~)) staff with public records disclosure requirements.

AMENDATORY SECTION (Amending WSR 82-04-023, filed 1/26/82)

WAC 137-08-080 Public ((~~disclosure~~)) records coordinators. ((~~Each departmental administrative unit, for example, each institution, shall~~)) The department will designate from among its employees ((~~at least one~~)) public ((~~disclosure~~)) records coordinators, who ((~~shall~~)) will:

(1) Have responsibility to respond to written requests for disclosure of the department's nonexempt public records located in that ((~~office~~)) location; and

(2) ((~~Refer the person requesting disclosure to any other office where the record is located, and assist further in the disclosure process; and~~

~~(3) Verify, if necessary, the identity of any person requesting information.~~)) Be responsible to gather records from staff and provide them in response to any public records request pertaining to their location.

AMENDATORY SECTION (Amending WSR 08-04-045, filed 1/31/08, effective 3/2/08)

WAC 137-08-090 Request for public records. (1) All requests for the disclosure of a public record, other than requests by incarcerated ((~~offenders~~)) individuals for inspection of their health record or central file must be submitted in writing directly to the Department of Corrections Public Records Officer at P.O. Box 41118, Olympia, WA 98504 or via email at publicdisclosureunit@doc1.wa.gov identifying the ((~~record~~)) record(s) sought with reasonable certainty. The written request should include:

(a) The name of the person requesting the record and their contact information;

(b) The calendar date on which the request is made; and

(c) The records requested.

Incarcerated ((~~offenders~~)) individuals under the authority of the department of corrections ((~~shall~~)) will submit requests to inspect their own health record, under chapter 70.02 RCW, or central file to the records manager at the facility in which((~~,~~)) they are currently incarcerated. For all other requests, incarcerated individuals must submit the request to the public records officer at the address listed in this subsection.

(2) A request ((~~for disclosure shall be made during customary business hours.~~

~~(3) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 137-08-150, the department must provide the person requesting disclosure with a written explanation for the nondisclosure, pursuant to WAC 137-08-130.~~

~~(4) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure pursuant to WAC 137-08-130, may request a review under the provisions of WAC 137-08-140.~~

~~(5) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.~~

~~(6) Nothing in this section or elsewhere in this chapter shall be construed to require the department to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the department and is not required for litigation by rules of pretrial discovery~~)) received after business hours will be considered to have been received the following business day.

AMENDATORY SECTION (Amending WSR 85-13-020, filed 6/10/85)

WAC 137-08-110 Fees—Inspection and copying. ((~~(1) No fee shall be charged for the inspection of public records.~~

~~(2) The department shall collect a fee of twenty cents per page plus postage to reimburse itself for the cost of providing copies of public records.~~

~~(3) Nothing contained in this section shall preclude the department from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the department.~~

~~(4) The secretary of the department or his designee is authorized to waive any of the foregoing copying costs.~~)) (1) The following copy fees and payment procedures apply to requests to the department under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the department is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The department does not have the resources to conduct a study to determine all of its actual copying costs;

(b) Through the 2017 legislative process, the public including requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The department will charge for any customized services used pursuant to RCW 42.56.120(3). Under RCW 42.56.430, the department may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The charges for copying methods used by the department are summarized in the fee schedule available on the department's web site at www.doc.wa.gov.

(4) Requestors are required to pay for copies in advance of receiving the records.

(5) No fee will be charged for the inspection of public records.

(6) No fee will be charged to:

(a) Law enforcement agencies that have made a request to the department for the purpose of active criminal investigation and/or prosecution.

(b) Other state agencies.

(c) Additional waivers may be made at the discretion of the public records officer.

(7) The public records officer may require an advance deposit of ten percent of the estimated fees or customized service charge as allowable under RCW 42.56.120(4).

(8) Responsive records may be provided in installments as allowable under RCW 42.56.120(4). Each installment must be either paid for or inspected prior to fulfilling the remainder of the request.

(9) Payment should be made by check or money order to the department of corrections. If, at the discretion of the public records officer cash payment is permitted, then the public records officer will also determine the denomination of bills and coins that will be accepted.

(10) The department will close a request when the requestor fails within thirty days to pay for a request or an installment or for the required ten percent deposit.

AMENDATORY SECTION (Amending WSR 82-04-023, filed 1/26/82)

WAC 137-08-120 ((~~Protection~~)) Inspection of public records. ((~~Public records shall be disclosed~~)) Other than incarcerated individuals inspecting their own health record or central file, public records will be inspected at department headquarters. This inspection will occur only in the presence of a public ((~~disclosure coordinator~~)) records or correctional records staff person or his or her designee, who ((~~shall~~)) will withdraw the records if the person requesting disclosure acts in a manner which ((~~will~~)) could damage or substantially disorganize the records or interfere excessively with other essential functions of the department. ((~~This section shall not be construed to prevent the department from accommodating a client by use of the mails in the disclosure process.~~))

AMENDATORY SECTION (Amending WSR 82-04-023, filed 1/26/82)

WAC 137-08-130 ((~~Disclosure~~)) Exemption procedure. (1) The public ((~~disclosure coordinator shall~~)) records staff will review file materials prior to disclosure.

(2) If the file does not contain materials exempt from disclosure, the ((~~public disclosure coordinator shall~~)) staff person will ensure full ((~~disclosure~~)) production.

(3) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.

(4) If the file does contain materials exempt from disclosure, ((~~the public disclosure coordinator shall deny disclosure~~)) under chapter 42.56 RCW or other statutes, the staff person responding will deny production of those exempt portions of the file, and ((~~shall~~)) will, at the time of ((~~the~~)) denial, in writing, clearly specify the reasons for the denial of ((~~disclosure~~)) production, including a statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption or reason applies. The remaining, nonexempt materials ((~~shall~~)) will be fully disclosed.

AMENDATORY SECTION (Amending WSR 86-10-010, filed 4/29/86)

WAC 137-08-140 Review of denial of disclosure. (1) If the person requesting disclosure disagrees with the decision ((~~of a public disclosure coordinator denying disclosure of a public record~~)) or the processing of their request, such person may petition the department's public ((~~disclosure~~)) records appeals officer for review of the decision denying disclosure. The form used by ((~~the public disclosure coordinator~~)) public records staff to deny disclosure of a public record ((~~shall~~)) will clearly indicate this right of review.

(2) Within ((~~ten working~~)) thirty calendar days after receipt of a petition for review of a decision ((~~denying disclosure, the public disclosure officer shall review the decision denying disclosure, and advise the petitioner, in writing, of the public disclosure officer's decision on the petition. Such review shall be deemed completed at the end of the second business day following denial of disclosure, and shall constitute final agency action for the purposes of judicial review~~)), the department will review the decision and advise the requestor, in writing, of its decision.

AMENDATORY SECTION (Amending WSR 08-01-026, filed 12/10/07, effective 1/10/08)

WAC 137-08-180 Records index. ((~~The~~)) A general records index outlining common record types maintained by the agency may be accessed on the department's web site in

the public disclosure section at((~~: http://www.doc.wa.gov/aboutdoc/publicdisclosure.asp~~)) http://www.doc.wa.gov/information/records/request.htm.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 137-08-100	Disclosure to client's representative.
WAC 137-08-105	Correction of erroneous information.
WAC 137-08-150	Exemptions to public records disclosure.
WAC 137-08-160	Qualifications on nondisclosure.
WAC 137-08-170	Interagency disclosure.

WSR 18-04-111
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2017-11—Filed February 7, 2018, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-179.

Title of Rule and Other Identifying Information: Adjusting geographic rating area to increase market stability.

Hearing Location(s): On March 13, 2018, at 12:00 p.m., at the Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA 98504.

Date of Intended Adoption: March 14, 2018.

Submit Written Comments to: Jane Beyer, P.O. Box 40258, Olympia, WA 98504-0258, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by March 12, 2108 [2018].

Assistance for Persons with Disabilities: Contact Lorie Villaflores, phone 360-725-7087, TTY 360-586-0241, email LorieV@oic.wa.gov, by March 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will consider amending the existing rules establishing geographic rating areas for individual and small group health plans.

Reasons Supporting Proposal: The commissioner has received more recent risk pool information, making adjustments to the current rating area designations and ratio restrictions necessary to more accurately reflect the risk pool.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.733, and 45 C.F.R. 147.102.

Statute Being Implemented: RCW 48.43.733.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40258, Olympia, WA 98504-0258, 360-725-7043; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7117; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7050.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Micah Sanders, P.O. Box 40258, Olympia, WA 98504-0258, phone 360-725-7040, fax 360-586-3109, email micahs@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: No impacted parties (carriers) are small businesses as defined in RCW 19.85.020(3).

February 7, 2018
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-23-019, filed 11/4/16, effective 12/5/16)

WAC 284-43-6680 Geographic rating area factor development. (1) For nongrandfathered individual or small group health plans offered, issued or renewed on or after January 1, 2014, and on or before December 31, 2018, if an issuer elects to adjust its premium rates based on geographic area, the issuer must use the geographic rating areas designated in WAC 284-43-6700.

(2) The premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic rating area, must not be more than 1.15.

(a) King County is the index geographic rating area for purposes of calculating the premium ratio. The geographic rating area factor for the index area must be set at 1.00.

(b) A health-status related factor may not be used to establish a rating factor for a geographic rating area. Health factor means any of the following:

(i) Health status of enrollees or the population in an area;

(ii) Medical condition of enrollees or the population in an area, including both physical and mental illnesses;

(iii) Claims experience;

(iv) Health services utilization in the area;

(v) Medical history of enrollees or the population in an area;

(vi) Genetic information of enrollees or the population in an area;

(vii) Disability status of enrollees or the population in an area;

(viii) Other evidence of insurability applicable ((~~to~~)) in the area.

(3) Assignment of a factor to a geographic rating area must be actuarially sound and based on provider reimbursement differences. An issuer must fully document the basis for the assigned rating factors in the actuarial memo submitted with a rate filing.

(4) The geographic rating area factors must be applied uniformly to individuals or small groups applying for or receiving coverage from the issuer.

(5) For out-of-state enrollees covered under a health benefit plan issued to a Washington resident, an issuer must apply the geographic rating area factor based on the primary subscriber's Washington residence. For out-of-state enrollees who are covered under a health benefit plan issued through an employer whose primary place of business is Washington, an issuer must apply the geographic rating area factor based on the employer's primary place of business.

(6) This section does not apply to stand alone dental plans offered on the Washington health benefit exchange.

NEW SECTION

WAC 284-43-6681 Geographic rating area factor development on or after January 1, 2019. (1) For nongrandfathered individual or small group health plans offered, issued or renewed on or after January 1, 2019, if an issuer elects to adjust its premium rates based on geographic area, the issuer must use the geographic rating areas designated in WAC 284-43-6701.

(2)(a) Except as provided in (b) and (c) of this subsection the premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic rating area, must not be more than 1.15.

(b) An issuer that offers qualified health plans as described in RCW 43.71.065 in every county in six or more rating areas designated in WAC 284-43-6701 may utilize a premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic area of up to 1.22, if the development of rating factors is actuarially justified and meets all applicable requirements.

(c) An issuer that offers qualified health plans as described in RCW 43.71.065 in every county in every rating area designated in WAC 284-43-6701 may utilize a premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic area of up to 1.40, if the development of rating factors is actuarially justified and meets all applicable requirements.

(d)(i) The area factor for the index geographic rating area must be set at 1.00. Except to the extent provided otherwise in (d) of this subsection, King County is the index geographic rating area for purposes of calculating the premium ratio.

(ii) If King County (area 1) is not in an issuer's service area, the geographic rating area of the county with the largest enrollment in the issuer's service area must be set at 1.00.

(iii) If the issuer offers both individual and small group health plans and either the individual or small group health plans are not offered in King County (area 1), the index geographic rating area may be different for individual and small group health plans. The index geographic rating area for each market must be established consistent with (d)(i) or (ii) of this subsection as applicable.

(iv) If the issuer is new to the Washington state market, the geographic rating area within the issuer's service area that has the greatest number of counties must be set at 1.00.

(3) A health-status related factor may not be used to establish a rating factor for a geographic rating area. Health factor means any of the following:

(a) Health status of enrollees or the population in an area;

(b) Medical condition of enrollees or the population in an area, including physical, mental, or behavioral health illnesses;

(c) Claims experience;

(d) Health services utilization in the area;

(e) Medical history of enrollees or the population in an area;

(f) Genetic information of enrollees or the population in an area;

(g) Disability status of enrollees or the population in an area; or

(h) Other evidence of insurability to the area.

(4) Assignment of a factor to a geographic rating area must be actuarially sound and based on provider costs and practice pattern differences. An issuer must fully document the basis for the assigned rating factors in the actuarial memorandum submitted with a rate filing.

(5) The geographic rating area factors used in health plans filed with the commissioner must be applied uniformly to those individuals or small groups applying for or receiving coverage from the issuer.

(6) For out-of-state enrollees under a health benefit plan issued to a Washington resident, an issuer must apply the geographic rating area factor based on the primary subscriber's Washington residence. For out-of-state enrollees who are covered under a health benefit plan issued through an employer whose primary place of business is Washington, an issuer must apply the geographic rating area factor based on the employer's primary place of business.

AMENDATORY SECTION (Amending WSR 16-23-019, filed 11/4/16, effective 12/5/16)

WAC 284-43-6700 Geographic rating area designation. (1) The following geographic rating areas are designated for Washington state for nongrandfathered individual and small group plans offered, issued, or renewed on or after January 1, 2014, and on or before December 31, 2018:

Area 1: Index geographic rating area: King County.

Area 2: Clallam, Cowlitz, Grays Harbor, Island, Jefferson, Mason, Lewis, Kitsap, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties.

Area 3: Clark, Klickitat, and Skamania counties.

Area 4: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties.

Area 5: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Okanogan, Walla Walla, Whitman, and Yakima counties.

(2) The commissioner will review the geographic rating area designation in this section not more frequently than every three years, beginning January 31, 2016. The commissioner will publish changes in the geographic rating area designation within sixty days of the review date.

NEW SECTION

WAC 284-43-6701 Geographic rating area designation on or after January 1, 2019. (1) The following geographic rating areas are designated for Washington state for nongrandfathered individual and small group plans issued or renewed on or after January 1, 2019:

Area 1: King County.

Area 2/West: Clallam, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Pacific, and Wahkiakum counties.

Area 3/South: Clark, Klickitat, and Skamania counties.

Area 4/Northeast: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties.

Area 5/South Sound: Mason, Pierce, and Thurston counties.

Area 6/South Central: Benton, Franklin, Kittitas, and Yakima counties.

Area 7/North Central: Adams, Chelan, Douglas, Grant, and Okanogan counties.

Area 8/Northwest: Island, San Juan, Skagit, Snohomish, and Whatcom counties.

Area 9/Southeast: Asotin, Columbia, Garfield, Walla Walla, and Whitman counties.

(2) The commissioner will review the geographic rating area designation in this section not more frequently than every three years, beginning January 31, 2021.

WSR 18-04-113
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed February 7, 2018, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-03-072 on January 11, 2017.

Title of Rule and Other Identifying Information: Proposed changes to rules related to marijuana packaging and labeling rules; WAC 314-55-105 Packaging and labeling requirements and 314-55-106 Marijuana warning symbol requirement.

Hearing Location(s): On March 21, 2018, at 10:00 a.m., at the Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after April 4, 2018.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by March 21, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by March 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal makes adjustments to packaging and labeling requirements to marijuana and marijuana products. Updates and clarifications were needed for the rules involved, and adjustments to requirements were needed due to concerns raised by the industry and stakeholders, and to continue to develop the regulatory landscape in this emerging industry. Most of the changes in this proposal were made to streamline labeling requirements and to reduce pressure on the "real estate" on labels to ensure information is readable and effective for consumers and the public. Accompanying materials are proposed to be virtually eliminated except for pesticides information and clarification is included that they may be provided in an electronic format via url or QR code. Adjustments to packaging requirements were made to provide flexibility for certain edible products packaging, and further prevention of the promotion of over consumption. An enhanced definition providing additional clarity for what is considered "especially appealing to children" is included and a new definition for the term "cartoon" is proposed. A delayed effective date will be included should these rule proposals be adopted to ensure licensees have adequate time to cycle through existing inventory and make changes to adapt to new packaging and labeling requirements.

Reasons Supporting Proposal: The Washington state liquor and cannabis board (WSLCB) has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. WSLCB convened a work group of industry members, the department of health (DOH), and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements. These proposed rules are a product of what was learned from this work group and other states that regulate marijuana, as well as through consumer surveys.

Statutory Authority for Adoption: 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: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1615; and Enforcement: Chief Justin Nordhorn, 30000 [3000] Pacific Avenue S.E., Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.325 [34.05.328] because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

1. Description of reporting, recordkeeping and other compliance requirements of the proposed rule:

WSLCB has received a lot of feedback from industry members, the public, staff, and other agency members regarding concerns or changes needed with packaging, labeling, warning statements, and other related rules. Industry

members and others have stated that labeling requirements are too onerous, while others have stated that the labels are difficult to read, do not contain desired information that would better inform a consumer or member of the public, or are confusing. Additionally, we recognize that packaging and labeling rules, and rules related to warning statements, could be clearer and better organized and that many technical changes are needed to ensure packaging, labeling, and warning statement rules are effective.

WSLCB has been engaged in a project to take a global look at packaging and labeling requirements to clarify, streamline, and make necessary changes to rules. WSLCB convened a work group of industry members, DOH, and the Washington Poison Center over much of 2017 to gather information and receive feedback on packaging and labeling rules requirements. These proposed rules are a product of what was learned from this work group and other states that regulate marijuana, as well as through consumer surveys.

Adjustments to packaging requirements include:

- Allowing certain infused solid edible products such as lozenges and capsules and other similar products on a case-by-case basis to be packaged loosely (not individually wrapped) in a resealable child resistant exterior package.
- Requiring that infused liquid edible products in packages with more than one serving be resealable, though do not have to be child resistant due to challenges with packaging carbonated liquids.
- Only infused liquid edibles in packages containing a single serving may be packaged with a nonresealable closure, such as a crown-style cap.

Adjustments to labeling requirements include:

Streamlining and paring down of warning statements to ensure critical information is communicated effectively while reducing pressure on label "real estate."

Removal of harvest date, manufactured date, and best by date from required information on labels. This information may still be placed on the label as an option, but is proposed to be removed as a requirement.

Removal of the retailer business/trade name and UBI on label requirements in anticipation of the passage of legislation that will remove it from required information on labels in statute. Producers and processors business/trade names and UBI numbers must still be listed on the label.

Changing the UBI requirement to the nine-digit number rather than the sixteen-digit UBI number.

Removal of all accompanying material requirements except for pesticides information to reduce label crowding issues seen by licensees putting it on the label. Accompanying materials may be given to consumers via electronic format, including using a url or QR code on the label. WSLCB is working with DOH to explore potential signage requirements for other warning statements not on the label at retail locations separately, similar to requirements for liquor licensees.

Enhanced definition providing additional clarity for what is considered "especially appealing to children." Creation of a new definition for the term "cartoon."

General improvements to organization of the rule to enhance clarity.

Universal symbol requirements:

Proposed amendments to WAC 314-55-106 Marijuana warning symbol requirement, add a requirement for a universal symbol for use on marijuana and marijuana products. This universal symbol will alert consumers and the public that the product is clearly marijuana or a marijuana product.

Similar to the "Not for Kids" warning symbol, marijuana licensees will be required to place the universal symbol on packaging of marijuana and marijuana products. The universal symbol developed and made available in digital form to licensees without cost by WSLCB must be placed on the principal display panel or front of the product package. The universal symbol will be available on WSLCB's web site if adopted. The universal symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is or contains marijuana, but must not be smaller than three-quarters of an inch in height by three-quarters of an inch in width. The universal symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package.

Licensees may print and use a sticker of the universal symbol in lieu of digital image placement of the universal symbol on labels of marijuana and marijuana products sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

(a) Must be placed on or near the principal display panel or on the front of the package; and

(b) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

Licensees develop and print labels in a multitude of ways. Some licensees choose to create and print labels for products independently, while others may choose to hire professional designers and printers to develop or print labels or product packaging. Costs of professional designing and printing vary depending on the label or packaging design, size, and other aesthetic considerations the licensee chooses to make. The packaging and labeling requirements and new universal symbol requirement will not require the use of professional services, but a licensee may choose to engage professional services if they wish.

Additionally, the digital image of the symbol is provided by WSLCB free of charge to licensees and is available for immediate download from WSLCB's web site. This means that no professional services are required should the licensee choose to download and place the digital image on products or labels independently.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs:

All licensees are required to have a computer and internet access to acquire and maintain a marijuana license. For this reason, licensees already have the necessary equipment

required to obtain the universal symbol from WSLCB's web site at no charge, so there are no costs of compliance that are necessary to obtain the new symbol.

Whether a licensee will incur costs due to the adjustments to packaging and labeling rules and new warning symbol labeling requirement depends on the products the licensee produces and individual business decisions the licensee makes. Each licensee is different as far as the number of products they produce, types of packaging and labeling, and size of products, so costs associated with the proposed changes may vary. If the licensee chooses to acquire the digital image and incorporate the universal symbol on product labels or packaging independently (without the use of professional services), administrative costs should be minimal. If a licensee instead chooses to use professional design services to change labels and print them for the licensee, the costs will be higher. Again, these choices are voluntary on the part of the licensee and not necessary to comply with the adjustments to packaging and labeling rules and the new universal symbol requirement.

Licensees that create products in smaller packages may have the most costs associated with the new universal symbol requirement due to the minimum sizing provisions in the new rule. The minimum size requirement of no smaller than three-quarters of an inch in height by three-quarters of an inch in width are needed to ensure the symbol is of a size so as to be immediately recognizable and legible to alert consumers and the public that the product is or contains marijuana. However, the size of the symbol may pose some challenges for those licensees with small packaging/products, which may result in higher costs associated with compliance with the new requirement. This may result in some licensees having to reconceptualize packaging of products, increasing the costs of initial compliance. These costs will vary depending on packaging type and product size, as well as by business decisions made by licensees, and cannot be predicted on a general level. The delayed effective date for the proposed changes to packaging and labeling rules and the new symbol requirement explained below is aimed at reducing these impacts. Licensees are also welcome to suggest ways to address these issues through the rule-making process.

WSLCB also plans on a delayed effective date so the proposed changes to packaging and labeling rules and the new universal symbol requirement may be essentially "phased in," further minimizing any costs licensees may incur in complying with the new labeling requirement. WSLCB received input from marijuana licensees that indicated that a delayed effective date ranging from six to eighteen months prior to implementation would reduce administrative costs for changing packaging and labels and phasing out product to comply with the new requirements. A delayed effective date will also allow licensees to move through product existing inventory and adjust new labeling to comply with the changes to rules in this proposal.

4. Will compliance with the rules cause businesses to lose sales or revenue?

This new requirement is unlikely to cause the loss of sales or revenue by marijuana businesses. This is due to the plan for delayed effective dates to allow licensees to cycle through existing product and prepare for the proposed changes to packaging and labeling requirements.

5. Costs of compliance for small businesses compared with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

a. Cost per employee;

b. Cost per hour of labor; or

c. Cost per one hundred dollars of sales.

Most marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to WSLCB, though WSCLB does collect data on the value of marijuana at retail and wholesale. Depending on whether the licensee is a producer or processor or a retailer, the sales numbers are different due to the variance between wholesale and retail sales.

The additional costs associated with complying with the proposed packaging and labeling requirements should be minimal compared to sales revenue. The costs associated with complying with the new universal symbol requirement are further mitigated by WSLCB's efforts to ensure that a digital image of the universal symbol be available to licensees at no cost. Additionally, a delayed effective date will further mitigate costs to licensees in making adjustments to packaging and labeling if the proposed changes are adopted.

The costs of complying with the proposed adjustments to the packaging and labeling rules and new universal symbol labeling requirement is indeterminate as it will vary depending on the circumstances (types of products, size of products, labels, etc.) and business decisions made by licensees, i.e. whether the licensee choses [chooses] to engage the services of a professional designer or printer rather than making changes to packaging and labeling independently. These factors will depend on the individual business decisions of licensees.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:

WSLCB sought to reduce costs on licensees through ensuring that the digital image of the universal symbol would be available to licensees at no cost. Additionally, WSLCB plans to have a delayed effective date after adoption of the new requirement (CR-103P), to allow licensees adequate time to cycle through product and adopt the changes to packaging and labeling requirements contained in this proposal. WSLCB will also use the time between adoption and the effective date to supply licensees with resources to comply with the new requirements, and to work on the packaging and labeling review and approval process for marijuana-infused edible products. These efforts will ease the transition and should mitigate much of the costs associated with adjusting to the new packaging and labeling requirements.

Though there are costs associated with complying with the adjustments to packaging and labeling requirements in this proposal, those costs are justified. The proposed packaging and labeling changes are intended to promote consumer

safety and information through clear warning statements, discourage over consumption, and to reduce public health and safety risks through the clear identification of marijuana and marijuana products on labels.

7. A description of how the agency will involve small businesses in the development of the rule:

Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rule-making process. WSLCB also performed outreach with several licensed processors to gather information related to timelines for the new requirement and costs associated with compliance. WSLCB used the feedback received through these efforts to develop the timeline for the proposed effective date for the changes to packaging and labeling rules to reduce costs to licensees and ensure adequate time for licensees to cycle through product and adjust to the new requirements.

8. A list of industries that will be required to comply with the rule:

All licensed marijuana businesses will be required to comply with these rules. Primarily, these changes will impact processors and retailers.

9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:

Because WSLCB considered feedback from licensees to develop a delayed effective date for rule changes, and worked to reduce the amount of information on labels and accompanying materials in this proposal to offset changes and address industry concerns, costs associated with adjusting to the proposed packaging and labeling requirements will be mitigated. WSLCB does not anticipate that jobs will be lost or created as a result of compliance with the proposed rule.

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, TTY 711 or 1-800-833-6388, email rules@lcb.wa.gov.

February 7, 2018
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-105 Packaging and labeling requirements. (1) ((~~All usable marijuana and marijuana-infused products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.~~

~~(2)~~)) **Packaging requirements.**

(a) **General packaging requirements applying to all marijuana products.** Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

((~~(3) Upon the request of a retail customer, a retailer must disclose the name of the certified third-party testing lab and results of the required quality assurance test for any usable marijuana, marijuana concentrate, or marijuana-infused product the customer is considering purchasing.~~

~~(4) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.~~

~~(5) The certified third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.~~

~~(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:~~

~~(a) Lot number;~~

~~(b) UBI number of the producer; and~~

~~(c) Weight of the product.~~

~~(7) Marijuana-infused products and marijuana concentrates meant to be eaten, swallowed, or inhaled, must be packaged in~~)) (b) **Additional product-specific packaging requirements.** The following product-specific packaging requirements apply to each of the following product types in addition to the packaging requirements provided in (a) of this subsection:

(i) **Marijuana-infused products general requirements.**

(A) All marijuana-infused products for oral ingestion must be packaged pursuant to the following requirements:

(I) Child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or ((~~use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in~~))

(II) Plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure, except as provided in (b)(i)(A)(III) and (B) of this subsection.

(III) Marijuana-infused products for oral ingestion in liquid form where a single serving is contained with the package may ((~~also~~)) be sealed using a metal crown cork style bottle cap. Marijuana-infused products for oral ingestion in liquid form that include more than one serving must be packaged with a resealable closure or cap.

(B) Marijuana-infused solid edible products.

(I) If there is more than one serving of marijuana-infused solid edible products in the package, each serving must be packaged individually in ((~~childproof~~)) child resistant packaging (((~~see WAC 314-55-105(7)~~))) as provided in (b)(i) of this subsection and placed in the outer package except as provided below.

(II) Products such as capsules, lozenges, and similar products approved by the WSLCB on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.

(C) Marijuana-infused liquid edible products. ((~~If there is~~)) Packages containing more than one serving ((~~in the package,~~)) of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

(II) Include a measuring device ((~~must be included in~~)) such as a measuring cap or dropper with the package ((~~with~~))

containing the marijuana-infused liquid edible product. Hash marks on the bottle or package do not qualify as a measuring device. ((A measuring cap or dropper must be included in the package with the marijuana-infused liquid edible product.

(8)

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10))) (ii) **Marijuana concentrates**. Marijuana concentrates must be packaged:

(A) In child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or

(B) Plastic four mil or greater in thickness, heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure.

(2) **Labeling requirements**.

(a) **Marijuana and marijuana product labels generally.** The following label requirements apply to all marijuana products:

(i) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(ii) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(((11) **All marijuana and marijuana products when sold at retail must include accompanying material that is attached to the package or is given separately to the consumer containing the following warnings:**

(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";

(b) "There may be health risks associated with consumption of this product";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12))) (iii) All information, warning statements, and language required in this section must not be covered or obscured in any way.

(iv) Labels affixed to the container or package containing marijuana or marijuana products sold at retail must include:

(((a))) (A) The business or trade name and the ((sixteen)) nine digit Washington state unified business identifier (UBI) number of the licensees that produced((,)) and processed ((and sold)) the marijuana or marijuana products((. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label));

(((b) Sixteen digit inventory ID number assigned)) (B) The unique identifier number generated by the WSLCB's traceability system. This must be the same number that appears on the transport manifest;

(((c))) (C) If more than one serving is in a package, the label must prominently display the number of servings in the package and the amount of product per serving;

(D) Net weight in ounces and grams or volume as ((appropriate;

(d) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to infused products; and

(e) If solvents were used, statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(f) Warnings that state: "This product has intoxicating effects and may be habit forming";

(g) Statement that "This product may be unlawful outside of Washington state";

(h) The WSLCB may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(13) **In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing usable marijuana, or packaged marijuana mix sold at retail must include:**

(a) Concentration of THC ())applicable;

(E) THC concentration (delta-9 tetrahydrocannabinol) listed as total THC and activated THC-A(())) and CBD ((()concentration (cannabidiol) listed as total CBD and activated CBD-A(()));

(v) Labels of usable marijuana and marijuana products sold at retail in the state of Washington must not contain any statement, depiction, or illustration that:

(A) Is false or misleading;

(B) Promotes over consumption;

(C) Represents the use of marijuana has curative or therapeutic effects;

(D) Depicts a child or other person under legal age consuming marijuana, or includes:

(I) Objects such as toys, characters suggesting the presence of a child, or any other depiction or illustration designed in any manner to be especially appealing to children or other persons under twenty-one years of age; or

(II) Is designed in any manner that is especially appealing to children or other persons under twenty-one years of age.

(b) ((Date of harvest.

(14))) **Standard warnings required on all labels.** The following warning statements must be included on labels of all marijuana and marijuana products. The warning statements required below must be of a size to be legible and readily visible to a consumer inspecting a package and must not be covered or obscured in any way.

(i) "Warning - May be habit forming";

(ii) "Unlawful outside Washington State";

(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana"; and

(iv) The marijuana universal symbol as provided in WAC 314-55-106.

(c) **Additional product-specific labeling requirements.** In addition to the labeling requirements in subsection (((10))) (3)(a) and (b) of this section, ((labels affixed to the container or package containing marijuana-infused products meant to be eaten or swallowed sold at retail must include:

(a) Date manufactured;

(b) Best by date;

(c))) the following product-specific labeling requirements apply to each of the following product types and must be present on labels when offered for sale at retail:

(i) **Usable marijuana, including marijuana mix.** The statement "Smoking is hazardous to your health."

(ii) **Marijuana concentrates, marijuana infused extract for inhalation, and infused marijuana mix.**

(A) If solvents were used to create the concentrate or extract, a statement that discloses the type of extraction method, including any solvents or gases used to create the concentrate or extract; and

(B) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(iii) **Marijuana-infused products** (except for marijuana-infused products for topical application as provided in (c)(iv) of this subsection).

(A) Serving size and the number of servings contained within the unit;

(((d) Total milligrams of active THC, or Delta 9 and total milligrams of active CBD;

(e))) (B) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(((f) "Caution: When eaten or swallowed, the)) (C) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract; and

(D) The following sentence: "CAUTION: Intoxicating effects ((of this drug)) may be delayed by ((two or more)) 2+ hours."

(((15) **In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana-infused extract for inhalation, or infused marijuana mix sold at retail must include:**

(a) Date manufactured;

(b) Best by date;

(c) Concentration of THC (total Delta 9 and Delta 9 THC-A) and CBD (total CBD and activated CBD-A).

(16) **In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana topicals sold at retail must include:**

(a) Date manufactured;

(b) Best by date;

(c) Total milligrams of active tetrahydrocannabinol (THC), or Delta 9 and total milligrams of active CBD.

(17))) (iv) **Marijuana-infused products for topical application.**

(A) The statement "DO NOT EAT" in bold, capital letters; and

(B) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(d) **Permitted optional information that may be included on labels.**

(i) Harvest date, "best by" date, and manufactured dates are optional information that may be placed on labels.

(ii) Other cannabinoids and terpenes not required to be placed on the label by this section may be included on the label if:

(((a))) (A) The producer or processor has test results from a certified third-party lab to support the claim; and

(((b))) (B) The lab results are made available to the consumer upon request.

(3) **Accompanying materials.** The following accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products at retail. A producer or processor may provide this information through an internet link, web address, or QR code on the product label so long as the information particular to that product as required below is maintained and accessible to a consumer for as long as the product is available for sale at retail.

A statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the usable marijuana or the base marijuana used to create the concentrate or the extract added to infused products.

(4) **Upon request materials.** Upon the request of a retail customer, a retailer must disclose the name of the certified lab that conducted and the results of the required quality assurance tests for any marijuana or marijuana product the customer is purchasing or considering purchasing.

(5) For the purposes of this section, the following definitions apply:

(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:

(i) The use of comically exaggerated features;

(ii) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(iii) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

(b) "Especially appealing to children" means a product, label, or advertisement that includes, but is not limited to, the following:

(i) The use of cartoons;

(ii) Bubble-type or other cartoon-like or action font;

(iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children;

(iv) A design, brand, or name that resembles a noncannabis consumer product of the type that is typically marketed to minors;

(v) Symbols or celebrities that are commonly used to market products to minors;

(vi) Images of minors; or

(vii) Similarities to products or words that refer to products that are commonly associated with minors or marketed to minors.

AMENDATORY SECTION (Amending WSR 16-23-089, filed 11/16/16, effective 2/14/17)

WAC 314-55-106 Marijuana warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Marijuana-infused products ((~~meant to be eaten or swallowed~~)) for oral ingestion sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol ("warning symbol") created and made available in digital form to licensees without cost by the Washington poison center (WPC). The warning symbol may be found on the WPC's web site.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package, except that a licensee must use a black border around the edges of the white background of the warning symbol image when the label or packaging is also white to ensure visibility of the warning symbol.

((~~(2)~~)) (c) Licensees may download the digital warning symbol from the WPC and print stickers, or purchase and use a sticker made available by the WPC, in lieu of incorporating the warning symbol on ((~~its~~)) the label or packaging as required under subsection (1) of this section. If a licensee elects to use a warning symbol sticker, the sticker:

((~~(a)~~)) (i) Must meet all requirements of ((~~subsection (1)~~)) (a) and (b) of this ((~~section~~)) subsection; and

((~~(b)~~)) (ii) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(2) All marijuana products sold at retail must be labeled on the principal display panel or front of the product package with the marijuana universal symbol ("universal symbol") created and made available in digital form to licensees without cost by the WSLCB. The digital file for the universal symbol is available on the WSLCB's web site.

(a) The universal symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers that the product is or contains marijuana, but must not be smaller than three-quarters of an inch in height by three-quarters of an inch in width;

(b) The universal symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package; and

(c) Licensees may download the digital universal symbol from the WSLCB's web site and print stickers in lieu of incorporating the universal symbol on the label or packaging as required under (a) and (b) of this subsection. If a licensee elects to use a universal symbol sticker, the sticker:

(i) Must meet all requirements of this section; and

(ii) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the marijuana product.

WSR 18-04-114
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed February 7, 2018, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-121 on July 19, 2017.

Title of Rule and Other Identifying Information: Proposed new section in chapter 314-55 WAC, WAC 314-55-055 Marijuana retail license forfeiture.

Hearing Location(s): On March 21, 2018, at 10:00 a.m., at the Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after April 4, 2018.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by March 21, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by March 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed new section in chapter 314-55 WAC details the process and criteria that WSLBC will use to carry out retail license forfeitures as required under RCW 69.50.325. This rule making is part of a larger rule-making effort to implement changes to rules needed due to changes made by the 2017 legislature. Other rule changes needed due to 2017 changes in statute will be handled under a separate CR-102 filing.

Reasons Supporting Proposal: The legislature passed ESSB 5131 during the 2017 legislative session that directed WSLCB to create a process for the forfeiture of marijuana retail licenses that are not fully operational and open to the public within a specified period from the date of license issuance, subject to the following restrictions:

- No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and
- WSLCB must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

Rule making is necessary to comply with the directive in ESSB 5131, codified in RCW 69.50.325, and to create the process WSLCB will use for retail license forfeitures.

Statutory Authority for Adoption: RCW 69.50.325, 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: Rebecca Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1615; and Enforcement: Chief Justin Nordhorn, 30000 [3000] Pacific Avenue S.E., Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.325 [34.05.328] because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

February 7, 2018
Jane Rushford
Chair

NEW SECTION

WAC 314-55-055 Marijuana retailer license forfeiture. (1) A marijuana retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after nine months of issuance of the license or April 23, 2018, whichever is later. Fully operational means the business meets the following criteria for at least 20 consecutive weeks within a nine month period:

(a) Is open to the public for a minimum of five hours a day between the hours of 8:00 am and 12:00 midnight, three days a week;

(b) Posts business hours outside of the premise in the public view; and

(c) Reports monthly sales from the sale of marijuana products and pays applicable taxes.

(2)(a) A marijuana retailer's license will not be subject to forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensed business to include:

(i) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(ii) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(b) The Board has the sole discretion to grant exceptions to the license forfeiture process if a marijuana retailer licensee has had circumstances occur that are out of their control such as a natural disaster.

(c) Adequate documentation will be required to verify any of the exceptions to license forfeiture in this section. It is the licensee's responsibility to inform the WSLCB if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

(3) A retailer that receives notice of license forfeiture under this section from the WSLCB may request an administrative hearing under chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.

WSR 18-04-115
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed February 7, 2018, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-086.

Title of Rule and Other Identifying Information: Brief enforcement hearings (adjudicative proceeding)—Penalty schedule.

The presiding officer may assess a penalty up to one thousand dollars upon finding a violation of chapter 42.17A RCW or Title 390 WAC.

Hearing Location(s): On March 15, 2018, at 1:30 p.m., at the Washington State Public Disclosure Commission, 711 Capitol Way South, #206, Olympia, WA 98504.

Date of Intended Adoption: April 10, 2018.

Submit Written Comments to: Barbara Sandahl, Deputy Director, 711 Capitol Way South, #206, email Barbara.sandahl@pdc.wa.gov, fax 360-753-1112, pdc@pdc.wa.gov.

Assistance for Persons with Disabilities: Contact Barbara Sandahl, deputy director, phone 360-753-1111, fax 360-753-1111 [360-753-1112], email Barbara.sandahl@pdc.wa.gov, pdc@pdc.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making will ensure that the commission has the ability to assess penalties for failure to file required treasurer (T-1) reports timely.

T-1 penalty schedule will be added to WAC 390-37-143.

Reasons Supporting Proposal: The adoption of the addition of T-1 penalty schedule will allow respondents, who have received notification of enforcement hearing, to enter

into statements of understandings and pay the scheduled penalty to avoid hearing.

Statutory Authority for Adoption: RCW 42.17A.110 Commission—Additional powers.

Statute Being Implemented: WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding)—Penalty schedule.

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

Name of Agency Personnel Responsible for Drafting: Jana Greer, Olympia, 360-753-1985.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

February 7, 2018
B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding)—Penalty schedule. The presiding officer may assess a penalty up to one thousand dollars upon finding a violation of chapter 42.17A RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $150	$150 - $300	$300 - $600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$150	$300	$600
Failed to file report by date of enforcement hearing.	$250	$500	$1,000
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $150 per report	$150 - $300 per report	$300 - $600 per report up to $1,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$150 per report	$300 per report	$600 per report up to $1,000
Failed to file report by date of enforcement hearing.	$250 per report	$500 per report	consideration by full commission
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $150	$150 - $300	$300 - $600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$150	$300	$600
Failed to file report by date of enforcement hearing.	$250	$500	$1,000
Failure to timely file an accurate and complete lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $150	$150 - $300	$300 - $600

Violation	1st Occasion	2nd Occasion	3rd Occasion
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$150	$300	$600
Failed to file report by date of enforcement hearing.	$250	$500	$1,000
Failure to timely file accurate and complete disclosure reports:			
Political committee registration (C-1pc).	$150	$300	$600
Statement of contributions deposit (C-3).	$150	$300	$600
Summary of total contributions and expenditures (C-4).	$150	$300	$600
Independent expenditures and electioneering communications (C-6).	$150	$300	$600
Last minute contribution report (LMC).	$150	$300	$600
Out-of-state committee report (C-5).	$150	$300	$600
Annual report of major contributors (C-7).	$150	$300	$600
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	$150	$300	$600
Public agency lobbying report (L-5).	$150	$300	$600
Grass roots lobbying report (L-6).	$150	$300	$600
Failure to file electronically.	$350	$650	$1,000
Exceeding contribution limits.	$150	$300	$600
Exceeding mini reporting threshold.	$150	$300	$600
Failure to comply with political advertising sponsor identification requirements.	$150	$300	$600
Failure to include required candidate's party preference in political advertising.	$150	$300	$600
Failure to comply with other political advertising requirements, RCW 42.17A.330 through 42.17A.345.	$150	$300	$600
Use of public facilities to assist a campaign for election or promote a ballot measure.	$150	$300	$600
Treasurer's failure to timely file an accurate and complete annual treasurer's report (T-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	$0 - $150	$150 - $300	$300 - $600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	$150	$300	$600
Failed to file report by date of enforcement hearing.	$250	$500	$1,000

"Occasion" means established violation. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(2) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors, including:

(a) Whether the respondent is a first-time filer;

(b) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(c) The respondent's unpaid penalties from a previous enforcement action;

(d) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(e) The amount of financial activity by the respondent during the statement period or election cycle;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention;

(h) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforce-

ment action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(i) Personal emergency or illness of the respondent or member of his or her immediate family;

(j) Other emergencies such as fire, flood, or utility failure preventing filing;

(k) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(l) Commission staff, third-party vendor, or equipment error, including technical problems at the agency preventing or delaying electronic filing.

(3) The presiding officer has authority to suspend all or a portion of an assessed penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of the entry of the order in that case.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission. Cases will automatically be scheduled before the full commission for an enforcement action when the respondent:

(a) Was found in violation during a previous reporting period;

(b) The violation remains in effect following any appeals; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

WSR 18-04-117
PROPOSED RULES
TRANSPORTATION IMPROVEMENT BOARD

[Filed February 7, 2018, 11:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-108.

Title of Rule and Other Identifying Information: Portions of chapters 479-05, 479-10 [479-06], and 479-14 WAC.

Hearing Location(s): On March 22, 2018, at 2:00 p.m., at 401 East Yakima Avenue, Yakima, WA 98901.

Date of Intended Adoption: March 23, 2018.

Submit Written Comments to: Kelsey Davis, P.O. Box 40901, Olympia, WA 98504-0901, email kelseyd@tib.wa.gov, fax 360-586-1165, by March 9, 2018.

Assistance for Persons with Disabilities: Contact Kelsey Davis, phone 360-586-1146, fax 360-586-1165, email kelseyd@tib.wa.gov, by March 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: General updates.

Reasons Supporting Proposal: Clarifications and small corrections.

Statutory Authority for Adoption: Chapter 47.26 RCW.

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

Name of Proponent: Transportation improvement board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mr. Ashley Probart, P.O. Box 40901, Olympia, WA 98504-0901, 360-586-1139.

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

A cost-benefit analysis is not required under RCW 34.05.328. Clarifying language.

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

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

February 7, 2018
Ashley Probart
Executive Director

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-05-012 Emergent nature project submission and limitations. An eligible agency may request the transportation improvement board to consider a project for funding outside of the normal call for projects. To be considered as emergent nature, a project must demonstrate one or more of the following:

(1) There has been a significant change in the location or development of traffic generators in the area of the project.

(2) The work proposed is necessary to avoid or reduce serious traffic congestion in the area of the project in the near future.

(3) A partially funded project that, if completed, would enable a community to secure an unanticipated economic development opportunity.

(4) Other funding sources the local agency has applied for or secured for the project.

(5) ((~~The funding of the project would not adversely impact currently funded projects.~~)) The project request is a result of a federal, state, or locally declared emergency and must be funded prior to the normal call for projects.

In meeting one or more of the criteria, the project request may not adversely impact currently funded projects. The agency may be asked to make a presentation to the board on the project.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-06-080 Final settlement. Up to five percent of total transportation improvement board funds may be retained until the agency submits final, complete, and accurate closeout documentation for a project.

A unilateral closeout of a project may be initiated by the board or executive director when an agency has not responded to requests for final documentation ((~~and all funds are expended~~)).

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-14-006 Previously funded projects. Projects are not eligible to compete for funding within the termini limits of a previously funded project for a period of ten years from contract completion. A project that is divided into multiple phases is not considered a previously funded project.

Exceptions: The executive director may consider project applications during the normal call for projects that meet one or more of the following criteria:

(1) Installation of traffic demand or system management improvements based on updated warrants;

(2) New technology, standards, or FHWA approvals (such as LED technology) that was not available when the project was previously funded;

(3) Have previously received preservation program funding.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-121 What projects are eligible for urban program funding. Eligible projects are:

(1) Improvements on federally classified arterials;

(2) Within a city qualifying for urban designation upon the next federal census as long as the project carries a federal arterial functional classification; or

(3) Within the urban growth area in counties ((~~which are in full compliance with Washington state's Growth Management Act~~)).

Any urban street that is not functionally classified at the time of award must obtain federal functional classification prior to approval to expend board funds.

Sidewalks with five feet minimum clear width are required on both sides of the arterial unless a deviation is granted under WAC 479-14-200.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-215 Small city match funding allocation. Within the small city arterial program, up to ten percent of the annual allocation may be portioned as an amount available for small cities to match the minimum federal funding ((~~provided~~)) match required for local government federal aid ((~~of~~)) transportation((~~, on a first come/first served basis~~)) projects.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-270 Small city federal match funding eligibility and application. (1) Cities with a population under five thousand may request grant funds to match a federal grant as part of the normal call for projects. The project must ((~~meet TIB eligibility requirements for the small city arterial program described under WAC 479-14-221. A TIB funding application form must be submitted to apply for federal match funding.~~)):

(a) Meet TIB eligibility requirements for the small city arterial program described under WAC 479-14-221; and

(b) Submit a TIB funding small city arterial program application form to apply for federal match funding.

(2) Cities with a population under five thousand may request grant funds to match federal transportation funding for emergent federal match projects. The project must:

(a) Meet TIB eligibility requirements for the small city arterial program described under WAC 479-14-221; and

(b) Submit a TIB funding small city arterial program application form.

Projects may be selected until the funding allocation is expended.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-271 Restriction on use of small city federal match funding. Federal match funds are only for transportation projects funded through federal transportation grants. ((~~All other local funding sources must be sought before applying for federal match funds from TIB.~~))

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-431 Award criteria for the sidewalk program. The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city sidewalk projects:

(1) Safety improvement - Projects that address hazard mitigation and accident reduction.

(2) Pedestrian access - Projects that improve or provide access to facilities including:

(a) Schools;

(b) Public buildings;

(c) Central business districts;

(d) Medical facilities;

(e) Activity centers;

(f) High density housing (including senior housing);

(g) Transit facilities;

((~~(h)~~)) (3) Completes or extends existing sidewalks.

((~~(3)~~)) (4) Completes or extends sidewalks to facilities listed in subsection (2) of this section that are identified in local agency latecomer agreements. The local agency must agree to collect the latecomer fee at the time of development and place the fee in its transportation improvement program.

(5) Local support - Addresses local needs and is supported by the local community.

((~~(4)~~)) (6) Sustainability - ((~~Improves~~)) Right sizing sidewalk or shared use path width and material type, provides hardscaping and ((~~appropriate~~)) native plantings, addresses low impact development or natural drainage practices((~~, and encourages pervious surface use~~)).

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-461 Matching requirement for the sidewalk program. The sidewalk program provides funding which will be matched by other funds as follows:

(1) The urban sidewalk program ((~~requires a match of at least twenty percent of total project costs.~~)) provides funding which will be matched by other funds as follows:

(a) For cities:

(i) If the city valuation is under one billion dollars, the matching rate is ten percent of total project costs.

(ii) If the city valuation is one billion dollars to two and one-half billion dollars, the rate is fifteen percent of total project costs.

(iii) If the city valuation is over two and one-half billion dollars, the rate is twenty percent of total project costs.

(b) For counties:

(i) If the road levy valuation is under three billion dollars, the rate is ten percent of total project costs.

(ii) If the road levy valuation is between three billion dollars to ten billion dollars, the rate is fifteen percent of total project costs.

(iii) If the road levy valuation is over ten billion dollars, the rate is twenty percent of total project costs.

(c) For transportation benefit districts, the match is based on the valuation of the city or county in which the project is located. If the project lies within more than one city or county, the match is determined by the city or county that has the greatest valuation.

(2) The small city sidewalk program ((~~matching rates are dependent on the city population~~)) provides funding which will be matched by other funds as follows:

(a) ((~~Cities with a population of one thousand and below are not required to provide matching funds.~~

~~(b) Cities with a population over one thousand but less than five thousand, require a match of at least five percent of the total project costs.~~)) If the city assessed valuation is under one hundred million dollars, no cash match is necessary.

(b) If the city assessed valuation is from one hundred million dollars to five hundred million dollars, a five percent match will be contributed.

(c) If the city assessed valuation is greater than five hundred million dollars, a match of ten percent will be contributed.

The board uses the current published valuation from the department of revenue.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 479-14-272 Small city federal match funding priority.