

**WSR 18-14-004**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed June 21, 2018, 8:32 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): On August 22, 2018, at 10:00 a.m., at the NWCAA Office, 1600 South 2nd Street, Mount Vernon, WA.

Date of Intended Adoption: September 13, 2018.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), fax 360-428-1620, by August 22, 2018.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber, phone 360-428-1617, fax 360-428-1620, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), by August 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

***Gasoline Dispensing Facilities (GDF) (amended NWCAA Section 580.6):***

- Added, revised, and clarified relevant definitions and terminology to better correlate with GDF provisions.
- Updated the applicability of GDF provisions to be more consistent with federal regulations (i.e., 40 C.F.R. 63 Subpart CCCCCC) and chapter 173-491 WAC.
- Clarified GDF requirements, including those related to keeping the vapor recovery system equipment in good working order.
- Added a tiered pressure decay test varying from every one to five years, depending on GDF size, which should help ensure gasoline tanks at GDFs are operated and maintained in a vapor-tight condition and in good working order.
  - Added certification requirement for testers.
  - Added shutdown provisions if failed equipment not repaired within fourteen days.
  - Added submittal of test reports.
  - Added five-year test report record retention.

***Spray Coating Operations (new NWCAA Section 508):***

- This is a spray coating regulation modeled after other local clean air agency regulations and 40 C.F.R. 63 Subpart HHHHHH that focuses on work practices and controls for spray coating operations at sources of air pollution and portable spray coating operations.
- There are requirements for enclosures, filtration, ventilation stacks, clean-up, storage and disposal of volatile organic compounds, and record keeping.
- There are exemptions for architectural or maintenance coatings to stationary structures, maintenance coatings to farm and mining equipment, bed liners, fiberglass resin and gel coat applications, air-brush equipment, aerosol spray cans, surface coating applications using powder coating or non-atomizing applications (e.g., paint brushes, rollers, hand-wipe, etc.), inside exhaust, and enclosures for large objects and existing spray coat-

ing operations conducted in enclosed spray areas located outdoors.

- Sources have up to twenty-four months to come into compliance with certain enclosure and control requirements.
- The regulation will reduce particulate emissions and lessen public exposure to toxic air pollutants.

***Public Records (amended NWCAA Section 106):***

- Clarified and updated the public records program to reflect recent changes in chapters 42.56 RCW and 44-14 WAC.

***Definitions (amended NWCAA Section 200):***

- Update general definition section to remove terms that are not used in the regulation, incorporate definitions from NWCAA Section 580, and add terms related to the GDF change.

***Adoption by Reference (amended NWCAA Section 104):***

- Update adoption by reference list to allow us to implement the most recent version of the referenced state and federal rules. In addition, adopt by reference the following federal rules so that NWCAA will be the implementing agency rather than EPA within NWCAA jurisdiction: 40 C.F.R. 60 Subpart XXX (Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification after July 17, 2014) and 40 C.F.R. 60 Subpart OOOOa (Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced after September 18, 2015).
- Remove citations that do not need to be adopted by reference or have been deleted from the WAC.

***New/Amended Regulation Section Derivations:***

Amended NWCAA Section 106: Revised to reflect chapters 42.56 RCW and 44-14 WAC; subsection numbering to match current format.

Amended NWCAA Section 200 -

"Bottom Loading" definition: Copied from NWCAA Section 580 and clarified.

"Bulk Gasoline Plant" definition: Copied from NWCAA Section 580 and clarified.

"Closed Refinery System" definition: Copied from NWCAA Section 580 and clarified.

"Cutback Asphalt" definition: Copied from NWCAA Section 580 and clarified.

"Disposal System" definition: Copied from NWCAA Section 580 and clarified.

"Fuel Burning Equipment" definition: New language.

"Gasoline" definition: Copied from NWCAA Section 580 and clarified.

"Gasoline Dispensing Facility" definition: Copied from NWCAA Section 580 and clarified.

"Gasoline Loading Terminal" definition: Copied from NWCAA Section 580 and clarified.

"National Pollution Discharge Elimination System (NPDES)" definition: New language.

"Petroleum Refinery" definition: Copied from NWCAA Section 580 and clarified.

"Process Unit" definition: Copied from NWCAA Section 580 and clarified.

"Proper Attachment Fittings" definition: Copied from NWCAA Section 580 and clarified.

"Stage I Vapor Recovery" definition: New term and definition.

"Stage II Vapor Recovery" definition: Copied from NWCAA Section 580 and clarified.

"Submerged Fill Line" definition: Copied from NWCAA Section 580 and clarified.

"Submerged Loading" definition: Copied from NWCAA Section 580 and clarified.

"Suitable Closure or Suitable Cover" definition: Copied from NWCAA Section 580 and clarified

"Temporary Source" definition: New term and definition.

"Throughput" definition: Copied from NWCAA Section 580 and clarified.

"Transport Tank" definition: Copied from NWCAA Section 580 and clarified.

"Turnaround or Process Unit Turnaround" definition: Copied from NWCAA Section 580 and clarified.

"Vapor Balance System" definition: Copied from NWCAA Section 580 and clarified.

"Vapor Recovery System" definition: Copied from NWCAA Section 580 and clarified.

"Volatile Organic Compound (VOC)" definition: Revised to reference chapter 173-400 WAC.

"Waxy, Heavy Pour Crude Oil" definition: Copied from NWCAA Section 580 and clarified.

New NWCAA Section 508: New language.

Amended NWCAA Section 580.6: Revised language; subsection numbering changed to match current format.

**Distributions for Section Being Replaced:** Amended NWCAA Section 200 -

"Adverse Impact on Visibility" definition: Deleted as not used.

"Air Quality Standard" definition: Deleted as not used.

"Class I Area" definition: Deleted as not used.

"Combustion and Incineration Units" definition: Deleted as not used.

"Commence" definition: Deleted as not used.

"Complainant" definition: Deleted as not used.

"Existing Stationary Facility" definition: Deleted as not used.

"Federal Class I Area" definition: Deleted as not used.

"Federal Land Manager" definition: Deleted as not used.

"Fire Chief" definition: Deleted as not used.

"Hearings Board" definition: Deleted as not used.

"Hog Fuel Boiler" definition: Deleted as not used.

"Lowest Achievable Emission Rate (LAER)" definition: Deleted as not used.

"Mandatory Class I Federal Area" definition: Deleted as not used.

"Mercury" definition: Deleted as not used.

"Mercury Ore" definition: Deleted as not used.

"Natural Conditions" definition: Deleted as not used.

"Net Emissions Increase" definition: Deleted as not used.

"Non-Highway Mobile Source" definition: Deleted as not used.

"Pathological Waste" definition: Deleted as not used.

"Reasonably Attributable" definition: Deleted as not used.

"Stack Height" definition: Deleted as not used.

"Straw" definition: Deleted as not used.

Reasons Supporting Proposal: See bullet list above.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141(1).

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

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 70.94.141.

Explanation of exemptions: Not applicable under RCW 70.94.141.

June 21, 2018

Mark Buford

Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-15 issue of the Register.

## WSR 18-14-028

### PROPOSED RULES

### DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

[Filed June 26, 2018, 12:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-077.

Title of Rule and Other Identifying Information: Chapter 25-48 WAC, archaeology and historic preservation, new definition and requirements for the creation of an archaeological monitoring permit.

Hearing Location(s): On August 20, 2018, at 1:00, at the Natural Resources Building, 111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: August 27, 2018.

Submit Written Comments to: Lance Wollwage, P.O. Box 48343, Olympia, WA 98504-8343, email lance.wollwage@dahp.wa.gov, by August 20, 2018.

Assistance for Persons with Disabilities: Contact Lance Wollwage, phone 360-586-3536, email lance.wollwage@dahp.wa.gov, by August 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of archaeology and historic preservation (DAHP) is revising rules for the issuance of archaeological excavation and removal permits under WAC 25-48-020 and 25-48-060. DAHP has identified the need to develop rules that simplify requirements for permits that propose archaeological monitoring. The proposed monitoring permit simplifies and reduces application requirements and DAHP anticipates the cost to applicants for this permit will be reduced.

Reasons Supporting Proposal: Under WAC 25-48-060, application requirements for archaeological excavation and removal permits are based on the needs of intensive scientific data-recovery efforts, including lengthy and detailed context statements and research designs. Archaeological monitoring work does not require the context and level of detail currently required for permit applications under WAC 25-48-060. Simplifying the application requirements for archaeological monitoring permit applications will reduce the time and effort needed to produce applications by professional archaeologists and project proponents, and the time and effort to review applications by agency and tribal staff.

Statutory Authority for Adoption: RCW 27.34.220, 27.53.140, 43.21C.120.

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

Name of Proponent: DAHP, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lance Wollwage, Olympia, 360-586-3536.

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. Adoption of the proposed rules will reduce applicant costs.

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.

June 26, 2018

Lance Wollwage

Assistant State Archaeologist

**AMENDATORY SECTION** (Amending WSR 06-06-001, filed 2/15/06, effective 3/18/06)

**WAC 25-48-020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Archaeology" means systematic, scientific study of the human past through material remains.

(2) "Historic" means peoples and cultures who are known through written documents in their own or other lan-

guages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 889-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(3) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(4) "Professional archaeologist" means a person who:

(a) Has designed and executed an archaeological study as evidenced by a thesis or dissertation and been awarded an advanced degree such as an M.A., M.S., or Ph.D. in archaeology, anthropology, history or other germane discipline with a specialization in archaeology from an accredited institution of higher education; and

(b) Has a minimum of one year of field experience with at least twenty-four weeks of field work under the supervision of a professional archaeologist, including no less than twelve weeks of survey or reconnaissance work and at least eight weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity must be documentable with a report on the field work produced by the individual.

(5) "Public lands" means lands owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state; including the state's submerged lands under the Submerged Lands Act, 43 U.S.C. Sec. 1301 et seq.

(6) "Site restoration" means to repair the archaeological property to its preexcavation vegetational and topographic state.

(7) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(8) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(9) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(10) "Archaeological resource" means any material remains of human life or activities which are of archaeological interest, including all sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls, and grinding stones, knives,

scrapers, rock carvings and paintings, and other implements and artifacts of any material.

(11) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.-220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(12) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation.

(13) "Director" means the director of the department of archaeology and historic preservation or his or her designee.

(14) "Department" means the department of archaeology and historic preservation.

(15) "State historic preservation officer" means the director, who serves as the state historic preservation officer under RCW 43.334.020.

(16) "Suspension" means the abeyance of a permit under this chapter for a specified period of time.

(17) "Revocation" means the termination of a permit under this chapter.

(18) "Mitigation" means:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(f) Monitoring the impact and taking appropriate corrective measures.

(19) "Abandonment" means that the resource has been deserted and the owner has relinquished ownership rights with no retention, as demonstrated by a writing, oral communication, action, or inaction.

(20) "Person" means any individual, corporation, partnership, trust, institution, association, or other private entity; or any officer, employee, agent, department, or instrumentality of the state or any county, city, or other political subdivision of the state.

(21) "Permittee" means any person who holds an active archaeological excavation permit issued under RCW 27.53.-060 and this chapter.

(22) "Respondent" means any person who has received a notice of violation under WAC 25-48-041, a notice of permit denial under WAC 25-48-105, a notice that a right of first refusal has been extinguished under WAC 25-48-108, or a notice of suspension or revocation under WAC 25-48-110,

and who has filed an application for an adjudicative proceeding.

(23) "Repository" means a facility, including but not limited to, a museum, archeological center, laboratory, or storage facility managed by a university, college, museum, other educational or scientific institution of a federal, state or local government agency or Indian tribe that provides secure, environmentally controlled storage, for archaeological collections and their associated records making them available for scientific, educational and cultural needs.

(24) "Archaeological value" means the cost comparable volume archaeological excavation would be, including retrieving scientific information from the site before it was vandalized. This includes field work, lab analysis, background research and reporting, and curation of the collection and records.

(25) "Archaeological monitoring" means the observation of ground-disturbing activities by a professional archaeologist as described in subsection (4) of this section in order to identify, document, avoid, and/or recover human skeletal remains and archaeological resources, under a plan approved by the department.

AMENDATORY SECTION (Amending WSR 06-06-001, filed 2/15/06, effective 3/18/06)

**WAC 25-48-060 Summary of information required of an applicant.** (1) Each application for ((a)) an archaeological site alteration and excavation permit shall include:

(a) An archaeological site alteration and excavation permit application coversheet;

(b) Sufficient background information and summary of previous field investigation, research and data gaps about the site(s) proposed for excavation such that the reviewers have a comprehensive understanding of the site(s) and current research questions to be able to review the proposal as a complete document((-

~~(b))~~);

(c) The nature and extent of the work proposed, including how and why it is proposed to be conducted and the methods proposed for excavation and recovery, number and placement of excavation units, proposed excavation volumes, proposed time of performance, locational maps, and a completed site inventory form((-

~~(c))~~);

(d) Summary of the environmental setting and depositional context, with an emphasis on vegetation, past and present available natural resources, geomorphology and formation processes, and their relationship to the archaeological deposits((-

~~(d))~~);

(e) An artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating of specimens and recovered data consistent with the Secretary of the Interior's standards for archaeological curation in 36 C.F.R. Part 79((-

~~(e))~~);

(f) If human remains are proposed for recovery, a plan for their removal and disposition must be provided; if human remains are not proposed for recovery, a plan for responding to the inadvertent discovery of human remains must be provided((-

~~(f)~~);

(g) A professional, scientific research design, including research questions, demonstrating that the work and reporting will be performed in a scientific and technically acceptable manner utilizing methods and techniques designed to address current scientific research questions and cultural resource management plans((-

~~(g)~~);

(h) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in this chapter((-

~~(h)~~);

(i) The name and address of the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, if different from the individual(s) enumerated under (g) of this subsection((-

~~(i)~~);

(j) Financial evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities and evidence of financial support for analysis and report writing((-

~~(j)~~);

(k) A plan for site restoration following excavation activities and evidence of plans to secure bonding to cover the cost of site restoration((-

~~(k)~~);

(l) Evidence of an agreement for the proposed work from the owner, agency, or political subdivision with management responsibility over the land((-

~~(l)~~);

(m) A site security plan to assure the protection of the site and its contents during the public permit review and excavation process((-

~~(m)~~);

(n) A public participation plan detailing the extent of public involvement and dissemination of project results to the public, as appropriate. Examples of appropriate public dissemination can include, but not be limited to: *Archaeology Month* lectures, slide shows, anthropological conferences, school presentations, newspaper articles, if warranted((-

~~(n)~~);

(o) A completed environmental checklist as required by WAC 197-11-100 to assist the department in making a threshold determination and to initiate SEPA compliance((-

~~(o)~~);

(p) Evidence of abandonment: Abandonment will be presumed where the applicant presents information that thirty or more years have elapsed since the loss of the resource. If it appears to the department from any source that the resource has not been abandoned or may not have been abandoned, and in the case of all United States government warships, aircraft, or other public vessels, the department will find that the presumption does not arise and will require proof of aban-

donment. Proof may be satisfied by submission of a statement of abandonment from the owner, his or her successors, assigns or legal representatives, or through final adjudication by a court of law((-

~~(p)~~);

(q) Disclosure by the applicant of any previous violation of this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves. The applicant shall disclose any such violation by the applicant, by the individual(s) proposed to be responsible for conducting the work, or by the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, and shall provide details, dates, and circumstances of each violation((-

~~(q)~~); and

(r) Disclosure by the applicant of outstanding archaeological excavation permits issued by the department to the applicant.

(2) Each application for an archaeological monitoring permit shall include:

(a) An archaeological monitoring permit application coversheet;

(b) Sufficient background information and summary of previous field investigation and research about the site(s) proposed for monitoring, such that the reviewers have a comprehensive understanding of the site(s) to be able to review the proposal as a complete document;

(c) The nature and extent of the work proposed, including how and why it is proposed to be conducted and the methods proposed for monitoring, proposed time of performance, locational maps showing archaeological and project construction elements and monitoring areas;

(d) A protocol for immediate steps to be taken on-site by the archaeological monitor should they find archaeological resources or human skeletal remains and stating the authority of the archaeologists to halt excavations or other activities that may endanger archaeological resources or human skeletal remains. The protocol must state that if archaeological resources are identified during archaeological monitoring, measures to avoid, minimize and mitigate impacts, collect and curate artifacts and records must be addressed through a permit amendment after additional consultation with the DAHP and interested/affected tribes;

(e) The name and address of the professional archaeologist(s) who will conduct the monitoring work;

(f) The name and address of the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, if different from the individual(s) enumerated under (e) of this subsection; and

(g) A completed site inventory form.

(3) Where the application is for the excavation and/or removal of archaeological resources on public lands, the name of the Washington university, museum, repository or other scientific or educational institution meeting the Secretary of the Interior's standards for archaeological curation in 36 C.F.R. Part 79, in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work other than human skeletal remains and funerary objects. The applicant

shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard, preserve, and allow for the future scientific access to these materials as property of the state.

~~((3))~~ (4) Where the application is for the excavation and/or removal of archaeological resources on private land, the name of the university, museum, repository, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work and all collections in the event the landowner wishes to take custody of the collection. The applicant shall submit written certification from the landowner stating this intention. If the landowner does not wish to take custody of the collection, the name of the university, museum, repository, or other scientific or educational institution in which the collection will be curated. The applicant shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific access to these materials.

~~((4))~~ (5) An applicant may temporarily curate a collection identified in subsection ~~((2) or (3))~~ (3) or (4) of this section in a repository that meets the Secretary of the Interior's standards for archaeological curation in 36 C.F.R. Part 79 until the appropriate Indian tribe has available facilities meeting the Secretary of the Interior's standards for archaeological curation in 36 C.F.R. Part 79 into which the collection may be curated.

~~((5))~~ (6) Where the application is for the excavation and/or removal of a historic archaeological resource that is an historic aircraft, the name of the Washington museum, historical society, nonprofit organization, or governmental entity that proposes to assume curatorial responsibility for the resource. The applicant shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the resource and all associated records, data, photographs and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific and public access to these materials.

~~((6))~~ (7) After review of the application, the department may require additional information to properly evaluate the proposed work and shall so inform the applicant. Field investigation or research may be required of the applicant or conducted by the department at the applicant's cost. A bond in an amount specified by the department may be required of the applicant to ensure payment of the professional expenses incurred by the department. Advance notice of any anticipated cost shall be given to the applicant.

**WSR 18-14-045**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed June 28, 2018, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-102.

Title of Rule and Other Identifying Information: Chapter 196-16 WAC, Registered professional land surveyors.

Hearing Location(s): On August 28, 2018, at 1:00 p.m., at the Department of Licensing, 405 Black Lake Boulevard, Conference Room 2108, Olympia, WA 98502.

Date of Intended Adoption: August 29, 2018.

Submit Written Comments to: Julie Konnersman, Management Analyst, Board of Registered Professional Engineers and Land Surveyors, P.O. Box 9012, Olympia, WA 98507-9012, email [engineers@dol.wa.gov](mailto:engineers@dol.wa.gov), fax 360-570-7098, by August 27, 2018.

Assistance for Persons with Disabilities: Contact Jenni Lingle, administrative assistant, phone 360-664-1564, fax 360-570-7098, TTY 711, email [engineers@dol.wa.gov](mailto:engineers@dol.wa.gov), by August 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In the interest of public safety and welfare, the edit to this rule will add the requirement that all licensed land surveyors must read the Survey Recording Act (chapter 58.09 RCW) and minimum standards for land boundary surveys and geodetic control surveys and guidelines for the preparation of land descriptions (chapter 332-130 WAC) as part of their professional development hours, and must attest that they have read them at the time of renewal.

Reasons Supporting Proposal: Most complaints against surveyors involve violations of chapters 58.09 RCW and 332-130 WAC. These prescribe what needs to be on a survey and the board believes review of these laws and rules will help surveyors with the preparation of their surveys.

Statutory Authority for Adoption: RCW 18.43.035.

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

Name of Proponent: Board of registered professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1570; Implementation and Enforcement: Ken Fuller, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1565.

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. Department of licensing is exempt under RCW 34.05.328 (5)(a).

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

Is exempt under RCW 19.85.020(3), this rule affects only individual licensees.

June 28, 2018  
 Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-11-119, filed 5/19/06, effective 7/1/06)

**WAC 196-16-110 Requirements.** (~~Starting on July 1, 2006,~~) All licensed professional land surveyors wishing to maintain lawful practice must accumulate fifteen PDH per year of a two-year renewal cycle. All renewals for licensure as a professional land surveyor (~~occurring on or after July 1, 2007~~) are subject to audit by the board.

On and after January 1, 2019, all licensed professional land surveyors must attest to reading chapters 58.09 RCW (Survey Recording Act) and 332-130 WAC (Minimum standards for land boundary surveys and geodetic control surveys and guidelines for the preparation of land descriptions) at the time of renewal.

AMENDATORY SECTION (Amending WSR 06-11-119, filed 5/19/06, effective 7/1/06)

**WAC 196-16-120 Units.** Qualifying activities will accrue PDH as follows:

1. College hours:
  - a. Completion of 1 college semester hour 45 PDH
  - b. Completion of 1 college quarter hour 30 PDH
2. 1 Continuing education unit 10 PDH
3. For publication or presentation of each:
  - a. Authored technical paper or article 10 PDH
  - b. Authored book 30 PDH
4. Membership in professional/technical societies or government committees or boards. 2 1/2 PDH  
(Not to exceed 5 PDH/year)
5. For each hour of attendance at professional or technical society meetings with an informational program. (Not to exceed 5 PDH/year) 1 PDH
6. For each hour of attendance at meetings or hearings of the board. (Not to exceed 7 1/2 PDH/year) 1 PDH
7. For each hour of preparation and subsequent presentation (\*) of a professional development program at seminars, professional/technical meetings, conventions or conferences. (Not to exceed 10 PDH/year) (\*) 1 PDH  
*This credit does not apply to full-time faculty*
8. For each hour of participation in committees of organizations whose purpose is to develop codes, standards, examinations and regulations. 1 PDH
9. For each hour of participation in an activity involving substantial and organized peer interaction, excluding time spent during regular employment. (Not to exceed 5 PDH/year) 1 PDH

10. For each hour of participation in organized courses, including employer provided courses, on first aid/safety, technical or management skills. 1 PDH
11. For each hour of participation in sessions, or courses sponsored by technical or professional societies, organizations or the board. 1 PDH
12. Each hour of self-study. (Not to exceed 5 PDH/year) 1 PDH
13. For reading chapters 58.09 RCW and 332-130 WAC. 2 PDH
14. Completion of CFed program. 30 PDH

**WSR 18-14-054**

**PROPOSED RULES**

**OFFICE OF**

**FINANCIAL MANAGEMENT**

[Filed June 28, 2018, 3:23 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-19-183 Must DCYF conduct background checks on all employees in covered positions and individuals being considered for a covered position?, 357-19-184 Besides the DCYF, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees?, 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by DCYF and what are the results of the background check used for?, 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize the secretary of the DCYF or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization?, 357-19-188 What happens when a permanent DCYF employee is disqualified because of a background check?, 357-19-189 What are the responsibilities of the secretary of the DCYF in carrying out the requirement to conduct background checks?, and 357-19-191 Does a permanent employee of DCYF who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification?

Hearing Location(s): On August 9, 2018, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: August 16, 2018.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by August 2, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by August 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2ESSHB [2E2SHB] 1661 creates the department of children, youth and families (DCYF) effective July 1, 2018. Section 807 of 2ESSHB [2E2SHB] 1661 amends RCW 41.06.475 which removes the requirement for OFM to adopt background check rules for the department of early learning and requires OFM to adopt background check rules for DCYF.

Reasons Supporting Proposal: To align Title 357 WAC with the changes made to chapter 41.06 RCW which became effective on June 7, 2018.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.475.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

June 28, 2018  
Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

**AMENDATORY SECTION** (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-19-183 Must ((~~DEL~~)) DCYF conduct background checks on all employees in covered positions and individuals being considered for a covered position?**

(1) The ((~~director~~)) secretary of the department of ((~~early learning~~ (~~DEL~~))) children, youth and families (DCYF) or designee must conduct background checks on all employees in covered positions and individuals being considered for a covered position.

(2) The requirement for background checks must include the following:

(a) Current employees in covered positions.

(b) Any employee considered for a covered position because of a layoff, reallocation, transfer, promotion, demotion, or other actions that result in the employee being in a covered position.

(c) Any individual being considered for positions which are covered positions.

(3) Considered for positions includes decisions about:

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

**AMENDATORY SECTION** (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

**WAC 357-19-184 Besides the ((~~DEL~~)) DCYF, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees?** (1) Employers may conduct background checks on applicants and/or employees if required by state or federal law, or if the employer identifies the need for a background check to verify that the applicant or employee satisfies the position requirements.

(2) Employers who conduct background checks must develop procedures regarding how and when background checks will be conducted. The procedures must include notification to applicants and/or employees if a background check is required.

**AMENDATORY SECTION** (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

**WAC 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by ((~~DEL~~)) DCYF and what are the results of the background check used for?** (1) The background check information considered by the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF will include but not be limited to conviction records, pending charges, and disciplinary board final decisions.

(2) The results of the background check must be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee.

**AMENDATORY SECTION** (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization?** An employee and/or individual applying for or being considered to remain in a covered position must authorize the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee to conduct a background check.

Failure to authorize the ((~~director~~)) secretary of the ((~~DEL~~)) DCYF or designee to conduct a background check disqualifies an employee or individual from consideration for any covered position including their current covered position.

**AMENDATORY SECTION** (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

**WAC 357-19-188 What happens when a permanent ((~~DEL~~)) DCYF employee is disqualified because of a background check?** (1) A permanent employee with a back-



ground check disqualification may be subject to any of the following actions in no specific order:

- (a) Voluntary demotion;
- (b) Job restructuring;
- (c) Voluntary resignation;
- (d) Job reassignment;
- (e) Nondisciplinary separation in accordance with WAC 357-46-195; or
- (f) Disciplinary action in accordance with WAC 357-40-010.

(2) An appointing authority may use the following interim measures while exploring the availability of actions (not to exceed thirty calendar days except in cases where there are investigations of pending charges):

- (a) Voluntary use of accrued vacation, exchange, and/or compensatory time;
- (b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or
- (c) Reassignment to another work location.
- (d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated due to a background check disqualification, the search for a non-covered position will occur over a period of thirty calendar days.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

**WAC 357-19-189 What are the responsibilities of the ((director)) secretary of the ((DEL)) DCYF in carrying out the requirement to conduct background checks?** (1) In order to implement the requirements of WAC 357-19-183, the ((director)) secretary of the ((DEL)) DCYF or designee must:

- (a) Notify employees and individuals being considered for covered positions that a background check is required for covered positions; and
- (b) Develop policies and procedures pertaining to background checks.

(2) Information contained in background checks must be used solely for the purpose of determining the character, suitability and competence of the employee and/or individual being considered for covered positions. The information must not be disseminated further. Dissemination and use of such information is governed by the criminal records privacy act, chapter 10.97 RCW. Unlawful dissemination of information protected by the criminal records privacy act is a criminal offense and may result in prosecution and/or disciplinary action as provided in chapter 357-40 WAC. However, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

**WAC 357-19-191 Does a permanent employee of ((DEL)) DCYF who is disqualified from a covered posi-**

**tion as a result of a background check have the right to request a review of the disqualification?** A permanent employee of ((DEL)) DCYF who is disqualified from a covered position as a result of a background check has the right to present to the ((director)) secretary of the ((DEL)) DCYF or designee evidence that mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

- (1) The employee's background check authorization and disclosure form;
- (2) The employee's age at the time of conviction, charge, or disciplinary board final decision;
- (3) The nature and severity of the conviction, charge, or disciplinary board final decision;
- (4) The length of time since the conviction, charge, or disciplinary board final decision;
- (5) The nature and number of previous offenses;
- (6) Vulnerability of the child to which the employee will or may have unsupervised access; and
- (7) The relationship between the potentially disqualifying event and the duties of the employee.

**WSR 18-14-055**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed June 28, 2018, 3:25 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-380 What is the purpose of the state leave sharing program?, 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?, 357-31-395 What definitions apply to shared leave?, 357-31-405 What documentation may an employee seeking shared leave be required to submit?, 357-31-415 Can donated leave be used for any purpose?, and 357-31-435 Must employees use their own leave before using shared leave?

Hearing Location(s): On August 9, 2018, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: August 16, 2018.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by August 2, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by August 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 1434 was passed during the 2018 legislative session with an effective date of July 1, 2018. This bill expands the use of shared leave to employees that are sick or temporarily disabled because of a pregnancy disability and for the purposes of parental leave. This bill also allows an employee to maintain up to forty hours of vacation and forty hours of sick leave while using

shared leave for this purpose. The purpose of the other amendments are to clean-up WAC by condensing language and housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
Statute Being Implemented: RCW 43.01.135.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

June 28, 2018

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-380 What is the purpose of the state leave sharing program?** The purpose of the state leave sharing program is to permit state employees, at no significantly increased cost to the state for providing leave, to come to the aid of another state employee who is likely to take leave without pay or terminate ~~((his or her))~~ employment ~~((because:~~

(1) ~~The employee has been called to service in the uniformed services;~~

(2) ~~The employee is volunteering with a governmental agency or a nonprofit organization when a state of emergency has been declared within the United States;~~

(3) ~~The employee or a relative or household member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; or~~

(4) ~~The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655).~~

AMENDATORY SECTION (Amending WSR 17-18-030, filed 8/28/17, effective 10/2/17)

**WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?** An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment~~((;))~~ or physical

or mental condition which is of an extraordinary or severe nature;

(b) ~~((The employee))~~ Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) ~~((The employee))~~ Is a victim of domestic violence, sexual assault~~((;))~~ or stalking as defined in RCW 41.04.655;

(e) ~~((The employee))~~ Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability; ~~((or))~~

(f) ~~((The employee))~~ Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC 357-31-395(4).

(2) ~~The ~~((illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or))~~ condition(s) listed in subsection (1) of this section is likely to cause, the employee to~~((:~~~~

~~((a)))~~ go on leave without pay status~~((;))~~ or ~~((b)))~~ terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete ~~((their:~~

~~((a))~~ Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

~~((b))~~ Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

~~((c))~~ Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) of this section)) leave in accordance with WAC 357-31-435. If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

**WAC 357-31-395 What definitions apply to shared leave?** (1) As defined in RCW 41.04.655, "employee" means any employee of the state, including employees of school districts and educational service districts, who ((is)) are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, grandparent((;)) or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen weeks after the birth or placement.

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) "Severe" or "extraordinary" condition is defined as serious ((or)), extreme ((and/or)) or life threatening.

((4)) (6) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty((;)) and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

((5)) (7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard((;)) and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

**WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit?** An employee may be required to submit the following documentation before the employer approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition ((before the employer approves or disapproves the request)).

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's

required ((absence before the employer approves or disapproves the request)).

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault((;)) or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault((;)) or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault((;)) or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault((;)) or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault((;)) or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault((;)) or stalking: An advocate for victims of domestic violence, sexual assault((;)) or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth or adoption of the child or proof of a current foster parent license for foster care or placement.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the pregnancy disability is a requirement.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

**WAC 357-31-415 Can donated leave be used for any purpose?** Vacation leave, sick leave, or all or part of a personal holiday transferred from a donating employee under these rules must be used solely for the purpose stated in WAC ((357-31-380)) 357-31-390.

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

**WAC 357-31-435 Must employees use their own leave before using shared leave?** (1) Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave((;)) and vacation leave that they have accrued before using shared leave.

(2) Employees who qualify for shared leave under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave((;)) and paid military leave allowed under RCW 38.40.060 before using shared leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday((;)) and vacation leave that they have accrued before using shared leave.

(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-895.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565 and personal holiday before using shared leave. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

## WSR 18-14-057

### PROPOSED RULES

#### OFFICE OF

#### FINANCIAL MANAGEMENT

[Filed June 28, 2018, 4:09 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-25-027 What must be included in the agency's sexual harassment policy?

Hearing Location(s): On August 9, 2018, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: August 16, 2018.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by August 2, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by August 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5996 was passed during the 2018 legislative session with an effective date of June 7, 2018. This bill states that an employer may not require an employee, as defined in chapter 49.44 RCW, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault.

Reasons Supporting Proposal: To place new provisions in Title 357 WAC so there are clear expectations of what is and what is not acceptable.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Statute Being Implemented: RCW 43.01.135.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

June 28, 2018

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

**WAC 357-25-027 What must be included in the agency's sexual harassment policy?** Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

- (1) Indicate who is covered by the policy;
- (2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;
- (3) State that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;
- (4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;
- (5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;
- (6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;
- (7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;
- (8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;
- (9) State that the complainant shall be informed of the status and the outcome of an investigation;
- (10) Identify the agency's investigation or response procedure;

(11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

(a) Preventing or not engaging in sexual harassment;  
(b) Responding to concerns or allegations of violations of the policy;

(c) Participation in an investigation under the policy; and  
(d) The prohibition against retaliation.

(12) State that confidentiality cannot be guaranteed;

(13) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;

(14) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal; ~~((and))~~

(15) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal; and

(16) State an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with section 1, chapter 117, Laws of 2018.

For the purposes of this subsection, "employee" has the same meaning as defined in section 1, chapter 117, Laws of 2018.

**WSR 18-14-058**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed June 28, 2018, 4:10 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-31-360 Must employees who have been ordered to required military duty, training, drills, or required to appear for a physical examination be granted paid military leave?

Hearing Location(s): On August 9, 2018, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: August 16, 2018.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, Olympia, WA 98501, email Kristie.Wilson@ofm.wa.gov, fax 360-586-4694, by August 2, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by August 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2851 passed during the 2018 legislative session with an effective date of June 7, 2018. This bill amends RCW 38.40.060 which clarifies

the calculation of military leave for officers and employees that work shifts spanning more than one calendar day.

Reasons Supporting Proposal: To align WAC 357-31-360 with the changes made to RCW 38.40.060, which became effective on June 7, 2018.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Statute Being Implemented: RCW 38.40.060.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue, Olympia, WA 98501, 360-407-4139.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

June 28, 2018

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 10-23-041, filed 11/10/10, effective 12/13/10)

**WAC 357-31-360 Must employees who have been ordered to required military duty, training, drills, or required to appear for a physical examination be granted paid military leave?** (1) Employees must be granted military leave with pay not to exceed twenty-one working days during each year, beginning October 1st and ending the following September 30th, in order to report for required military duty, training duty in the Washington National Guard or the Army, Navy, Air Force, Coast Guard, or Marine Corps reserves of the United States or any organized reserve or armed forces of the United States, or to report for drills including those in the National Guard under Titles 10 and 32 U.S.C., or state active status.

(2) The employee is charged military leave only for the days that ~~((they are))~~ the employee is scheduled to work. If the employee is scheduled to work a shift that begins on one calendar day and ends on the next calendar day, the employee is charged military leave only for the first calendar day. If the employee is scheduled to work a shift that begins on one calendar day and ends later than the next calendar day, the employee is charged military leave for each calendar day except the calendar day on which the shift ends.

~~((2))~~ (3) Military leave with pay is in addition to any vacation and sick leave to which an employee is entitled and does not reduce benefits, performance ratings, privileges((-) or pay.

~~((3))~~ (4) During paid military leave, the employee must receive the normal base salary.

~~((4))~~ (5) Employees required to appear during working hours for a physical examination to determine physical fitness for military service must receive full pay for the time required to complete the examination.

Employees who are not yet in the military may use paid miscellaneous leave for this purpose. Employees who are already in the military may use paid military leave as described in this section. An employee who is currently in the military may use paid miscellaneous leave for this purpose if they do not have paid military leave available.

**WSR 18-14-059**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed June 28, 2018, 4:12 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-31-010 Which employees qualify for holiday compensation? and 357-31-165 At what rate do general government employees accrue vacation leave?

Hearing Location(s): On August 9, 2018, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: August 16, 2018.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, Olympia, WA 98501, email Kristie.Wilson@ofm.wa.gov, fax 360-586-4694, by August 2, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by August 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes are housekeeping in nature.

Reasons Supporting Proposal: Housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 43.01.040.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue, Olympia, WA 98501, 360-407-4139.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

June 28, 2018

Roselyn Marcus

Assistant Director of  
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

**WAC 357-31-010 Which employees qualify for holiday compensation?** (1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection ~~((+))~~ (2) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 17-20-052, filed 9/29/17, effective 10/31/17)

**WAC 357-31-165 At what rate do general government employees accrue vacation leave?** (1) Full-time general government employees accrue vacation leave at the following rates:

(a) During the first and second years of current continuous state employment - Nine hours, twenty minutes per month;

(b) During the third year of current continuous state employment - Ten hours per month;

(c) During the fourth year of current continuous state employment - Ten hours, forty minutes per month;

(d) During the fifth and sixth years of total state employment - Eleven hours, twenty minutes per month;

(e) During the seventh, eighth and ninth years of total state employment - Twelve hours per month;

(f) During the tenth, eleventh, twelfth, thirteenth and fourteenth years of total state employment - Thirteen hours, twenty minutes per month;

(g) During the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth years of total state employment - Fourteen hours, forty minutes per month;

(h) During the twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth years of total state employment - Sixteen hours per month; and

(i) During the twenty-fifth and succeeding years of total state employment - Sixteen hours, forty minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection ((1)(k)-(1)(i))) (1)(i) of this section.

(3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

(c) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

### WSR 18-14-070

#### PROPOSED RULES

### HEALTH CARE AUTHORITY

[Filed June 29, 2018, 12:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-071.

Title of Rule and Other Identifying Information: WAC 182-560-100 Achieving a Better Life Experience (ABLE) Act.

Hearing Location(s): On August 7, 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](http://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 August 8, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by August 7, 2018.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunications relay service (TRS) 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by August 3, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending chapter 182-560 WAC, Achieving a Better Life Experience (ABLE) Act to comply with amendments to federal rules under 26 U.S.C. Sec. 529A, Qualified ABLE programs, and to clarify how contributions to ABLE accounts count towards countable income in determining eligibility for apple health programs.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 26 U.S.C. Sec. 529A Qualified ABLE programs.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 26 U.S.C. Sec. 529A Qualified ABLE programs.

Rule is necessary because of federal law, 26 U.S.C. Sec. 529A Qualified ABLE programs.

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: 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 changes to the proposed rules apply to clients so they do not impose any costs on businesses.

June 29, 2018

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-135, filed 5/24/17, effective 7/1/17)

**WAC 182-560-100 Achieving a Better Life Experience (ABLE) Act.** This rule describes a qualified achieving a better life experience (ABLE) account and its effect on the determination of eligibility for Washington apple health coverage.

(1) A qualified ABLE account:

(a) Is established and maintained by a state, or its designated agency or entity;

(b) Meets federal requirements under 26 U.S.C. Sec. 529A; and

(c) Is used to save funds for the disability related expenses of the account's designated beneficiary.

(2) This section applies to ABLE account beneficiaries who:

(a) Are entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act; or

(b) Meet the blindness or disability requirements under WAC 182-512-0050 (1)(b) and (c).

(3) The disability or blindness described in subsection (2)(a) or (b) of this section must have occurred before age twenty-six.

(4) This section does not apply if the total combined annual contributions to an ABLE account exceed the ~~((gift tax annual exclusion amount identified in the Internal Revenue Service publication 559))~~ limit under 26 U.S.C. Sec. 529A.

(5) When determining countable income for apple health programs for the account's designated beneficiary, the medic-aid agency or the agency's designee does not:

(a) Count contributions made by a person other than the designated beneficiary to the ABLE account;

(b) Count funds distributed from the account;

(c) Count earnings generated by the account, such as accrued interest or dividends; or

(d) Reduce income used to determine eligibility by the amount of contributions made to the account, including any funds the designated beneficiary may contribute to it.

(6) When determining eligibility for apple health programs, the agency or the agency's designee excludes as resources:

(a) The value of an ABLE account, including any earnings generated by the account; and

(b) Subject to subsection (8) of this section, distributions from the account for qualified disability expenses as long as the beneficiary:

(i) Maintains an ABLE account;

(ii) Contributes to an ABLE account; or

(iii) Receives distributions from such ABLE account.

(7) "Qualified disability expense (QDE)" means any expense related to the beneficiary's blindness or disability that is made for the benefit of the beneficiary, including the following expenses:

(a) Education;

(b) Housing;

(c) Transportation;

(d) Employment training and support;

(e) Assistive technology and personal support services;

(f) Health;

(g) Prevention and wellness;

(h) Financial management;

(i) Legal fees;

(j) Expenses for oversight and monitoring; and

(k) Funeral and burial expenses.

(8) Distributions under subsection (6)(b) of this section, which are retained into a subsequent calendar month:

(a) Remain excluded as resources as long as the distributions are identifiable and the beneficiary still intends to use the distribution for a QDE;

(b) Are available resources on the first day of a subsequent calendar month if the intent of the beneficiary changes such that the beneficiary will not use the distribution for a QDE; and

(c) Are available resources on the first day of any subsequent month when the distribution is actually used for a non-QDE.

(9) The agency or the agency's designee counts as a resource on the first day of the following month any funds distributed for purposes other than paying a QDE expense described in subsection (7) of this section.

(10) If the beneficiary has multiple ABLE accounts, the agency or the agency's designee applies this section to the first ABLE account established.

(11) Funds remaining in the ABLE account when the beneficiary dies are subject to estate recovery under chapter 182-527 WAC, less any:

(a) Outstanding QDE debts; and

(b) Premium payments made from the ABLE account on behalf of the beneficiary to obtain coverage under the apple health care for workers with disabilities described in WAC 182-511-1000.

## WSR 18-14-082

### PROPOSED RULES

### HEALTH CARE AUTHORITY

[Filed July 2, 2018, 9:54 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-119.

Title of Rule and Other Identifying Information: WAC 182-531-2030 Enhanced rates for pediatric care services and administration of vaccines.

Hearing Location(s): On August 7, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than August 8, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by August 7, 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](mailto:amber.lougheed@hca.wa.gov), by August 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is creating new WAC 182-531-2030 Enhanced rates for pediatric care services and administration of vaccines. The funding for this enhanced rate was authorized under ESSB 6032, section 213 (1)(ddd).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6032, section 213 (1)(ddd).

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, 360-725-5145; Implementation and Enforcement: Wendy



Steffens, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344.

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

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

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

Is exempt under RCW 19.85.025(3) as the 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.

July 2, 2018  
Wendy Barcus  
Rules Coordinator

#### NEW SECTION

**WAC 182-531-2030 Enhanced rates for pediatric care services and administration of vaccines.** (1) Subject to available funds, the agency pays an enhanced rate for covered pediatric care services and the administration of vaccines provided to clients age eighteen and younger.

(2) For the purposes of this section, pediatric care services are defined as covered evaluation and management services.

(3) The agency uses the resource-based relative value scale (RBRVS) payment methodology described in WAC 182-531-1850 to calculate the enhanced rate.

(4) If the enhanced rate is less than the agency's published fee schedule rate, the agency pays the published rate.

(5) This enhanced rate applies only to pediatric care services and administration of vaccines for clients age eighteen and younger that are not already paid at an enhanced rate.

**WSR 18-14-084  
PROPOSED RULES  
UTILITIES AND TRANSPORTATION  
COMMISSION**

[Filed July 2, 2018, 11:20 a.m.]

Original Notice.

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

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

Hearing Location(s): On August 20, 2018, at 9:30 a.m., at the Richard Hemstad Building, Room 206, 1300 South

Evergreen Park Drive S.W., Olympia, WA 98503. Public hearing to consider adoption of proposed rules.

Date of Intended Adoption: August 20, 2018.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, email records@utc.wa.gov, fax 360-586-1150, by July 31, 2018.

Assistance for Persons with Disabilities: Contact Ashley Miller, phone 360-664-1130, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email ashley.miller@utc.wa.gov, by August 6, 2018.

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

Reasons Supporting Proposal: The commission last revised chapter 480-07 WAC in 2006. Since that time, there have been technological changes, including greater use of electronic documents, and new legislation. In addition, the commission has received suggestions to clarify the rules in this chapter to incorporate and better reflect current commission practice. The commission currently proposes to add to, amend, or repeal the rules in Parts III B through IV to address these concerns.

Statutory Authority for Adoption: RCW 34.05.020.

Statute Being Implemented: RCW 80.01.040.

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

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

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

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 commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

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 commission issued a notice requesting comment and cost information on any economic impact the proposed rules would have on businesses, and the only comments the agency received from stakeholders were that the rules would not have any such impact. The proposed rules primarily reflect current commission practices and procedures and thus will not impose any costs on businesses that they do not presently incur.

A copy of the detailed cost calculations may be obtained by contacting Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.E. [S.W.], Olympia, WA 98504, phone 360-664-1160, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email records@utc.wa.gov.

July 2, 2018

Mark L. Johnson  
Executive Director  
and Secretary

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

**WAC 480-07-500 General rate proceedings—Statement of policy.** (1) **Scope of this subpart.** This subpart explains the special requirements for certain ~~((rate increase))~~ filings to change rates charged by electric, natural gas, pipeline, telecommunications, and water companies, low-level radioactive waste sites, ~~((and))~~ solid waste collection companies, and commercial ferries.

(2) **Inconsistencies with subpart A requirements.** If there is any inconsistency between the requirements in subpart B of these rules and those in subpart A, the requirements in subpart B control.

(3) **Purpose of special rules.** The special requirements in subpart B are designed to standardize presentations, clarify issues, and speed and simplify processing of general rate proceedings.

(4) ~~((Summary rejection for))~~ **Failure to comply.** The commission, pursuant to WAC 480-07-141, may ~~((summarily))~~ reject, or require the company to revise, any filing ~~((for))~~ to initiate a general rate proceeding that does not conform to the requirements of subpart B of these rules. ~~((If))~~ The commission ~~((summarily rejects a filing for a general rate, it))~~ will provide a written statement of its reasons ~~((and will provide an opportunity for the case to be refiled in conformance with these rules))~~ if it rejects a filing. The company may revise or refile a filing that remedies the noncompliance the commission has identified and otherwise fully complies with the rules consistent with the requirements in WAC 480-07-141(2), which governs the date on which the commission considers a filing to have been made.

(5) **Less than statutory notice.** The commission may grant requests to alter tariffs on less than statutory notice for good cause shown, in accordance with RCW 80.28.060 ~~((and))~~ or 81.28.050. A company that seeks to implement general rate proceeding tariff changes on less than statutory notice must include with its filing a complete explanation of the reasons that support such treatment.

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

**WAC 480-07-505 General rate proceedings—Definition—Tariff suspension.** (1) ~~((Rate))~~ **Filings that ~~((are considered))~~ initiate general rate proceedings.** ~~((A general rate proceeding filing is))~~ Except as otherwise provided in this rule or RCW 80.04.130 (2)(a) (governing rate decreases for telecommunications companies), the commission will initiate a general rate proceeding in response to a filing by any ~~((regulated))~~ public service company ~~((specified))~~ identified in WAC 480-07-500 ~~((for an increase in))~~ requesting to change its rates if that filing meets any of the following criteria:

(a) The ~~((amount requested))~~ rates a company requests would ~~((increase))~~ alter its gross annual revenue ~~((of the com-~~

pany)) from activities ~~((regulated by))~~ the commission regulates by three percent or more.

(b) ~~((Tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more.~~

~~((e))~~ The company requests a change in its authorized rate of return ~~((on common equity))~~ or a change in its capital structure.

~~((c))~~ ~~((c))~~ The company is a solid waste collection company regulated under chapter 81.77 RCW ~~((except for filings specified under subsection (3)(a) of this section)).~~

(2) ~~((Rate))~~ **Filings under Title 80 RCW that ~~((are not considered))~~ will not initiate general rate proceedings.** The commission generally will not initiate general rate proceedings in response to the following ~~((proceedings are not considered general rate increases))~~ filings, even though the revenue ~~((requested may exceed))~~ the company requests may vary by three percent ~~((of))~~ or more from the company's current gross annual revenue from Washington regulated operations:

(a) Periodic rate adjustments the commission has generally authorized for electric and natural gas companies ~~((that may be authorized by the commission))~~ (e.g., power cost adjustments ~~((and))~~, purchased gas cost adjustments, or decoupling adjustments);

(b) Emergency or other ~~((short notice increases caused by disaster or weather related conditions))~~ rate increases a company requests on short notice as a result of disasters, adverse weather, or other causes beyond the company's control that unexpectedly and substantially ~~((increasing))~~ increase a public service company's expenses; or

(c) Rate ~~((increases))~~ changes designed to recover ~~((government imposed increases in))~~ only the costs a company incurs to comply with government actions that directly impact the company's costs ~~((of doing business such as))~~ to provide regulated service (e.g., changes ~~((in))~~ to tax laws or ~~((ordinances))~~ local fees) or to comply with federal or state rules concerning the level of rates for telecommunications companies.

~~((d))~~ Other increases designed to recover increased expenses arising on short notice and beyond a public service company's control.

(3) ~~((Rate))~~ **Filings under chapter 81.77 RCW that ~~((are))~~ will not ~~((considered))~~ initiate general rate proceedings.** The ~~((following filings are not considered))~~ commission generally will not initiate general rate proceedings ~~((for))~~ in response to the following filings by solid waste collection companies regulated under chapter 81.77 RCW even though the request may meet one or more criteria identifying general rate proceedings:

(a) Filings by companies;

(i) That provide ~~((neither traditional residential or commercial solid waste operations. This category includes))~~ specialized ~~((carriers generally))~~ hauling services restricted to certain specific waste products ~~((for))~~ that are limited to specific customers ~~((and carriers providing))~~; or

(ii) That provide only on-call or nonscheduled service (i.e., ~~((C))~~ Class C ~~((C))~~ companies, as defined in WAC 480-70-041).

(b) ~~((Disposal fee pass-through charges for drop-box service, provided there are no affiliated interest relationships.~~

(e) Filings for collection of per-customer pass-through surcharges and taxes imposed by the jurisdictional local government based on the current year customer count either as a specified dollar amount or percentage fee amount.) Filings seeking only to pass through a change in fees unilaterally established and imposed by governmental or unaffiliated private entities, including disposal, recycling, yard waste, or processing fees, or to pass through changes to fees charged by affiliated entities if the public service company demonstrates that the total cost of transfer, transport, and fees at the affiliate's facilities is equal to or lower than other reasonable and currently available alternatives;

(c) Filings for rate changes designed to recover only the costs a company incurs to comply with government actions that directly impact the company's costs to provide regulated service (e.g., changes to state or local fees, charges, or taxes directly related to the collection or disposal of solid waste);

(d) Filings ~~((by existing solid waste companies for the implementation of))~~ implementing new solid waste collection programs; or

(e) Filings for periodic rate adjustments through a cost adjustment mechanism the commission has generally authorized for solid waste collection companies (e.g., fuel or recycling commodity adjustments).

(4) Commission discretion. The commission retains discretion to determine whether to initiate a general rate proceeding in response to any filing described in this section or to convert any rate proceeding to a general rate proceeding following notice and an opportunity to comment, if the commission finds that such action is consistent with the public interest. The commission may require that any filing or proposal by a ~~((regulated))~~ public service company to ~~((increase))~~ change rates for any customer class, or to restructure rates, ~~((is))~~ be subject to the procedures and protections ~~((of))~~ in subpart B of these rules.

(5) Suspension of tariffs. The commission may take action at a regularly scheduled open public meeting to suspend the tariff sheets included in any filing that seeks to change rates. A company may waive its right to commission consideration of the filing at an open meeting and request immediate suspension of the tariffs, either in the cover letter accompanying the filing or in a subsequent document. If commission staff confirms that the filing is complete and complies with the applicable rules in subpart B of these rules, the commission may enter a complaint and order suspending the tariffs without further process. The company and statutory parties may engage in discovery pursuant to WAC 480-07-400 through 480-07-415 after the commission issues a notice of prehearing conference prior to the commission entering a prehearing conference order.

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

**WAC 480-07-510 General rate proceeding~~((s))~~ filings—Electric, natural gas, pipeline, and Class A telecommunications companies.** General rate proceeding filings ~~((for))~~ by electric, natural gas, pipeline, and Class A telecommuni-

cations companies as defined in WAC 480-120-034 must include the information described in this section. ~~((The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. For purposes of this rule, "file with the commission," means filed with the commission's executive secretary under WAC 480-07-140 at the time the company files its general rate case; whereas "serve" or "provide" to commission staff or another party, means delivery to such persons, not filed with the commission.))~~ The company and all parties to an adjudication in a general rate proceeding must file all required documents in electronic form consistent with the requirements in WAC 480-07-140 and by the next business day must file five paper copies of all testimony and exhibits unless the commission establishes a different number. If an exhibit is a database, spreadsheet, or model, the paper copy of that exhibit may simply reference or describe its contents if printing the entirety of the database, spreadsheet, or model would result in a document exceeding five pages and would render the data, spreadsheet cells, or model unusable. The party, however, must submit a complete electronic version of the database, spreadsheet, or model, with all information, formulae, and functionality intact, as part of the party's electronic filing.

(1) Testimony and exhibits. ~~((company must file with the commission nineteen paper copies of))~~ company's initial filing and any supplemental filings the commission authorizes must include all testimony and exhibits ~~((that))~~ the company intends to present as its direct case ~~((if the filing is suspended and a hearing held, unless the commission preapproves the filing of fewer copies. In addition, the company must provide one electronic copy of all filed material in the format identified in WAC 480-07-140(6). Material that the company has not produced under its direction and control and that is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format)).~~ The company must serve a copy of the ~~((materials filed under this section))~~ initial filing on the public counsel unit of the Washington state attorney general's office at the time ~~((of))~~ the company makes the filing with the commission ~~((in any))~~ if the proceeding is the type in which public counsel ~~((will appear))~~ generally appears or has appeared in the past. The ~~((utility))~~ filing must ~~((provide an exhibit that includes))~~ include a results-of-operations statement showing test year actual results and ~~((the))~~ any restating and pro forma adjustments in columnar format ~~((supporting its))~~ that support the company's general rate request. The ~~((utility must also show))~~ company must identify each restating and pro forma adjustment and ~~((its))~~ the effect of that adjustment on the ~~((results of))~~ company's operations and revenue requirement. The testimony must include a written description of each proposed restating and pro forma adjustment describing the reason, theory, and calculation of the adjustment.

(2) Tariff sheets. ~~((company must file with the commission and provide to public counsel a copy of))~~ company's initial filing must include the company's proposed new or revised tariff sheets in legislative format (i.e., with strike-through to indicate ~~((any))~~ the material to be deleted and underlining to indicate ~~((any))~~ the material to be

inserted(~~(, in paper and electronic format, unless already provided as an exhibit under subsection (1) of this section. The company must also file with the commission)) consistent with the requirements in WAC 480-80-105, as well as copies of any tariff sheets that are referenced ~~((by))~~ in the new or amended tariff sheets.~~

**(3) ~~((Work papers and accounting adjustments:~~**

~~(a) At the time the company makes its general rate case filing, the company must provide one copy of all supporting work papers of each witness to public counsel and three copies to staff in a format as described in this subsection. Staff and each other party must provide work papers to all other parties within five days after the filing of each subsequent round of testimony filed (e.g., response, rebuttal). If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be included as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided, but the company must identify clearly the materials that are omitted and their content. Omitted materials must be provided or made available if requested. The following information is required for work papers:~~

~~(b) *Organization.* Work papers must be plainly identified and well organized, and must include an index and tabs. All work papers must be cross referenced and include a description of the cross referencing methodology.~~

~~(c) *Electronic documents.* Parties must provide all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be provided using logical file paths, as necessary, by witness, and using identifying file names. A party may file a document with locked, hidden or password protected cells only if necessary to protect the confidentiality of the information within the cells or proprietary information in the document. The party shall designate that portion of the document as confidential under RCW 80.04.095, WAC 480-07-160, and/or a protective order, and the party shall provide it to any person requesting the password who has signed an appropriate confidentiality agreement.~~

~~(d)) **Detailed support for proposals.**~~

~~(a) *General.* The company must include in its initial testimony and exhibits, including those addressing accounting adjustments, all detail, calculations, information, and descriptions necessary to support its requests and proposals and meet its burden of proof. Any party responding to the company's proposal also must include in that party's testimony and exhibits all detail, calculations, information, and descriptions necessary to support its proposals.~~

~~(b) *Capital structure and rate of return.* The company must include in testimony and exhibits a detailed ~~((portrayal))~~ description of the development of any capital structure and rate of return proposals ~~((and all supporting work papers in the format described in this subsection.~~~~

~~(e)). Any other party that files testimony or exhibits that propose revisions to the company's current capital structure or authorized rate of return also must provide similar detailed~~

information in testimony and exhibits supporting its proposal.

~~(c) *Restating and pro forma adjustments.* ~~((Parties must provide work papers that contain))~~ Each party that proposes restating or pro forma adjustments must include in its testimony and exhibits a detailed portrayal of the restating ~~((actual))~~ and pro forma adjustments ~~((that the company))~~ the party uses to support its ~~((filing or that another party uses to support its litigation))~~ proposal or position ~~((, specifying))~~. That portrayal must specify all relevant assumptions ~~((, and including))~~ and include specific references to charts of accounts, financial reports, studies, and all similar records ~~((relied on by the company in preparing its filing, and by all parties in preparing their testimony and exhibits. All work papers))~~ on which the party relies. Testimony and exhibits must include support for, and calculations showing, the derivation of each input number used in the detailed portrayal ~~((and for each subsequent level of detail. The))~~, as well as the derivation of all interstate and multiservice allocation factors ~~((must be provided in the work papers))~~.~~

~~(i) *Change in methodologies for adjustments.* If a party proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.~~

~~(ii) <sup>(ii)</sup> Restating ~~((actual))~~ adjustments ~~((<sup>(ii)</sup>))~~ adjust the booked operating results for any defects or infirmities in actual recorded results of operations that can distort test period earnings. Restating ~~((actual))~~ adjustments are also used to adjust from an as-recorded basis to a basis that ~~((is acceptable for rate making))~~ the commission accepts for determining rates. Restating adjustments must be calculated based on the unadjusted test year operating results, not on another party's adjustments. The commission may refuse to consider any adjustment that is not calculated consistent with this requirement. Nonexclusive examples of restating ~~((actual))~~ adjustments are adjustments ~~((<sup>(ii)</sup>))~~ that:~~

~~(A) Remove prior period amounts ~~((, <sup>(ii)</sup>))~~;~~

~~(B) Eliminate below-the-line items that were recorded as operating expenses in error ~~((, <sup>(ii)</sup>))~~;~~

~~(C) Adjust from book estimates to actual amounts ~~((, and <sup>(ii)</sup>))~~;~~

~~(D) Annualize ongoing costs that the company began to incur part way through the test year;~~

~~(E) Normalize weather or hydro conditions; or~~

~~(F) Eliminate or ~~((<sup>(ii)</sup>))~~ normalize extraordinary items recorded during the test period.~~

~~((<sup>(iii)</sup>))~~ <sup>(ii)</sup> Pro forma adjustments ~~((<sup>(ii)</sup>))~~ give effect for the test period to all known and measurable changes that are not offset by other factors. The ~~((work papers))~~ company and any other party filing testimony and exhibits proposing pro forma adjustments must identify dollar values and underlying reasons for each proposed pro forma adjustment. Pro forma adjustments must be calculated based on the restated operating results. Pro forma fixed and variable power costs, net of

power sales, may be calculated directly based either on test year normalized demand and energy load, or on the future rate year demand and energy load factored back to test year loads.

(iii) If a party proposes to calculate an adjustment in a manner different than the method the commission most recently accepted or authorized for the company, the party must also include in testimony and exhibits the rationale for, and documents that demonstrate, how that adjustment would be calculated under the methodology previously accepted by the commission and must explain the reason for the proposed change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless the commission so states in the order approving the settlement.

~~((f))~~ (d) *Revenue sources.* The company must include in testimony and exhibits a detailed portrayal of revenue from regulated sources, by source, during the test year and ~~((a parallel portrayal, by source, of))~~ the changes ~~((in))~~ that would result in those revenues ~~((produced by the filing))~~ if the commission approves the company's request, including an explanation of how the resulting changes were derived.

~~((g) If the public service))~~ (e) *Achievement of rate of return.* The company must demonstrate in testimony and exhibits why the company has not achieved its authorized rate of return ~~((, an explanation of why it has not))~~ and what actions the company ~~((is doing))~~ has taken prior to and during the test year to improve its earnings in addition to its request for increased rates. If the company has not taken any such actions, the company must explain why it has not.

~~((h))~~ (f) *Rate base and results of operations.* The company's testimony and exhibits must include a representation of the company's actual rate base and results of operations ~~((of the company))~~ during the test period, calculated in the same manner ~~((used by))~~ the commission used to calculate the ~~((company's))~~ revenue requirement in the ~~((commission's))~~ final order in the company's most recent ~~((order granting the company a))~~ general rate ~~((increase))~~ proceeding.

~~((i) Supplementation of))~~ (g) *Affiliate and subsidiary transactions.* The company's testimony and exhibits must supplement, as necessary, the annual affiliate and subsidiary transaction reports ~~((as provided))~~ required in rules governing reporting ~~((requirements for each))~~ for the applicable industry ~~((, as necessary,))~~ to include all such transactions during the test period. The company ~~((is required to))~~ must identify all affiliate and subsidiary transactions that materially affect the proposed rates. The company must support the allocation method the company used to distribute common costs between regulated and nonregulated affiliated entities and the dollar amount of those costs.

(h) *Electronic documents and confidentiality.* Electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support exhibits must use logical file paths, as necessary, by witness and must use identifying file names consistent with the naming requirements in WAC 480-07-140. A party may file a document with locked, hidden, or password protected cells only if such restricted access is necessary to protect the information within the cells that is not subject to public disclosure. The

party must identify each locked, hidden, or password protected cell and must designate such cells, as well as any other information the party contends is confidential under RCW 80.04.095 or otherwise protected from public disclosure, in compliance with the requirements in WAC 480-07-160 and any applicable protective order. The party must make such information accessible to all persons who have signed the protective order or are otherwise entitled to access the information including, but not necessarily limited to, commission staff and public counsel. Redacted versions of models or spreadsheets that contain information that is designated as confidential or highly confidential or otherwise protected from public disclosure must be in .pdf format (using Adobe Acrobat or comparable software) and must mask the information protected from public disclosure as required in WAC 480-07-160.

(i) *Referenced documents.* If a party's testimony or exhibits refer to a document including, but not limited to, a report, study, analysis, survey, article, or court or agency decision, the party's testimony and exhibits must include that document except as provided below:

(i) A party may include an official citation or internet Uniform Resource Locator (URL) to a commission order or to a court opinion or other state or federal agency decision, rather than the document itself, if that decision is reported in a generally accepted publication (e.g., Washington Reports Second (Wn.2d), Public Utility Reports (P.U.R.), etc.) or if the document is readily available on the web site of the agency that entered that decision:

(ii) A party may include only the relevant excerpts of a voluminous document if the party also provides a publicly accessible internet URL to the entire document or describes the omitted portions of the document and their content and makes those portions available to the other parties and the commission upon request; and

(iii) A party is not required to file or distribute materials subject to third-party copyright protection but must describe those materials and their content and make them available for inspection upon request by the parties and the commission.

#### (4) **Work papers.**

(a) *General.* Work papers are documents that support the technical aspects of a party's testimony and exhibits. Work papers may include, but are not limited to, calculations, data analysis and raw data. Work papers are not a part of a party's direct case. Within five business days after each party files and serves its testimony and exhibits, the party also must provide to all other parties the work papers on which each of its witnesses relied when preparing testimony and exhibits. All work papers must comply with the requirements of this subsection.

(b) *Organization.* Work papers must be plainly identified and well organized, with different documents or sections separated by or into tabs, and must include an index. All work papers must be cross-referenced and include a description of the cross-referencing methodology.

(c) Any work papers provided to other parties must comply with requirements governing electronic documents and confidentiality in subsection (3)(h) and referenced documents in subsection (3)(i) of this section.

(d) Filing designated work papers with the commission. If the commission determines that it needs information in addition to a party's testimony and exhibits, the commission may issue a bench request for designated portions of that party's work papers. The commission will receive into evidence the work papers a party provides in response to a bench request unless the commission rejects that response, either in response to an objection or on the commission's own motion, as provided in WAC 480-07-405 (7)(b). The commission will not rely on any other work papers as the basis for any finding of fact or conclusion of law in the proceeding unless the commission formally admits such work papers into the evidentiary record.

**(5) Summary document.**

(a) Contents. The company must ~~(file with the commission a summary)~~ include in its initial filing a document that ~~(briefly states the following)~~ summarizes the information in this subsection (5)(a) on an annualized basis, if applicable ~~(in presenting the following information, the company)~~, and must itemize revenues from any temporary, interim, periodic, or other noncontinuing tariffs. The company must include in its rate change percentage and revenue change calculations any revenues from proposed general rate change tariffs that would supersede revenue from noncontinuing tariffs. The summary document must ~~(also)~~ include:

~~((a))~~ (i) The date and amount of the ~~(latest prior)~~ last general rate ~~(increase authorized by)~~ change the commission ~~(is)~~ authorized for the company and the revenue the company realized from that ~~(authorized increase in)~~ change during the test period ~~(is)~~ based on the company's test period units of ~~(revenue:~~

~~(b))~~ sale (e.g., kilowatt hours, therms, etc.);

(ii) Total revenues ~~((a))~~ the company is realizing at its present rates and the total revenues the company would realize at the requested rates ~~(is)~~

~~(c))~~;

(iii) Requested revenue change in percentage, in total ~~(is)~~ and by major customer class ~~(is)~~

~~(d))~~;

(iv) Requested revenue change in dollars, in total ~~(is)~~ and by major customer class ~~(is)~~

~~(e)~~ Requested rate change in dollars, per average);

(v) The representative effect of the request in dollars for the average monthly use per customer, by customer class ~~(is)~~ or other similar meaningful representation, ~~(if necessary to depict representative effect of the request. The summary document must also state)~~ including, but not limited to, the effect of the proposed rate ~~(increase)~~ change in dollars per month on ~~(typical)~~ residential customers by usage categories ~~(is)~~

~~(f))~~;

(vi) Most current customer count, by major customer class ~~(is)~~

~~(g))~~;

(vii) Current authorized overall rate of return and authorized rate of return on common equity ~~(is)~~

~~(h))~~;

(viii) Most recently calculated actual rate of return and actual rate of return on common equity;

(ix) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate the requested rates of return ~~((on common equity:~~

~~(i))~~;

(x) Requested capital structure ~~(is)~~

~~(j))~~;

(xi) Requested net operating income ~~(is)~~

~~(k))~~;

(xii) Requested rate base and method of calculation, or equivalent ~~(is)~~

~~(l)~~ Requested); and

(xiii) Revenue effect of any requested attrition allowance ~~(is, if any is requested)~~.

~~((5))~~ (b) Required service ~~((of summary document))~~.

(i) Persons to receive service. The company must serve the summary document on ~~((public counsel and mail the summary document described in subsection (4) of this section to))~~ the persons designated below on the same date it files the summary document with the commission:

~~((a))~~ (A) The public counsel unit of the Washington state attorney general's office;

(B) All intervenors on the commission's master service list for the company's most recent general rate proceeding;

~~((b))~~ (C) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the company's filing, if the company's rate change request may affect the rates established or considered in that prior proceeding ~~((may be affected in the company's proposed general rate filing)); and~~

~~((c))~~ (D) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section.

(ii) Cover letter. The company must enclose a cover letter with the summary document stating that the company's prefiled testimony and exhibits, and the accompanying work papers, ~~((diskettes, and publications specified in this rule))~~ are available from the company on request ~~((or stating that they have been provided)), subject to any restrictions on information that is protected from public disclosure, if the company is not serving them along with the summary document.~~

(iii) Limitation. This ~~((provision))~~ service requirement does not create a right to service or notice ~~((is))~~ of future filings in the proceeding to the persons named to receive the summary. Any person other than commission staff and public counsel who wishes to be served documents subsequently filed in the general rate proceeding must petition to intervene in that proceeding.

(6) Cost studies. The ~~((company must file with the commission))~~ company's initial filing must: (a) Include any cost studies ~~((is))~~ the company performed or relied on to prepare its ~~((filing,))~~ proposals; (b) identify all cost studies conducted in the last five years for any of the company's services ~~(is)~~; and (c) describe the methodology the company used in all such cost studies. If the cost studies are in the form of a model, the company must provide a copy of, or reasonable access to, the model that will enable the commission to verify and modify the model's inputs and assumptions.

(7) ((Other)) Additional documents. The ~~((company must file with the commission its))~~ company's initial filing

must include the following documents or an internet URL for each of these documents:

(a) The company's most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders;

(b) The company's most recent FERC Form 1 and FERC Form 2(~~(, if applicable)~~) for electric and natural gas companies; and

(c) The company's Form 10K's, Form 10Q's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the (~~(filing date)~~) rate change request.

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

**WAC 480-07-520 General rate proceeding(~~(s)~~) filings—Solid waste collection companies and commercial ferries.** General rate (~~(increase)~~) proceeding filings by (~~(class A and B haulers as defined in WAC 480-70-041)~~) solid waste collection companies or commercial ferries must include the information described in this rule. (~~(The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.)~~) The company must file all required documents in electronic form consistent with the requirements in WAC 480-07-140. A solid waste collection company may file a document with locked, hidden, or password protected cells only if such restricted access is necessary to protect the information within the cells that is not subject to public disclosure. The solid waste collection company must identify each locked, hidden, or password protected cell and must designate such cells, as well as any other information the party contends is confidential under RCW 81.77.210 or otherwise protected from disclosure, in compliance with the requirements in WAC 480-07-160 and any applicable protective order. The solid waste collection company must make such information accessible to all persons who have signed the protective order or are otherwise entitled to access the information including, but not necessarily limited to, commission staff. A commercial ferry company may not file a document with locked, hidden, or password protected cells.

(1) **Proposed tariff.** The company's initial filing must include the company's proposed tariff sheets (~~(may be filed in electronic form supplemented by one paper copy. The proposed tariff sheets should)~~). Sections that are narrative, e.g., that contain rules or notes, must be in legislative format, i.e., with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted. (~~(The electronic copy must be submitted in the format identified in WAC 480-07-140(6))~~) Changes to tariff sections that are tabular, e.g., charts containing rates and charges, must be marked with appropriate tariff symbols consistent with the requirements in WAC 480-70-286.

(2) **Local government ordinances and customer notices.** The company's initial filing must include a copy of every local government ordinance related to the request in compliance with WAC 480-70-326, and a copy of the customer notices issued in compliance with the provisions of WAC 480-70-271.

(3) **Transmittal letter.** The company's initial filing must include a transmittal letter (~~(prepared)~~) in compliance with (~~(the provisions of)~~) WAC 480-70-326.

(4) **Work papers.** (~~(One paper and one electronic copy of all supporting work papers for the test period, which is the most recent or most appropriate consecutive twelve-month period for which financial data are available. The electronic copy must be submitted in the format identified in WAC 480-07-140(6).)~~) The company's initial filing must include all work papers that support the company's rate change request. Work papers must include the following:

(a) A detailed pro forma income statement separated (~~(among solid waste, single family residential recycling, multifamily recycling, and yard waste)~~) by customer class, with restating (~~(actual)~~) and pro forma adjustments, reflected in separate columns, including all supporting calculations and documentation for all adjustments.

(i) (~~(<sup>1</sup>)~~) Restating (~~(actual)~~) adjustments(~~(<sup>2</sup>)~~) adjust the booked operating results for any defects or infirmities in actual recorded results of operations that can distort test period earnings. Restating (~~(actual)~~) adjustments are also used to adjust from an as-recorded basis to a basis that (~~(is acceptable)~~) the commission accepts for determining rates (~~(making)~~). Examples of restating (~~(actual)~~) adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) (~~(<sup>2</sup>)~~) Pro forma adjustments(~~(<sup>3</sup>)~~) give effect for the test period to all known and measurable changes that are not offset by other factors. The company's initial filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(iii) Restating and pro forma adjustments must be calculated as the variance from the booked operating results.

(b) A calculation of the (~~(revenue impact of proposed tariff revisions)~~) total revenues the company is realizing at its present rates and the total revenues the company would realize at the requested rates.

(c) An income statement listing all revenue and expense accounts by month or a supporting general ledger for the test period.

(d) If nonregulated revenue represents more than ten percent of total company test period revenue, a detailed separation of all revenue and expenses between regulated and nonregulated operations.

(e) A detailed list of all nonregulated operations(~~(including the rates charged for the services rendered)~~). The company must provide copies of all contracts (~~(must be provided on)~~) upon request.

(f) A detailed (~~(price out information that)~~) study that reconciles service pickups or passenger counts, as applicable, to the test year revenue by tariff item or service. The computed revenue must reconcile(~~(s)~~) within five percent (~~(, without adjustment, to the)~~) of test period (~~(booked)~~) revenue(~~(including the test period customer count by tariff item)~~).

(g) A consolidated balance sheet(~~(including the percentage of equity and the percentage)~~) for the company with supporting documentation including, but not limited to,

detailed cost of debt and a list of all real property and vehicle leases to which the company is a party.

(h) A detailed calculation of net investment in plant and equipment and the net book value of used and useful assets at the end of the test period.

(i) A detailed depreciation schedule listing all used and useful assets the regulated entity that operates under the tariff for which the company files the rate request held during the test period, including the date of purchase, the cost at purchase, the depreciable life, the salvage value, depreciation expense, and accumulated depreciation expense at the end of the test period.

~~((i) Computed average investment. Average investment is the net book value of allowable assets at the beginning of the test period plus the net book value of allowable assets at the end of the test period, divided by two. Investor supplied working capital may be included, provided a work sheet is submitted detailing the calculations.))~~

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates, including a full description of the relationship, the terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

(5) **Annual report.** The company's initial filing must include the company's most recent consolidated annual report to shareholders, if any.

(6) **Interim rates.** The commission may grant interim rates subject to refund when considering proposed changes to tariffs requested by solid waste collection companies under RCW 81.28.050. Interim rates subject to refund granted pursuant to this section shall be limited to those companies that demonstrate, after a brief adjudicative proceeding or limited hearing, an emergency, undue hardship, or inequity. If a solid waste collection company requests interim rate relief, the commission will consider the request on an expedited schedule.

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

**WAC 480-07-530 General rate proceeding(s) filings —Water companies and Class B telecommunications companies.** General rate proceeding filings by water companies and Class B telecommunication companies as defined in WAC 480-120-034 must include the information described in this section. The company must file all required documents in electronic form consistent with the requirements in WAC 480-07-140. A party may file a document with locked, hidden, or password protected cells only if such restricted access is necessary to protect the information within the cells from public disclosure. The party must identify each locked, hidden, or password protected cell and must designate such cells, as well as any other information the party contends is confidential under

RCW 80.04.095 or otherwise protected from public disclosure, in compliance with the requirements in WAC 480-07-160 and any applicable protective order. The party must make such information accessible to all persons who have signed the protective order or are otherwise entitled to access the information including, but not necessarily limited to, commission staff. The filing must include the following:

(1) **Cover letter.** The cover letter must:

(a) Provide a description of the filing and the requested rate change in understandable terms;

(i) Explain any technical terms and otherwise use common terms to describe the filing so the public can easily understand its impact;

(ii) Define any acronyms, if used, must be defined before they are used in the text of the letter;

(b) State why the company is requesting a rate change (e.g., to recover higher costs for water testing);

(c) Describe each service that the filing impacts and the dollar and percentage change for each service as well as the net impact of all changes on the company's total regulated revenue.

(2) **Tariff.** The company's initial filing must include the company's proposed tariff sheets. Sections that are narrative, e.g., that contain rules or notes, must be in legislative format, i.e., with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted. Changes to tariff sections that are tabular, e.g., charts containing rates and charges, must be marked with appropriate tariff symbols consistent with the requirements in WAC 480-80-105.

(3) **Customer notice.** A copy of the notice the company mailed to customers.

(4) **Work papers.** Work papers must support the company's rate change request and, at a minimum, must include the following:

(a) A calculation of the total revenues the company is realizing at its present rates and the total revenues the company would realize at the requested rates by each class affected;

(b) A balance sheet and statement of revenues and expenses;

(c) A depreciation schedule;

(d) A schedule showing any adjustments proposed to the statement of revenues and expenses, including any restating adjustments or pro forma adjustments, and the effect of any adjustments on the proposed rates;

(e) An explanation of all restating adjustments and pro forma adjustments that the company proposes, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records on which the company relied in preparing its initial filing, and its supporting testimony and exhibits).



(i) ~~((actual))~~ Restating ~~((actual))~~ adjustments ~~((actual))~~ adjust the booked operating results for any defects or infirmities in actual recorded results, which can distort test period earnings. Restating ~~((actual))~~ adjustments are also used to adjust from an as-recorded basis to a basis that ~~((is acceptable for rate making))~~ the commission accepts for determining rates. Examples of restating ~~((actual))~~ adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) ~~((Pro))~~ Pro forma adjustments ~~((Pro))~~ give effect for the test period to all known and measurable changes that are not offset by other factors. The ~~((filing))~~ work papers must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(iii) Restating and pro forma adjustments must be calculated as the variance from the booked operating results.

(f) Usage or other statistics verifying test year revenues and proposed revenues.

(g) For water companies, the public water system identification number ((assigned by)) the Washington department of health has assigned for each system that the new rates will affect.

(h) A schedule showing separation of revenues and expenses between regulated and nonregulated operations.

(i) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates ~~((This must include:))~~, including a full description of the relationship, the terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

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

**WAC 480-07-540 General rate proceedings—Burden of proof.** Public service companies bear the burden of proof in the general rate proceedings ((that propose changes that would increase any rate, charge, rental, or toll, as provided)) described in RCW 80.04.130 or 81.04.130. The burden of proof includes the burden of going forward with evidence and the burden of persuasion. The commission will consider the company's ~~((prefiled evidence))~~ initial filing and any supplemental filings the commission authorized to be ((its)) the company's full direct case in support of its rate ((filing)) change request for purposes of deciding any prehearing motion to dismiss under WAC 480-07-380.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-07-550 General rate proceedings—Compliance filings and other resulting filings.

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

**WAC 480-07-610 Brief adjudicative proceedings. (1) When permitted.** The commission may use brief adjudicative proceedings under RCW 34.05.482 when ~~((doing so is))~~:

(a) Such proceedings are consistent with other provisions of law ~~((, when))~~:

(b) Protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties ~~((, and when))~~:

(c) Discovery and prefiled written testimony are not necessary to provide the commission with sufficient evidence to render a determination; and

(d) The commission believes that the issues presented can best be resolved through a brief adjudication ((is)) consistent with the public interest. In exercising its discretion to conduct a brief adjudication, the commission will consider the preferences of the parties, the possible benefits to be gained from a brief adjudication, and the nature of issues involved.

(2) **Matters suitable for brief adjudication.** Categories of proceedings suitable for brief adjudication include, but are not necessarily limited to:

(a) ~~((Review of denials or partial denials of))~~ Challenges to commission notices of intent to deny, in whole or in part, applications for authority that are not protested((-)):

(b) Contested applications for temporary authority ~~(((-))~~:

(c) Proceedings that could lead to suspension, cancellation, or revision of authority for failure to maintain tariffs, pay fees, or file required documents ~~(((-))~~:

(d) Formal complaints ~~((in which))~~ that do not require notice and an opportunity to participate ((in the proceeding need not be given)) to persons other than the parties ~~(((-))~~ and the commission can best resolve in a brief adjudication including, but not limited to, complaints the commission initiates to determine whether a company is providing service subject to commission regulation without commission authority:

(e) ~~((Petitions for mitigation of))~~ Contested penalty assessments under RCW 80.04.405 ((and)), 81.04.405, ((including any challenge to the validity of a penalty assessment or the existence of an underlying violation.)) or 19.122.-150, or consideration of requests for mitigation of the penalty:

(f) Applications for authority to provide auto transportation service to which a company properly objects; and

(g) Requests by solid waste collection companies pursuant to WAC 480-07-520(6) for interim rates subject to refund.

(3) ~~((How to request))~~ **Initiating a brief adjudication.** The director of the administrative law division will determine whether the commission will initiate a brief adjudicative proceeding.

(a) The commission may set a matter for brief adjudication on its own initiative.

(b) Except as otherwise provided in this section, any person may ((apply for)) file a petition requesting that the commission commence a brief adjudicative proceeding ((by filing with the secretary of the commission a letter stating)).

(i) The petition must describe the issues the petitioner seeks to have the commission resolve, the petitioner's position on those issues, and the reasons why a brief (adjudication should be used and a certificate of service upon) adjudicative proceeding would be appropriate to resolve those issues. The petitioner must serve the petition on all other identified or necessary parties. (The commission may set a matter for brief adjudication on its own motion when doing so will not prejudice the rights of any person. Each applicant for a brief adjudicative proceeding must submit a written explanation of its view of the issues along with its application. Parties may file written submissions as provided in the commission's notice that it will conduct the brief adjudicative proceeding) and must file a certificate of service with the petition.

(ii) Any identified or necessary party that opposes the petition may file a response within ten days after service of the petition stating the reasons why a brief adjudicative proceeding would not be appropriate to resolve the issues identified in the petition.

(iii) If the commission initiates a brief adjudication, it will issue a notice of the time and place for the proceeding. A decision denying the petition will be in writing, and the petitioner may seek commission review of that decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

(c) Any person requesting a hearing or commission review of orders or letters suspending or canceling a permit for failure to maintain evidence of required insurance coverage or other specified circumstances must submit that request in writing within fourteen days after the commission posts the order or letter on its web site. The director of the administrative law division will determine whether the commission will initiate a brief adjudication in response to the request or if an administrative law judge will enter a decision based on the information provided in the request and commission staff's response. The requestor may seek commission review of any such decision pursuant to the procedure for requesting review of initial orders in WAC 480-07-825.

(4) Assignment of presiding officer. If the commission ~~((grants the request))~~ sets a matter for a brief adjudication, ~~((#))~~ the commission will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

(5) ((Requesting and presenting oral comments.

(a) Request. A party to a brief adjudicative proceeding may request to make an oral statement in the application or in a response to the application. The presiding officer may grant a request to make an oral statement or may ask the parties to make oral statements if the presiding officer believes an oral statement will help in reaching a decision.

(b)) Hearing.

(a) Notice and nature of proceeding. The commission will serve ~~((upon))~~ on the parties a notice of the time and place for the brief adjudicative proceeding ~~((and the name and telephone number of the designated presiding officer))~~ at least seven days before the proceeding. That notice or a subsequent procedural order will specify how the commission will conduct the proceeding. The parties may offer written exhibits for inclusion in the record and may make oral state-

ments in support of their positions. The presiding officer also may permit parties to present one or more witnesses to testify in support of their positions subject to cross-examination by the other party.

(b) Exhibits. Each party must file with the commission and serve on the other parties all exhibits the party proposes to introduce into the record. The presiding officer may refuse to admit into the evidentiary record any exhibits not provided in advance of the hearing. The notice of brief adjudicative proceeding or subsequent procedural order will establish the deadlines for filing these exhibits.

(i) Exhibit numbers. Parties must mark all exhibits in the upper right-hand corner of the first page prior to submission as follows:

(A) State "Exh." followed by the initials of the witness who will sponsor the exhibit or the name of the party if no witness will sponsor the exhibit.

(B) Place a hyphen after the witness's initials or party name and insert the number of the exhibit. For example, the first exhibit commission staff designates either would be marked "Exh. Staff-1" or if sponsored by staff witness John Q. Witness, would be marked "Exh. JQW-1"; the second exhibit would be marked either "Exh. Staff-2" or "Exh. JQW-2," etc.

(C) Place the capital letter "C" immediately after the number of the exhibit if the exhibit includes information designated as confidential under WAC 480-07-160. Place the capital letters "HC" immediately after the number of the exhibit if the exhibit includes information designated as highly confidential under WAC 480-07-160 and a protective order.

(ii) Format. Any exhibit in the form of a spreadsheet that displays results of calculations based on formulas must be filed and served electronically in its native Excel format in compliance with WAC 480-07-140 (6)(a)(ii). All other exhibits must be filed and served electronically in searchable .pdf (Adobe Acrobat or comparable software) format.

(iii) Organization. Each exhibit must be a separate document (i.e., multiple exhibits must not be scanned into a single document), and each document must be labeled with the exhibit name. Any paper copies of the exhibits that the presiding officer requires must be organized into sets that are tabbed, labeled, and grouped by witness, if any.

(c) Exhibit and witness lists. Each party must file with the commission and serve on all parties a list of all exhibits the party intends to offer for admission into the record. If the presiding officer permits parties to present witness testimony, each party also must provide a list of all witnesses the party intends to present at the hearing and a brief summary of the testimony each witness will give. The notice of brief adjudicative proceeding or a subsequent procedural order will establish the deadline for filing exhibit and witness lists.

(d) Testimony. The presiding officer may refuse to permit a witness to testify if the witness is not on the witness list. The presiding officer also may refuse to hear proposed testimony if it would not be relevant to the issues to be addressed in the proceeding or would be cumulative of the testimony to be offered by another witness. The presiding officer may limit a witness's testimony to the subjects identified in the summary the party provides prior to the hearing.

**(6) Initial order.**

(a) The presiding officer may enter a decision orally and make ~~((an oral))~~ a brief statement of the reasons for the decision ~~((during the brief adjudication if the party affected is present at the proceeding))~~ at the conclusion of the hearing. The presiding officer will then enter an initial order ~~more fully explaining that decision in writing within ten days after the date of the hearing.~~

(b) The presiding officer may take the matter under advisement at the conclusion of the hearing and enter a written initial order that addresses the issues raised ~~((by the application))~~ in the proceeding within ten days after the date of the brief adjudication. The ~~((initial order will be served on the parties pursuant to WAC 480-07-150 (3) and (7))~~ presiding officer may extend this deadline for good cause.

**(7) Review of initial orders.**

(a) *Timing.* Any party may ~~((file a written))~~ petition for review of an initial order ~~((in a brief adjudication))~~ within twenty-one days after service of the ~~((initial))~~ order ~~((and the commission will review the initial order))~~. The commission also may review an initial order on its own motion.

(b) *Format for petition for review.* The commission ~~((encourages written))~~ strongly prefers petitions for review to be in writing so parties will have the greatest opportunity to state reasons for their views, but the commission will accept oral petitions for review as authorized in RCW 34.05.488 and this rule. A ~~((written))~~ party's request for review of an initial order must ~~((contain))~~ identify the errors the party alleges in the order and must provide an explanation of the ~~((party's view of the matter, with a statement of))~~ reasons why the party contends that the initial order is incorrect ~~((, and a certificate of service. Oral petitions for review are permitted under RCW 34.05.488)).~~ The petitioning party must serve its written petition on all parties when it submits the petition to the commission for filing. A party orally requesting review must make that request in the presence of all parties, the presiding officer, and a court reporter.

(c) *Response.* ~~((The commission encourages written responses.))~~ Any party may file and serve a written response to ~~((a))~~ an oral or written petition for review ~~((must be filed with the commission and served to the other parties))~~ within seven days after ~~((service of the petition for review, or on a schedule set by the presiding officer. The commission may hear orally any response to an oral petition for review))~~ the petitioning party makes its oral request for review or serves the written petition unless the commission establishes a different deadline.

(8) **Final order on review.** The commission may adopt, modify, or reject ~~((;))~~ the initial order or may remand the initial order for further proceedings ~~((consistent with the terms of its final order))~~. The final order on review will be in writing ~~((;))~~ and will include a brief statement of the reasons for the decision ~~((, and will be entered))~~. The commission will enter the final order within twenty days after the deadline for requesting review ~~((or of the request for review, whichever is later))~~ of the initial order. The order ~~((must))~~ will include a notice of any further available administrative review or, if none is available, a notice that judicial review may be available.

(9) ~~((Final))~~ **Finality of initial order** ~~((without review. If no party seeks review of the initial order, the commission may enter an order adopting)).~~ The initial order ~~((as its))~~ becomes the commission's final order by operation of law under either of the following conditions:

(a) No party timely seeks administrative review of the initial order, and the commission does not initiate review on its own motion; or

(b) The commission does not enter a final order in response to a petition for administrative review within twenty days after the deadline for requesting review, unless all parties and the commission agree to waive the date by which the commission must enter a final order.

(10) **Record.** The record in a brief adjudicative proceeding consists of any exhibits the presiding officer admits into the record, the transcript of the hearing, and any other documents regarding the matter that ~~((were))~~ the presiding officer considered ~~((or prepared by the presiding officer))~~ for the brief adjudicative proceeding or ~~((by the reviewing officer for))~~ that the commission considered in any review of an initial order. The ~~((agency's))~~ commission's record need not constitute the exclusive basis for action, unless otherwise required by law.

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

**WAC 480-07-620 Emergency adjudicative proceedings.** (1) **When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.-479 ~~((to suspend or cancel authority, to require that a dangerous condition be terminated or corrected, or to require immediate action))~~ in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate commission action ~~((by the commission. Such situations include, but are not limited to:~~

(a) Inadequate service by a public service company when the inadequacy involves an immediate danger to the public health, safety, or welfare; and

(b) Violations of law, rule, or order related to public safety, when the violation involves an immediate danger to the public health, safety, or welfare)) within the commission's jurisdiction.

(2) **Complaint.** If time permits, the commission or a complainant must prepare a complaint and serve it on the respondent using a method that best provides actual notice of the adjudication. ~~((If a majority of the commissioners are not available to authorize a complaint, one commissioner or, if no commissioner is available, the secretary or executive director of the commission or an administrative law judge may authorize a complaint.))~~

(3) **Who presides.** The commissioners will sit as presiding officers, hear the matter, and enter an order ~~((;))~~ if a majority of the commissioners are available. Any available commissioner will sit as presiding officer, hear the matter, and enter an initial order ~~((;))~~ if a majority of the commissioners is not available. The ~~((supervisor))~~ director of the commission's administrative law ~~((judge function))~~ division will assign an administrative law judge either to sit as a presiding officer with the commissioner(s), or if no commissioner is available,

to preside alone, hear the matter, and enter an initial order ~~((if no commissioner is available))~~.

(4) **Record and decision.** The official record will include any written submissions of the parties ~~((;)), any testimony or oral comments by the parties~~ ~~((-if))~~ the presiding officer ~~((has allowed oral comments;))~~ allows, and any other documents regarding the matter that ~~((were considered or prepared by))~~ the commission considers. The ~~((agency's))~~ commission's record need not constitute the exclusive basis for action ~~((;))~~ unless otherwise required by law.

(5) **Emergency order.** The commission will take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication. The presiding officer will enter an emergency order as soon as practicable under the circumstances. The order will include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order is effective when entered. ~~((The commission will serve the order pursuant to WAC 480-07-150(3) and (7).))~~

(6) **Post-order process.** After entering an emergency order under this section, the commission will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger to the public health, safety, or welfare, and will enter a final order.

(7) **Review or reconsideration of emergency order.** Any party to an emergency adjudicative proceeding may seek immediate review by the full commission in the case of any order entered by a single commissioner or by an administrative law judge. In the case of any order entered by a majority of the commissioners, any party may seek ~~((immediate))~~ reconsideration. If ~~((either))~~ a party requests review or reconsideration ~~((is requested))~~, the commission will establish appropriate process to complete its review or reconsideration within ten business days of the date of any petition for review or reconsideration. A party seeking ~~((immediate))~~ review or reconsideration is not automatically entitled to a stay of the emergency order.

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

**WAC 480-07-630 Telecommunications companies— Arbitration under the Telecommunications Act of 1996.**

(1) **Scope.** This rule implements the arbitration provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. ~~((§§))~~ Secs. 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. ~~((§))~~ Sec. 252 are subject to judicial review. Arbitration under this section, however, is not an adjudicative proceeding under the Washington Administrative Procedure Act, chapter 34.05 RCW. Arbitration decisions are binding only upon the parties to the arbitration. Arbitration under this section should be characterized by fairness, cooperation, and openness between or among the parties, and is designed to resolve disputes efficiently and economically.

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel ~~((section))~~ unit of the office of the Washington state attorney general may elect to participate pursuant to RCW 80.04.510.

(4) **Filing and service of a petition for arbitration.**

(a) *When allowed.* During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. ~~((§))~~ Sec. 252 (b)(1), any party to the negotiation may petition the commission to arbitrate all issues that remain unresolved. Parties may continue to negotiate in good faith and may continue to participate in mediation to resolve the disputed issues after a party requests arbitration ~~((is requested))~~.

(b) *Filing.* Parties must file petitions for arbitration under ~~((section))~~ 47 U.S.C. Sec. 252 (b)(2) as provided for other petitions under WAC ~~((480-07-145))~~ 480-07-370(3), and must follow the format requirements for pleadings in WAC 480-07-395.

(c) *Service.* A party that files a petition for arbitration must deliver a complete copy of the petition and all accompanying documentation to the other party or parties to the negotiation on the same day that the petitioner files the petition ~~((is filed))~~ with the commission.

(5) **Contents of petition and documentation.** A petition for arbitration ~~((filed))~~ under this section must:

(a) State the date on which the local exchange carrier received the original request for negotiation ~~((was received))~~, and the dates one hundred thirty-five days and one hundred sixty days after ~~((the request was received))~~ that receipt;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the petitioner;

(d) State any conditions that the ~~((petitioning party))~~ petitioner requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. ~~((§))~~ Sec. 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. ~~((§§))~~ Secs. 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents on which the petitioner relies ~~((on))~~ to support its positions or that it intends to introduce as exhibits at the hearing.

**(6) Filing and service of ~~((an answer))~~ a response to a petition for arbitration.**

(a) *When allowed.* Any party to the negotiation may respond to a petition for arbitration and may file with the commission such additional information as ~~((it))~~ the respondent wishes within twenty-five days after the petitioner files the petition ~~((is filed))~~.

(b) *Filing.* ~~((Answers))~~ Responses to petitions for arbitration under ~~((section))~~ 47 U.S.C. Sec. 252 (b)(2) must be filed with the commission in the manner provided for ~~((answers))~~ responses to other petitions under WAC ~~((480-07-145,))~~ 480-07-370(3) and must follow the format requirements for pleadings under WAC 480-07-395.

(c) *Service.* A party responding to a petition for arbitration must deliver to the petitioner and any other party or parties to the negotiation a complete copy of the ~~((answer))~~ response and all accompanying documentation on the same day that the respondent files the response ~~((is filed))~~ with the commission.

**(7) Contents of ~~((answer))~~ response and required documentation. ~~((An answer))~~ A response to a petition for arbitration filed under this section must:**

(a) State whether the respondent disputes the date the petitioner asserts was the date on which the ~~((respondent))~~ incumbent local exchange carrier received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with subsection (5)(a) of this section;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the respondent;

(d) State any conditions that the ~~((responding party))~~ respondent requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. ~~((§))~~ Sec. 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available and different from any draft agreement the petitioner submitted with the petition, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. ~~((§§))~~ Secs. 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents on which the respondent relies ~~((on))~~ to support its positions or that it intends to introduce as exhibits at the hearing.

(8) **Verification.** The petition, ~~((answer))~~ response, and all documentation filed must be verified as provided by WAC 480-07-395, or submitted by affidavit or declaration.

(9) **Confidentiality; protective order.** Petitions, ~~((answers))~~ responses, and any documents a party provides to the commission pursuant to a request under ~~((section))~~ 47 U.S.C. Sec. 252 (b)(4)(B) are subject to Washington's public disclosure laws, including chapter 42.56 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or ~~((answer))~~ response is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

(10) **Discovery.** Parties must cooperate in good faith in the voluntary, prompt, and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. A party's failure to cooperate in discovery may be treated as a failure to negotiate in good faith. The arbitrator will schedule a discovery conference for a date ten days after the deadline for responses to the petition for arbitration, subject to rescheduling or cancellation if all parties agree. During the conference, the arbitrator will review the asserted need for any additional discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. ~~((§))~~ Sec. 252 (b)(4)(B). Parties may submit to the arbitrator any discovery requests to which a party has not responded ~~((to))~~ by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. ~~((§))~~ Sec. 252 (b)(4)(B) at any time.

**(11) Appointment and authority of arbitrator.**

(a) *Appointment.* The commission will appoint one or more commissioners, one or more commission employees ~~((appointed by the commission)),~~ or one or more persons under contract with the commission ~~((may be designated))~~ to act as arbitrator(s) ~~((when))~~ to resolve a petition for arbitration ~~((is filed))~~. The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement~~((s))~~ unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the ~~((selection))~~ appointment of the arbitrator.

(b) *Authority.* Arbitrators will exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law. Other members of the commission's staff may assist an arbitrator, but the arbitrator may not consult with a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties ~~((may not be consulted))~~. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petitioner filed the petition for arbitration ~~((was filed))~~. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. ~~((§))~~ Sec. 252 (b)(4)(C).

(12) **Consolidation.** The commission or an arbitrator may consolidate arbitration proceedings to reduce burdens on telecommunications carriers, parties to arbitration proceedings, and the commission.

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

**WAC 480-07-640 Telecommunications companies—Review and approval of interconnection agreements under the Telecommunications Act of 1996.** (1) **Scope.** This rule implements the commission review and approval process provisions of (~~section 252 of the Telecommunications Act of 1996,~~) 47 U.S.C. ((§)) Sec. 252.

(2) **Commission review and approval of agreements (by the commission).**

(a) *Filing and service of agreements (for approval).*

(i) Negotiated agreements. Parties to a negotiated interconnection agreement must (~~submit~~) file a complete, signed copy of their agreement to the commission for approval under 47 U.S.C. ((§)) Sec. 252(e) within thirty days after they sign the agreement (~~is signed~~). The parties must include any appendices or attachments to the agreement (must be included). The request for approval must summarize the agreement's main provisions(~~The request for approval~~) and must affirm that the agreement does not discriminate against nonparty carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval under 47 U.S.C. ((§)) Sec. 252 do not begin until a complete request is properly filed.

(ii) Arbitrated agreements—Petition for review; (~~answer~~) response. Any party may petition for commission review of an arbitrator's report and decision within thirty days after the commission issues the arbitrator's report (~~is issued~~), or at such other time as is established by notice or order. Other parties to the arbitration proceeding (~~must file an answer~~) may file a response within ten days after the petitioner serves the petition (is served), or at such other time as (~~is established~~) the commission establishes by notice or order. Both petition and (~~answer~~) response must be in the form of a brief of the issues(~~s~~) and must address all legal and factual bases in support of the parties' respective arguments that the commission should or should not modify the arbitrator's report and decision (~~should, or should not, be modified~~).

(iii) Arbitrated agreements—Request for approval. The parties must also file, on the date established for (~~answering~~) responding to any petition for review, their request for approval of an arbitrated interconnection agreement and a complete, signed copy of their interconnection agreement including all negotiated terms, all terms requested under (~~section~~) 47 U.S.C. Sec. 252(i) (~~of the Telecommunications Act of 1996~~), and all terms drafted to implement the arbitrator's report and decision. Arbitrated terms must be in bold font style and identify by footnote the arbitrated issue that relates to the text. Any appendices or attachments to the agreement must be included. The request for approval must

summarize the agreement's main provisions(~~The request for approval~~) and must affirm that the agreement does not discriminate against nonparty carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow (~~it to be refiled~~) the parties to refile the request when it is complete. The timelines established for commission review of requests for approval do not begin until the parties file a complete request (~~is properly filed~~).

(iv) (~~Filing and service. Parties must file requests for approval with the commission secretary, as provided in WAC 480-07-145. Parties must serve the request for approval on all other parties not filing jointly, as provided in WAC 480-07-150.~~) Adopted agreements. If a company adopts an interconnection agreement in its entirety that the commission has previously approved, the parties to the adopted agreement must notify the commission of the adoption within thirty days after they sign the adopted agreement. The commission will include the adopted agreement on the no-action portion of a regularly scheduled open meeting agenda. In the absence of an objection, the commission will allow the agreement to become effective according to its terms.

(b) *Commission consideration of requests for approval and petitions for review.*

(i) Negotiated agreements. The commission (~~will consider a request for approval of~~) delegates authority to the commission secretary to approve or reject a fully negotiated interconnection agreement (at a regularly or specially scheduled open public meeting). The commission will approve or reject a fully negotiated agreement within ninety days after the date on which the parties file the agreement and request for approval.

(ii) Arbitrated agreements. The commission will consider any petition for review of an arbitrator's report and decision (~~at hearing, which may, in the commission's discretion, be scheduled coincident with a regularly or specially scheduled open public meeting. The commission may hear oral argument by the parties, oral comment from members of the public, or both. The commission will enter an order approving or rejecting a fully negotiated agreement within ninety days after the date on which the request for approval and interconnection agreement are filed~~) using the same procedures in WAC 480-07-825 for review of an initial order. The commission will enter an order (~~resolving~~) approving or rejecting a partially or fully arbitrated agreement within thirty days after the parties file the agreement and request for approval (and interconnection agreement are filed).

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

**WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements.** The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

(1) **Petitions for enforcement.** A telecommunications company that is a party to an interconnection agreement with

another telecommunications company may petition under this rule for enforcement of the agreement.

(a) *What the petition must contain.* Each petition for enforcement must contain the following elements:

(i) A statement, including specific facts, demonstrating that the petitioner engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue.

(ii) A copy of the provision of the interconnection agreement that the petitioner contends ~~((is not being complied with))~~ the other party is violating.

(iii) A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations, or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

(b) *How to serve the petition.* The petitioner must serve the petition for enforcement electronically on the responding party on the same day the petitioner files the petition ~~((is filed))~~ with the commission. ~~((If the petitioner chooses to serve the respondent by mail or parcel delivery service, it must deliver a copy of the petition and all supporting documents by hand delivery, fax, or email (to the email address specified by the recipient for the purpose of receiving a copy of the petition) on the same day as filed with the commission.))~~ For purposes of this section, ~~((service must be effected on))~~ the petitioner must serve:

(i) The responding party's authorized representative, attorney of record, or designated agent for service of process;

(ii) The responding party's representatives with whom the petitioner conducted the negotiations addressed in (a)(i) of this subsection; and

(iii) All parties designated in the interconnection agreement to receive notices.

(c) *Prefiling notice of petition.* The petitioner must give at least ten days' written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify each specific provision of the agreement that the petitioner alleges ~~((was))~~ the other party violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The petitioner must serve the written notice ~~((must be served))~~ as provided in (b) of this subsection. The petitioner must include a copy of this notice with its petition for enforcement. The written notice shall be valid for thirty days from the date of service. If the petitioner wishes to file a petition for enforcement after the thirty-day period, the petitioner must serve another notice to the respondent at least ten days prior to filing the petition.

(2) ~~((Answering))~~ Responding to a petition. The respondent may ~~((answer))~~ respond to the petition. The respondent waives the opportunity to present any matter that is not raised in the ~~((answer,))~~ response except ~~((that the answer may be amended))~~ as provided under subsection (3) of this section.

(a) *Contents of the* ~~((answer. The answer))~~ response. The response to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. The respondent must support any facts ~~((relied upon must be supported))~~ on which it relies by affidavits, declarations, or other sworn

statements by persons having personal knowledge of the facts.

(b) *Filing and service of the* ~~((answer))~~ response. The respondent must file the ~~((answer))~~ response with the commission and serve it electronically on the petitioner within five business days after ~~((service of))~~ the petitioner serves the petition for enforcement. ~~((Service must be accomplished so that a copy of the response to the petition for enforcement and all supporting documents reach the petitioner's attorney, or the person who signed the petition if petitioner has no attorney, on the same day the answer is filed with the commission. If the respondent chooses to serve the petitioner by mail, a copy of the petition for enforcement and all supporting documents must be delivered to the person identified above on the same day as filed with the commission.))~~

(3) Amendment of petition and ~~((answer))~~ response. The presiding officer may permit the ~~((responding party))~~ respondent to amend its ~~((answer))~~ response for good cause shown, and to avoid substantial prejudice to the ~~((responding party that is not caused by the fault of the responding party))~~ respondent for which the respondent is not responsible. The presiding officer may permit either party to amend its petition or ~~((answer))~~ response to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, ~~((CR 15(b) of the Washington superior court civil rules,))~~ Washington superior court civil rule 15(b) when determining whether to permit amendment of the petition or answer to conform to the evidence.

(4) Prehearing conference. The commission will conduct a prehearing conference regarding ~~((each))~~ a petition for enforcement of an interconnection agreement.

(a) *Schedule; mandatory attendance.* The presiding officer will issue a notice of a prehearing conference within five business days after the petitioner files the petition ~~((is filed))~~. Both the petitioner and the respondent must attend the prehearing conference. The prehearing conference may be conducted by telephone.

(b) *Procedural determination.* The presiding officer will determine at the prehearing conference whether the commission can resolve the disputed issues raised in the petition ~~((can be determined))~~ by relying only on the pleadings, ~~((submissions))~~ filings, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the following: (i) The parties' preferences and the reasons they advance(:); (ii) the need to clarify statements by asking questions(:); (iii) whether the issues are largely factual, largely legal, or involve questions of fact and law(:); (iv) the apparent complexity of facts and issues(:); (v) the need for speedy resolution(:); and (vi) the completeness of information presented. The presiding officer may require the parties to ~~((submit))~~ file written briefs on the issues.

(c) *Means of obtaining additional information.* If the presiding officer determines that further proceedings are necessary, the presiding officer will establish a schedule for receiving additional facts or evidence and may schedule an enforcement hearing session to explore the facts and issues raised in the petition and the ~~((answer. The party filing the petition or answer may file with the petition or answer a request for discovery))~~ response. Either party may request

that the commission make its discovery rules available, stating the matters ~~((to be inquired into))~~ into which the party seeks to inquire and their relationship to matters directly at issue. The presiding officer may allow limited discovery requiring only the disclosure of facts relating directly to matters at issue, and only if the requesting party shows that discovery is ((shown to be essential to the requesting party)) essential. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

~~((d) **Consideration as a complaint.** If the matter at issue involves policy, technical or accounting issues that require extensive analysis or discovery, the commission may convert the proceeding to a complaint proceeding under RCW 80.04.110 to allow adequate time and process for the demands of the proceeding.))~~

**(5) Powers of the presiding officer; conversion of proceeding; ~~((recommended))~~ initial or final ~~((decision))~~ order.**

(a) *Conduct of proceeding.* The presiding officer has broad discretion to conduct the proceeding in a manner that best suits the nature of the petition~~((;))~~ including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110. Matters may be appropriate for conversion when: (i) Their complexity requires that they cannot be completed on the schedule provided in this rule; ~~((when))~~ (ii) the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; ~~((when))~~ (iii) extensive policy argument or legal briefing is required; or ~~((when))~~ (iv) participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written ~~((submissions))~~ filings or may schedule an enforcement hearing ~~((session))~~. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) ~~((Recommended decision.))~~ *Initial order.* The presiding officer, if other than the commissioners, will ~~((serve a recommended decision on the parties))~~ enter an initial order resolving the petition within seventy-five days of the date the petitioner submitted the petition ~~((for enforcement was filed)), or twenty-one days after the last hearing session or~~ ~~((submission))~~ filing, whichever is later. ~~((The recommended decision is subject to approval by the commission.))~~ If the commissioners preside over the enforcement proceeding, they may enter a final ~~((decision))~~ order within the time requirements applicable to ~~((recommended decisions))~~ initial orders.

(c) *Commission review* ~~((of the recommended decision.))~~ Any party may file a petition for administrative review of ~~((a recommended decision))~~ the initial order within seven days after the commission enters the order ~~((is entered. A party opposing review)).~~ The opposing party may file ~~((an answer))~~ a response within five days after the petitioner files a petition for review ~~((is filed. The commission may hear the parties' arguments regarding any recommended decision on the written pleadings or during oral argument, which may, in the commission's discretion, be scheduled coincident with a regular or special open public meeting. The commission may request commission staff to make a presentation at the argument. The commission will conduct this session within ten days after the date of the recommended decision, or as soon~~

thereafter as the commissioners' schedules permit. If no party files a petition for administrative review, the commission may adopt the recommended decision without material change. If the commission considers making a material change in a recommended order to which no petition for review has been filed, the commission must first seek the views of the parties on the issue).

**(6) Commission decision on petition for enforcement.**

~~((a) **Extent of commission discretion.** The commission will serve a final decision on the parties in the form of a commission order resolving the issues. The commission may adopt, modify, or reject all or part of any recommended decision.~~

~~((b) **Time of service.**))~~ The commission will enter its final order on the petition for enforcement no later than ninety days after the date the ~~((petition is filed or fifteen))~~ petitioner filed the petition or thirty days after ~~((the meeting at which it reviews the recommended decision))~~ a party files a petition for review of an initial order, whichever is later. The commission may extend this time for ~~((lack of resources or for other))~~ good cause.

~~((c) **Petition for reconsideration.** The parties may petition for reconsideration within ten days after the commission serves its order on the petition for enforcement. If a party petitions for reconsideration, the commission may request that an answer be filed. The commission may request additional comments, briefing, evidence, or argument from the parties. Filing a petition for reconsideration of the order does not stay the effect of the order. A petition for reconsideration is deemed denied unless the commission grants or denies it by written order within ten days after the date on which petition for reconsideration is filed or the date established for filing an answer or additional comments, briefing, evidence, or argument, whichever is later. The commission may alter the time for entering its order on a petition for reconsideration by notice or letter.~~

~~((d) **Failure to comply with the order.** Any party who fails to comply with the terms of the commission's final order on a petition for enforcement is subject to penalties under RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.))~~

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

**WAC 480-07-660 Railroad grade-crossing closures~~((—Objections))~~.** The commission may grant a petition to close a railroad grade crossing without a hearing unless the commission receives an objection to the proposed closure within twenty days after providing notice of the petition as required in RCW 81.53.060.

(1) ~~((Filing. Anyone who objects to a highway railroad))~~ **Objections.** An objection to a petition to close a railroad grade crossing ~~((closure under RCW 81.53.060 must file an objection in writing within twenty days after publication of notice of the proposed closure. The objection))~~ must be in writing and must:



(a) Identify the person or persons who object by full name (~~and~~), mailing address, telephone number, and email address;

(b) Identify the particular crossing that is the subject of the objection;

(c) State the commission docket number(~~(, if known)~~); and

(d) Explain the basis for the objection.

If a communication does not meet these requirements, the commission will not treat the communication as an objection when determining whether a hearing is required under RCW 81.53.060.

(2) ~~((Party status; appearances; service of final order. Filing an objection does not make a person a party to a proceeding under RCW 81.53.060.))~~ **Parties.** Only parties may fully participate in any proceeding the commission conducts to determine whether to grant a contested petition for a railroad grade crossing closure. A person other than the petitioner and commission staff who wishes to participate as a party (must enter an appearance) including, but not limited to, a person filing an objection to the closure, must petition to intervene prior to or at the initial prehearing conference or first hearing session, whichever is earlier, as prescribed (by) in WAC 480-07-340. ((A person who fails to establish party status by appearance may file a "late-filed petition to intervene" as provided in WAC 480-07-355. A person must establish party status to be entitled to service of any initial order or the commission's final order in the matter. Persons who are not parties may receive a courtesy copy of any initial or final order on request.))

(3) ~~((Other))~~ **Interested persons.** The commission will provide interested persons who are not parties (will be provided) with an opportunity to (be heard) comment on the issues in the proceeding and offer evidence, as required by RCW 81.53.060. Such interested persons (who are not parties), however, may not call witnesses, cross-examine witnesses, or otherwise participate as a party((Interested persons who are not parties)) at the hearing and do not have standing to file petitions for administrative review of initial orders or to file petitions for reconsideration of final orders.

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

**WAC 480-07-700 Alternative dispute resolution.** The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest(~~(, and subject to approval by commission order)~~). Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission ~~((retains and will exercise its authority in every adjudicative proceeding to consider))~~ will determine whether to approve and adopt any proposed settlement or other agreement (for approval) and the extent to which it resolves some or all of the issues presented in the proceeding consistent with the public interest.

(2) **Forms of ADR.** The commission provides the following nonexclusive forms of ADR:

(a) Voluntary negotiation. Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight.

(b) Commission-directed negotiation. The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720.

(c) Mediation. The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties in formal or informal mediation.

(d) Assignment of settlement judge. The commission may assign a settlement judge to assist the parties to resolve their dispute through negotiation in appropriate circumstances.

(e) Arbitration. The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

(3) **Settlement conference.** A settlement conference ~~((means))~~ is any discussion or other communication((, in person or otherwise, intended to resolve one or more disputed issues (whether actual or anticipated))) between two or more parties in an adjudicative proceeding intended to resolve one or more disputed issues. Settlement conferences do not include requests for information ~~((or))~~ for clarification, or in aid of discovery, or communications to identify whether a dispute exists or whether another party is willing to negotiate resolution of a disputed issue ~~((, or in aid of discovery))~~. Settlement conferences must be informal and without prejudice to the rights of the parties. The parties may waive the procedural requirements of this section relating to settlement conferences ((may be waived)) if all parties and the commission agree. Any party and any person who has filed a petition to intervene may participate in an initial or early ((initial) settlement conference as defined in this section. An intervenor's participation in a settlement conference is limited to the interests supporting its intervention, except by agreement of other participants in the conference. No party is required to attend a settlement conference, but any party that attends and participates must make a good faith effort to resolve one or more disputed issues in which the party has a substantial interest.

(a) Initial settlement conference. The commission will ~~((set))~~ include in the procedural schedule for each adjudicative proceeding the date for ~~((an initial))~~ at least one settlement conference. Parties ~~((wishing to))~~ may reschedule ~~((the initial))~~ a settlement conference ((must seek modification of)) included in the procedural schedule without seeking to modify the schedule ((by the presiding officer upon notice to all other)) if all parties agree, but the parties must provide notice to the presiding officer of the rescheduled date.

(b) Early ((initial) settlement conference. Any party ~~((that wishes to))~~ may initiate a settlement conference with any other party ~~((between the filing of the docket and))~~ after the commission opens a docket and before the initial prehearing conference ((must have included in its notice to customers, if otherwise required, a statement indicating that an early initial settlement conference might be scheduled. In addition,

~~the party proposing an early initial), but in general rate proceedings for electric, natural gas, or Class A telecommunications companies, the party initiating the settlement conference must provide ten days prior notice of any such conference to the commission, ((public counsel,)) any statutory party, any person ((that has filed)) who has submitted a petition to intervene or notice of appearance, and any person ((that)) who was a party in the most recent proceeding of the same type(;) involving the same filing party and respondent, if any. Such persons may participate in ((an early initial)) the early settlement conference ((in the docket if they file)), as may any other person who submits a petition to intervene prior to the early ((initial)) settlement conference.~~

(4) ~~((ADR)) Settlement negotiation guidelines.~~ In any settlement negotiation, including collaboratives, settlement conferences, and mediations, the following apply unless all participants agree otherwise:

(a) ~~((The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;~~

~~((b))~~ No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

~~((c))~~ Parties may agree that (b) Information exchanged exclusively within the context of settlement negotiations will be treated as confidential((, subject to the requirements of RCW 5.60.070; and

~~((d))~~ and will be privileged against disclosure to the extent permitted by law;

(c) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement((, Participants)) and must immediately advise the commission if ((a commission-sanctioned ADR)) that process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that they are at an impasse ((has been reached or an impasse is declared by)) or any neutral third party who is assisting the participants in the ADR process(;

~~((e))~~ declares an impasse); and

(d) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding(;) unless all parties consent in writing.

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

**WAC 480-07-710 Mediation.** (1) **Scope.** This rule applies generally to settlement negotiations in which the commission agrees to assign a qualified mediator to assist the parties. This rule ((applies specifically to)) also implements the mediation provisions of ((sections 251 and 252 of)) the Telecommunications Act of 1996, 47 U.S.C. ((§§)) Secs. 251 and 252.

(2) **Commission participation.** The parties to a negotiation((, including a negotiation under 47 U.S.C. §§ 251 and

252,)) may ask the commission to mediate any differences that arise during the negotiation. A request for mediation must include a brief statement of the nature of the dispute and the names, postal and email addresses, and telephone ((and fax)) numbers of the parties and their representatives. Copies of the request must be served on all parties to the negotiation. All parties are required to participate in good faith if the commission agrees to mediate.

(3) **Mediators.** The commission may assign ((one or more)) a qualified employee(s) to serve as ((mediator(s)) a mediator. The commission may require the parties to retain the services of a professional mediator acceptable to all parties.

(4) **Process.** Mediators have discretion to regulate the course of the mediation, including scheduling mediation sessions, in consultation with the parties. The following general procedures apply:

(a) The mediator may not impose a settlement but may offer proposals for settlement;

(b) The mediator may meet individually with the parties or attorneys during mediation;

(c) Only the parties to the negotiation and the mediator may attend the mediation session(s), unless all parties and the mediator consent to the presence of others;

(d) Parties must provide the mediator with a brief statement of position and relevant background information prior to the first mediation session;

(e) The mediator may ask for supplemental information;

(f) The mediator may not provide legal advice to the parties, nor are any mediator's stated opinions as to law or policy binding on the commission(;) unless ((later adopted by the commission)) the commission subsequently adopts them;

(g) The mediation process is confidential and the information exchanged is privileged to the extent permitted by law((, subject to the requirement for a written agreement or other record indicating an expectation that mediation communications will be privileged against disclosure as required under RCW 7.07.020)); and

(h) No stenographic or electronic record will be ((kept)) made.

(5) **Fees and costs.** Each party must bear its own ((fees and)) costs for the mediation. Each party must pay any fees imposed by commission rule or statute.

(6) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement ((and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-640 (commission approval of interconnection agreements) or WAC 480-07-740, as appropriate)). The commission will ((determine the appropriate procedure in each proceeding)) review the settlement consistent with the requirements of WAC 480-07-640 or 480-07-740, as applicable.

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

**WAC 480-07-720 Collaboratives.** (1) ~~((Defined; membership.))~~ **Definition.** A collaborative is a commission-sanctioned negotiation in which interested persons work with each other and representatives of commission staff to achieve

consensus on one or more issues(~~(s)~~) within the commission's jurisdiction(~~(s assigned to or identified by)~~) that the commission assigns or the collaborative participants identify.

**(2) Establishment.** The commission may establish a collaborative on its own initiative or in response to a petition. A petition seeking to establish a collaborative must state the issues on which the petitioner seeks consensus, identify potential participants, and explain why a collaborative would be beneficial to resolve the issues. The commission, in its discretion, may approve the petition and establish a collaborative or may deny the petition.

**(3) Participation.** Any person whose interests may be substantially affected by the result of the collaborative (~~(must be given an opportunity to)~~) may participate in the collaborative. Once the commission establishes a collaborative, the participants (~~(must inform the commission and seek approval if a collaborative seeks to change its membership)~~) may not change the participants or redefine the issues (~~(#)~~) they will address without commission approval.

~~((2))~~ **Procedure.** Participants must develop procedural guidelines for their negotiations when beginning a collaborative and should refer to any commission policy statement(s) that relate to ADR for guidance.

~~(3))~~ **(4) Communication with commission.** Collaborative participants must agree on the form and substance of any communication (~~(between)~~) they have with the commission (~~(and collaborative)~~) concerning the collaborative. The participants may (~~(be)~~) communicate with the commission through commission staff (~~(assigned to serve)~~) if staff is not a participant and is serving as a neutral third party in the collaborative, (~~(or through)~~) and staff should establish if this will be its role at the outset of the collaborative. Otherwise, the participants should address their communications to the commission secretary(~~(s subject to agreement among the participants to the form and substance of any such communication)~~).

**(5) Conclusion.** The participants must inform the commission when they: (a) Have reached consensus on the issues to be addressed in the collaborative; (b) have reached partial consensus on those issues and believe further negotiation would not be fruitful; or (c) have reached an impasse and believe that further negotiations would not be fruitful. The participants should propose any commission action they recommend as a result of the collaborative.

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

**WAC 480-07-730 Settlement.** A settlement is an agreement among two or more parties to a commission adjudication that resolves one or more disputed issues in that proceeding(~~(s filed)~~). All settlements must be documented in a written settlement agreement that the parties file with the commission as a proposed resolution of (~~(one or more)~~) those issues. (~~(Parties must submit an electronic copy of the settlement agreement in the format identified in WAC 480-07-140 (6-))~~) No settlement is effective unless and until the commission approves it.

**(1) Full settlement.** A full settlement is an agreement of all parties that would resolve all disputed issues in (~~(a pro-~~

~~ceeding may be presented as a full settlement for commission review. Parties who file a full settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement)) an adjudication.~~

**(2) Partial settlement.** A partial settlement is an agreement of all parties on some, but not all, of the disputed issues (~~(may be presented as a partial settlement for commission review, and remaining matters may be litigated. Parties who file a partial settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement))~~) in an adjudication. The parties may litigate the disputed issues the agreement does not resolve.

**(3) Multiparty settlement.** A multiparty settlement is an agreement (~~(of)~~) among some, but not all, parties (~~(on)~~) in an adjudication to resolve one or more disputed issues (~~(may be offered as their position in the proceeding along with the evidence that they believe supports it. Nonsettling parties may offer evidence and argument in opposition))~~).

**(a) Full multiparty settlement.** A full multiparty settlement is an agreement among some, but not all, parties to resolve all disputed issues between them. The parties that are not included in the settlement agreement have the rights set forth in WAC 480-07-740 (3)(c).

**(b) Partial multiparty settlement.** A partial multiparty settlement is an agreement among some, but not all, parties to resolve some, but not all, disputed issues between them. The parties may litigate the disputed issues the agreement does not resolve. The parties that are not included in the settlement agreement also have the rights set forth in WAC 480-07-740 (3)(c).

**(4) Notice to commission.** When submitting any type of settlement agreement for commission approval, parties must advise the commission if they (~~(reach)~~) have reached a full, partial, (~~(or)~~) full multiparty, or partial multiparty settlement (~~(and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-740. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-740))~~).

**(5) Settlement agreement contents.** A settlement agreement must describe the dispute between the parties and set forth the terms and conditions to which the parties have agreed to resolve that dispute.

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

**WAC 480-07-740 Settlement consideration procedure.** The commission (~~(must)~~) will review all settlement agreements to determine whether (~~(a proposed settlement meets all pertinent legal and policy standards. The commission must have a reasonable opportunity to hear parties' views on why the settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of the settlement presentation to the commission))~~) they comply with applicable legal

requirements and whether approval of the agreements is consistent with the public interest.

(1) ~~((Settlement presentation timing. Parties must file a proposed settlement with a recommended effective date that allows the commission sufficient time to schedule a formal settlement hearing and provide an opportunity for public comment when the commission, after consulting the parties, determines that such comment is needed. The commission must have sufficient time to deliberate and to prepare an order responding to the proposal. The parties must allow sufficient time for the filing, review, and approval of))~~ **General.** The timing and content of any settlement agreement submitted to the commission must afford the commission a reasonable opportunity to:

(a) Review the terms of the settlement;

(b) Consider evidence and argument from all parties on why the commission should or should not approve and adopt the settlement;

(c) Consider any public comments the commission receives;

(d) Enter an order prior to the recommended effective date of a settlement agreement and any statutory deadline by which the commission must take action in the proceeding; and

(e) Review and approve any required compliance filing.

**(2) Specific timing requirements.**

(a) ~~((General rate))~~ Complex proceedings. In general rate proceedings for electric, natural gas, and Class A telecommunications companies or matters of comparable complexity, parties must ~~((allow))~~ submit a settlement agreement and supporting documentation to the commission at least ~~((thirty days between filing a proposed settlement agreement and))~~ sixty days prior to the requested effective date of any tariff changes or other terms and conditions of the settlement.

(b) Less complex matters. In matters that are less complex, parties must ~~((allow))~~ submit a settlement agreement and supporting documentation to the commission at least ~~((twenty-one days between filing a proposed settlement agreement and))~~ thirty days prior to the requested effective date for any tariff changes or other terms and conditions of the settlement.

(c) Notice to commission ~~((; inquiries regarding arrangements for review))~~. Parties should inform the ~~((commission at the earliest opportunity when it appears that they may))~~ presiding administrative law judge as soon as they reach a settlement in principle and ~~((ask))~~ request that the commission ~~((to make tentative))~~ suspend the procedural schedule or make other arrangements for filing and review ~~((Parties may direct informal inquiries to the supervisor of the commission's administrative law function or the supervisor's designee))~~ of the parties' settlement agreement after the parties have executed it. In the cover letter accompanying the filing of a settlement agreement with the commission, the parties should highlight any time-sensitive provisions in that agreement.

(d) Statutory deadline. When requesting to suspend the procedural schedule for commission consideration of a settlement agreement in general rate proceedings or other proceedings in which a statute requires final commission action within a specified time period, the party that submitted the suspended tariff or other initial filing at issue must inform the

commission whether the party would be willing to extend the statutory deadline, if necessary, to add the amount of time the commission requires to consider the settlement and take final action in the proceeding. The commission may decline to consider a settlement agreement if the commission determines that it cannot consider the settlement and take final action in the proceeding by the statutory deadline.

(e) Hearing. The commission will ~~((schedule))~~ conduct a hearing ~~((to consider a proposed settlement))~~ if the commission believes that a hearing will assist ~~((it))~~ the commission to decide whether to approve and adopt the ~~((proposal))~~ settlement.

~~((e) Timing;))~~ (f) Requested effective date. The commission will endeavor to ~~((meet))~~ render a decision on the settlement prior to the parties' requested effective date if the parties submit the settlement agreement in compliance with this section, but the commission cannot guarantee that it will be able to do so.

~~((2))~~ (3) **Settlement presentation** ~~((contents)).~~ When ~~((filing a proposed))~~ submitting a settlement agreement ~~((s))~~ for commission approval, the settling parties must ~~((also file))~~ include supporting documentation sufficient to demonstrate ~~((to the commission))~~ that the ~~((proposal))~~ settlement is consistent with the law and the public interest ~~((and that it is appropriate for adoption)).~~

(a) ~~((Narrative;))~~ Supporting documentation. The supporting documentation ~~((should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and))~~ must describe the disputed issue(s) and proposed resolution and must include or reference sufficient evidence to support commission approval and adoption of the settlement agreement under applicable law consistent with the public interest ~~((; and a summary of legal points that bear on the proposed settlement)).~~ The documentation may be in the form of a ~~((memorandum))~~ brief, supporting prefiled testimony, (brief,) or other form that serves the same functions. Documentation supporting a settlement agreement in a general rate proceeding or other complex proceeding must include prefiled testimony.

(b) Testimony. Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the ~~((proposal and))~~ settlement agreement and to answer questions concerning the ~~((settlement))~~ agreement's details, (and its) costs, and benefits. (Proponents of a proposed settlement must present sufficient evidence to support its adoption under the standards that apply to its acceptance.) If the commission conducts a hearing on the settlement, counsel for each party must be prepared to make a brief presentation ~~((of the settlement,))~~ and address any legal matters associated with ~~((it. Counsel))~~ the settlement agreement. Each party's witness(es) must be available to respond to questions from the bench ~~((regarding those subjects))~~ and cross-examination by counsel for any party that opposes the settlement.

(c) Rights of ~~((opponents of a proposed))~~ parties opposed to a settlement. Parties opposed to the commission's approval and adoption of a ~~((proposed))~~ settlement retain the following rights:

(i) The right to cross-examine witnesses supporting the ((proposal)) settlement;

(ii) The right to present evidence ((opposing the proposal)) in support of their opposition to the settlement;

(iii) The right to present argument in opposition to the ((proposal)) settlement; and

(iv) The right to present evidence, or ((;)) in the commission's discretion((;)) an offer of proof, in support of ((the opposing party's preferred result)) their position on how the commission should resolve the disputed issues in the proceeding.

(d) Discovery. The presiding officer may allow discovery on the proposed settlement ((in the presiding officer's discretion)).

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

**WAC 480-07-750 Commission discretion to ((accept)) consider and approve or reject a settlement((; impose conditions, or reject a proposed settlement)).** (1) **Consideration of a settlement.** The commission ((may)) will decide whether ((or not)) to consider a ((proposed)) settlement. The commission ((will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission)) generally will consider a settlement that complies with the requirements in WAC 480-07-740.

(2) **Approval or rejection of a settlement.** If ((the commission)) it considers a ((proposed)) settlement, ((it may accept the proposed)) the commission may approve the settlement, with or without conditions, or may reject it((-

(a) If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement and may take into account the need to address other pending business before the commission)). The commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.

(a) Approval without conditions. If the commission approves a settlement without conditions, the commission will adopt the terms set forth in the settlement agreement as the resolution of the disputed issues identified in that agreement.

(b) Approval with conditions. If the commission ((accepts a proposed)) conditions its approval of a settlement ((upon conditions not proposed)) on terms that are not included in the settlement((-the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions)) agreement, the commission will provide the parties with the opportunity to accept or reject the commission's conditions.

(i) If all parties to the settlement agreement timely notify the commission that they accept the conditions, the terms in the settlement agreement and the commission's conditions will resolve the issues identified in the settlement agreement.

The commission's order conditionally approving the settlement agreement will then become final by operation of law with respect to those issues without further action from the commission.

(ii) If a party ((rejects a proposed)) to the settlement rejects any of the commission's conditions or does not unequivocally and unconditionally accept all of those conditions, the commission will notify the parties that it deems the settlement ((is deemed)) to be rejected, and ((;)) (c) of this subsection applies. A party may seek clarification or reconsideration of a commission order approving a settlement agreement with conditions pursuant to WAC 480-07-835, 480-07-840, or 480-07-850.

(c) Rejection. If the commission rejects a settlement, the adjudication returns to its status at the time the commission suspended the procedural schedule to consider the settlement. The commission may conduct a prehearing conference to establish a procedural schedule for the remainder of the adjudication. Subject to compliance with any statutory deadline for commission action or an agreed extension of such a deadline, the commission may extend the time for completion of the proceedings by the elapsed time for commission consideration of the settlement.

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

**WAC 480-07-800 ((General definitions)) Order entry, effectiveness, and service.** (1) (("Entry" of)) Entry. The commission has entered an order ((means the signing of the order by all persons who are to sign the order;)) when all authorized persons have signed it as an official act indicating that the order is to be effective, and those persons or their designee have submitted the order to the commission's records center for service. Each order will state the date on which ((it is entered)) the commission enters it.

(2) **Effectiveness.** An order is effective when ((entered;)) the commission enters it unless ((;)) the order specifies a different effective date ((other than the date the order is entered is specified in the order)).

(3) (("Service" of)) Service. The commission serves an order ((means placing copies of the order in the U.S. mail, postage prepaid, addressed to all parties and any other persons required by law to be served)) as provided in WAC 480-07-360. Each order will state the date on which ((it is served)) the commission serves it. The service date of an order governs the determination of time limits for further administrative procedure or for judicial review.

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

**WAC 480-07-810 Interim or interlocutory orders.** (1) **Defined.** Orders ((entered during the course of)) the commission enters in an adjudicative proceeding ((are)) prior to entering an initial or final order are interim or interlocutory orders((-as distinguished from initial orders that may be entered by an administrative law judge at the conclusion of a proceeding and final orders entered by the commission at the conclusion of a proceeding. Examples of)). Interim or interlocutory orders ((are orders concerning)) include, but are not

limited to, orders ruling on a party's participation in a proceeding, ~~((orders concerning))~~ scheduling issues, discovery disputes, and ((orders that relate to proposed evidence)) cvi-dentiary issues.

(2) **When review is available.** ~~The commission has discretion to review interim or interlocutory ((review is discretionary with the commission))~~ orders. The commission may accept review of ~~((interim or interlocutory))~~ such orders ((in adjudicative proceedings)) if it finds that:

(a) The ~~((ruling))~~ order terminates a party's participation in the proceeding, and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) ~~((A))~~ Immediate review is necessary to prevent substantial prejudice to a party that would not be remediable ~~((by post-hearing review))~~ in the commission's final order; or

(c) ~~((A))~~ Immediate review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

(3) **Process for seeking review.** Any party may petition for review of an interim or interlocutory order.

(a) ~~The party must file and serve a petition((s)) for interlocutory review ((must be filed and served on other parties)) within ten days after ((service of))~~ the commission serves the order ((or issuance of the ruling for which)) the party is petitioning the commission to review ((is requested)). The petition must ~~((state))~~ provide a full explanation of why the ((ruling is in error or)) petitioner believes the order is erroneous or otherwise should be changed and why ((interlocutory)) immediate review is necessary~~((, and must cite reasons that support the petition. Answers must be filed)).~~

(b) ~~Any other party may file and serve a response to the petition within ten days after the petitioner files the petition ((is filed. The commission may alter these filing deadlines when doing so is consistent with the public interest))~~ unless the commission establishes a different deadline.

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

**WAC 480-07-820 Initial and final orders. (1) Defined.**

(a) *Initial orders.* ~~(("))~~ Initial orders(( " dispose of the merits in a proceeding that is conducted before an)) are orders an administrative law judge enters that resolve the disputed issues in adjudications in which the administrative law judge ((and are entered over the signature of the administrative law judge. Initial orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. All initial orders are subject to further action by the commission as provided in WAC 480-07-825)) presides without the commissioners. The commission secretary also may enter initial orders in response to challenges to, or requests for mitigation of, commission penalty assessments.

(b) *Final orders.* ~~(("))~~ Final orders(( " dispose of the merits of a proceeding following consideration by the commissioners and are entered over the signatures of a majority of the commissioners. Final orders include those that grant dis-

positive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. Final orders may be entered whenever:

~~(i) The commissioners personally preside over a proceeding;~~

~~(ii) The commissioners enter an order following administrative review of an initial order in response to a timely petition for administrative review;~~

~~(iii) The commissioners enter an order after the period available for petitions for administrative review and no such petition has been filed;~~

~~(iv) All of the parties to a proceeding waive their right to an initial order; or~~

~~(v) The commissioners enter an order following the timely filing of a petition for reconsideration of a final order or a petition for rehearing of a final order))~~ are orders that a majority of the commissioners enter that resolve the substantive disputed issues in an adjudication in which the commissioners preside or that a majority of the commissioners enter on review of an initial order entered by an administrative law judge or the commission secretary.

(2) **Service.** The commission will serve ~~((a copy of any))~~ initial ((order and the commission's)) and final orders ((to each party of record and to the party's attorney or other authorized representative pursuant to RCW 34-05-461(9) and WAC 480-07-150(3)) on all party representatives included in the master service list in an adjudication.

(3) **Timing.** Except as otherwise provided in these rules or applicable statute, the presiding ((officer)) administrative law judge will enter an initial order within sixty days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), ~~((initial briefs are filed, or reply))~~ or receives final briefs ((are filed)), whichever occurs last. Except as otherwise provided in these rules or applicable statute, the commission will enter its final order within ninety days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), ((initial briefs are filed, or reply briefs are filed, or the commission)) receives final briefs, or receives a petition for administrative review or ((an answer)) a response to a petition for review, whichever occurs last. The ((presiding officer or the)) commission may alter the time for ((entry of)) entering an initial or final order ((by notice to the parties)) for good cause.

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

**WAC 480-07-825 Initial orders—Finality; petitions for administrative review; motions for clarification. (1) ((When a))** Initial order finality.

(a) An initial order will conclude a proceeding and thus be considered final unless within the time for petitioning for administrative review:

(i) A party timely petitions for administrative review; or

(ii) The commission notifies the parties that it intends to review the initial order.

(b) Parties that seek finality of an initial order before the end of the petition period may waive the right to seek admin-

istrative review. If all parties waive review, the order will become final on the day the commission issues a notice of finality declining to exercise administrative review or when the time for exercising such review ends.

(c) An initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value. Such orders, if cited, must be identified as initial orders.

(2) Petition for administrative review ((is appropriate)). A party ((who wishes to)) may challenge any finding of fact, conclusion of law, remedy, or result ((proposed by)) in an initial order ((may file a petition)) by petitioning for administrative review. A party also may ((file a)) petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review of an initial order from any party.

((2)) (a) Timing of petition. ((Any)) A party ((to an adjudicative proceeding may)) must file and serve ((a)) any petition for administrative review within twenty days after the commission serves the initial order ((is served)). The commission may extend or shorten the time on a showing of good cause.

((3)) (b) Contents((length)). Petitions for administrative review must ((clearly)) not exceed thirty pages in length and must conform to the following requirements:

(i) Every petition must identify with specificity the nature of each challenge to the initial order((the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific)). The petitioner must separately state and number every contention.

(ii) A petition that challenges a finding of fact must cite the ((pertinent)) page or part of the record ((or must otherwise state the evidence it)) that includes the evidence on which the petitioner relies ((on)) to support its ((petition,)) challenge and should include a recommended finding of fact.

(iii) A petition that challenges a conclusion of law must cite the ((appropriate)) statute, rule, ((or case involved)) case law, or other legal authority on which the petitioner relies to support its challenge and should include a recommended conclusion of law.

(iv) A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision. ((Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

#### (4) Answers:

((a)) (c) Responses.

(i) Who may ((answer)) respond. Any party to the adjudication may ((answer)) respond to another party's petition for administrative review.

((b)) (ii) Filing and service. ((An answer)) A response to a petition for administrative review must be filed and served within ten days after the petitioner files and serves its petition ((is filed. The commission may designate a different time for filing answers to petitions.

((c)) unless the commission establishes a different deadline.

(ii) Challenge to order in ((answer)) response. A party ((who)) that did not ((file a)) petition for administrative review of an initial order may challenge the order or portions of the order in its ((answer)) response to the petition of another party if that challenge is in response, or otherwise reasonably related, to the issues raised in the petition.

((5)) (d) Reply.

((a)) (i) By right. A party has the right to reply to new challenges to the order that are ((raised under subsection (e) of this section)) included in another party's response as authorized in (c)(iii) of this subsection.

((b)) (ii) By leave of commission. A party otherwise has no right to reply to ((an answer)) a response, but may petition for leave to reply((, citing new matters)). Any such petition must cite new issues raised in the ((answer and stating why those matters were not)) response, state why the petitioner could not have reasonably anticipated those issues, and explain why a reply is necessary. The petitioner ((may)) should attach a reply to the petition for leave to accept the reply.

((c)) (iii) Timing. ((A)) The petitioner must file its reply ((under (a) of this subsection,)) or a petition for leave to reply ((under (b) of this subsection, must be filed)) no later than five days after ((service of the answer)) the respondent submits its response. The commission may extend the time ((upon)) on a showing of good cause.

((6)) (c) Oral argument. ((The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding.)) A party ((who desires to present oral argument)) may request oral argument((, stating why)) before the commissioners, but any such request must demonstrate that oral argument is necessary to assist the commission in making its decision ((and why)) on the petition for administrative review and that the written presentations ((will be)) are insufficient.

#### ((7) Initial order finality.

(a) The initial order of an administrative law judge will become a final order of the commission unless, within the time for filing petitions for administrative review:

(i) A party petitions for administrative review, or receives an extension of time to file a petition for administrative review and files within the extended period; or

(ii) The commission serves a notice to the parties of its intention to review the initial order.

(b) Parties who seek finality of an initial order before the end of the petition period may waive the right to seek administrative review. If all parties waive review, the order will become final on the day the commission declines to exercise administrative review or when the time for exercising review ends. If the commission exercises administrative review, all parties may state objections and responses as permitted in subsection (8) of this section.

(c) An initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value. Such orders, if cited, must be identified as ALJ orders.

~~(8) Designation for)~~ **(3) Motion for clarification of initial order.** Any party that does not seek to change the substantive outcome or reasoning of an initial order may file a motion for clarification of that order within five days after the commission serves the order.

**(a) Purpose.** The purpose of a motion for clarification of an initial order is to correct obvious or ministerial error without the need for parties to request administrative review.

**(b) Response.** No party may file a response to a motion for clarification unless requested by the commission.

**(c) Effect.** Filing a motion for clarification does not automatically toll the time for filing a petition for administrative review or for compliance with the initial order. A party may request in its motion for clarification that the commission toll or otherwise extend the time for filing a petition for administrative review or for complying with the initial order. The party making the request must demonstrate good cause for the extension.

**(d) Order denying or granting clarification.** The presiding administrative law judge will enter an order either denying the motion or granting the motion and providing clarification within five days after the party files the motion. A party may seek administrative review of an order granting or denying clarification either:

**(i)** In a petition for administrative review of that order filed by the deadline for filing a petition for administrative review of the original initial order; or

**(ii)** As part of the party's petition for administrative review of the original initial order.

**(4) Commission-initiated review.** The commission may ~~((designate))~~ initiate review of an initial order ~~((for administrative review))~~ on the commission's own motion by serving ~~((on the parties))~~ a notice ~~((of its intention))~~ that the commissioners intend to review the order. The notice will ~~((identify the docket number and the title of the proceeding, a time period within which the parties may state objections to the initial order, and a time to respond to others))~~ establish a schedule for parties to state their positions on the initial order and make supporting arguments. The notice may invite the parties to address specific issues relating to the initial order.

~~((9))~~ **(5) Administrative law judge.** An administrative law judge other than the administrative law judge who entered the initial order will assist the commissioners to enter a final order on review of the initial order.

**(6) Final order.** The commission may ~~((by))~~ enter a final order that adopts, ~~((modify))~~ modifies, or rejects an initial order ~~((after considering the pleadings and the record))~~. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.

~~((10))~~ **(7) Judicial review.** The statutory time for filing a petition for judicial review commences when the commission serves its final order ~~((;))~~ or when an initial order becomes final under RCW 80.01.060(3) and subsection ~~((7))~~ (1) of this section ~~((; or when a petition for reconsideration is deemed denied as a matter of law, as provided in RCW 34.05.470. However,))~~; provided that, if a party timely files a petition for reconsideration of the final order ~~((;))~~ and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review ~~((does not))~~ commences ~~((until))~~ on the date on which

the ~~((agency))~~ commission serves an order ~~((disposing of))~~ granting or denying the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

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

**WAC 480-07-830 Motion to reopen the record prior to entry of a final order.** ~~((Any))~~ **(1) Record closure.** The evidentiary record in an adjudication closes at the conclusion of the last day of hearing unless the commission rules otherwise; except that the evidentiary record will also include any exhibit containing public comments and responses to bench requests the commission receives after the hearings conclude.

**(2) Reopening the record.** A party may file a motion to reopen the evidentiary record at any time after the record closes ~~((of the record))~~ and before ~~((entry of))~~ the commission enters a final order. A party seeking to present additional evidence after the commission has entered a final order must submit a petition for rehearing pursuant to WAC 480-07-870. The commission may reopen the record in a proceeding on its own motion. ~~((In uncontested proceedings, the commission may exercise its discretion to reopen the record to allow receipt of written evidence when otherwise lawful. In contested proceedings,))~~

**(3) Required showing.** The commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. A motion to reopen the record must include the evidence the party proposes to add to the record and must demonstrate that the evidence meets this standard.

**(4) Responses.** The commission will give ~~((at))~~ the other parties an opportunity to respond to ~~((any))~~ a motion to reopen the record, including to the evidence ~~((received after the record is closed))~~ the moving party seeks to add to the record, unless the commission determines that it can rule on the motion without hearing from the other parties consistent with the requirements of due process.

**(5) Ruling.** The commission ~~((may enter a))~~ will rule on a motion to reopen the record in the final order ~~((or))~~ unless the commission determines that a separate order is warranted. If the commission grants the motion in a separate order, the commission may return the matter to the presiding officer for further ~~((consideration))~~ proceedings, including ~~((further))~~ additional evidentiary hearings or other process when appropriate.

**(6) Compliance with statutory deadline.** The commission may deny a motion to reopen the record in any proceeding in which the commission must enter a final order within a statutory time frame or by a statutory deadline if the commission determines that it reasonably could not consider the additional evidence offered and enter a final order within the statutory time frame or by the statutory deadline.



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

**WAC 480-07-835 Clarification of final order by motion.** (1) Motion ~~((—when appropriate))~~ **for clarification.** Any party ~~((who does not seek to change the outcome with respect to an issue may file))~~ may request that the commission clarify a final order by filing a motion for clarification ~~((of a final order))~~ within ten days after the commission serves the order ~~((is served))~~. The purpose of such a motion ~~((for clarification))~~ is to ~~((ask))~~ ensure that the parties know their rights and responsibilities under the final order. An appropriate motion for clarification ~~((of))~~ requests that the commission modify the final order or take other action to accomplish one or more of the following goals:

(a) Clarify the meaning of ~~((an))~~ , or requirements in, the order ~~((so that compliance may be enhanced,))~~ so that ~~((any))~~ the parties can accurately prepare compliance filings ~~((may be accurately prepared and presented, to suggest))~~;

(b) Make technical changes ~~((that may be required))~~ to ~~((correct))~~ reconcile the application of principle to data, resolve inconsistencies, or ~~((to))~~ correct patent error without the need for parties to request reconsideration and without delaying post-order compliance ~~((—A motion for clarification may also request that obvious))~~; or

(c) Correct typographical or other ministerial errors ~~((in orders be corrected by letter from the secretary or by subsequent order, consistent with WAC 480-07-875)).~~

(2) Motions ~~((—when not appropriate))~~ **that do not seek clarification.** ~~((If))~~ A party may not file a motion for clarification that seeks to change an outcome with respect to one or more issues resolved by a final order, or that challenges a finding of fact or conclusion of law stated in the order ~~((, it may not do so by motion for clarification, but must file)).~~ A party seeking such commission action must submit a petition for reconsideration pursuant to WAC 480-07-850.

(3) **Response.** No party may file a response to a motion for clarification unless ~~((requested by))~~ the commission requests a response.

(4) **No tolling.** Filing a ~~((petition))~~ motion for clarification ~~((tolls the time for judicial review but))~~ does not toll the time for filing a petition for reconsideration of, or compliance with, the final order of which the party seeks clarification ~~((is sought)).~~ If the commission enters an order that modifies the final order, the subsequent order will clarify the deadlines for compliance and will be a final order for purposes of further commission or judicial review.

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

**WAC 480-07-840 Clarification of a final order by conference.** After the commission enters a final order, the commission may schedule an order clarification conference on its own motion or at a party's request. The commissioners may ~~((personally))~~ attend the conference or may designate one or more persons to attend on their behalf. The commission will determine whether it will record or transcribe an order clarification conference ~~((will be recorded)).~~

(1) **Purpose.** The purpose of an order clarification conference is to clarify ~~((the meaning of a))~~ the final order when

parties disagree about ~~((the order's))~~ its meaning or requirements. ~~((Parties to))~~ An order clarification conference ~~((may ask for clarification of the meaning of an order))~~ provides the parties and the commission with the opportunity to:

(a) Explore and resolve any ~~((barriers to compliance,))~~  
(b) Ensure that any compliance filing can be accurately prepared and presented;

(c) Propose ~~((disagreements or lack of understanding about the meaning of, or requirements in, the final order so that parties can accurately prepare any compliance filings; or~~

(d) Identify and make technical changes ~~((that may be required to correct))~~ to reconcile the application of principle to data ~~((; or~~

~~((to))~~, resolve inconsistencies, or correct patent error.

~~((The))~~ (2) **Limitation.** An order clarification conference is not a forum for discussing or challenging the evidentiary, legal, or policy decisions ~~((expressed))~~ in the order. Parties may pursue those remedies through a petition for reconsideration or other means.

~~((2))~~ (3) **Effect.**

(a) An order clarification conference ~~((will))~~ does not stay the ~~((effect))~~ effectiveness of an order, the ~~((time))~~ deadlines for compliance, or the time ~~((for securing post-order review, or the time for petitioning for))~~ frames for petitioning for further commission or judicial review ~~((, unless)).~~ If as a result of the conference ~~((results in a supplemental commission order, which then becomes)),~~ the commission enters an order that modifies the final order, the subsequent order will clarify the deadlines for compliance and will be a final order ~~((subject to))~~ for purposes of further commission or judicial review.

(b) An order clarification conference does not constitute a formal interpretation of an order. The final order that is the subject of an order clarification conference will remain the sole expression of the commission's decision unless ~~((supplemented through an additional))~~ the commission modifies that order in a subsequent order.

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

**WAC 480-07-850 Reconsideration of a final order** ~~((by petition)).~~ (1) **Petition** ~~((—timing)).~~ Any party may petition for reconsideration of a final order within ten days after the commission serves the order ~~((is served)).~~

(a) **Purpose.** The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more ~~((issues determined by the commission's))~~ determinations in a final order.

~~((2))~~ **Petition** ~~((—))~~ (b) **Contents.** ~~((The petitioner))~~ A petition for reconsideration must ~~((clearly))~~;

(i) Identify each portion of the challenged order ~~((that it))~~ the petitioner contends is erroneous or incomplete ~~((, must))~~;

(ii) Site those portions of the record and each ~~((law or))~~ statute, commission rule ~~((that)),~~ or other law on which the petitioner relies ~~((on))~~ to support its petition ~~((,))~~; and ~~((must))~~

(iii) Present brief argument in support of ~~((its petition))~~ the relief the petitioner requests.

~~((3))~~ **Answer.** (c) **Response.** No party may file ~~((an answer))~~ a response to a petition for reconsideration unless

~~((requested by))~~ the commission ~~((- If the commission requests answers to a petition for reconsideration, it will issue a notice stating the date by which answers must be filed and))~~ authorizes a response in a notice establishing the deadline for submitting responses, which may also establish the date by which the commission intends to enter an order resolving the petition. The commission will not grant a petition for reconsideration without providing other parties an opportunity to respond to the petition.

~~((4))~~ (d) Oral argument. The commission will not hear oral argument on a petition for reconsideration unless the commission determines ~~((on its own motion))~~ in its discretion that oral argument ~~((is required))~~ will assist the commission in resolving the petition.

~~((5))~~ (2) Disposition. A petition for reconsideration is deemed denied twenty days after the date the petition is filed, unless the commission either:

- (a) Enters an order resolving the petition; or
- (b) Serves the parties with a written notice specifying the date by which ~~((#))~~ the commission will act on the petition.

~~((6))~~ (3) Action. If the commission grants a petition for reconsideration, the commission may modify its prior order or take other appropriate action. If the commission denies the petition, the commission will take no further action ~~((will be taken))~~ in the matter with respect to the final order. No party may petition for reconsideration of an order on reconsideration.

~~((7))~~ (4) Stay. Filing a petition for reconsideration does not automatically stay the effect of an order or serve as a request for a stay. A party may request that the commission stay the effectiveness of an order pending reconsideration by filing a petition for stay pursuant to WAC 480-07-860.

~~((8))~~ (5) Judicial review. Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a commission final order. If a party timely files a proper petition for reconsideration ~~((is timely filed))~~, the time for filing a petition for judicial review does not commence until the ~~((agency))~~ commission serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470. An order denying reconsideration, or a notice ~~((of the time for disposition under))~~ specifying the date by which the commission will act on a petition for reconsideration pursuant to subsection ~~((5))~~ (2)(b) of this section, is not subject to judicial review.

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

**WAC 480-07-860 Stay.** Any party may petition the commission to stay ~~((#))~~ the effectiveness of a final order within ten days after ~~((its service))~~ the commission serves that order, unless the order or applicable statute provides otherwise ~~((provided by statute or stated in the final order))~~. The commission may stay the effect of a final order on its own initiative. ~~((The effect of a final order is not automatically stayed when a party files a motion for clarification, a petition for reconsideration, or a))~~

(1) Petition. A petition for stay must cite those portions of the record and statute, commission rule, or other law on

which the petitioner relies to support its petition and must present brief argument in support of the relief the petitioner requests.

(2) Response. No party may file a response to a petition for stay unless the commission authorizes a response in a notice establishing the deadline for filing responses, which may also establish the date by which the commission intends to enter an order resolving the petition.

(3) Disposition. A petition for stay is deemed denied twenty days after the date the petitioner submits the petition unless the commission either:

- (a) Enters an order resolving the petition; or
- (b) Serves the parties with a written notice specifying the date by which the commission will act on the petition.

(4) Effect. Filing a petition for ~~((rehearing))~~ stay does not automatically stay the effect of a final order or the deadline for filing a petition for reconsideration. Commission action is required to stay the effect of a final order.

(5) Reconsideration or judicial review. No party may request reconsideration of a commission determination denying a petition for stay. Such a determination also is not subject to judicial review.

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

**WAC 480-07-870 Rehearing.** Any person affected by a commission final order may ~~((file a))~~ petition for rehearing ~~((- Public service companies may seek rehearing under RCW 80.04.200 or 81.04.200))~~ of that order.

(1) Petition. A petition for rehearing must set forth sufficient grounds for rehearing the commission order and must include substantial evidence or an offer of proof in support of the requested relief. Sufficient grounds for rehearing consist of the following:

- (a) Changed conditions since the commission entered the order;
- (b) Harm to the petitioner resulting from the order that the commission did not consider or anticipate when it entered the order;
- (c) An effect of the order that the commission or the petitioner did not contemplate or intend; or
- (d) Any good and sufficient cause that the commission did not consider or determine in the order.

(2) Filing and service. The petitioner must file the petition in the docket in which the commission entered the final order and must serve the petition on all parties and persons included in the master service list for that docket.

(3) Responses. Any party in the original proceeding may file a response to the petition within twenty days after the petitioner serves the petition unless the commission establishes a different deadline by notice.

(4) Process. Pursuant to RCW 80.04.200 or 81.04.200, if the petitioner is a public service company and files its petition either no earlier than two years after the effective date of the commission's final order or no earlier than six months after the effective date of a final order that a court has not reviewed and with which the company is in compliance, the commission will conduct a prehearing conference to establish a procedural schedule for commission consideration of the peti-

tion. In all other circumstances, the commission will determine whether to accept the petition and, if so, the proceedings the commission will undertake to consider the petition.

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

**WAC 480-07-875 Amendment, rescission, or correction of order.** (1) **Amendment or rescission.** The commission may propose, or may act in response to a petition, to alter, amend, or rescind any order that ~~((#))~~ the commission has entered((;)). Any such petition must comply with the requirements in WAC 480-07-870 for a petition for rehearing. The commission may take the action it has proposed or grant the petition only after providing:

(a) Notice of the petition or proposed commission action to the affected public service company or companies ((affected)) and to all parties in the underlying proceeding((; and after allowing)); and

(b) An opportunity for parties to respond in writing or at a hearing ((as in the case of complaints. Any order altering, amending, or rescinding a prior order will have the same effect as any other final order when served upon the public service company or companies affected)) consistent with due process.

(2) **Correction.** The commission may act on its own initiative or on the motion of any party to correct obvious or ministerial errors in orders. The commission may enter a corrected order or ~~((effect))~~ make any corrections to the order by notice or letter ~~((The commission may direct the secretary to effect any corrections by notice or letter))~~ without prior notice or opportunity to respond unless due process requires otherwise. The time for any available ~~((post-hearing))~~ review of the corrections begins ((with the service of the correction, as to the matter corrected)) when the commission serves the corrected order, notice, or letter.

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

**WAC 480-07-880 Compliance filings(~~(; subsequent filings; reporting requirement)~~).** (1) ~~((Compliance filings; compliance order.~~ When the commission enters a final order that authorizes or requires a party to make a filing to implement specific terms of the order with respect to the issues resolved in an adjudicative proceeding by implementing a precisely defined result, the filing is a "compliance filing." For example, a commission final order in a general rate proceeding may authorize or require a party to file original or substitute tariff sheets to implement the terms of the final order. A compliance filing is made under the docket number of the final order to which it relates. A compliance order is an order approving or rejecting a compliance filing.

(2) **Subsequent filing.** ~~When the commission enters a final order that authorizes or requires a party to make a filing to implement general instructions (e.g., the formulation of policy, or filing of tariffs other than to implement a precisely defined result), the filing initiates a new proceeding that will be assigned a new docket number, and the filing is deemed a "subsequent filing." For example, a commission final order in~~

~~a complaint proceeding may authorize or require a party to make a tariff filing by a date certain.~~

(3) **Reporting requirement.** ~~The commission may enter a final order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be filed under the docket number of the proceeding in which the final order is entered, unless otherwise specified in the order establishing the requirement or by later letter from the secretary of the commission.)~~ **Definition.** A compliance filing is a party's submission in response to a final order that authorizes or requires that party to implement specific terms of that order. A compliance filing may be a single submission (e.g., a revised tariff) or multiple submissions (e.g., periodic reports). A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. A party's filing in response to general commission direction in an order (e.g., filing a new or revised tariff other than the tariffs that initiated the proceeding) is not a compliance filing but is a subsequent filing governed by WAC 480-07-885.

(2) **Filing and effective dates.** The commission will state in its final order authorizing or requiring a compliance filing the date by which the party must make the compliance filing and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to take appropriate action with respect to a compliance filing. A compliance filing does not become effective automatically on its stated effective date. The commission must approve or accept any compliance filing before it can be effective.

(3) **Where to make filings.** Parties must make compliance filings in the docket of the final order to which they relate unless the commission has required otherwise in that order. Parties must file and serve such filings consistent with the filing and service requirements in that docket. A party making a compliance filing that includes a tariff also must provide work papers to the other parties that demonstrate the derivation of the proposed rates or charges in that tariff.

(4) **Responses.** Commission staff must, and any other party in the docket may, file a response to the compliance filing within five business days from the date it is filed or by such other deadline as the commission may establish. Any such response must be limited to the issue of whether the filing complies with the commission order. Except as otherwise provided in this section, commission staff must review the filing to determine its compliance with the order and, at a minimum, file a response in the form of a letter informing the commission of the results of that review.

(5) **No dispute.** If no party disputes the filing's compliance with the final order, the commission may issue a notice or letter that the filing appears to comply with the order and that allows the filing to become effective.

(6) **Dispute.** If a party disputes the filing's compliance with the final order, the commission will provide an opportunity to respond. The commission may then enter an order:

(a) Approving the filing;

(b) Rejecting the filing, in whole or in part, for failure to comply with the final order and requiring a revised compliance filing; or

(c) Establishing additional process for commission consideration of the filing.

(7) **Subsequent discovery of noncompliance.** If the commission allows a compliance filing to become effective but later discovers that the filing does not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance with that order. The commission's erroneous acceptance of a compliance filing does not validate the noncompliant elements of the filing or modify the final order requiring that filing.

(8) **Reports.** The commission may enter an order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be submitted under the docket number of the proceeding in which the commission entered the order unless the order specifies otherwise or the commission establishes a different requirement in a subsequent order or notice. Such compliance filings have no stated effective date, do not become effective by operation of law, and require no commission action in response to the filing.

(9) **Monetary payments.** An order may require a party to pay monetary penalties, either in a single lump sum or periodically over time. No party should file a response to any timely payment made in compliance with the order, and the commission generally will not issue an acknowledgment or approval in response to the payment.

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

**WAC 480-07-885 Subsequent filings**~~(—Filing requirements, timing, commission action)~~. When the commission enters a final order that authorizes or requires a party to make a subsequent filing to implement general instructions in that order (e.g., the submission of tariffs other than revisions to the tariffs that initiated the proceeding), the filing initiates a new proceeding to which the commission will assign a new docket number.

(1) **Filing and service requirements.**

(a) ~~(A person who makes)~~ In the cover letter accompanying a subsequent filing, the party must (provide a cover letter that identifies) request a new docket and identify the order and the docket in which the commission required the subsequent filing. (The commission will assign a new docket number to a subsequent filing.)

(b) A ~~(person who makes a)~~ subsequent filing that includes tariff sheets must comply with all pertinent requirements for tariff filings of the industry, including the required statutory notice period, unless the commission authorizes the subsequent filing to become effective on less than statutory notice.

(c) A person who makes a subsequent filing must serve a copy of the filing on all parties to the proceeding in which the commission entered the final order authorizing or requiring the filing (was authorized or required). Any party that believes the subsequent filing is not in compliance with the commission's final order in that proceeding must file its objection in both the original and new dockets within ten

days of the service date of the subsequent filing unless the commission establishes a different deadline.

(2) **Timing.** A final order that authorizes or requires a subsequent filing may state the date by which the party must make the subsequent filing (must be made). If ~~((no))~~ the final order does not specify a date for the subsequent filing (is specified in the final order), the commission may establish the date by subsequent order, notice, or ((by)) letter (from the commission secretary).

(3) **Commission action** ~~(on subsequent filing)~~. The commission generally will act on a subsequent filing that includes tariff sheets in the same manner that it would act on an original tariff filing of the industry, subject to any additional requirements in the final order that authorized or required that filing. If a party to the original proceeding objects to the subsequent filing as not in compliance with the final order in that proceeding, the commission also may take additional action in that docket.

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

**WAC 480-07-900 Open public meetings.** (1) **Regular meetings.** The commission will hold regular meetings to conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The commission generally schedules two ~~((business))~~ open meetings per month ~~((usually on Thursday))~~ on alternate Thursdays at 9:30 a.m. in the commission's office in Olympia, Washington. The specific time and place of each ~~((business))~~ open meeting are published, as required, in the *Washington State Register* and on the commission's ~~((internet))~~ web site. The commission may cancel ~~((a))~~ an open meeting or change the time or place of ~~((a))~~ an open meeting and will publish a notice of these changes on its web site and in the *Washington State Register* for distribution at least twenty days prior to the rescheduled meeting date.

(2) **Special meetings.** The commission may convene special open meetings under RCW 42.30.080.

(3) **Recessed meetings.** The commission may recess a regular or special open meeting and reconvene it at a different time or location.

(4) **Agenda.** The commission will ~~((distribute))~~ publish an agenda for each regular ~~((business))~~ open meeting at least two business days prior to the meeting. The commission ~~((will make its best effort to compile and publish a complete agenda. It may amend its))~~ also may publish an addendum or otherwise amend the agenda after ((it is published)) publishing it and may take up matters that do not appear on ((its)) the published agenda consistent with notice and due process requirements. The commission posts the agenda and any addendum ((are posted to the commission's internet)) on its web site. ((The commission will provide a copy of the agenda via U.S. mail on request.))

(a) ~~((“))~~ Discussion~~((“))~~ agenda. The discussion portion of the agenda includes items that are scheduled for discussion and action by the commissioners. This part of the agenda is further divided into ~~((“))~~ utilities~~((“))~~ and ~~((“))~~ transportation~~((“))~~ sections.

(b) ~~((“))~~ No-action~~((“))~~ agenda. The no-action portion of the agenda includes items that appear to be noncontroversial

and, by law, may take effect without action by the commission. The commission will move any item on the no-action portion of the agenda ((will be moved)) to the discussion portion of the agenda at the request of any commissioner((The commission)) or other person and may take such action on the item as ((#)) the commission deems appropriate.

(c) ~~((#))~~ Consent((#)) agenda. The consent portion of the agenda includes items that appear to be noncontroversial and, by law, require action by the commission to take effect. The commission will act on the items on the consent portion of the agenda by a single motion and a single vote of the commissioners. The commission will move any item on the consent portion of the agenda ((will be moved)) to the discussion portion of the agenda at the request of any commissioner. ((The commission will act on the items on the consent agenda by a single motion and a single vote of the commission)) or other person and may take such action on the item as the commission deems appropriate.

**(5) Deadlines and schedules.**

(a) The commission generally schedules items for consideration at the last regular ~~((business))~~ open meeting before the item would take effect by operation of law. The commission generally ~~((schedules))~~ includes items without a stated effective date ~~((such as petitions, for consideration))~~ on the agenda for the regular open meeting scheduled thirty days or more after the commission receives a complete filing.

(b) ~~((#))~~ A company ((makes a filing and)) that requests ((action by the commission before the)) a filing become effective on less than statutory or other required notice ((period is complete, the commission will schedule consideration of the request at its next regular business meeting, if the request is filed and complete at least seven business days before the)) must make that request and a complete filing at least seven business days prior to the next regular open meeting to have the commission consider the filing at that meeting. The commission generally will schedule items filed less than seven business days before ~~((#))~~ an open meeting ((will generally be scheduled)) for the second ((business)) open business meeting after the filing.

(c) All written comments in response to an open meeting item ~~((must be filed with))~~ should be submitted to the commission at least three business days in advance of the meeting to enable the commissioners to consider those comments during the meeting. Persons are not required to ~~((file))~~ submit written comments about an open meeting item to make oral comments at the meeting.

~~((d))~~ The commission will publish the agenda for each regular business meeting two business days before the meeting.

~~((e))~~ The commission may publish an addendum to the agenda prior to the beginning of the meeting.

(6) **Staff contact.** The commission will designate a staff member to analyze and present a recommendation to the commissioners for each item on the discussion portion of the agenda((, the commission designates a staff member who is assigned to analyze and present a recommendation to the commission at the open meeting. The staff person and a contact number are identified in the agenda)). The agenda item description will include the staff person's name and contact information. Persons interested in ~~((open meeting agenda))~~

these items may discuss them with the designated staff((, subject to time availability)) person prior to the open meeting.

(7) **Public comment.** The commission will provide an opportunity at the beginning of each ~~((business))~~ open meeting for members of the public to request that items on the consent or no-action ~~((sections))~~ portions of the agenda be moved to the discussion ~~((section))~~ portion. The commission will provide an opportunity for public comment on each item on the discussion portion of the agenda ((item)) before taking action on that item.

(8) **Orders.** The commission may direct the executive secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

(9) **Modifications.** The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

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

**WAC 480-07-903 Delegation of authority to the executive secretary. (1) General provisions.**

(a) The working title of the secretary position authorized in RCW 80.01.030 is ~~((#))~~ executive secretary.((#))

(b) The commission delegates authority to the executive secretary as set out in this section and WAC 480-07-904 and 480-07-905, pursuant to RCW 80.01.030 and subject to oversight and direction by a majority of the commissioners.

(c) The commission may also delegate functions to the executive secretary by order.

(d) When the executive secretary is absent or otherwise unavailable to perform authorized duties, the commission authorizes the executive secretary's designee to perform the duties on behalf of the executive secretary.

(2) **General delegation of authority.** The commission authorizes the executive secretary to supervise the general administrative functions of the agency, including without limitation the following specific tasks.

(a) *Filings, correspondence, and documents.* The executive secretary will sign commission documents to be filed with the code reviser, courts, or other agencies or governmental entities. The executive secretary will sign other official commission correspondence and filings that the commissioners do not sign. The executive secretary will sign all permits and other official commission documents unless the commission has delegated signing authority to other commission personnel.

(b) *Appointing authority.* The executive secretary is the ~~((#))~~ appointing authority((#)) for the commission and has authority over appointment, separation, and discipline of commission employees. This authority includes, but is not limited to, appointments, terminations, reductions in force, dismissals, suspensions, and demotions pursuant to WAC 356-30-007 and 356-34-011.

(c) *Grievance procedure.* The commission authorizes the executive secretary to hear bargaining unit employee grievances and enter a final agency decision. The commission reserves the right to hear individual grievances or to

select another designee to hear grievances on a case-by-case basis.

(d) *Rejection of defective filings.* The executive secretary will sign orders or letters rejecting tariffs, contracts, applications, or other filings that do not comply with statutory requirements or commission rules regarding effective dates, required supporting documents, or other standards for a complete filing.

(e) *Penalty assessment challenges and mitigation.* Unless the commission refers the matter to the administrative law division for hearing, the executive secretary will sign orders or letters:

(i) *Denying or sustaining, in whole or in part, challenges to penalties the director of the administrative law division has assessed on delegated authority from the commission pursuant to WAC 480-07-915; or*

(ii) *Granting or denying, in whole or in part, mitigation of such penalties.*

~~(3) ((**Authority to resolve delegated matters.** Matters delegated to the executive secretary by rule are specified in this section and in WAC 480-07-904 and 480-07-905.))~~ **Deferral to the commissioners.** The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.

~~((4) **Authority to sign discretionary orders implementing commission decisions:**~~

~~(a) **Commissioner direction.** A majority of the commissioners may direct the executive secretary to sign an order or decision implementing a decision made by a majority of the commissioners.~~

~~(b) **Commissioner unavailability.** When a majority of the commissioners are unavailable to sign and enter decisions and orders of the commission, the executive secretary is authorized to do so without express direction only when:~~

~~(i) A majority of the commissioners has previously reached a decision on the merits of the particular matter; and~~

~~(ii) In the executive secretary's judgment, in consultation with any available commissioner, entry of the order cannot be deferred pending commissioner availability.~~

~~(5) **Commission review.** Commission review of decisions delegated under RCW 80.01.030 is *de novo*.)~~

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

**WAC 480-07-904 Delegation of authority ((to the executive secretary)) to decide certain matters. (1) Delegation by order.** Except as expressly provided in these rules, the commission will establish by order the matters it delegates ((the following matters)) to the executive secretary or other authorized commission personnel for decision.

((The executive secretary's)) **(2) Effect.** A decision made on delegated authority shall take effect immediately on entry of an order or letter or on a later date specified in the order or letter, without prior notice. The executive secretary may set any particular matter for commission decision ((by the commission)) through ((either)) the open public meeting process ((or an administrative process the commission otherwise employs)), adjudicative or brief adjudicative proceeding, or other established commission process. Upon request, the

commission will review the matter under subsection ((3)) (4) of this section ((at a commission open meeting.

~~(a) Applications for funding highway railroad grade crossing improvements under the grade crossing protection fund for applications under WAC 480-62-405 (1)(a).~~

~~(b) Petitions for approval of changes to existing highway railroad grade crossings, including installation or modification of signals; reconstruction of the crossing; or implementation of changes in design or construction.~~

~~(c) Applications by water companies for removal from regulation or for the commission to exercise regulation under RCW 80.04.010.~~

~~(d) Applications for approval of:~~

~~(i) Fully negotiated telecommunications interconnection agreements; and~~

~~(ii) Adoptions of existing interconnection agreements.~~

~~(e) Applications for less than statutory notice approval of transportation company fuel surcharges and requests for rate increases limited to passing through costs that are authorized for pass-through, such as tipping fees.~~

~~(f) Requests for a commission order establishing that a securities filing complies with RCW 80.08.040.~~

~~(g) Requests for assignment or management of telephone number resources.~~

~~(h) Petitions for mitigation of penalties when the petitioner does not request a hearing, or when commission staff supports the request for mitigation.~~

~~(i) Requests for approval of service area agreements.~~

~~(j) Petitions for exemption to allow extensions of time to make filings under deadlines set by rule or order, not including deadlines established in an adjudication.~~

~~(k) Requests for registration as a telecommunications company in Washington.~~

~~(l) Requests by telecommunications companies for authorization of transfers of property under WAC 480-143-120 (Transfers of property) or determination under WAC 480-143-180 (Disposal and determination of necessary and useful property) that property is not necessary or useful to perform public duties and may be disposed, limited to property that has a market value that does not exceed either one percent of the company's rate base, last established by commission order, or two hundred thousand dollars, whichever is greater).~~

~~((2)) (3) **Notice.** The commission will notify the affected company and post on ((its internet)) the commission's web site for at least fourteen days a listing of all matters ((decided pursuant to subsection (1) of this section)) the executive secretary or other authorized personnel decided on delegated authority, showing the docket number, date of entry of decision, company name, and ((last date)) deadline for filing a request for commission review ((to be filed. The commission will regularly publish electronic notice of listings to persons requesting such notice. Any person may request notice by alternative means)).~~

~~((3) **Opportunity for**) (4) **Commission review.** ((a) Delegated matters, generally. Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration)) Except as provided in WAC 480-07-905, any person directly affected by a~~

delegated determination may request commission review of that determination. The person must file that request no later than the fourteenth day after the date ((of the posting. The commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. The commission will provide a form for this purpose on the commission's web site. The commission will schedule a request for review promptly for consideration and will notify the affected company, and any person requesting review, of the time and place of the open meeting at which review will be taken.

(b) Orders suspending or canceling permits. Carriers seeking review of orders suspending or canceling a permit for failure to maintain evidence of required insurance coverage, or for other circumstances specified in WAC 480-07-905, must request an adjudicative or brief adjudicative proceeding under WAC 480-07-610)) the commission serves the order and posts it on the commission's web site. The commission will consider the request using the same process applicable to commission review of initial orders set forth in WAC 480-07-825.

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

**WAC 480-07-905 Delegation of authority ((to executive secretary)) to enter *ex parte* orders. (1) Except as expressly provided elsewhere in these rules, the commission will authorize((s)) by order the executive secretary or other authorized personnel to enter ((the following)) *ex parte* orders or letters in the name of the commission in nonadjudicative matters. The commission will maintain on its web site a list of all nonadjudicative matters the commission has delegated to the executive secretary or other authorized personnel and the personnel to whom the commission delegated that authority.**

(2) The commission will notify the affected company and post on its web site notice of ((the order will be published, and responses)) all orders or letters entered on delegated authority. Persons affected by the order or letter who wish to respond must follow the procedure ((outlined,)) in WAC 480-07-904 (2) and (3), except that carriers seeking commission review of orders or letters suspending or canceling a permit (e.g., for failure to maintain evidence of required insurance coverage((, or other circumstance specified in subsections below))), must request ((an adjudicative)) a hearing or brief adjudicative proceeding ((under)) pursuant to WAC 480-07-610.

**(((1) Household goods carriers, chapter 480-15 WAC.**

(a) Orders granting authority and permits for permanent, provisional or temporary intrastate transportation of household goods.

(b) Orders and permits authorizing or reflecting change of a carrier's permit name, corporate name, trade name, or addition of a trade name.

(c) Orders authorizing voluntary suspension of permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(d) Orders reinstating voluntarily suspended permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(e) Orders permanently canceling permit authority or dismissing application by request of carrier or applicant.

(f) Orders suspending a permit if the carrier fails to maintain evidence of required cargo and/or liability insurance coverage. Such orders will inform the carrier that a permit may be reinstated if the carrier corrects conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudicative or brief adjudicative proceeding.

(g) Orders vacating suspension of a permit if the commission receives the insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(h) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(i) Orders reinstating previously canceled permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(j) Orders rejecting or denying applications for temporary authority if WAC 480-15-285 applies.

(k) Orders rejecting or denying applications for permit authority under WAC 480-15-320 or 480-15-330, or canceling a permit if the carrier does not satisfy conditions for granting authority, or for good cause under WAC 480-15-450.

**(2) ~~Solid waste collection companies—Specialized, chapters 81.77 RCW and 480-70 WAC.~~**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by any existing carrier.

(b) Orders and permits authorizing change of carrier's corporate name, trade name, or addition of a trade name.

(c) Orders and permits approving unprotested applications to transfer or lease certificate.

(d) Orders suspending a permit if the carrier fails to maintain evidence of the required liability insurance coverage. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudication or brief adjudicative proceeding.

(e) Orders vacating suspension of permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(3) ~~Solid waste collection companies—Traditional, chapters 81.77 RCW and 480-70 WAC.~~**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by an existing carrier.

(b) Orders and permits authorizing change of carrier's name, trade name or addition of a trade name.

(c) Orders suspending a permit if the carrier fails to maintain evidence of the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(4) ~~Private, nonprofit transportation providers, chapter 480-31 WAC.~~**

(a) Orders and permits authorizing intrastate transportation of persons with special needs.

(b) Orders and permits authorizing sale, assignment, lease, acquisition or transfer.

(c) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order must inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-31 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(5) ~~Charter and excursion busses, chapter 480-40 WAC.~~**

(a) Orders and permits authorizing intrastate transportation of passengers by charter or excursion.

(b) Orders suspending permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to

suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(c) Orders vacating suspension of permit if the commission receives an insurance filing during the suspension period or orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(d) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension and fails to request a hearing or brief adjudicative proceeding during the suspension period.

(e) Orders canceling permit authority or dismissing an application by request of the carrier or applicant.

(f) Orders dismissing application after due notice to applicant for failure to meet the requirements of chapter 480-40 WAC.

(g) Orders authorizing lease, assignment, or transfer of permit authority.

**(6) ~~Auto transportation companies, chapter 81.68 RCW.~~**

(a) Orders and permits authorizing intrastate, intercity transportation of passengers involving unprotested applications to serve routes not served by any existing carrier and that do not fall within the boundaries of a transit district.

(b) Orders and permits involving name changes, including trade names.

(c) Orders authorizing lease, assignment, or transfer of permit authority.

(d) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(e) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 81.68 RCW and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(7) ~~Commercial ferries, chapter 480-51 WAC.~~**

(a) Orders suspending a certificate if the carrier fails to maintain the required insurance coverage. The order will inform the carrier that the certificate may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest suspension by requesting a brief adjudication or an adjudication.

(b) Orders vacating suspension of a certificate if the carrier corrects conditions leading to suspension and orders of abeyance if the respondent requests a brief adjudication or an adjudication.

(c) Orders canceling a previously suspended certificate if the carrier fails to correct conditions leading to suspension



and fails to timely request an adjudication or brief adjudication.

~~(8) **Temporary transportation authority.** The commission delegates to the executive secretary decisions in applications for temporary motor carrier or solid waste authority. The decision takes effect immediately on entry of an order without prior notice of delegation. An applicant whose application is denied, in whole or in part, may obtain review by requesting an adjudication within twenty days following entry of the order. Commission review of delegated decisions under this provision will be *de novo*.~~

~~(9) **Cancellation for failure to file annual reports or pay regulatory fees.** The commission delegates to the executive secretary notices to regulated companies concerning their failure to timely file annual reports and pay regulatory fees, as well as orders scheduling hearings and canceling registrations or permit authority for failure to comply with commission rules governing annual reports and regulatory fees.~~)

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

**WAC 480-07-910 Informal complaints.** (1) **How to make an informal complaint.** Any person may make an informal complaint to the commission about any business ~~((that))~~ or entity the commission regulates or about the commission's operations. A person may make an informal complaint by telephone, correspondence, ~~((fax transmission;))~~ or email(~~(;))~~ or by using the complaint form available on the commission's web site.

(2) **Contents.** An informal complaint must identify the business ~~((or person to whom)),~~ entity, or operations to which the complaint pertains. An informal complaint should:

(a) Present all facts that are needed for the commission to understand the nature of, and reason(s) for, the complaint;

(b) Describe the acts or omissions that led to the complaint, with all relevant dates; and

(c) Cite all relevant statutes or rules, if the person who files the complaint knows them.

(3) **Commission response; result.** Commission employees assigned to assist consumers may discuss an informal complaint with the affected persons ~~((by correspondence or otherwise)).~~ The commission will investigate the complaint to determine if there are violations of any applicable rule or law and if so, will work with the parties to ensure compliance. The commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or ~~((in))~~ an order ~~((that compels a person to do something or forbids a person from doing something)).~~

(4) **Uniform Mediation Act not applicable.** The Uniform Mediation Act ~~((chapter 172, Laws of 2005, codified as)),~~ chapter 7.07 RCW(~~(;))~~, does not apply to the commission's informal complaint resolution process.

(5) **Filing of formal complaint regarding subject of informal complaint.** Making an informal complaint does not prevent any party from filing a formal complaint as provided in WAC 480-07-305. The commission also may initiate a formal complaint proceeding on its own initiative. The commission will stop processing an informal complaint when a per-

son filing an informal complaint files a formal complaint or the commission initiates a formal complaint proceeding.

#### NEW SECTION

**WAC 480-07-915 Penalty assessments.** (1) **Delegation.** The commission delegates to the director of the administrative law division, or another administrative law judge the director designates, the authority to assess penalties pursuant to RCW 80.04.405, 81.04.405, 81.04.530, 19.122.150, or any other statutes that authorize the commission to assess penalties outside of an adjudicative proceeding for violations of any commission order or any statute, rule, or regulation within the commission's jurisdiction except as provided in WAC 480-07-917.

(2) **Notice.** At the direction of the director of the administrative law division, the commission will serve a notice on the person assessed a penalty describing the violation with reasonable particularity, specifying the amount of the penalty, and advising the person that the penalty is due and payable.

(3) **Response.** Within fifteen days of receiving the notice, the person subject to the penalty assessment must take one of the following actions:

(a) *Pay the assessed penalty.* The penalized person may admit the violation and pay the full amount of the penalty by the due date.

(b) *Contest the violation.* The penalized person may submit written materials to contest the penalty assessment and may request that the commission make a determination based on those materials or may request the opportunity to present facts described in those materials through evidence at a hearing.

(c) *Request mitigation.* The penalized person may admit the violation but submit written materials in support of a request to reduce the amount of the penalty. The penalized person may request mitigation based solely on the written materials or may request the opportunity to present the facts described in those materials through evidence at a hearing.

(d) *Accept conditions.* If the commission offers to suspend any or all of the penalty based on specified conditions (e.g., to commit no additional violations within a specified period of time), the person may admit the violation, accept the conditions, and pay any unsuspended portion of the penalty by the due date, subject to complying with the conditions by the date specified in the notice of penalty assessment. Failure to comply with those conditions will result in the suspended portion of the original penalty immediately becoming due and payable.

(4) **Written statement.** Any response contesting the violation or requesting mitigation must include a written statement of the reasons supporting the requested relief. The commission may deny any contest to the violation or any mitigation request that does not include such a statement.

(5) **Staff reply.** Commission staff will file any reply to a response contesting the violation or requesting mitigation within ten business days. If the commission conducts a hearing on the request, commission staff will participate as a party in that proceeding.

(6) **Hearing.** The commission will grant a request for hearing to contest the violation or request mitigation only if material issues of law or fact require consideration of evidence and resolution in a hearing. If the commission denies a request for hearing, the commission will consider the contest of the violations or request for mitigation based on the written statement included in the response. If the commission grants a request for hearing, an administrative law judge other than the director of the administrative law division or the designee who signed the penalty assessment will review the evidence supporting the contest of the violation or application for mitigation in a brief adjudicative proceeding pursuant to WAC 480-07-610. The executive secretary will issue a notice establishing the procedures, date, and time for the hearing.

(7) **Order.** The executive secretary will enter an order resolving contested violations or requests for mitigation the commission considers without a hearing. A person aggrieved by the order may request administrative review. The commission will consider the request using the same process and requirements applicable to commission review of initial orders set forth in WAC 480-07-825.

(8) **Compliance with conditions.** An order on mitigation may suspend all or part of an assessed penalty based on one or more conditions.

(a) *Compliance.* If the penalized person complies with all conditions in the order, commission staff will file a letter confirming that compliance. If the commission agrees, the executive secretary will issue a letter or notice waiving the suspended portion of the penalty.

(b) *Noncompliance.* If the penalized person does not comply with any such condition, commission staff will file a letter or motion requesting that the commission impose some or all of the suspended portion of the penalty. The penalized person must file any response to the letter or motion within five business days, including any request for a hearing to assess the person's compliance with the condition. The commission will consider and make a determination on the letter or motion and any request for hearing using the same procedure and requirements in subsections (6) and (7) of this rule.

(9) **Enforcement.** Unless a timely contest of the violation(s) or mitigation request is pending before the commission, failure to pay an assessed penalty by the due date is a violation of law for which the commission may take additional enforcement action including, but not necessarily limited to, one or more of the following:

- (a) Assess additional penalties;
- (b) Suspend or revoke the operating authority of a penalized public service company whose operating authority is subject to commission suspension or revocation until the company pays the penalty in full;
- (c) Refer the debt to a collection agency;
- (d) Initiate an adjudicative or brief adjudicative proceeding; or
- (e) File an enforcement action in superior court.

#### NEW SECTION

**WAC 480-07-917 Penalties for failure to file annual report and pay regulatory fees.** (1) **Monetary penalties.** Any public service company that fails to file a complete

annual report with the commission and pay any required regulatory fees by May 1st of each year, or by a subsequent deadline the commission has previously established in response to a company's timely request to extend the May 1st filing date, must pay the following monetary penalties to the commission:

(a) Two hundred fifty dollars if the filing is one to thirty days late;

(b) Five hundred dollars if the filing is thirty-one to sixty days late; or

(c) One thousand dollars if the filing is sixty-one to ninety days late.

(2) **Alternative penalties.** If a public service company has not filed a complete annual report and paid any required regulatory fees within ninety days after the filing deadline, the commission in its discretion may impose one or both of the following penalties as an alternative to the monetary penalties in subsection (1) of this section:

(a) Revocation or cancellation of the company's operating authority (unless otherwise prohibited under applicable law) following notice and opportunity for hearing (if required by applicable law); and

(b) Penalties the commission may assess pursuant to RCW 80.04.380, 80.04.405, 81.04.380, or 81.04.405, as applicable.

(3) **Notice.** The commission will serve a notice on each public service company that has failed to file a complete annual report and pay any required regulatory fees by the deadline, specifying the amount of the monetary penalty due as of the date of the notice. The notice will also advise the company that the specified penalty is due and payable and will increase as provided in subsection (1) of this section, or that the company may be subject to the alternative penalties in subsection (2) of this section, if the company continues to fail to file a complete annual report and pay any required regulatory fees.

(4) **Waiver.** The commission may waive a monetary penalty, in whole or in part, if the public service company demonstrates to the commission's satisfaction that the company failed to file its complete annual report and pay any required regulatory fees by the deadline due to circumstances beyond the company's control.

(a) *Request.* The commission must receive any request for waiver of the monetary penalty within fifteen days of the date of the commission notice informing the company that the penalty is due and payable. The request must include a written statement of the reasons the company failed to file a complete annual report and pay any required regulatory fees by the deadline sufficient to demonstrate that the company's failure was due to circumstances beyond its control. Unless those circumstances continue to persist, the company should file a complete annual report and pay any required regulatory fees prior to, or at the same time as, submitting a request for waiver.

(b) *Circumstances beyond a company's control.* Circumstances beyond a company's control that may support a request to waive some or all of the monetary penalty include, but are not limited to:

(i) Death or serious illness of the person responsible for filing the report, or a member of that person's immediate family;

(ii) Destruction by fire or other casualty of the company's place of business or business records;

(iii) An act of fraud, embezzlement, theft, or conversion on the part of an employee; or

(iv) The commission did not send notice of the annual report filing requirement to the company as a result of commission error. Commission error for these purposes does not include either the commission's inability to send notice to the company or the commission sending notice to an incorrect address if the company has failed to provide the commission with the company's current correct email address (or physical address if the company has notified the commission that it does not have, and cannot obtain, an email address).

(c) *Circumstances not beyond a company's control.* Circumstances that are not beyond a company's control and that will not support a request to waive some or all of the monetary penalty include, but are not limited to:

(i) Financial hardship;

(ii) Misunderstanding or lack of knowledge of commission rules;

(iii) Failure to receive an annual report form from the commission unless the annual report form was not available on the commission's web site, or the commission did not furnish a copy of the form upon request in reasonable time for the company to file the form and pay any required fees;

(iv) Mistakes or misconduct on the part of an employee other than fraud, embezzlement, theft, or conversion;

(v) Employee termination or turnover;

(vi) Personal events such as weddings or graduation ceremonies; and

(vii) Vacations or business trips.

(d) *No tolling.* A request for waiver of a monetary penalty does not toll a company's obligation to file a complete annual report and pay any required regulatory fees. If the company has not made the required filing, the penalty amount will continue to escalate as provided in subsection (1) of this section unless and until the company makes that filing, regardless of whether the company has requested a waiver of the penalty.

(e) *Commission decision.* Within ten days of receiving a request for waiver, the commission will issue a notice informing the company of the commission's decision on the request.

(f) *No administrative review.* Except for penalties the commission assesses pursuant to subsection (2)(b) of this section, the decision on any request for waiver of a monetary penalty is final and is not subject to further administrative review.

(5) **Delegation.** The commission delegates to the director of regulatory services, or the director's designee, the authority to assess and to determine whether to waive, in whole or in part, the monetary penalties in subsection (1) of this section. The commission delegates to the director of the administrative law division, or an administrative law judge the director designates, the authority to impose the alternative penalties in subsection (2) of this section.

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

**WAC 480-07-920 Interpretive and policy statements.**

(1) **General.** Upon the petition of any person, or upon its own (~~motion~~) initiative, the commission may make and issue interpretive and policy statements to advise the public of (~~its~~) the commission's current opinions, approaches, and likely courses of action. Interpretive and policy statements are advisory only and are not binding on the commission or any person.

(2) **Roster of interested persons.** The commission will maintain a roster of interested persons(~~, consisting of persons~~) who have requested in writing to be notified of all interpretive and policy statements (~~issued by~~) the commission issues. The commission will periodically update the roster. (~~When~~) The commission will provide an electronic copy to each person on the roster when the commission issues an interpretive (~~or~~) and policy statement(~~, it will send a copy of the statement to each person on the roster~~).

(3) (~~Index of current statements.~~ The commission maintains a file and an index of all currently effective interpretive and policy statements. The statements are available for inspection and copying at the records center in the commission's Olympia headquarters office and are posted on the commission's internet web site.) Submission of statement to the office of the code reviser. Whenever it issues an interpretive and policy statement, the commission will submit to the office of the code reviser for publication in the *Washington State Register* a statement describing the subject matter of the interpretive and policy statement and describing how interested persons may obtain a copy of that statement.

(4) **Conversion to rules.** The commission may convert any interpretive and policy statement into rules through a formal rule making. Any interested person may petition the commission to initiate such a rule making. Upon receipt of such a petition, the commission will:

(a) Notify the joint administrative rules review committee of the petition; and

(b) Within sixty days either deny the petition in writing, stating the reasons for the denial, or initiate rule-making proceedings.

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

**WAC 480-07-930 Declaratory orders under RCW**

**34.05.240. (1) Petition.** Any interested person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW 34.05.240.

(a) *Format.* Petitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the requirements for other forms of adjudicative pleading as specified in Part III, subpart A of this chapter.

(b) *Relationship with adjudications.* The commission will dismiss a petition for declaratory order when issues in the petition are at issue in a pending adjudication. The commission will reject a single pleading that (~~seeks~~) purports to present the commission with the option to enter either a

declaratory order or ~~((in the alternative,))~~ an adjudicative order. The filing party must ~~((choose which))~~ specify a single process ~~((it deems appropriate))~~ under which it requests that the commission proceed.

(2) **Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the commission receives the petition. The commission will serve notice ~~((will be served))~~ on all persons who are required by law to be given notice and on any other person to whom the commission deems notice to be desirable.

(3) **Response.** Any person may respond to a petition for declaratory order by filing ~~((an answer))~~ a response within twenty days after the petition is filed or at such other time as the commission may establish by notice. The commission will not enter a declaratory order under RCW 34.05.240 if any person:

(a) Asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights might be substantially prejudiced by entry of a declaratory order~~((;))~~;

(b) Supports such assertion by sworn statement in the form of a declaration or affidavit demonstrating the potential for substantial prejudice~~((;))~~; and

(c) Does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

(4) **Conversion of proceeding.** The commission may convert the form of a declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an adjudicative proceeding under Part III, subpart A of this chapter.

(5) **Commission action on petition.** Within thirty days after it receives a petition for declaratory order, the commission will:

(a) Enter a declaratory order;

(b) Notify the petitioner that the commission will not enter a declaratory order under RCW 34.05.240~~((;))~~ and state the reasons for ~~((its action))~~ that decision;

(c) Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order; or

(d) Set a reasonable time and place for a hearing. ~~((If a))~~ The commission will hold any hearing ~~((is held))~~ on a petition for declaratory order under RCW 34.05.240~~((; it must be held no more than))~~ within ninety days after receipt of the petition. ~~((If a hearing is held,))~~ The commission will give at least seven days' notice of any hearing to the petitioner, to all persons to whom notice is required by law, and to any other person ~~((#))~~ the commission deems desirable. The notice will include the time~~((;))~~ and place~~((;))~~ for the hearing and a statement of the issues ~~((involved))~~ the commission will consider.

(6) **Extension of time.** The commission may ~~((for good cause))~~ extend the times specified in subsection (5)(c) and (d) of this section for good cause.

(7) **Commission action after hearing.** ~~((If a))~~ The commission will take one of the following actions within a reasonable time after holding any hearing ~~((is held))~~ as provided in subsection (5)(d) of this section~~((; the commission will within a reasonable time))~~:

(a) Enter a declaratory order; or

(b) Notify the petitioner that the commission will not enter a declaratory order and state the reasons for ~~((its action-  
(8) Service. The commission will serve its order or notice upon all persons who are required to receive notice under subsection (2) of this section))~~ that decision.

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

**WAC 480-07-940 Conversion of proceedings.** The commission ~~((will consider whether to))~~ may convert a proceeding ~~((pursuant to RCW 34.05.070))~~ to a different type of proceeding on the commission's own initiative or upon application by any party or person ~~((or upon its own motion))~~ directly affected. Any such conversion or commission refusal to convert a proceeding will comply with the requirements in RCW 34.05.070 and be consistent with the public interest.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-07-883 Compliance filing—Filing requirements; timing; commission action.

#### **WSR 18-14-086**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed July 2, 2018, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-142.

Title of Rule and Other Identifying Information: Chapter 246-840 WAC, the nursing care quality assurance commission (commission) proposes new sections and amendments to existing rule that will establish requirements and standards for prescribing opioid drugs by advanced registered nurse practitioners consistent with the directives of ESHB 1427 (chapter 297, Laws of 2017).

Hearing Location(s): On August 10, 2018, at 9:00 a.m., at the Crowne Plaza Hotel, Beacon and Capital Room, 17338 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: August 10, 2018.

Submit Written Comments to: Amber Zawislak, P.O. Box 47864, Olympia, WA 98504-7864, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-4738, by July 31, 2018.

Assistance for Persons with Disabilities: Contact Amber Zawislak, phone 360-236-4785, fax 360-236-4738, TTY 360-833-6388 or 711, email [amber.zawislak@doh.wa.gov](mailto:amber.zawislak@doh.wa.gov), by July 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to establish new sections within the current pain management subchapter of chapter 246-840 WAC to implement the provisions of ESHB 1427. The bill directed five

boards and commissions to consider the Agency Medical Directors' Group and the Centers for Disease Control and Prevention guidelines, and to work in consultation with the Washington state department of health, the University of Washington, and the professional associations of each profession to develop requirements for prescribing opioid drugs. The commission is also proposing amendments to the current pain management rules to assure alignment with the proposed opioid prescribing rules, increase consistent rule application, and reduce duplication between existing and new rules.

**Reasons Supporting Proposal:** The proposed rules are necessary to establish and implement opioid prescribing requirements for advanced registered nurse practitioners. The proposed rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with the directives of ESHB 1427. The proposed rules recognize instances where clinical judgement is appropriate by providing practice guidance without being overly prescriptive, and are designed to reduce the risks associated with opioid use in the management of pain, while increasing public health and safety.

**Statutory Authority for Adoption:** RCW 18.79.110 and 18.79.400.

**Statute Being Implemented:** ESHB 1427 (chapter 297, Laws of 2017), codified in part as RCW 18.79.800.

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

**Name of Proponent:** Washington state nursing care quality assurance commission, governmental.

**Name of Agency Personnel Responsible for Drafting and Implementation:** Amber Zawislak, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4785; and **Enforcement:** Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

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 Amber Zawislak, P.O. Box 47864, Olympia, WA 98504, phone 360-236-4785, fax 360-236-4738, TTY 360-833-6388 or 711, email [amber.zawislak@doh.wa.gov](mailto:amber.zawislak@doh.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules impact clinics and hospitals where advanced registered nurse practitioners (ARNP) practice if the ARNP(s) in the business prescribe opioids for pain management. The proposed rules do not apply to nurses who do not prescribe opioids. The following North American Industrial Classification System (NAICS) six-digit codes, total number of businesses in Washington state in 2013, total combined and average business payroll (rounded to the thousands), and minor cost thresholds have been applied to the proposal:

1. NAICS Code: 621399 Office of Physicians (except mental health specialists)

Total establishments in Washington: 3,120

Total combined annual payroll: \$3,744,650,000.00

Average annual payroll (total payroll divided by total establishments): \$1,200,208.00

Minor Cost threshold (Average payroll multiplied by .01): \$12,002.00

2. NAICS Code: 621399 Offices of All Other Miscellaneous Health Practitioners

Total establishments in Washington: 913

Total combined annual payroll: \$103,873,000.00

Average annual payroll (total payroll divided by total establishments): \$113,771.84

Minor Cost threshold (Average payroll multiplied by .01): \$1,137.71

The commission has analyzed the anticipated costs of compliance for a business at \$16.77 for each patient encounter only when an ARNP prescribes opioids, and only if the ARNP performs all of the tasks required in the proposed rules. Many of the tasks in the rules are often performed by other staff (such as medical assistants or licensed practical nurses) at a much lower cost. For example, regarding the following tasks required under the proposed rules at every patient encounter when an opioid is prescribed:

- Documenting patient history and physical condition
- Documenting/updating the patient health record
- Completing a prescription monitoring program (PMP) check

An ARNP performing these tasks would cost the business an estimated \$\*9.03; or a medical assistant-certified could perform the same tasks for an estimated \$6.87\*.

Depending on the patient's phase of pain management, the business may incur the following additional cost:

a. From \$0 per patient encounter for a patient whose pain level and function meet the expected course of recovery; up to

b. An estimated \$21.50 per patient encounter when a practitioner must seek a consultation with another practitioner regarding specific coprescribed controlled drugs, or coprescribing opioids to a patient receiving medication assisted treatment.

Based on these anticipated costs, the commission has determined that the proposed rules would not impose more than minor costs for businesses that must comply.

\*Based on United States Department of Labor Statistics, Occupational Employment and Wages 2017 for 29-1069 Physicians and Surgeons, and 31-9092 Medical Assistants.

June 29, 2018

Paula R. Meyer, MSN, RN, FRE

Executive Director

Nursing Care Quality Assurance Commission

**AMENDATORY SECTION** (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-460 Pain management—Intent.** ~~((These rules))~~ WAC 246-840-460 through 246-840-4990 govern the use of opioids in the treatment of ((patients for chronic noncancer)) pain in the acute, perioperative, sub-acute, and chronic phases. Treatment modalities including opioid use can serve to improve the quality of life for those patients who suffer from pain, as well as reduce the morbidity and costs associated with undertreatment or inappropriate treatment of pain. For the purpose of these rules, the inappro-

appropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments. In addition to these rules, the nursing commission recommends practitioners adhere to applicable state agency medical directors' group (AMDG) and federal Centers for Disease Control and Prevention (CDC) guidelines for the treatment of pain in all phases.

**AMENDATORY SECTION** (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-463 Exclusions.** ~~((The rules adopted under))~~ WAC 246-840-460 through ~~((246-840-493))~~ 246-840-4990 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care; ~~((or~~
- (2) The management of acute pain caused by an injury or surgical procedure-))
- (3) The treatment of inpatient hospital patients; or
- (4) Procedural premedications.

**AMENDATORY SECTION** (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-465 Definitions.** The following definitions ~~((in this section))~~ apply in WAC 246-840-460 through ~~((246-840-493))~~ 246-840-4990, unless the context clearly requires otherwise.

(1) "Aberrant behavior" means behavior that indicates misuse, diversion, or substance use disorder. This includes, but is not limited to, multiple early refills or renewals, or obtaining prescriptions for the same or similar drugs from more than one practitioner or other health care provider.

(2) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus, and typically is associated with invasive procedures, trauma, and disease. ~~((It is generally time-limited, often less than three months in duration, and usually less than six months.~~

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

- (a) Impaired control over drug use;
- (b) Craving;
- (c) Compulsive use; or
- (d) Continued use despite harm.

~~((3))~~ Acute pain is considered to be six weeks or less in duration.

(3) "Biological specimen test" or "biological specimen testing" means testing of bodily fluids or other biological samples including, but not limited to, urine or hair for the presence of various drugs and metabolites.

(4) "Chronic ~~((noncancer))~~ pain" means a state in which ~~((noncancer))~~ pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process, that causes continuous or intermittent pain ~~((over months or years))~~ more than twelve weeks in duration, lasting months or years. Chronic pain includes pain resulting from cancer or

treatment in a patient who is two years post completion of curative anti-cancer treatment with no current evidence of disease.

~~((4))~~ "Comorbidity") (5) "Comorbidities" means a ~~((pre-existing))~~ preexisting or coexisting physical or psychiatric disease or condition.

~~((5))~~ (6) "Episodic care" means medical care provided by ~~((a provider))~~ an advanced registered nurse practitioner other than the designated primary ~~((provider))~~ care practitioner in the acute care setting, for example, urgent care or emergency department.

~~((6))~~ (7) "High dose" means ninety milligram morphine equivalent dose (MED), or more, per day.

(8) "High-risk" means a category of patient at increased risk of morbidity or mortality, such as from comorbidities, polypharmacy, history of substance use disorder or abuse, aberrant behavior, high dose opioid prescription, or the use of any central nervous system depressant.

(9) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. ~~((Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as freestanding hospice facilities, hospitals, nursing homes, or other long-term care facilities.~~

~~((7))~~

(10) "Hospital" means any institution, place, building, or agency licensed by the department under chapter 70.41 or 71.12 RCW or designated as a state hospital under chapter 72.23 RCW, to provide accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(11) "Inpatient" means a person who has been admitted to a hospital for more than twenty-four hours.

(12) "Medication assisted treatment (MAT)" means the use of pharmacologic therapy, often in combination with counseling and behavioral therapies, for the treatment of substance use disorders.

(13) "Morphine equivalent dose (MED)" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables or calculators.

~~((8))~~ (14) "Multidisciplinary pain clinic" means a ~~((clinic or office))~~ facility that provides comprehensive pain management and ~~((may))~~ includes care provided by multiple available disciplines, ~~((for example, physicians, osteopathic physicians, physician assistants, advanced registered nurse practitioners, physical therapists, occupational therapists, and other complementary therapies.~~

~~((9))~~ practitioners, or treatment modalities.

(15) "Multimodal management of pain" means the application of nonopioid analgesic mechanisms, such as, but not limited to, antidepressants, anticonvulsants, anti-inflammatory medications, acetaminophen, interventional procedures, or any nonpharmacological pain treatments.

(16) "Nonoperative pain" means pain which does not occur as a result of surgery.

(17) "Opioid analgesic" or "opioid" means a drug that is either an opiate derived from the opium poppy, or opiate-like semi-synthetic or synthetic drugs. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, and methadone.

(18) "Palliative care" means care that maintains or improves the quality of life of patients and their families facing serious, advanced, or life-threatening illness. With palliative care, particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

(19) "Pain" means an unpleasant sensory or emotional experience associated with actual or potential tissue damage, or described in terms of such damage.

(20) "Pain management clinic" means a publicly or privately owned facility for which a majority of patients are receiving chronic pain treatment.

(21) "Perioperative pain" means acute pain that occurs as the result of surgery.

(22) "Prescription monitoring program" or "PMP" means the Washington state prescription monitoring program authorized under chapter 70.225 RCW.

(23) "Practitioner" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a dentist licensed under chapter 18.32 RCW, a physician licensed under chapter 18.71 or 18.57 RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or a podiatric physician licensed under chapter 18.22 RCW.

(24) "Risk assessment tools" means validated tools or questionnaires appropriate for identifying a patient's level of risk for substance use or misuse.

(25) "Subacute pain" means a continuation of pain, of six to twelve weeks in duration.

(26) "Substance use disorder" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. Substance use disorder is not the same as physical dependence or tolerance that are normal physiological consequences of extended opioid therapy for pain. It is characterized by behaviors that include, but are not limited to, impaired control over drug use, craving, compulsive use, or continued use despite harm.

#### NEW SECTION

**WAC 246-840-4651 Patient notification, secure storage, and disposal.** (1) The practitioner shall provide information to the patient educating them of:

(a) Risks associated with the use of opioids as appropriate to the medical condition, the type of patient, and the phase of treatment;

(b) The safe and secure storage of opioid prescriptions; and

(c) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs.

(2) The practitioner shall document such notification in the patient record.

(3) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phases of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

#### NEW SECTION

**WAC 246-840-4653 Use of alternative modalities for pain treatment.** The practitioner shall consider multimodal pharmacologic and nonpharmacologic therapy for pain rather than defaulting to the use of opioid therapy alone whenever reasonable as evidence-based, clinically appropriate alternatives exist. A practitioner may combine opioids with other medications and treatments including, but not limited to, acetaminophen, acupuncture, chiropractic, cognitive behavior therapy, nonsteroidal anti-inflammatory drugs (NSAIDs), osteopathic manipulative treatment, physical therapy, massage, or sleep hygiene.

#### NEW SECTION

**WAC 246-840-4655 Continuing education requirements for opioid prescribing.** (1) In order to prescribe an opioid in Washington state, an advanced registered nurse practitioner licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids. Additionally, a chronic pain management specialist must meet the continuing education requirements in WAC 246-840-493. The continuing education must be at least four hours in length.

(2) The advanced registered nurse practitioner shall complete the one-time continuing education requirement described in subsection (1) of this section by the end of the advanced registered nurse practitioner's first full continuing education reporting period after January 1, 2019, or during the first full continuing education reporting period after initial licensure, whichever is later. The four hour course may count toward any NCQAC required continuing education.

#### NEW SECTION

**WAC 246-840-4657 Diagnosis identified on prescriptions.** The advanced registered nurse practitioner shall include the diagnosis or the International Classification of Diseases (ICD) code on all opioid prescriptions.

#### NEW SECTION

**WAC 246-840-4659 Patient evaluation and patient record—Acute.** Prior to prescribing an opioid for acute nonoperative pain or acute perioperative pain, the advanced registered nurse practitioner shall:

(1) Conduct and document an appropriate history and physical examination including screening for risk factors for overdose and severe postoperative pain;

(2) Evaluate the nature and intensity of the pain or anticipated pain following surgery; and

(3) Inquire about any other medications the patient is prescribed or is taking including type, dosage, and quantity prescribed.

#### NEW SECTION

**WAC 246-840-4661 Treatment plan—Acute nonoperative pain.** The advanced registered nurse practitioner shall comply with the requirements in this section when prescribing opioid analgesics for acute nonoperative pain and shall document completion of these requirements in the patient record.

(1) The advanced registered nurse practitioner shall consider recommending or prescribing nonopioid analgesics as the first line of pain control in patients under the provisions of WAC 246-840-4653, unless not clinically appropriate.

(2) The advanced registered nurse practitioner, or practitioner's authorized designee as defined in WAC 246-470-050, shall conduct queries of the prescription monitoring program (PMP) in accordance with the provisions of WAC 246-840-4990 to identify any Schedule II-V medications or drugs of concern received by the patient, and document their review and any concerns.

(3) If the advanced registered nurse practitioner prescribes opioids for effective pain control, such prescription must not be in greater quantity than needed for the expected duration of pain severe enough to require opioids. A three-day supply or less will often be sufficient; more than a seven-day supply will rarely be needed. The advanced registered nurse practitioner shall not prescribe beyond a seven-day supply without clinical documentation in the patient record to justify the need for such a quantity.

(4) The advanced registered nurse practitioner shall reevaluate the patient who does not follow the expected course of recovery. If significant and documented improvement in function or pain control has not occurred, the advanced registered nurse practitioner shall reconsider the continued use of opioids, or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

- (a) Change in pain level;
- (b) Change in physical function;
- (c) Change in psychosocial function; and
- (d) Additional planned diagnostic evaluations to investigate causes of continued acute nonoperative pain or other treatments.

(6) Long-acting or extended release opioids are not typically indicated for acute nonoperative pain. Should an advanced registered nurse practitioner need to prescribe a long-acting opioid for acute pain, that reason must be documented in the patient record.

(7) Medication assisted treatment (MAT) medications shall not be discontinued when treating acute pain, except as consistent with the provisions of WAC 246-840-4970.

(8) If the advanced registered nurse practitioner elects to treat a patient with opioids beyond the six-week time period

of acute nonoperative pain, the advanced registered nurse practitioner shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain, WAC 246-840-4665 and 246-840-4667, shall apply.

#### NEW SECTION

**WAC 246-840-4663 Treatment plan—Acute perioperative pain.** The advanced registered nurse practitioner shall comply with the requirements in this section when prescribing opioid analgesics for perioperative pain and shall document completion of these requirements in the patient's record.

(1) The advanced registered nurse practitioner shall consider prescribing nonopioid analgesics as the first line of pain control in patients under the provisions of WAC 246-840-4653, unless not clinically appropriate.

(2) The advanced registered nurse practitioner, or practitioner's authorized designee as defined in WAC 246-470-050, shall conduct queries of the prescription monitoring program (PMP) in accordance with the provisions of WAC 246-840-4990 to identify any Schedule II-V medications or drugs of concern received by the patient, and document in the patient record their review and any concerns.

(3) If the advanced registered nurse practitioner prescribes opioids for effective pain control, such prescription shall be in no greater quantity than needed for the expected duration of pain severe enough to require opioids. A three-day supply or less will often be sufficient; more than a fourteen-day supply will rarely be needed for perioperative pain. The advanced registered nurse practitioner shall not prescribe beyond a fourteen-day supply from the time of discharge without clinical documentation in the patient record to justify the need for such a quantity. For more specific best practices, the advanced registered nurse practitioner may refer to clinical practice guidelines including, but not limited to, those produced by the agency medical directors' group (AMDG), the Centers for Disease Control and Prevention (CDC), or the Bree Collaborative.

(4) The advanced registered nurse practitioner shall reevaluate a patient who does not follow the expected course of recovery. If significant and documented improvement in function or pain control has not occurred, the advanced registered nurse practitioner shall reconsider the continued use of opioids, or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control should include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

- (a) Change in pain level;
- (b) Change in physical function;
- (c) Change in psychosocial function; and
- (d) Additional planned diagnostic evaluations or other treatments.

(6) If the advanced registered nurse practitioner elects to prescribe a combination of opioids with a medication listed in WAC 246-840-4960 or to a patient known to be receiving a medication listed in WAC 246-840-4960 from another prac-



itioner, such prescribing must be in accordance with WAC 246-840-4960.

(7) If the advanced registered nurse practitioner elects to treat a patient with opioids beyond the six-week time period of acute perioperative pain, the advanced registered nurse practitioner shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain, WAC 246-840-4665 and 246-840-4667, shall apply unless there is documented improvement in function or pain control, and there is a documented plan and timing for discontinuation of all opioid medications.

#### NEW SECTION

**WAC 246-840-4665 Patient evaluation and patient record—Subacute pain.** The advanced registered nurse practitioner shall comply with the requirements in this section when prescribing opioid analgesics for subacute pain and shall document completion of these requirements in the patient record.

(1) Prior to prescribing an opioid for subacute pain, the advanced registered nurse practitioner shall:

(a) Conduct an appropriate history and physical examination or review and update the patient's existing history and examination taken during the acute nonoperative or acute perioperative phase;

(b) Evaluate the nature and intensity of the pain;

(c) Inquire about other medications the patient is prescribed or taking including type, dosage, and quantity prescribed;

(d) Conduct, or cause the practitioner's authorized designee as defined in WAC 246-470-050 to conduct, a query of the prescription monitoring program (PMP) in accordance with the provisions of WAC 246-840-4990, to identify any Schedule II-V medications or drugs of concern received by the patient, and document their review and any concerns;

(e) Screen and document the patient's potential for high-risk behavior and adverse events related to opioid therapy. If the advanced registered nurse practitioner determines the patient is high-risk, consider lower dose therapy, shorter intervals between prescriptions, more frequent visits, increased biological specimen testing, and prescribing rescue naloxone;

(f) Obtain a biological specimen test if the patient's function is deteriorating or if pain is escalating; and

(g) Screen or refer the patient for further consultation for psychosocial factors that may be impairing recovery including, but not limited to, depression or anxiety.

(2) The advanced registered nurse practitioner treating a patient for subacute pain with opioids shall ensure that, at a minimum, the following are documented in the patient record:

(a) The presence of one or more recognized diagnoses or indications for the use of opioid pain medication;

(b) The observed significant and documented improvement in function or pain control forming the basis to continue prescribing opioid analgesics beyond the acute pain episode;

(c) The result of any queries of the PMP;

(d) All medications the patient is known to be prescribed or taking;

(e) An appropriate pain treatment plan, including the consideration of, or attempts to use, nonpharmacological modalities and nonopioid therapy;

(f) Results of any aberrant biological specimen testing results and the risk-benefit analysis if opioids are to be continued;

(g) Results of screening or referral for further consultation for psychosocial factors that may be impairing recovery including, but not limited to, depression or anxiety;

(h) Results of screening for the patient's level of risk for aberrant behavior and adverse events related to opioid therapy;

(i) The risk-benefit analysis of any combination of prescribed opioid and benzodiazepines or sedative-hypnotics, if applicable; and

(j) All other required components of the patient record, as established in statute or rule.

(3) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional planned diagnostic evaluations or other treatments.

#### NEW SECTION

**WAC 246-840-4667 Treatment plan—Subacute pain.** (1) The advanced registered nurse practitioner shall recognize the progression of a patient from the acute nonoperative or acute perioperative phase to the subacute phase and take into consideration the risks and benefits of continued opioid prescribing for the patient.

(2) If tapering has not begun prior to the six- to twelve-week subacute phase, the advanced registered nurse practitioner shall reevaluate the patient who does not follow the expected course of recovery. If significant and documented improvement in function or pain control has not occurred, the advanced registered nurse practitioner shall reconsider the continued use of opioids, or whether tapering or discontinuing opioids is clinically indicated. The advanced registered nurse practitioner shall make reasonable attempts to discontinue the use of opioids prescribed for the acute pain event by no later than the twelve-week conclusion of the subacute phase.

(3) If the advanced registered nurse practitioner prescribes opioids for effective pain control, such prescription shall be in no greater quantity than needed for the expected duration of pain severe enough to require opioids. The advanced registered nurse practitioner shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity during the subacute phase.

(4) If the advanced registered nurse practitioner elects to prescribe a combination of opioids with a medication listed in WAC 246-840-4960 or prescribes opioids to a patient known to be receiving a medication listed in WAC 246-840-4960

from another practitioner, such prescribing must be in accordance with WAC 246-840-4960.

(5) If the advanced registered nurse practitioner elects to treat a patient with opioids beyond the six- to twelve-week subacute phase, the advanced registered nurse practitioner shall document in the patient record that the patient is transitioning from subacute pain to chronic pain. Rules governing the treatment of chronic pain, WAC 246-840-467 through 246-840-4940, shall apply.

**AMENDATORY SECTION** (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-467 Patient evaluation and patient record.** The advanced registered nurse practitioner shall ~~((obtain;))~~ evaluate~~((;))~~ and document the patient's health history and physical examination in the patient's health record prior to treating for chronic ~~((noneancer))~~ pain.

(1) The patient's health history shall include:

(a) The nature and intensity of the pain;

(b) The effect of pain on physical and psychosocial function;

(c) Current and past treatments for pain, including medications and their efficacy;

~~((b))~~ (d) Review of any significant comorbidities; ~~((and~~ (e)) (e) Any current or historical substance ((abuse)) use disorder;

(f) Current medications and, as related to treatment of the pain, the efficacy of medications tried; and

(g) Medication allergies.

(2) ~~((The patient's health history should include:~~

(a) ~~A review of any available prescription monitoring program or emergency department-based information exchange; and~~

(b) ~~Any relevant information from a pharmacist provided to advanced registered nurse practitioners.~~

~~((3))~~ The ~~((initial))~~ patient evaluation ~~((shall))~~ prior to opioid prescribing must include:

(a) Appropriate physical examination;

(b) ~~((The nature and intensity of the pain;~~

(c) The effect of the pain on physical and psychological function;

~~((d))~~ Consideration of the risks and benefits of chronic pain treatment for the patient;

(c) Medications the patient is taking including indication(s), ((date,)) type, dosage, ((and)) quantity prescribed((;)

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

(i) History of addiction;

(ii) Abuse or aberrant behavior regarding opioid use;

(iii) Psychiatric conditions;

(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;

(v) Poorly controlled depression or anxiety;

(vi) Evidence or risk of significant adverse events, including falls or fractures;

(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;

~~((viii))~~ Repeated visits to emergency departments seeking opioids;

~~((ix))~~ History of sleep apnea or other respiratory risk factors;

~~((x))~~ Possible or current pregnancy; and

~~((xi))~~ History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the advanced registered nurse practitioner; and

(f) The advanced registered nurse practitioner's instructions to the patient), and as related to treatment of the pain, efficacy of medications tried;

(d) Review of the prescription monitoring program (PMP) to identify any Schedule II-V medications or drugs of concern received by the patient in accordance with the provisions of WAC 246-840-4990;

(e) Any available diagnostic, therapeutic, and laboratory results;

(f) Use of a risk assessment tool and assignment of the patient to a high, moderate, or low risk category. The advanced registered nurse practitioner should use caution and shall monitor a patient more frequently when prescribing opioid analgesics to a patient identified as high risk;

(g) Any available consultations, particularly as related to the patient's pain;

(h) Pain related diagnosis, including documentation of the presence of one or more recognized indications for the use of pain medication;

(i) Treatment plan and objectives including:

(i) Documentation of any medication prescribed;

(ii) Biologic specimen testing ordered; and

(iii) Any labs or imaging ordered.

(j) Written agreements, as described in WAC 246-840-475 for treatment between the patient and the advanced registered nurse practitioner;

(k) Patient counseling concerning risks, benefits, and alternatives to chronic opioid therapy.

(3) The health record must be maintained in an accessible manner, readily available for review, and contain documentation of requirements in subsections (1) and (2) of this section, and all other required components of the patient record, as set out in statute or rule.

**AMENDATORY SECTION** (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-470 Treatment plan.** (1) When the patient enters the chronic pain phase, the advanced registered nurse shall reevaluate the patient by treating the situation as a new disease.

~~(2)~~ The ~~((written))~~ chronic pain treatment plan ~~((shall))~~ must state the objectives that will be used to determine treatment success and ~~((shall))~~ must include, at a minimum:

- (a) Any change in pain relief;
- (b) Any change in physical and psychosocial function; and
- (c) Additional diagnostic evaluations or other planned treatments.

~~((2))~~ (3) After treatment begins, the advanced registered nurse practitioner ~~((should))~~ shall adjust drug therapy to the individual health needs of the patient.

~~(4)~~ The advanced registered nurse practitioners shall ~~((include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. Advanced registered nurse practitioners shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.~~

~~(3)~~ Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment)) complete patient notification in accordance with the provisions of WAC 246-840-4651.

AMENDATORY SECTION (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-475 Written agreement for treatment.**

~~((Chronic noncancer pain patients should receive all chronic pain management prescriptions from one advanced registered nurse practitioner and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing))~~ The advanced registered nurse practitioner shall use a written agreement for treatment with the patient ~~((outlining patient))~~ who requires long-term opioid therapy for chronic pain that outlines the patient's responsibilities. This written agreement for treatment ((shall)) must include:

(1) The patient's agreement to provide biological samples for ~~((urine/serum medical level screening))~~ biological specimen testing when requested by the advanced registered nurse practitioner;

(2) The patient's agreement to take medications at the dose and frequency prescribed, with a specific protocol for lost prescriptions and early refills or renewals;

(3) Reasons for which ~~((drug))~~ opioid therapy may be discontinued ~~((e.g., violation of agreement))~~;

(4) The requirement that all chronic ~~((pain management))~~ opioid prescriptions are provided by a single prescriber, a single clinic, or a multidisciplinary pain clinic ~~((and))~~;

(5) The requirement that all chronic opioid prescriptions are to be dispensed by a single pharmacy or pharmacy system whenever possible;

~~((5))~~ (6) The patient's agreement to not abuse ~~((alcohol or use other medically unauthorized substances;~~

~~(6))~~ substances that can put the patient at risk for adverse outcomes;

(7) A written authorization for:

(a) The advanced registered nurse practitioner to release the agreement for treatment to:

(i) Local emergency departments;

(ii) Urgent care facilities;

(iii) Other practitioners caring for the patient who might prescribe pain medications; and

(iv) Pharmacies;

(b) Other practitioners to report violations of the agreement ~~((back))~~ to the advanced registered nurse practitioner treating the patient's chronic pain and to the prescription monitoring program (PMP);

~~((7))~~ A written authorization that the advanced registered nurse practitioner may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;

~~(8)~~ Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;

~~(9))~~ (8) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

~~((10))~~ (9) Acknowledgment that, if the patient violates the terms of the agreement, the violation and the advanced registered nurse practitioner's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

AMENDATORY SECTION (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-477 Periodic review.** (1) The advanced registered nurse practitioner shall periodically review the course of treatment for chronic ~~((noncancer))~~ pain ~~((the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.~~

~~(4))~~ The frequency of visits, biological testing, and prescription monitoring program (PMP) queries are determined based on the patient's risk category:

(a) For a high-risk patient, at least quarterly;

(b) For a moderate-risk patient, at least semiannually;

(c) For a low-risk patient, at least annually;

(d) Immediately upon indication of concerning aberrant behavior; and

(e) More frequently at the advanced registered nurse practitioner's discretion.

(2) During the periodic review, the advanced registered nurse practitioner shall determine:

(a) Patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved ~~((or))~~, diminished, or are maintained using objective evidence ~~((considering any available information from family members or other caregivers))~~; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the advanced registered nurse practitioner's evaluation of progress towards treatment objectives.

~~((2))~~ (3) Periodic or patient evaluations must also include:

(a) History and physical examination related to the pain;  
(b) Use of validated tools to document either maintenance of function and pain control or improvement in function and pain level; and

(c) Review of the PMP to identify any Schedule II-V medications or drugs of concern received by the patient at a frequency determined by the patient's risk category, and otherwise in accordance with the provisions of WAC 246-840-4990 and subsection (1) of this section.

(4) The advanced registered nurse practitioner shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The advanced registered nurse practitioner shall consider tapering, changing, or discontinuing treatment ~~((when:~~

~~(a) Function or pain does not improve after a trial period;~~  
~~(b) There is evidence of significant adverse effects;~~  
~~(c) Other treatment modalities are indicated; or~~  
~~(d) There is evidence of misuse, addiction, or diversion.~~

~~(3) The advanced registered nurse practitioner should periodically review information from any available prescription monitoring program or emergency department-based information exchange.~~

~~(4) The advanced registered nurse practitioner should periodically review any relevant information from a pharmacist provided to the advanced registered nurse practitioner) in accordance with the provisions of WAC 246-840-4935.~~

AMENDATORY SECTION (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-485 Consultation—Recommendations and requirements.** (1) The advanced registered nurse practitioner shall consider and document referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic ~~((noncancer))~~ pain patients who are under eighteen years of age ~~((;))~~ or who are ~~((at risk for medication misuse, abuse, or diversion))~~ potential high-risk patients. The management of pain in patients with a history of substance ~~((abuse))~~ use or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold ~~((for adults))~~ is one hundred twenty milligrams morphine equivalent dose (MED)~~((for aH))~~. ~~((In the event))~~ If an advanced registered nurse practitioner prescribes a dosage amount that meets or exceeds the mandatory consultation threshold of one hundred twenty milligrams MED ~~((orally))~~ per day, a consultation with a pain management specialist as described in WAC 246-840-493, 246-853-750, 246-854-330, 246-817-965, 246-918-880, 246-919-940, or 246-922-750 is required, unless the consultation is exempted under WAC 246-840-487 or 246-

840-490. ~~((Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged.~~

~~((a))~~ The mandatory consultation shall consist of at least one of the following:

~~((i))~~ (a) An office visit with the patient and the pain management specialist;

~~((ii) A telephone))~~ (b) A consultation between the pain management specialist and the advanced registered nurse practitioner;

~~((iii) An electronic consultation between the pain management specialist and the advanced registered nurse practitioner; or~~

~~((iv))~~ (c) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the advanced registered nurse practitioner or with a licensed health care practitioner designated by the advanced registered nurse practitioner or the pain management specialist; or

(d) Other chronic pain evaluation services as approved by the commission.

~~((b) An))~~ (3) The advanced registered nurse practitioner shall document each ~~((mandatory))~~ consultation with the pain management specialist. Any written record of ~~((the))~~ a consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the pain management specialist provides a written record of the consultation to the advanced registered nurse practitioner, the advanced registered nurse practitioner shall maintain it as part of the patient record.

~~((3))~~ Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist as defined in WAC 246-840-493, at any time. For the purposes of WAC 246-840-460 through 246-840-493, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.) (4) The advanced registered nurse practitioner shall use great caution when prescribing opioids to children and adolescents with chronic pain; appropriate referral to a specialist is encouraged.

AMENDATORY SECTION (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-487 Consultation—Exemptions for exigent and special circumstances.** An advanced registered nurse practitioner is not required to consult with a pain management specialist as ~~((described))~~ defined in WAC 246-840-493 when ~~((he or she))~~ the advanced registered nurse practitioner has documented adherence to all standards of practice as defined in WAC 246-840-460 through 246-840-493, and when any one or more of the following conditions apply:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain, which may or may not include hospitalization, requiring a temporary escalation in opioid dosage ~~((;))~~ with expected return to ~~((or below))~~ their baseline dosage level or below;

(3) The advanced registered nurse practitioner documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalency dosage (MED) per day without first obtaining a consultation; or

(4) The advanced registered nurse practitioner documents the patient's pain and function is stable, and the patient is on a nonescalating dosage of opioids.

AMENDATORY SECTION (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-490 Consultation—Exemptions for the advanced registered nurse practitioner.** The advanced registered nurse practitioner is exempt from the consultation requirement in WAC 246-840-485 if one or more of the following qualifications are met:

(1) The advanced registered nurse practitioner is a pain management specialist under WAC 246-840-493;

(2) The advanced registered nurse practitioner has successfully completed, within the last two years, a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization ~~(with)~~. At least two of these hours must be dedicated to ~~(long-acting opioids, to include methadone)~~ substance use disorder;

(3) The advanced registered nurse practitioner is a pain management practitioner working in a multidisciplinary chronic pain ~~(treatment center)~~ clinic or a multidisciplinary academic research facility; or

(4) The advanced registered nurse practitioner has a minimum three years of clinical experience in a chronic pain management ~~(setting)~~ clinic, and at least thirty percent of ~~(his or her)~~ the advanced registered nurse practitioners' current practice is the direct provision of pain management care.

AMENDATORY SECTION (Amending WSR 11-10-064, filed 5/2/11, effective 7/1/11)

**WAC 246-840-493 Pain management specialist.** A pain management specialist, functioning as a consultant for the prescribing of chronic opioid therapy, shall meet ~~((one or more of))~~ the following qualifications:

(1) ~~((If a physician or osteopathic physician:~~

~~(a) Board certified or board eligible by an American Board of Medical Specialties approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or~~

~~(b) Has a subspecialty certificate in pain medicine by an ABMS approved board; or~~

~~(c) Has a certification of added qualification in pain management by the AOA; or~~

~~(d) A minimum of three years of clinical experience in a chronic pain management care setting; and~~

~~(i) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for physicians or the Washington state board of osteopathic medicine and surgery for osteopathic physicians; and~~

~~(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and~~

~~(iii) At least thirty percent of the physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.~~

~~(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.~~

~~(3) If an advanced registered nurse practitioner (ARNP):~~

~~(a) A minimum of three years of clinical experience in a chronic pain management care setting;~~

~~(b)) Credentialed in pain management by a Washington state nursing care quality assurance commission-approved ~~((national professional association, pain association, or other)) certifying or~~ credentialing entity~~((;~~~~

~~(e)); or~~

~~(2) Meet all of the following:~~

~~(a) A minimum of three years of clinical experience in a chronic pain management care setting;~~

~~(b) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and~~

~~((d)) (c) At least thirty percent of the ~~((ARNP's)) advanced registered nurse practitioner's~~ current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.~~

~~((4) If a podiatric physician:~~

~~(a) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or~~

~~(b) A minimum of three years of clinical experience in a chronic pain management care setting; and~~

~~(c) Credentialed in pain management by a Washington state podiatric medical board, approved national professional association, pain association, or other credentialing entity; and~~

~~(d) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.)~~

#### NEW SECTION

**WAC 246-840-4935 Tapering requirements.** The advanced registered nurse practitioner shall assess and document the appropriateness of continued use of the current treatment plan if the patient's response to, or compliance with, the current treatment plan is unsatisfactory. The advanced registered nurse practitioner shall consider tapering, changing, discontinuing treatment, or referral for a substance use disorder evaluation when:

(1) The patient requests;

(2) The patient experiences a deterioration in function or pain;

- (3) The patient is noncompliant with the written agreement;
- (4) Other treatment modalities are indicated;
- (5) There is evidence of misuse, abuse, substance use disorder, or diversion;
- (6) The patient experiences a severe adverse event or overdose;
- (7) There is unauthorized escalation of doses; or
- (8) There is continued dose escalation with no improvement in pain, function, or quality of life.

#### NEW SECTION

**WAC 246-840-4940 Patients with chronic pain, including those on high doses, establishing a relationship with a new practitioner.** (1) When a patient receiving chronic opioid pain medication(s) changes to a new advanced registered nurse practitioner, the advanced registered nurse practitioner shall query the prescription monitoring program (PMP). It is normally appropriate for the new advanced registered nurse practitioner to initially maintain the patient's current opioid doses. Over time, the advanced registered nurse practitioner may evaluate if any tapering or other adjustments in the treatment plan can or should be done.

(2) An advanced registered nurse practitioner's treatment of a new high dose chronic pain patient is exempt from the mandatory consultation requirements of WAC 246-840-485 and the tapering requirements of WAC 246-840-4935 if:

(a) The patient was previously being treated with a dosage of opioids in excess of one hundred twenty milligram MED for chronic pain under an established written agreement for treatment of the same chronic condition or conditions;

(b) The patient's dose is stable and nonescalating;

(c) The patient has a demonstrated history in their record of compliance with treatment plans and written agreements as documented by medical records and PMP queries; and

(d) The patient has documented functional stability, pain control, or improvements in function or pain control, at the dose in excess to one hundred twenty milligram MED.

(3) With respect to the treatment of a new patient under subsection (1) or (2) of this section, this exemption applies for the first three months of newly established care, after which the requirements of WAC 246-840-485 and 246-840-4935 shall apply.

#### NEW SECTION

**WAC 246-840-4950 Special populations—Patients twenty-five years of age or under, pregnant patients, and aging populations.** (1) Patients twenty-five years of age or under. In the treatment of pain for patients twenty-five years of age or under, the advanced registered nurse practitioner shall treat pain in a manner equal to that of an adult but must account for the weight of the patient and adjust the dosage prescribed accordingly.

(2) Pregnant patients. Use of medication assisted treatment (MAT) opioids, such as methadone or buprenorphine, by a pregnant patient shall not be discontinued without oversight by the MAT prescribing practitioner. The advanced reg-

istered nurse practitioner shall weigh carefully the risks and benefits of opioid detoxification during pregnancy.

(3) Aging populations. As people age, their tolerance and metabolizing of opioids may change. The advanced registered nurse practitioner shall consider the distinctive needs of patients who are sixty-five years of age or older and who have been on chronic opioid therapy or who are initiating opioid treatment.

#### NEW SECTION

**WAC 246-840-4955 Episodic care of chronic opioid patients.** (1) When providing episodic care for a patient who the advanced registered nurse practitioner knows is being treated with opioids for chronic pain, such as for emergency or urgent care, the advanced registered nurse practitioner shall review the prescription monitoring program (PMP) to identify any Schedule II-V or drugs of concern received by the patient and document in the patient record their review and any concerns.

(2) An advanced registered nurse practitioner providing episodic care to a patient who the advanced registered nurse practitioner knows is being treated with opioids for chronic pain should provide additional opioids to be equal to the severity of the acute pain. If opioids are provided, the advanced registered nurse practitioner shall limit the use of opioids to the minimum amount necessary to control the acute nonoperative pain, acute perioperative pain, or similar acute exacerbation of pain until the patient can receive care from the practitioner who is managing the patient's chronic pain treatment.

(3) The episodic care advanced registered nurse practitioner shall report known violations of the patient's written agreement to the patient's treatment practitioner who provided the agreement for treatment.

(4) The episodic care advanced registered nurse practitioner shall coordinate care with the patient's chronic pain treatment practitioner if that person is known to the episodic care advanced registered nurse practitioner, when practicable.

#### NEW SECTION

**WAC 246-840-4960 Coprescribing with certain medications.** (1) The advanced registered nurse practitioner shall not knowingly prescribe opioids in combination with the following Schedule II-IV medications without documentation in the patient record of clinical judgment and discussion of risks with the patient:

- (a) Benzodiazepines;
- (b) Barbiturates;
- (c) Sedatives;
- (d) Carisoprodol; or
- (e) Nonbenzodiazepine hypnotics also known as Z drugs.

(2) If a patient receiving an opioid prescription is known to be concurrently prescribed one or more of the medications listed in subsection (1) of this section, the advanced registered nurse practitioner prescribing opioids shall consult with the other prescriber(s) to establish a patient care plan for the

use of the medications concurrently or consider whether one of the medications should be tapered.

#### NEW SECTION

##### **WAC 246-840-4970 Coprescribing of opioids for patients receiving medication assisted treatment (MAT).**

(1) Where practicable, the advanced registered nurse practitioner providing acute nonoperative pain or acute perioperative pain treatment to a patient known to be receiving medication assisted treatment (MAT) shall prescribe opioids for pain relief either in consultation with the MAT prescribing practitioner or a pain specialist.

(2) The advanced registered nurse practitioner shall not discontinue MAT medications when treating acute nonoperative pain or acute perioperative pain without documentation of the reason for doing so, nor shall use of these medications be used to deny necessary operative intervention.

#### NEW SECTION

##### **WAC 246-840-4980 Coprescribing of naloxone. (1)**

The advanced registered nurse practitioner shall confirm or provide a current prescription for naloxone when fifty milligrams MED or above, or when prescribed to a high-risk patient.

(2) The advanced registered nurse practitioner should counsel and provide an option for a current prescription for naloxone to patients being prescribed opioids as clinically indicated.

#### NEW SECTION

##### **WAC 246-840-4990 Prescription monitoring program—Required registration, queries, and documentation.**

(1) The advanced registered nurse practitioner shall register to access the prescription monitoring program (PMP) or demonstrate proof of having registered to access the PMP if they prescribe opioids in Washington state.

(2) The advanced registered nurse practitioner is permitted to delegate performance of a required PMP query to an authorized designee, as defined in WAC 246-470-050.

(3) At a minimum, the advanced registered nurse practitioner shall ensure a PMP query is performed prior to the prescription of an opioid at the following times:

(a) First opioid prescription for acute pain unless clinical exception is documented; such exceptions should be rare, occurring in less than ten percent of the first prescriptions;

(b) First refill for acute pain if not checked with initial prescription due to documented clinical exception;

(c) Time of transition from acute to subacute pain;

(d) Time of transition from subacute to chronic pain; and

(e) Time of preoperative assessment for any elective surgery or prior to discharge for nonelective surgery.

(4) For chronic pain management, the advanced registered nurse practitioner shall ensure a PMP query is performed at a minimum frequency determined by the patient's risk assessment, as follows:

(a) For a high-risk patient, a PMP query shall be completed at least quarterly.

(b) For a moderate-risk patient, a PMP query shall be completed at least semiannually.

(c) For a low-risk patient, a PMP query shall be completed at least annually.

(5) The advanced registered nurse practitioner shall ensure a PMP query is performed for any chronic pain patient immediately upon identification of aberrant behavior.

(6) The advanced registered nurse practitioner shall ensure a PMP query is performed when providing episodic care to a patient who the advanced registered nurse practitioner knows to be receiving opioids for chronic pain, in accordance with WAC 246-840-4955.

(7) For the purposes of this section, the requirement to consult the PMP does not apply when the PMP or the electronic medical record (EMR) cannot be accessed by the advanced registered nurse practitioner due to a temporary technological or electrical failure. The query shall be completed as soon as technically feasible.

(8) Pertinent concerns discovered in the PMP shall be documented in the patient record.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-840-473 Informed consent.

WAC 246-840-480 Long-acting opioids, including methadone.

WAC 246-840-483 Episodic care.

#### **WSR 18-14-087**

##### **PROPOSED RULES**

##### **DEPARTMENT OF HEALTH**

(Board of Naturopathy)

[Filed July 2, 2018, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-059.

Title of Rule and Other Identifying Information: Amending WAC 246-836-210 Authority to use, prescribe, dispense and order and new WAC 246-836-212 Nonsurgical medical cosmetic procedures, the board of naturopathy (board) is proposing an amendment to an existing rule and proposing to add a new section of rule to address the practice of nonsurgical cosmetic procedures performed by naturopathic physicians.

Hearing Location(s): On September 7, 2018, at 1:00 p.m., at the Department of Health, Town Center 2 (TC2), Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: September 7, 2018.

Submit Written Comments to: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by August 31, 2018.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, TTY 360-833-6388 or 711, email susan.gragg@doh.wa.gov, by August 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing an amendment to an existing rule and proposing to add a new section of rule to clarify the practice of nonsurgical cosmetic procedures performed by naturopathic physicians, and adds training and practice requirements for those naturopathic physicians who choose to perform them.

Reasons Supporting Proposal: The proposed rule is necessary to set minimum standards for the performance of nonsurgical cosmetic procedures by naturopathic physicians and ensure that naturopathic physicians performing these procedures apply the same, consistent standard of good medical practice as a similar, prudent health care practitioner.

Statutory Authority for Adoption: RCW 18.36A.160.

Statute Being Implemented: Chapter 18.36A RCW.

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

Name of Proponent: Washington state board of naturopathy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

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 Gragg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4941, fax 360-236-2901, TTY 360-833-6388 or 711, email susan.gragg@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No small business economic impact statement is required because although the proposed rules do have a more-than-minor cost, that cost is a one-time cost, is only for those practitioners choosing to perform the nonsurgical cosmetic procedures, and will be more than offset by the expected new revenue that will come in to providers through being able to offer these additional health care services. The cost of the one-time training is expected to be approximately \$1,700; this is more than the threshold of \$1,138 but the new expected income would be a new on-going revenue stream. The cost impact threshold is calculated as follows: Payroll-based threshold for an average establishment in this NAICS code 621399 (Offices of All Other Miscellaneous Health Practitioners) that would be affected by these proposed rules is \$1,138 ( $103,873 * 1000 / 913 * (0.01) = \$1,138$  where 103,873 \* 1000 is Annual payroll and 913 is Total Establishments for this NAICS.

July 2, 2018  
Blake T. Maresh  
Executive Director

AMENDATORY SECTION (Amending WSR 12-13-104, filed 6/20/12, effective 7/21/12)

**WAC 246-836-210 Authority to use, prescribe, dispense and order.** (1) Naturopathic medical practice includes the prescription, administration, dispensing, and use of:

(a) Nutrition and food science, physical modalities, minor office procedures, homeopathy, hygiene, and immunizations/vaccinations;

(b) Contraceptive devices;

(c) Nonlegend medicines including vitamins, minerals, botanical medicines, homeopathic medicines, and hormones;

(d) Legend drugs as defined under RCW 69.41.010 (~~(with the exception of Botulinum Toxin (commonly known as, among other names, Botox, Vistabel, Dysport, or NeuroBloc) and inert substances used for cosmetic purposes)~~); and

(e) Codeine and testosterone products that are contained within Schedules III, IV, and V in chapters 69.50 RCW and 246-887 WAC.

(2) In accordance with RCW 69.41.010(13), all prescriptions must be hand-printed, typewritten, or generated electronically.

(3) Prior to being allowed to administer, prescribe, dispense, or order controlled substances, a naturopathic physician must meet the requirements in WAC 246-836-211 and have obtained the appropriate registration issued by the Federal Drug Enforcement Administration.

(4) Naturopathic physicians may not treat malignancies except in collaboration with a practitioner licensed under chapter 18.57 or 18.71 RCW.

#### NEW SECTION

**WAC 246-836-212 Nonsurgical medical cosmetic procedures.** (1) Prior to performing a nonsurgical cosmetic procedure, a naturopathic physician must establish a physician/patient relationship which includes, but is not limited to:

(a) Taking a history;

(b) Performing an appropriate physical examination;

(c) Making an appropriate diagnosis;

(d) Recommending appropriate treatment;

(e) Obtaining the patient's informed consent;

(f) Providing instructions for emergency and follow-up care; and

(g) Preparing an appropriate medical record.

(2) The naturopathic physician is responsible for:

(a) The safety of the patient;

(b) Performing the nonsurgical medical cosmetic procedure in accordance with standard medical practice; and

(c) Ensuring that each treatment is documented in the patient's medical record.

(3) Prior to being allowed to prescribe and administer botulinum toxins (commonly known as, among other names, Botox, Vistabel, Dysport, or NeuroBloc) and inert substances consistent with naturopathic scope of practice used for cosmetic purposes, naturopathic physicians must be appropriately trained in aesthetic injectable techniques. Such training must:

(a) Be obtained through a certifying body or organization that is:

(i) Accredited or nationally recognized;



(ii) A recognized entity as defined in WAC 246-836-080;

(iii) Part of a council on naturopathic medical education (CNME) accredited residency; or

(iv) Conducted through in-person training substantially equivalent to those trainings in (a)(i) through (iii) of this subsection by a qualified individual holding an active license that includes the authority to prescribe and administer botulinum toxins and inert substances.

(b) Be a combination of hands-on training and training in pharmacology that pertains to aesthetics and must also include:

(i) Criteria for the selection and treatment of patients;

(ii) Indications and contraindications for each procedure;

(iii) Preprocedural and postprocedural care;

(iv) Recognition and acute management of potential complications; and

(v) Infectious disease control.

### WSR 18-14-088

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed July 2, 2018, 12:24 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-139.

Title of Rule and Other Identifying Information: Chapters 246-853 and 246-854 WAC, the board of osteopathic medicine and surgery (board) proposes new sections and changes to existing rule that will establish requirements and standards for prescribing opioid drugs by osteopathic physicians and osteopathic physician assistants consistent with the directives of ESHB 1427.

Hearing Location(s): On August 22, 2018, at 9:00 a.m., at the Department of Health, 20425 72nd Avenue South, Building 2, Suite 310, Room 309, Kent, WA 98032.

Date of Intended Adoption: August 22, 2018.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by August 15, 2018.

Assistance for Persons with Disabilities: Contact Davis Hylkema, phone 360-236-4663, fax 360-236-2901, TTY 360-833-6388 or 711, email [davis.hylkema@doh.wa.gov](mailto:davis.hylkema@doh.wa.gov), by August 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing establishing new sections of rule to implement the provisions of ESHB 1427. The bill directed five boards and commissions to consider the agency medical directors' group and the centers for disease control guidelines, and to work in consultation with the department, the University of Washington, and the professional associations of each profession to develop requirements for prescribing opioid drugs. The board is also proposing amendments to the current pain management rules to assure alignment with the proposed opioid pre-

scribing rules, increase consistent rule application, and reduce duplication between existing and new rules.

Reasons Supporting Proposal: The proposed rules are necessary to establish and implement opioid prescribing requirements for osteopathic physicians and osteopathic physician assistants. The proposed rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with the directives of ESHB 1427. The goal of this proposal is to help reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs.

Statutory Authority for Adoption: RCW 18.57.800 and 18.57A.800.

Statute Being Implemented: ESHB 1427 (chapter 297, Laws of 2017), codified in part as RCW 18.57.800 and 18.57A.800.

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

Name of Proponent: Washington state board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766.

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 Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 360-833-6388 or 711, email [brett.cain@doh.wa.gov](mailto:brett.cain@doh.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules impact clinics and hospitals where osteopathic physicians and osteopathic physician assistants (PA) practice if the physician(s) or PA(s) in the business prescribe opioids for pain management. The proposed rules do not apply to osteopathic physicians or PAs who do not prescribe opioids. The following North American Industrial Classification System (NAICS) six-digit codes, total number of businesses in Washington state in 2013, total combined and average business payroll (rounded to the thousands), and minor cost thresholds have been applied to the proposal:

1. NAICS Code: 62111 Office of Physicians (except mental health specialists)

Total establishments in Washington: 3,120

Total combined annual payroll: \$3,744,650,000

Average annual payroll (total payroll divided by total establishments): \$1,200,208

Minor Cost threshold (Average payroll multiplied by .01): \$12,002

2. NAICS Code: 622110 General Medical and Surgical Hospitals

Total establishments in Washington: 100

Total combined annual payroll: \$6,566,100,000

Average annual payroll (total payroll divided by total establishments): \$656,610,000

Minor Cost threshold (Average payroll multiplied by .01): \$656,610

3. NAICS Code: 621399 Offices of All Other Miscellaneous Health Practitioners

Total establishments in Washington: 913

Total combined annual payroll: \$103,873,000

Average annual payroll (total payroll divided by total establishments): \$113,771

Minor Cost threshold (Average payroll multiplied by .01): \$1,137

The board has analyzed the anticipated costs of compliance for a business at \$49.13 for every patient encounter for physicians and \$24.36 for PAs only when a physician or PA prescribes opioids, and only if the physician or PA performs all of the tasks required in the proposed rules. Many of the required tasks in the rules are often performed by other staff (such as medical assistants or licensed practical nurses) at much lower costs. For example, regarding the following tasks required under the proposed rules at every patient encounter when an opioid is prescribed:

- Documenting patient history and physical condition.
- Documenting/Updating the patient health record.
- Completing a prescription monitoring program (PMP) check.

A physician performing these tasks would cost the business an estimated \$30.77\*;

A PA performing these tasks would cost the business an estimated \$15.45\*;

A medical assistant-certified could perform the same tasks for an estimated \$6.87\*.

Depending on the patient's phase of pain management, the business may incur the following additional cost:

a. From \$0 per patient encounter for a patient whose pain level and function meet the expected course of recovery; up to

b. An estimated \$19.72 per patient encounter when a physician (or \$9.74 if a PA) must seek a consultation with another practitioner regarding specific co-prescribed controlled drugs, or co-prescribing opioids to a patient receiving medication assisted treatment.

Based on these anticipated costs, the board has determined that the proposed rules would not impose more than minor costs for businesses that must comply.

\*Based on United States Department of Labor Statistics, Occupational Employment and Wages 2017 for 29-1069 Physicians and Surgeons, 29-1071 Physician Assistants, and 31-9092 Medical Assistants.

July 2, 2018  
C. Hunter, DO  
Chair

## OPIOID PRESCRIBING—GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 11-10-062, filed 5/2/11, effective 7/1/11)

**WAC 246-853-660 ((Pain management—))Intent and scope.** ((These rules)) WAC 246-853-660 through 246-853-790 govern the ((use of opioids in the treatment of patients for chronic noneancer)) prescribing of opioids in the treatment of pain.

AMENDATORY SECTION (Amending WSR 11-10-062, filed 5/2/11, effective 7/1/11)

**WAC 246-853-661 Exclusions.** ((The rules adopted under)) WAC 246-853-660 through ((246-853-673)) 246-853-790 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care; ((or
- (2) The management of acute pain caused by an injury or surgical procedure.))
- (3) The treatment of inpatient hospital patients. As used in this section, "inpatient" means a person who has been admitted to a hospital for more than twenty-four hours; or
- (4) The provision of procedural premedications.

AMENDATORY SECTION (Amending WSR 11-10-062, filed 5/2/11, effective 7/1/11)

**WAC 246-853-662 Definitions.** The definitions in this section apply in WAC ((246-853-600)) 246-853-660 through ((246-853-673)) 246-853-790 unless the context clearly requires otherwise.

(1) "Aberrant behavior" means behavior that indicates misuse, diversion, or substance use disorder. This includes, but is not limited to, multiple early refills or obtaining prescriptions of the same or similar drugs from more than one osteopathic physician or other health care practitioner.

(2) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. ((It is generally time limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

- (a) Impaired control over drug use;
- (b) Craving;
- (c) Compulsive use; or
- (d) Continued use despite harm.

(3) Acute pain is considered to be six weeks or less in duration.

(3) "Biological specimen test" or "biological specimen testing" means tests of urine, hair, or other biological samples for various drugs and metabolites.

(4) "Chronic ((noneancer)) pain" means a state in which ((noneancer)) pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years((-

(4) "Comorbidity" means a preexisting or coexisting physical or psychiatric disease or condition.

(5) "Episodic care" means medical care provided by a provider other than the designated primary provider in the acute care setting, for example, urgent care or emergency department.

(6) Chronic pain may include pain resulting from cancer in a patient who is up to two years post completion of

curative anti-cancer treatment with no current evidence of disease.

(5) "High-dose" means ninety milligrams MED, or more, per day.

(6) "High-risk" is a category of patient at increased risk of morbidity or mortality, such as from comorbidities, polypharmacy, history of substance use disorder or abuse, aberrant behavior, high-dose opioid prescription, or the use of any central nervous system depressant.

(7) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. ~~((Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as freestanding hospice facilities, hospitals, nursing homes, or other long-term care facilities.~~

~~(7))~~

(8) "Hospital" means any institution, place, building, or agency licensed by the department under chapter 70.41 or 71.12 RCW, or designated under chapter 72.23 RCW to provide accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(9) "Medication assisted treatment" or "MAT" means the use of pharmacologic therapy, often in combination with counseling and behavioral therapies, for the treatment of substance use disorders.

(10) "Morphine equivalent dose" or "MED" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

~~((8))~~ (11) "Multidisciplinary pain clinic" means a ~~((clinic or office))~~ facility that provides comprehensive pain management and ~~((may))~~ includes care provided by multiple available disciplines, practitioners, or treatment modalities ~~((for example, physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, physical therapy, occupational therapy, or other complementary therapies.~~

~~(9))~~.

(12) "Nonoperative pain" means acute pain which does not occur as a result of surgery.

(13) "Opioid analgesic" or "opioid" means a drug that is either an opiate derived from the opium poppy or opiate-like that is a semi-synthetic or synthetic drug. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, and methadone.

(14) "Palliative" means care that improves the quality of life of patients and their families facing serious, advanced, or life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

(15) "Pain" means an unpleasant sensory or emotional experience associated with actual or potential tissue damage, or described in terms of such damage.

(16) "Perioperative pain" means acute pain that occurs as the result of surgery.

(17) "Prescription monitoring program" or "PMP" means the Washington state prescription monitoring program authorized under chapter 70.225 RCW.

(18) "Practitioner" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a dentist licensed under chapter 18.32 RCW, a physician licensed under chapter 18.71 or 18.57 RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or a podiatric physician licensed under chapter 18.22 RCW.

(19) "Subacute pain" is considered to be a continuation of pain, of six to twelve weeks in duration.

(20) "Substance use disorder" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. Substance use disorder is not the same as physical dependence or tolerance characterized by behaviors that include, but are not limited to, impaired control over drug use, craving, compulsive use, or continued use despite harm.

#### NEW SECTION

**WAC 246-853-675 Patient notification, secure storage, and disposal.** (1) The osteopathic physician shall provide information to the patient educating them of risks associated with the use of opioids as appropriate to the medical condition, type of patient, and phase of treatment. The osteopathic physician shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and  
(b) The transition between phases of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and  
(ii) Subacute pain to chronic pain.

(3) Patient notification must include information regarding:

(a) The safe and secure storage of opioid prescriptions; and  
(b) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs.

#### NEW SECTION

**WAC 246-853-680 Use of alternative modalities for pain treatment.** The osteopathic physician shall consider multimodal pharmacologic and nonpharmacologic therapy for pain rather than defaulting to the use of opioid therapy alone whenever reasonable, evidence-based, clinically appropriate alternatives exist. An osteopathic physician may combine opioids with other medications and treatments including, but not limited to, acetaminophen, acupuncture, chiropractic, cognitive behavior therapy, nonsteroidal anti-

inflammatory drugs (NSAIDS), osteopathic manipulative treatment, physical therapy, massage, or sleep hygiene.

#### NEW SECTION

**WAC 246-853-685 Continuing education requirements for opioid prescribing.** (1) In order to prescribe an opioid in Washington state, an osteopathic physician licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids and the current opioid prescribing rules in this chapter. The continuing education must be at least one hour in length.

(2) The osteopathic physician shall complete the one-time continuing education requirement described in subsection (1) of this section by the end of the osteopathic physician's first full continuing education reporting period after January 1, 2019, or during the first full continuing education reporting period after initial licensure, whichever is later.

(3) The continuing education required under this section counts toward meeting any applicable continuing education requirements.

#### **OPIOID PRESCRIBING—ACUTE NONOPERATIVE PAIN AND ACUTE PERIOPERATIVE PAIN**

#### NEW SECTION

**WAC 246-853-690 Patient evaluation and patient record.** Prior to prescribing opioids for acute nonoperative pain or acute perioperative pain, the osteopathic physician shall:

(1) Conduct and document an appropriate history and physical examination, including screening for risk factors for overdose and severe postoperative pain;

(2) Evaluate the nature and intensity of the pain or anticipated pain following surgery; and

(3) Inquire about any other medications the patient is prescribed or is taking, including date, type, dosage and quantity prescribed.

#### NEW SECTION

**WAC 246-853-695 Treatment plan—Acute nonoperative pain.** The osteopathic physician shall comply with the requirements in this section when prescribing opioid analgesics for acute nonoperative pain and shall document completion of these requirements in the patient record:

(1) The osteopathic physician shall consider prescribing nonopioid analgesics as the first line of pain control in patients in accordance with the provisions of WAC 246-853-680, unless not clinically appropriate.

(2) The osteopathic physician, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-853-790 to identify any Schedule II-V medications or drugs of concern received by the patient and document their review and any concerns.

(3) If the osteopathic physician prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids.

(a) A three-day supply or less will often be sufficient.

(b) More than a seven-day supply will rarely be needed.

(c) The osteopathic physician shall not prescribe beyond a seven-day supply without clinical documentation in the patient record to justify the need for such a quantity.

(4) The osteopathic physician shall reevaluate the patient who does not follow the normal course of recovery. If significant and documented improvement in function or pain control has not occurred, the osteopathic physician shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function;

(d) Additional planned diagnostic evaluations to investigate causes of continued acute nonoperative pain or other treatments.

(6) Long-acting or extended release opioids are not indicated for acute nonoperative pain. Should an osteopathic physician need to prescribe a long-acting opioid for acute pain, the osteopathic physician must document the reason in the patient record.

(7) An osteopathic physician shall not discontinue medication assisted treatment medications when treating acute pain, except as consistent with the provisions of WAC 246-853-780.

(8) If the osteopathic physician elects to treat a patient with opioids beyond the six-week time period of acute nonoperative pain, the osteopathic physician shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain in WAC 246-853-705 and 246-853-710 shall apply.

#### NEW SECTION

**WAC 246-853-700 Treatment plan—Acute perioperative pain.** The osteopathic physician shall comply with the requirements in this section when prescribing opioid analgesics for perioperative pain and shall document completion of these requirements in the patient record:

(1) The osteopathic physician shall consider prescribing nonopioid analgesics as the first line of pain control in patients in accordance with the provisions of WAC 246-853-680, unless not clinically appropriate.

(2) The osteopathic physician, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-853-790 to identify any Schedule II-V medications or drugs of concern received by the patient and document in the patient record their review and any concerns.

(3) If the osteopathic physician prescribes opioids for effective pain control, such prescription shall be in no greater quantity than needed for the expected duration of pain severe enough to require opioids.

(a) A three-day supply or less will often be sufficient.

(b) More than a fourteen-day supply will rarely be needed for perioperative pain.

(c) The osteopathic physician shall not prescribe beyond a fourteen-day supply from the time of discharge without clinical documentation in the patient record to justify the need for such a quantity. For more specific best practices, the osteopathic physician may refer to clinical practice guidelines.

(4) The osteopathic physician shall reevaluate a patient who does not follow the normal course of recovery. If significant and documented improvement in function or pain control has not occurred, the osteopathic physician shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control should include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

- (a) Change in pain level;
- (b) Change in physical function;
- (c) Change in psychosocial function; and
- (d) Additional planned diagnostic evaluations or other treatments.

(6) If the osteopathic physician elects to prescribe a combination of opioids with a medication listed in WAC 246-853-775 or to a patient known to be receiving a medication listed in WAC 246-853-775 from another practitioner, the osteopathic physician must prescribe in accordance with WAC 246-853-775.

(7) If the osteopathic physician elects to treat a patient with opioids beyond the six-week time period of acute perioperative pain, the osteopathic physician shall document in the patient record that the patient is transitioning from acute to subacute pain. Rules governing the treatment of subacute pain in WAC 246-853-705 and 246-853-710 shall apply unless there is documented improvement in function or pain control and there is a documented plan and timing for discontinuation of all opioid medications.

## OPIOID PRESCRIBING—SUBACUTE PAIN

### NEW SECTION

**WAC 246-853-705 Patient evaluation and patient record.** The osteopathic physician shall comply with the requirements in this section when prescribing opioid analgesics for subacute pain and shall document completion of these requirements in the patient record.

(1) Prior to prescribing opioids for subacute pain, the osteopathic physician shall:

(a) Conduct an appropriate history and physical examination or review, and update the patient's existing history and examination taken during the acute nonoperative or acute perioperative phase;

(b) Evaluate the nature and intensity of the pain;

(c) Inquire about other medications the patient is prescribed or taking, including date, type, dosage, and quantity prescribed;

(d) Conduct, or cause their designee to conduct, a query of the PMP in accordance with the provisions of WAC 246-853-790 to identify any Schedule II-V medications or drugs

of concern received by the patient and document the review for any concerns;

(e) Screen and document the patient's potential for high-risk behavior and adverse events related to opioid therapy. If the osteopathic physician determines the patient is high-risk, consider lower dose therapy, shorter intervals between prescriptions, more frequent visits, increased biological specimen testing, and prescribing rescue naloxone;

(f) Obtain a biological specimen test if the patient's function is deteriorating or if pain is escalating; and

(g) Screen or refer the patient for further consultation for psychosocial factors which may be impairing recovery including, but not limited to, depression or anxiety.

(2) The osteopathic physician treating a patient for subacute pain with opioids shall ensure that, at a minimum, the following are documented in the patient record:

(a) The presence of one or more recognized diagnoses or indications for the use of opioid pain medication;

(b) The observed significant and documented improvement in function or pain control forming the basis to continue prescribing opioid analgesics beyond the acute pain episode;

(c) The result of any queries of the PMP and any concerns the osteopathic physician may have;

(d) All medications the patient is known to be prescribed or taking;

(e) An appropriate pain treatment plan, including the consideration of, or attempts to use, nonpharmacological modalities and nonopioid therapy;

(f) Results of any aberrant biological specimen testing and the risk-benefit analysis if opioids are to be continued;

(g) Results of screening or referral for further consultation for psychosocial factors which may be impairing recovery including, but not limited to, depression or anxiety;

(h) Results of screening for the patient's level of risk for aberrant behavior and adverse events related to opioid therapy;

(i) The risk-benefit analysis of any combination of prescribed opioid and benzodiazepines or sedative-hypnotics, if applicable; and

(j) All other required components of the patient record, as established in statute or rule.

(3) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional planned diagnostic evaluations or other treatments.

### NEW SECTION

#### **WAC 246-853-710 Treatment plan—Subacute pain.**

(1) The osteopathic physician shall recognize the progression of a patient from the acute nonoperative or acute perioperative phase to the subacute phase and take into consideration the risks and benefits of continued opioid prescribing for the patient.

(2) If tapering has not begun prior to the six- to twelve-week subacute phase, the osteopathic physician shall reeval-

uate the patient who does not follow the normal course of recovery. If significant and documented improvement in function or pain control has not occurred, the osteopathic physician shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated. The osteopathic physician shall make reasonable attempts to discontinue the use of opioids prescribed for the acute pain event by no later than the twelve-week conclusion of the subacute phase.

(3) If the osteopathic physician prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids. The osteopathic physician shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity during the subacute phase.

(4) If the osteopathic physician elects to prescribe a combination of opioids with a medication listed in WAC 246-853-775 or prescribes opioids to a patient known to be receiving a medication listed in WAC 246-853-775 from another practitioner, the osteopathic physician shall prescribe in accordance with WAC 246-853-775.

(5) If the osteopathic physician elects to treat a patient with opioids beyond the six- to twelve-week subacute phase, the osteopathic physician shall document in the patient record that the patient is transitioning from subacute pain to chronic pain. Rules governing the treatment of chronic pain in WAC 246-853-715 through 246-853-760 shall apply.

#### OPIOID PRESCRIBING—CHRONIC PAIN MANAGEMENT

##### NEW SECTION

**WAC 246-853-715 Patient evaluation and patient record.** (1) For the purposes of this section, "risk assessment tool" means professionally developed, clinically accepted questionnaires appropriate for identifying a patient's level of risk for substance abuse or misuse.

(2) The osteopathic physician shall evaluate and document the patient's health history and physical examination in the patient record prior to treating for chronic pain.

(a) History. The patient's health history must include:

(i) The nature and intensity of the pain;

(ii) The effect of pain on physical and psychosocial function;

(iii) Current and past treatments for pain, including medications and their efficacy;

(iv) Review of any significant comorbidities;

(v) Any current or historical substance use disorder;

(vi) Current medications and, as related to treatment of pain, the efficacy of medications tried; and

(vii) Medication allergies.

(b) Evaluation. The patient evaluation prior to opioid prescribing must include:

(i) Appropriate physical examination;

(ii) Consideration of the risks and benefits of chronic pain treatment for the patient;

(iii) Medications the patient is taking including indication(s), date, type, dosage, quantity prescribed, and, as related to treatment of the pain, efficacy of medications tried;

(iv) Review of the PMP to identify any Schedule II-V medications or drugs of concern received by the patient in accordance with the provisions of WAC 246-853-790;

(v) Any available diagnostic, therapeutic, and laboratory results;

(vi) Use of a risk assessment tool and assignment of the patient to a high-, moderate-, or low-risk category. The osteopathic physician should use caution and shall monitor a patient more frequently when prescribing opioid analgesics to a patient identified as high-risk.

(vii) Any available consultations, particularly as related to the patient's pain;

(viii) Pain related diagnosis, including documentation of the presence of one or more recognized indications for the use of pain medication;

(ix) Treatment plan and objectives including:

(A) Documentation of any medication prescribed;

(B) Biologic specimen testing ordered; and

(C) Any labs or imaging ordered;

(x) Written agreements, also known as a "pain contract," for treatment between the patient and the osteopathic physician; and

(xi) Patient counseling concerning risks, benefits, and alternatives to chronic opioid therapy.

##### NEW SECTION

**WAC 246-853-720 Treatment plan.** (1) When the patient enters the chronic pain phase, the osteopathic physician shall reevaluate the patient by treating the situation as a new disease.

(2) The chronic pain treatment plan must state the objectives that will be used to determine treatment success and must include:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(3) After treatment begins, the osteopathic physician shall adjust drug therapy to the individual health needs of the patient.

(4) The osteopathic physician shall complete patient notification in accordance with the provisions of WAC 246-853-675.

##### NEW SECTION

**WAC 246-853-725 Written agreement for treatment.** The osteopathic physician shall use a written agreement for treatment with the patient who requires long-term opioid therapy for chronic pain that outlines the patient's responsibilities. This written agreement for treatment must include:

(1) The patient's agreement to provide biological samples for biological specimen testing when requested by the osteopathic physician;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills or renewals;

(3) Reasons for which opioid therapy may be discontinued including, but not limited to, the patient's violation of an agreement;

(4) The requirement that all chronic opioid prescriptions are provided by a single prescriber, single clinic, or a multi-disciplinary pain clinic;

(5) The requirement that all chronic opioid prescriptions are to be dispensed by a single pharmacy or pharmacy system whenever possible;

(6) The patient's agreement to not abuse substances that can put the patient at risk for adverse outcomes;

(7) A written authorization for:

(a) The osteopathic physician to release the agreement for treatment to:

(i) Local emergency departments;

(ii) Urgent care facilities;

(iii) Other practitioners caring for the patient who might prescribe pain medications; and

(iv) Pharmacies.

(b) The osteopathic physician to release the agreement to other practitioners so other practitioners can report violations of the agreement to the osteopathic physician treating the patient's chronic pain and to the PMP;

(8) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

(9) Acknowledgment that if the patient violates the terms of the agreement, the violation and the osteopathic physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

For the purposes of this section, "refill" means a second or subsequent filling of a previously issued prescription that is authorized to be dispensed when the patient has exhausted their current supply. For the purposes of WAC 246-853-660 through 246-853-790, refills are subject to the same limitations and requirements as initial prescriptions.

#### NEW SECTION

**WAC 246-853-730 Periodic review.** (1) The osteopathic physician shall periodically review the course of treatment for chronic pain. The osteopathic physician shall base the frequency of visits, biological testing, and PMP queries, in accordance with the provisions of WAC 246-853-790 on the patient's risk category:

(a) For a high-risk patient, at least quarterly;

(b) For a moderate-risk patient, at least semiannually;

(c) For a low-risk patient, at least annually;

(d) Immediately upon indication of concerning or aberrant behavior; and

(e) More frequently at the osteopathic physician's discretion.

(2) During the periodic review, the osteopathic physician shall determine:

(a) The patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved, diminished, or are maintained using objective evidence; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the osteopathic physician's evaluation of progress towards treatment objectives.

(3) Periodic patient evaluations must also include:

(a) History and physical exam related to the pain;

(b) Use of validated tools to document either maintenance of function and pain control or improvement in function and pain level; and

(c) Review of the PMP to identify any Schedule II-V medications or drugs of concern received by the patient at a frequency determined by the patient's risk category, and otherwise in accordance with the provisions of WAC 246-853-790 and subsection (1) of this section.

(4) The osteopathic physician shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with the current treatment plan is unsatisfactory. The osteopathic physician shall consider tapering, changing, or discontinuing treatment in accordance with the provisions of WAC 246-853-755.

#### NEW SECTION

**WAC 246-853-735 Consultation—Recommendations and requirements.** (1) The osteopathic physician shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic pain patients who are under eighteen years of age or who are potential high-risk patients. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold is one hundred twenty milligrams MED. Unless the consultation is exempted under WAC 246-853-740 or 246-853-745, an osteopathic physician who prescribes a dosage amount that meets or exceeds the mandatory consultation threshold must comply with the pain management specialist consultation requirements described in WAC 246-853-750. The mandatory consultation must consist of at least one of the following:

(a) An office visit with the patient and the pain management specialist;

(b) A consultation between the pain management specialist and the osteopathic physician;

(c) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the osteopathic physician or with a licensed health care practitioner designated by the osteopathic physician or the pain management specialist; or

(d) Other chronic pain evaluation services as approved by the board.

(3) The osteopathic physician shall document in the patient record each consultation with the pain management specialist. Any written record of a consultation by the pain management specialist must be maintained as a patient record by the specialist. If the pain management specialist provides

a written record of the consultation to the osteopathic physician, the osteopathic physician shall maintain it as part of the patient record.

(4) The osteopathic physician shall use great caution when prescribing opioids to children or adolescents with chronic pain; appropriate referral to a specialist is encouraged.

#### NEW SECTION

**WAC 246-853-740 Consultation—Exemptions for exigent and special circumstances.** An osteopathic physician is not required to consult with a pain management specialist as defined in WAC 246-853-750 when the osteopathic physician has documented adherence to all standards or practice as defined in WAC 246-853-715 through 246-853-760, and when one or more of the following conditions are met:

- (1) The patient is following a tapering schedule;
- (2) The patient requires treatment for acute pain, which may or may not include hospitalization, requiring a temporary escalation in opioid dosage with expected return to their baseline dosage level or below;
- (3) The osteopathic physician documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams MED per day without first obtaining a consultation; or
- (4) The osteopathic physician documents the patient's pain and function is stable and the patient is on a nonescalating dosage of opioids.

#### NEW SECTION

**WAC 246-853-745 Consultation—Exemptions for the osteopathic physician.** An osteopathic physician is exempt from the consultation requirement in WAC 246-853-735 if one or more of the following qualifications are met:

- (1) The osteopathic physician is a pain management specialist under WAC 246-853-750;
- (2) The osteopathic physician has successfully completed every four years a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organizations. At least two of these hours must be in substance use disorders;
- (3) The osteopathic physician is a pain management practitioner working in a multidisciplinary chronic pain treatment center or a multidisciplinary academic research facility; or
- (4) The osteopathic physician has a minimum three years of clinical experience in a chronic pain management setting, and at least thirty percent of their current practice is the direct provision of pain management care.

#### NEW SECTION

**WAC 246-853-750 Pain management specialist.** A pain management specialist shall meet one or more of the following qualifications:

(1) An allopathic or osteopathic physician must:

(a) Be board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology;

(b) Have a subspecialty certificate in pain medicine by an ABMS-approved board;

(c) Have a certification of added qualification in pain management by the AOA; or

(d) Be credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for an allopathic physician or the Washington state board of osteopathic medicine and surgery for an osteopathic physician; or

(e) Have a minimum of three years of clinical experience in a chronic pain management care setting including:

(i) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years for an allopathic physician or three years for an osteopathic physician; and

(ii) At least thirty percent of the physician's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

(2) An allopathic physician assistant or osteopathic physician assistant must have a delegation agreement with a physician pain management specialist and meet all of the following educational and practice requirements:

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for an allopathic physician assistant or the Washington state board of osteopathic medicine and surgery for an osteopathic physician assistant;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the physician assistant's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(3) A dentist must be board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(4) An advanced registered nurse practitioner (ARNP) must:

(a) Be credentialed in pain management by a Washington state nursing care quality assurance commission-approved certifying or credentialing entity; or

(b) Meet all of the following:

(i) A minimum of three years of clinical experience in a chronic pain management care setting;

(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(iii) At least thirty percent of the ARNP's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.



(5) A podiatric physician must:

(a) Be board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Foot and Ankle Surgery or its predecessor, the American Board of Podiatric Medicine, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or

(b) Have a minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Be credentialed in pain management by a Washington state podiatric medical board-approved national professional association, pain association, or other credentialing entity;

(ii) Have successfully completed at least eighteen hours of continuing education in pain management during the past two years; and

(iii) At least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.

#### NEW SECTION

**WAC 246-853-755 Tapering requirements.** (1) The osteopathic physician shall assess and document the appropriateness of continued use of the current treatment plan if the patient's response to or compliance with the current treatment is unsatisfactory.

(2) The osteopathic physician shall consider tapering, changing, discontinuing treatment, or referral for a substance use disorder evaluation when:

(a) The patient requests;

(b) The patient experiences a deterioration in function or pain;

(c) The patient is noncompliant with the written agreement;

(d) Other treatment modalities are indicated;

(e) There is evidence of misuse, abuse, substance use disorder, or diversion;

(f) The patient experiences a severe adverse event or overdose;

(g) There is unauthorized escalation or doses; or

(h) The patient is receiving an escalation in opioid dosage with no improvement in pain, function, or quality of life.

#### NEW SECTION

**WAC 246-853-760 Patients with chronic pain, including those on high doses, establishing a relationship with a new practitioner.** (1) When a patient receiving chronic opioid pain medications changes to a new practitioner, it is normally appropriate for the new practitioner to initially maintain the patient's current opioid doses. Over time, the practitioner may evaluate if any tapering or other adjustments in the treatment plan can or should be done.

(2) An osteopathic physician's treatment of a new high-dose chronic pain patient is exempt from the mandatory consultation requirements of WAC 246-853-735 and the tapering requirements of WAC 246-853-755 if:

(a) The patient was previously being treated with a dosage of opioids in excess of one hundred twenty milligrams MED for chronic pain under an established written agree-

ment for treatment of the same chronic condition or conditions;

(b) The patient's dose is stable and nonescalating;

(c) The patient has a demonstrated history in their record of compliance with treatment plans and written agreements as documented by medical records and PMP queries; and

(d) The patient has documented functional stability, pain control, or improvements in function or pain control, at the dose in excess of one hundred twenty milligrams MED.

(3) With respect to the treatment of a new patient under subsection (1) or (2) of this section, this exemption applies for the first three months of newly established care, after which the requirements of WAC 246-853-735 and 246-853-755 shall apply.

### **OPIOID PRESCRIBING—SPECIAL POPULATIONS**

#### NEW SECTION

**WAC 246-853-765 Special populations—Patients twenty-five years of age or under, pregnant patient, and aging populations.** (1) Patients twenty-five years of age or under. In the treatment of pain for patients twenty-five years of age or under, the osteopathic physician shall treat pain in a manner equal to that of an adult but must account for the weight of the patient and reduce the dosage prescribed accordingly.

(2) Pregnant patients. The osteopathic physician shall not discontinue the use of MAT opioids, such as methadone or buprenorphine, by a pregnant patient without oversight by the MAT prescribing practitioner. The osteopathic physician shall weigh carefully the risks and benefits of opioid detoxification during pregnancy.

(3) Aging populations. As people age, their tolerance and metabolizing of opioids may change. The osteopathic physician shall consider the distinctive needs of patients who are sixty-five years of age or older and who have been on chronic opioid therapy or who are initiating opioid treatment.

#### NEW SECTION

**WAC 246-853-770 Episodic care of chronic opioid patients.** (1) When providing episodic care for a patient who the osteopathic physician knows is being treated with opioids for chronic pain, such as for emergency or urgent care, the osteopathic physician shall review the PMP to identify any Schedule II-V or drugs of concern received by the patient and document in the patient record their review and any concerns.

(2) An osteopathic physician providing episodic care to a patient who the osteopathic physician knows is being treated with opioids for chronic pain should provide additional opioids to be equal to the severity of the acute pain. If opioids are provided, the osteopathic physician shall limit the use of opioids to the minimum amount necessary to control the acute nonoperative pain, acute perioperative pain, or similar acute exacerbation of pain until the patient can receive care from the practitioner who is managing the patient's chronic pain treatment.

(3) The osteopathic physician providing episodic care shall report known violations of the patient's written agree-

ment to the patient's treatment practitioner who provided the agreement for treatment, when reasonable.

(4) The osteopathic physician providing episodic care shall coordinate care with the patient's chronic pain treatment practitioner if that person is known to the osteopathic physician providing episodic care, when reasonable.

(5) For the purposes of this section, "episodic care" means medical care provided by a practitioner other than the designated primary practitioner in the acute care setting; for example, urgent care or emergency department.

## OPIOID PRESCRIBING—COPRESCRIBING

### NEW SECTION

**WAC 246-853-775 Coprescribing of opioids with certain medications.** (1) The osteopathic physician must not knowingly prescribe opioids in combination with the following Schedule II-IV medications without documentation in the patient record of clinical judgment:

- (a) Benzodiazepines;
- (b) Barbiturates;
- (c) Sedatives;
- (d) Carisoprodol; or
- (e) Sleeping medications, also known as Z drugs.

(2) If a patient receiving an opioid prescription is known to be concurrently prescribed one or more of the medications listed in subsection (1) of this section, the osteopathic physician prescribing opioids shall consult with the other prescriber(s) to establish a patient care plan for the use of the medications concurrently or consider whether one of the medications should be tapered.

### NEW SECTION

**WAC 246-853-780 Coprescribing of opioids for patients receiving medication assisted treatment.** (1) Where practicable, the osteopathic physician providing acute nonoperative pain or acute perioperative pain treatment to a patient known to be receiving MAT shall prescribe opioids for pain relief either in consultation with the MAT prescribing practitioner or pain specialist.

(2) The osteopathic physician shall not discontinue MAT medications when treating acute nonoperative pain or acute perioperative pain without documentation of the reason for doing so, nor shall use of these medications be used to deny necessary intervention.

### NEW SECTION

**WAC 246-853-785 Coprescribing of naloxone.** (1) The osteopathic physician shall confirm or provide a current prescription for naloxone when high dose opioids are prescribed.

(2) The osteopathic physician should counsel and provide an option for a current prescription for naloxone to patients being prescribed opioids as clinically indicated.

## OPIOID PRESCRIBING—PRESCRIPTION MONITORING PROGRAM

### NEW SECTION

**WAC 246-853-790 Prescription monitoring program—Required registration, queries, and documentation.** (1)

The osteopathic physician shall register to access the PMP or demonstrate proof of having registered to access the PMP if they prescribe opioids in Washington state.

(2) The osteopathic physician may delegate the retrieval of a required PMP query to an authorized designee, in accordance with WAC 246-470-050.

(3) At a minimum, the osteopathic physician shall ensure a PMP query is performed prior to the issuance of any prescription of an opioid or of a benzodiazepine.

(4) For the purposes of this section, the requirement to consult the PMP does not apply in situations when it cannot be accessed by the osteopathic physician or their authorized designee due to a temporary technological or electrical failure.

(5) In cases of technical or electrical failure, the osteopathic physician shall document in the patient record the date(s) and time(s) of attempts to access the PMP and shall check the PMP for that patient as soon as is practicable after the failure is resolved, but not later than the next prescription.

(6) Pertinent concerns discovered in the PMP shall be documented in the patient record.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-853-663 Patient evaluation.

WAC 246-853-664 Treatment plan.

WAC 246-853-665 Informed consent.

WAC 246-853-666 Written agreement for treatment.

WAC 246-853-667 Periodic review.

WAC 246-853-668 Long-acting opioids, including methadone.

WAC 246-853-669 Episodic care.

WAC 246-853-670 Consultation—Recommendations and requirements.

WAC 246-853-671 Consultation—Exemptions for exigent and special circumstances.

WAC 246-853-672 Consultation—Exemptions for the osteopathic physician.

WAC 246-853-673 Pain management specialist.

AMENDATORY SECTION (Amending WSR 11-10-062, filed 5/2/11, effective 7/1/11)

**WAC 246-854-240 ((Pain management—))Intent and scope.** ((These rules)) WAC 246-854-240 through 246-854-370 govern the ((use of opioids in the treatment of patients for chronic noncancer)) prescribing of opioids in the

treatment of pain. Nothing in these rules in any way restricts the current scope of practice of osteopathic physician assistants as set forth in chapters 18.57 and 18.57A RCW and the working agreements between the osteopathic physician and the osteopathic physician assistant, which may include pain management.

AMENDATORY SECTION (Amending WSR 11-10-062, filed 5/2/11, effective 7/1/11)

**WAC 246-854-241 Exclusions.** ~~((The rules adopted under))~~ WAC 246-854-240 through ~~((246-854-253))~~ 246-854-370 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care; ~~(or~~
- ~~(2) The management of acute pain caused by an injury or surgical procedure;)~~
- (3) The treatment of inpatient hospital patients. As used in this section, "inpatient" means a person who has been admitted to a hospital for more than twenty-four hours; or
- (4) The provision of procedural premedications.

AMENDATORY SECTION (Amending WSR 11-10-062, filed 5/2/11, effective 7/1/11)

**WAC 246-854-242 Definitions.** The definitions in this section apply ~~((in))~~ to WAC 246-854-240 through ~~((246-854-253))~~ 246-854-370 unless the context clearly requires otherwise.

(1) "Aberrant behavior" means behavior that indicates misuse, diversion, or substance use disorder. This includes, but is not limited to, multiple early refills or obtaining prescriptions of the same or similar drugs from more than one osteopathic physician or other health care practitioner.

(2) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. ~~((It is generally time limited, often less than three months in duration, and usually less than six months.~~

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

- (a) Impaired control over drug use;
- (b) Craving;
- (c) Compulsive use; or
- (d) Continued use despite harm.

~~(3))~~ Acute pain is considered to be six weeks or less in duration.

(3) "Biological specimen test" or "biological specimen testing" means tests of urine, hair, or other biological samples for various drugs and metabolites.

(4) "Chronic ~~((noncancer))~~ pain" means a state in which ~~((noncancer))~~ pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. Chronic pain may include pain resulting from cancer in a

patient who is up to two years postcompletion of curative anticancer treatment with no current evidence of disease.

~~((4))~~ "Comorbidity" means a preexisting or coexisting physical or psychiatric disease or condition.

(5) "Episodic care" means medical care provided by a provider other than the designated primary provider in the acute care setting, for example, urgent care or emergency department.

~~(6))~~ (5) "High-dose" means ninety milligrams, MED, or more per day.

(6) "High-risk" is a category of patient at increased risk of morbidity or mortality, such as from comorbidities, poly-pharmacy, history of substance use disorder or abuse, aberrant behavior, high-dose opioid prescription, or the use of any central nervous system depressant.

(7) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less ~~((Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as freestanding hospice facilities, hospitals, nursing homes, or other long-term care facilities)).~~

~~((7))~~ (8) "Hospital" means any institution, place, building, or agency licensed by the department under chapter 70.41 or 71.12 RCW, or designated under chapter 72.23 RCW to provide accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(9) "Medication assisted treatment" or "MAT" means the use of pharmacologic therapy, often in combination with counseling and behavioral therapies, for the treatment of substance use disorders.

(10) "Morphine equivalent dose" or "MED" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

~~((8))~~ (11) "Multidisciplinary pain clinic" means a ~~((clinic or office))~~ facility that provides comprehensive pain management and ~~((may))~~ includes care provided by multiple available disciplines, practitioners, or treatment modalities ~~((; for example, physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, physical therapy, occupational therapy, or other complementary therapies)).~~

~~((9))~~ (12) "Nonoperative pain" means acute pain which does not occur as a result of surgery.

(13) "Opioid analgesic" or "opioid" means a drug that is either an opiate derived from the opium poppy or opiate-like that is a semi-synthetic or synthetic drug. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, and methadone.

(14) "Palliative" means care that improves the quality of life of patients and their families facing serious, advanced, or life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of

pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

(15) "Pain" means an unpleasant sensory or emotional experience associated with actual or potential tissue damage, or described in terms of such damage.

(16) "Perioperative pain" means acute pain that occurs as the result of surgery.

(17) "Prescription monitoring program" or "PMP" means the Washington state prescription monitoring program authorized under chapter 70.225 RCW.

(18) "Practitioner" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a dentist licensed under chapter 18.32 RCW, a physician licensed under chapter 18.71 or 18.57 RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or a podiatric physician licensed under chapter 18.22 RCW.

(19) "Subacute pain" is considered to be a continuation of pain, of six to twelve weeks in duration.

(20) "Substance use disorder" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. Substance use disorder is not the same as physical dependence or tolerance characterized by behaviors that include, but are not limited to, impaired control over drug use, craving, compulsive use, or continued use despite harm.

#### NEW SECTION

**WAC 246-854-255 Patient notification, secure storage, and disposal.** (1) The osteopathic physician assistant shall provide information to the patient educating them of risks associated with the use of opioids as appropriate to the medical condition, type of patient, and phase of treatment. The osteopathic physician assistant shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

- (a) The first issuance of a prescription for an opioid; and
- (b) The transition between phases of treatment, as follows:

- (i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

- (ii) Subacute pain to chronic pain.

(3) Patient notification must include information regarding:

- (a) The safe and secure storage of opioid prescriptions; and

- (b) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs.

#### NEW SECTION

**WAC 246-854-260 Use of alternative modalities for pain treatment.** The osteopathic physician assistant shall consider multimodal pharmacologic and nonpharmacologic therapy for pain rather than defaulting to the use of opioid therapy alone whenever reasonable, evidence-based, clinically appropriate alternatives exist. An osteopathic physician assistant may combine opioids with other medications and treatments including, but not limited to, acetaminophen, acu-

puncture, chiropractic, cognitive behavior therapy, nonsteroidal anti-inflammatory drugs (NSAIDs), osteopathic manipulative treatment, physical therapy, massage, or sleep hygiene.

#### NEW SECTION

**WAC 246-854-265 Continuing education requirements for opioid prescribing.** (1) In order to prescribe an opioid in Washington state, an osteopathic physician assistant licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids and the current opioid prescribing rules in this chapter. The continuing education must be at least one hour in length.

(2) The osteopathic physician assistant shall complete the one-time continuing education requirement described in subsection (1) of this section by the end of the osteopathic physician assistant's first full continuing education reporting period after January 1, 2019, or during the first full continuing education reporting period after initial licensure, whichever is later.

(3) The continuing education required under this section counts toward meeting any applicable continuing education requirements.

#### **OPIOID PRESCRIBING—ACUTE NONOPERATIVE PAIN AND ACUTE PERIOPERATIVE PAIN**

#### NEW SECTION

**WAC 246-854-270 Patient evaluation and patient record.** Prior to prescribing opioids for acute nonoperative pain or acute perioperative pain, the osteopathic physician assistant shall:

(1) Conduct and document an appropriate history and physical examination, including screening for risk factors for overdose and severe postoperative pain;

(2) Evaluate the nature and intensity of the pain or anticipated pain following surgery; and

(3) Inquire about any other medications the patient is prescribed or is taking, including date, type, dosage, and quantity prescribed.

#### NEW SECTION

**WAC 246-854-275 Treatment plan—Acute nonoperative pain.** The osteopathic physician assistant shall comply with the requirements in this section when prescribing opioid analgesics for acute nonoperative pain and shall document completion of these requirements in the patient record:

(1) The osteopathic physician assistant shall consider prescribing nonopioid analgesics as the first line of pain control in patients in accordance with the provisions of WAC 246-854-260, unless not clinically appropriate.

(2) The osteopathic physician assistant, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-854-370 to identify any Schedule II-V medications or drugs of concern received by the patient and document their review and any concerns.

(3) If the osteopathic physician assistant prescribes opioids for effective pain control, such prescription must not be in a quantity greater than needed for the expected duration of pain severe enough to require opioids.

(a) A three-day supply or less will often be sufficient.

(b) More than a seven-day supply will rarely be needed.

(c) The osteopathic physician assistant shall not prescribe beyond a seven-day supply without clinical documentation in the patient record to justify the need for such a quantity.

(4) The osteopathic physician assistant shall reevaluate the patient who does not follow the normal course of recovery. If significant and documented improvement in function or pain control has not occurred, the osteopathic physician assistant shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional planned diagnostic evaluations to investigate causes of continued acute nonoperative pain or other treatments.

(6) Long-acting or extended release opioids are not indicated for acute nonoperative pain. Should an osteopathic physician assistant need to prescribe a long-acting opioid for acute pain, the osteopathic physician assistant must document the reason in the patient record.

(7) An osteopathic physician assistant shall not discontinue medication assistant treatment medications when treating acute pain, except as consistent with the provisions of WAC 246-854-360.

(8) If the osteopathic physician assistant elects to treat a patient with opioids beyond the six-week time period of acute nonoperative pain, the osteopathic physician assistant shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain in WAC 246-854-285 and 246-854-290 shall apply.

#### NEW SECTION

**WAC 246-854-280 Treatment plan—Acute perioperative pain.** The osteopathic physician assistant shall comply with the requirements in this section when prescribing opioid analgesics for perioperative pain and shall document completion of these requirements in the patient record:

(1) The osteopathic physician assistant shall consider prescribing nonopioid analgesics as the first line of pain control in patients in accordance with the provisions of WAC 246-854-260, unless not clinically appropriate.

(2) The osteopathic physician assistant, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-854-370 to identify any Schedule II-V medications or drugs of concern received by the patient and document in the patient record their review and any concerns.

(3) If the osteopathic physician assistant prescribes opioids for effective pain control, such prescription shall be in no greater quantity than needed for the expected duration of pain severe enough to require opioids.

(a) A three-day supply or less will often be sufficient.

(b) More than a fourteen-day supply will rarely be needed for perioperative pain.

(c) The osteopathic physician assistant shall not prescribe beyond a fourteen-day supply from the time of discharge without clinical documentation in the patient record to justify the need for such a quantity. For more specific best practices, the osteopathic physician assistant may refer to clinical practice guidelines.

(4) The osteopathic physician assistant shall reevaluate a patient who does not follow the normal course of recovery. If significant and documented improvement in function or pain control has not occurred, the osteopathic physician assistant shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control should include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional planned diagnostic evaluations or other treatments.

(6) If the osteopathic physician assistant elects to prescribe a combination of opioids with a medication listed in WAC 246-854-355 or to a patient known to be receiving a medication listed in WAC 246-854-355 from another practitioner, the osteopathic physician assistant must prescribe in accordance with WAC 246-854-355.

(7) If the osteopathic physician assistant elects to treat a patient with opioids beyond the six-week time period of acute perioperative pain, the osteopathic physician assistant shall document in the patient record that the patient is transitioning from acute to subacute pain. Rules governing the treatment of subacute pain in WAC 246-854-285 and 246-854-290 shall apply unless there is documented improvement in function or pain control and there is a documented plan and timing for discontinuation of all opioid medications.

#### **OPIOID PRESCRIBING—SUBACUTE PAIN**

#### NEW SECTION

**WAC 246-854-285 Patient evaluation and patient record.** The osteopathic physician assistant shall comply with the requirements in this section when prescribing opioid analgesics for subacute pain and shall document completion of these requirements in the patient record.

(1) Prior to prescribing opioids for subacute pain, the osteopathic physician assistant shall:

(a) Conduct an appropriate history and physical examination or review, and update the patient's existing history and examination taken during the acute nonoperative or acute perioperative phase;

(b) Evaluate the nature and intensity of the pain;

(c) Inquire regarding other medications the patient is prescribed or taking, including date, type, dosage, and quantity prescribed;

(d) Conduct, or cause their designee to conduct, a query of the PMP in accordance with the provisions of WAC 246-854-370 to identify any Schedule II-V medications or drugs of concern received by the patient and document the review for any concerns;

(e) Screen and document the patient's potential for high-risk behavior and adverse events related to opioid therapy. If the osteopathic physician assistant determines the patient is high-risk, consider lower dose therapy, shorter intervals between prescriptions, more frequent visits, increased biological specimen testing, and prescribing rescue naloxone;

(f) Obtain a biological specimen test if the patient's function is deteriorating or if pain is escalating; and

(g) Screen or refer the patient for further consultation for psychosocial factors which may be impairing recovery including, but not limited to, depression or anxiety.

(2) The osteopathic physician assistant treating a patient for subacute pain with opioids shall ensure that, at a minimum, the following are documented in the patient record:

(a) The presence of one or more recognized diagnoses or indications for the use of opioid pain medication;

(b) The observed significant and documented improvement in function or pain control forming the basis to continue prescribing opioid analgesics beyond the acute pain episode;

(c) The results of any queries of the PMP and any concerns the osteopathic physician assistant has;

(d) All medications the patient is known to be prescribed or taking;

(e) An appropriate pain treatment plan including, the consideration of, or attempts to use, nonpharmacological modalities and nonopioid therapy;

(f) Results of any aberrant biological specimen testing and the risk-benefit analysis if opioids are to be continued;

(g) Results of screening or referral for further consultation for psychosocial factors which may be impairing recovery including, but not limited to, depression or anxiety;

(h) Results of screening for the patient's level of risk for aberrant behavior and adverse events related to opioid therapy;

(i) The risk-benefit analysis of any combination of prescribed opioid and benzodiazepines or sedative-hypnotics, if applicable; and

(j) All other required components of the patient record, as established in statute or rule.

(3) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional planned diagnostic evaluations or other treatments.

#### NEW SECTION

##### **WAC 246-854-290 Treatment plan—Subacute pain.**

(1) The osteopathic physician assistant shall recognize the

progression of a patient from the acute nonoperative or acute perioperative phase to the subacute phase and take into consideration the risks and benefits of continued opioid prescribing for the patient.

(2) If tapering has not begun prior to the six- to twelve-week subacute phase, the osteopathic physician assistant shall reevaluate the patient who does not follow the normal course of recovery. If significant and documented improvement in function or pain control has not occurred, the osteopathic physician assistant shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated. The osteopathic physician assistant shall make reasonable attempts to discontinue the use of opioids prescribed for the acute pain event by no later than the twelve-week conclusion of the subacute phase.

(3) If the osteopathic physician assistant prescribes opioids for effective pain control, such prescription must not be in no greater quantity than needed for the expected duration of pain severe enough to require opioids. The osteopathic physician assistant shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity during the subacute phase.

(4) If the osteopathic physician assistant elects to prescribe a combination of opioids with a medication listed in WAC 246-854-355 or prescribes opioids to a patient known to be receiving a medication listed in WAC 246-854-355 from another practitioner, the osteopathic physician assistant shall prescribe in accordance with WAC 246-854-355.

(5) If the osteopathic physician assistant elects to treat a patient with opioids beyond the six- to twelve-week subacute phase, the osteopathic physician assistant shall document in the patient record that the patient is transitioning from subacute pain to chronic pain. Rules governing the treatment of chronic pain in WAC 246-854-295 through 246-854-340, shall apply.

#### **OPIOID PRESCRIBING—CHRONIC PAIN MANAGEMENT**

##### NEW SECTION

**WAC 246-854-295 Patient evaluation and patient record.** (1) For the purposes of this section, "risk assessment tool" means professionally developed, clinically accepted questionnaires appropriate for identifying a patient's level of risk for substance abuse or misuse.

(2) The osteopathic physician assistant shall evaluate and document the patient's health history and physical examination in the patient record prior to treating for chronic pain.

(a) History. The patient's health history must include:

(i) The nature and intensity of the pain;

(ii) The effect of pain on physical and psychosocial function;

(iii) Current and past treatments for pain, including medications and their efficacy;

(iv) Review of any significant comorbidities;

(v) Any current or historical substance use disorder;

(vi) Current medications and, as related to treatment of pain, the efficacy of medications tried; and

(vii) Medication allergies.

(b) Evaluation. The patient evaluation prior to opioid prescribing must include:

- (i) Appropriate physical examination;
- (ii) Consideration of the risks and benefits of chronic pain treatment for the patient;
- (iii) Medications the patient is taking including indication(s), date, type, dosage, quantity prescribed, and, as related to treatment of the pain, efficacy of medications tried;
- (iv) Review of the PMP to identify any Schedule II-V medications or drugs of concern received by the patient in accordance with the provisions of WAC 246-854-370;
- (v) Any available diagnostic, therapeutic, and laboratory results;
- (vi) Use of a risk assessment tool and assignment of the patient to a high, moderate, or low-risk category. The osteopathic physician assistant should use caution and shall monitor a patient more frequently when prescribing opioid analgesics to a patient identified as high-risk;
- (vii) Any available consultations, particularly as related to the patient's pain;
- (viii) Pain related diagnosis, including documentation of the presence of one or more recognized indications for the use of pain medication;
  - (ix) Treatment plan and objectives including:
    - (A) Documentation of any medication prescribed;
    - (B) Biologic specimen testing ordered; and
    - (C) Any labs or imaging ordered.
  - (x) Written agreements, also known as a "pain contract," for treatment between the patient and the osteopathic physician assistant; and
  - (xi) Patient counseling concerning risks, benefits, and alternatives to chronic opioid therapy.

#### NEW SECTION

**WAC 246-854-300 Treatment plan.** (1) When the patient enters the chronic pain phase, the osteopathic physician assistant shall reevaluate the patient by treating the situation as a new disease.

(2) The chronic pain treatment plan must state the objectives that will be used to determine treatment success and must include, at a minimum:

- (a) Any change in pain relief;
- (b) Any change in physical and psychosocial function; and
- (c) Additional diagnostic evaluations or other planned treatments.

(3) After treatment begins, the osteopathic physician assistant shall adjust drug therapy to the individual health needs of the patient.

(4) The osteopathic physician assistant shall complete patient notification in accordance with the provisions of WAC 246-854-255.

#### NEW SECTION

**WAC 246-854-305 Written agreement for treatment.** The osteopathic physician assistant shall use a written agreement for treatment with the patient who requires long-term opioid therapy for chronic pain that outlines the patient's

responsibilities. This written agreement for treatment must include:

- (1) The patient's agreement to provide biological samples for biological specimen testing when requested by the osteopathic physician assistant;
- (2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills or renewals;
- (3) Reasons for which opioid therapy may be discontinued including, but not limited to, the patient's violation of an agreement;
- (4) The requirement that all chronic opioid prescriptions are provided by a single prescriber, single clinic, or a multi-disciplinary pain clinic;
- (5) The requirement that all chronic opioid prescriptions are to be dispensed by a single pharmacy or pharmacy system whenever possible;
- (6) The patient's agreement to not abuse substances that can put the patient at risk for adverse outcomes;
- (7) A written authorization for:
  - (a) The osteopathic physician assistant to release the agreement for treatment to:
    - (i) Local emergency departments;
    - (ii) Urgent care facilities;
    - (iii) Other practitioners caring for the patient who might prescribe pain medications; and
    - (iv) Pharmacies.
  - (b) The osteopathic physician assistant to release the agreement to other practitioners so other practitioners can report violations of the agreement to the osteopathic physician assistant treating the patient's chronic pain and to the PMP.

(8) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

(9) Acknowledgment that if the patient violates the terms of the agreement, the violation and the osteopathic physician assistant's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

For the purposes of this section, "refill" means a second or subsequent filling of a previously issued prescription that is authorized to be dispensed when the patient has exhausted their current supply. For the purposes of WAC 246-854-240 through 246-854-370, refills are subject to the same limitations and requirements as initial prescriptions.

#### NEW SECTION

**WAC 246-854-310 Periodic review.** (1) The osteopathic physician assistant shall periodically review the course of treatment for chronic pain. The osteopathic physician assistant shall base the frequency of visits, biological testing, and PMP queries, in accordance with the provisions of WAC 246-854-370 on the patient's risk category:

- (a) For a high-risk patient, at least quarterly;
- (b) For a moderate-risk patient, at least semiannually;
- (c) For a low-risk patient, at least annually;
- (d) Immediately upon indication of concerning or aberrant behavior; and

(e) More frequently at the osteopathic physician assistant's discretion.

(2) During the periodic review, the osteopathic physician assistant shall determine:

(a) The patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved, diminished, or are maintained using objective evidence; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the osteopathic physician assistant's evaluation of progress towards treatment objectives.

(3) Periodic patient evaluations must also include:

(a) History and physical exam related to the pain;

(b) Use of validated tools to document either maintenance of function and pain control or improvement in function and pain level; and

(c) Review the PMP to identify any Schedule II-V medications or drugs of concern received by the patient at a frequency determined by the patient's risk category, and otherwise in accordance with the provisions of WAC 246-854-370 and subsection (1) of this section.

(4) The osteopathic physician assistant shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with the current treatment plan is unsatisfactory. The osteopathic physician assistant shall consider tapering, changing, or discontinuing treatment in accordance with the provisions of WAC 246-854-335.

#### NEW SECTION

**WAC 246-854-315 Consultation—Recommendations and requirements.** (1) The osteopathic physician assistant shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic pain patients who are under eighteen years of age or who are potential high-risk patients. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold is one hundred twenty milligrams MED. Unless the consultation is exempted under WAC 246-854-320 or 246-854-325, an osteopathic physician assistant who prescribes a dosage amount that meets or exceeds the mandatory consultation threshold must comply with the pain management specialist consultation requirements described in WAC 246-854-330. The mandatory consultation must consist of at least one of the following:

(a) An office visit with the patient and the pain management specialist;

(b) A consultation between the pain management specialist and the osteopathic physician assistant;

(c) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the osteopathic physician assistant or with a licensed health care practitioner designated by the osteo-

pathic physician assistant or the pain management specialist; or

(d) Other chronic pain evaluation services as approved by the board.

(3) The osteopathic physician assistant shall document in the patient record each consultation with the pain management specialist. Any written record of a consultation by the pain management specialist must be maintained as a patient record by the specialist. If the pain management specialist provides a written record of the consultation to the osteopathic physician assistant, the osteopathic physician assistant shall maintain it as part of the patient record.

(4) The osteopathic physician assistant shall use great caution when prescribing opioids to children or adolescents with chronic pain; appropriate referral to a specialist is encouraged.

#### NEW SECTION

**WAC 246-854-320 Consultation—Exemptions for exigent and special circumstances.** An osteopathic physician assistant is not required to consult with a pain management specialist as defined in WAC 246-854-330 when the osteopathic physician assistant has documented adherence to all standards of practice as defined in WAC 246-854-295 through 246-854-340, and when one or more of the following conditions are met:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain, which may or may not include hospitalization, requiring a temporary escalation in opioid dosage with expected return to their baseline dosage level or below;

(3) The osteopathic physician assistant documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty MED per day without first obtaining a consultation; or

(4) The osteopathic physician assistant documents the patient's pain and function is stable and the patient is on a nonescalating dosage of opioids.

#### NEW SECTION

**WAC 246-854-325 Consultation—Exemptions for the osteopathic physician assistant.** An osteopathic physician assistant is exempt from the consultation requirement in WAC 246-854-315 if one or more of the following qualifications are met:

(1) The osteopathic physician assistant is a pain management specialist under WAC 246-854-330;

(2) The osteopathic physician assistant has successfully completed every four years a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organizations. At least two of these hours must be in substance use disorders;

(3) The osteopathic physician assistant is a pain management practitioner working in a multidisciplinary chronic pain treatment center or a multidisciplinary academic research facility; or



(4) The osteopathic physician assistant has a minimum of three years clinical experience in a chronic pain management setting, and at least thirty percent of their current practice is the direct provision of pain management care.

#### NEW SECTION

**WAC 246-854-330 Pain management specialist.** A pain management specialist shall meet one or more of the following qualifications:

(1) An allopathic or osteopathic physician must:

(a) Be board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology;

(b) Have a subspecialty certificate in pain medicine by an ABMS-approved board;

(c) Have a certification of added qualification in pain management by the AOA;

(d) Be credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for an allopathic physician or the Washington state board of osteopathic medicine and surgery for an osteopathic physician; or

(e) Have a minimum of three years clinical experience in a chronic pain management care setting including:

(i) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years for an allopathic physician or three years for an osteopathic physician; and

(ii) At least thirty percent of the physician's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

(2) An allopathic physician assistant or osteopathic physician assistant must have a delegation agreement with a physician pain management specialist and meet all of the following educational requirements and practice requirements:

(a) A minimum of three years clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for an allopathic physician assistant or the Washington state board of osteopathic medicine and surgery for an osteopathic physician assistant;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the physician assistant's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(3) A dentist must be board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(4) An advanced registered nurse practitioner (ARNP) must:

(a) Be credentialed in pain management by a Washington state nursing care quality assurance commission-approved certifying or credentialing entity; or

(b) Meet all of the following:

(i) A minimum of three years clinical experience in a chronic pain management care setting;

(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(iii) At least thirty percent of the ARNP's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(5) A podiatric physician must:

(a) Be board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Foot and Ankle Surgery or its predecessor, the American Board of Podiatric Medicine, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or

(b) Have a minimum of three years clinical experience in a chronic pain management care setting; and

(i) Be credentialed in pain management by a Washington state podiatric medical board-approved national professional association, pain association, or other credentialing entity;

(ii) Have successfully completed at least eighteen hours of continuing education in pain management during the past two years; and

(iii) At least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.

#### NEW SECTION

**WAC 246-854-335 Tapering requirements.** (1) The osteopathic physician assistant shall assess and document the appropriateness of continued use of the current treatment plan if the patient's response to or compliance with the current treatment is unsatisfactory.

(2) The osteopathic physician assistant shall consider tapering, changing, discontinuing treatment, or referral for a substance use disorder evaluation when:

(a) The patient requests;

(b) The patient experiences a deterioration in function or pain;

(c) The patient is noncompliant with the written agreement;

(d) Other treatment modalities are indicated;

(e) There is evidence of misuse, abuse, substance use disorder, or diversion;

(f) The patient experiences a severe adverse event or overdose;

(g) There is unauthorized escalation or doses; or

(h) The patient is receiving an escalation in opioid dosage with no improvement in pain, function, or quality of life.

#### NEW SECTION

**WAC 246-854-340 Patients with chronic pain, including those on high doses, establishing a relationship with a new practitioner.** (1) When a patient receiving chronic opioid pain medications changes to a new practitioner, it is normally appropriate for the new practitioner to initially maintain the patient's current opioid doses. Over

time, the practitioner may evaluate if any tapering or other adjustments in the treatment plan can or should be done.

(2) An osteopathic physician assistant's treatment of a new high-dose chronic pain patient is exempt from the mandatory consultation requirements of WAC 246-854-315 and the tapering requirements of WAC 246-854-335 if:

(a) The patient was previously being treated with a dosage of opioids in excess of one hundred twenty milligrams MED for chronic pain under an established written agreement for treatment of the same chronic condition or conditions;

(b) The patient's dose is stable and nonescalating;

(c) The patient has a demonstrated history in their record of compliance with treatment plans and written agreements as documented by medical records and PMP queries; and

(d) The patient has documented functional stability, pain control, or improvements in function or pain control, at the dose in excess of one hundred twenty milligrams MED.

(3) With respect to the treatment of a new patient under subsection (1) or (2) of this section, this exemption applies for the first three months of newly established care, after which the requirements of WAC 246-854-315 and 246-854-335 shall apply.

#### OPIOID PRESCRIBING—SPECIAL POPULATIONS

##### NEW SECTION

**WAC 246-854-345 Special populations—Patients twenty-five years of age or under, pregnant patients, and aging populations.** (1) Patients twenty-five years of age or under. In the treatment of pain for patients twenty-five years of age or under, the osteopathic physician assistant shall treat pain in a manner equal with that of an adult but must account for the weight of the patient and reduce the dosage prescribed accordingly.

(2) Pregnant patients. The osteopathic physician assistant shall not discontinue the use of MAT opioids, such as methadone or buprenorphine, by a pregnant patient without oversight by the MAT prescribing practitioner. The osteopathic physician assistant shall weigh carefully the risks and benefits of opioid detoxification during pregnancy.

(3) Aging populations. As people age, their tolerance and metabolizing of opioids may change. The osteopathic physician assistant shall consider the distinctive needs of patients who are sixty-five years of age or older and who have been on chronic opioid therapy or who are initiating opioid treatment.

##### NEW SECTION

**WAC 246-854-350 Episodic care of chronic opioid patients.** (1) When providing episodic care for a patient who the osteopathic physician assistant knows is being treated with opioids for chronic pain, such as for emergency or urgent care, the osteopathic physician assistant shall review the PMP to identify any Schedule II-V or drugs of concern received by the patient and document in the patient record their review and any concerns.

(2) An osteopathic physician assistant providing episodic care to a patient who the osteopathic physician assistant knows is being treated with opioids for chronic pain should

provide additional opioids to be equal to the severity of the acute pain. If opioids are provided, the osteopathic physician assistant shall limit the use of opioids to the minimum amount necessary to control the acute nonoperative pain, acute perioperative pain, or similar acute exacerbation of pain until the patient can receive care from the practitioner who is managing the patient's chronic pain treatment.

(3) The osteopathic physician assistant providing episodic care shall report known violations of the patient's written agreement to the patient's treatment practitioner who provided the agreement for treatment, when reasonable.

(4) The osteopathic physician assistant providing episodic care shall coordinate care with the patient's chronic pain treatment practitioner if that person is known to the osteopathic physician assistant providing episodic care, when reasonable.

(5) For the purposes of this section, "episodic care" means medical care provided by a practitioner other than the designated primary practitioner in the acute care setting; for example, urgent care or emergency department.

#### OPIOID PRESCRIBING—COPRESCRIBING

##### NEW SECTION

**WAC 246-854-355 Coprescribing of opioids with certain medications.** (1) The osteopathic physician assistant must not knowingly prescribe opioids in combination with the following Schedule II-IV medications without documentation in the patient record of clinical judgment:

- (a) Benzodiazepines;
- (b) Barbiturates;
- (c) Sedatives;
- (d) Carisoprodol; or
- (e) Sleeping medications, also known as Z drugs.

(2) If a patient receiving an opioid prescription is known to be concurrently prescribed one or more of the medications listed in subsection (1) of this section, the osteopathic physician assistant prescribing opioids shall consult with the other prescriber(s) to establish a patient care plan for the use of the medications concurrently or consider whether one of the medications should be tapered.

##### NEW SECTION

**WAC 246-854-360 Coprescribing of opioids for patients receiving medication assisted treatment.** (1) Where practicable, the osteopathic physician assistant providing acute nonoperative pain or acute perioperative pain treatment to a patient known to be receiving MAT shall prescribe opioids for pain relief either in consultation with the MAT prescribing practitioner or pain specialist.

(2) The osteopathic physician assistant shall not discontinue MAT medications when treating acute nonoperative pain or acute perioperative pain without documentation of the reason for doing so, nor shall use of these medications be used to deny necessary intervention.

NEW SECTION**WAC 246-854-365 Coprescribing of naloxone.** (1)

The osteopathic physician assistant shall confirm or provide a current prescription for naloxone when high-dose opioids are prescribed.

(2) The osteopathic physician assistant should counsel and provide an option for a current prescription for naloxone to patients being prescribed opioids as clinically indicated.

**OPIOID PRESCRIBING—PRESCRIPTION  
MONITORING PROGRAM**

NEW SECTION**WAC 246-854-370 Prescription monitoring program—Required registration, queries, and documentation.** (1)

The osteopathic physician assistant shall register to access the PMP or demonstrate proof of having registered to access the PMP if they prescribe opioids in Washington state.

(2) The osteopathic physician assistant may delegate the retrieval of a required PMP query to an authorized designee, in accordance with WAC 246-470-050.

(3) At a minimum, the osteopathic physician assistant shall ensure a PMP query is performed prior to the issuance of any prescription of an opioid or a benzodiazepine.

(4) For the purposes of this section, the requirement to consult the PMP does not apply in situations when it cannot be accessed by the osteopathic physician assistant or their authorized designee due to a temporary technical or electrical failure.

(5) In cases of technical or electrical failure, the osteopathic physician assistant shall document in the patient record the date(s) and time(s) of attempts to access the PMP and shall check the PMP for that patient as soon as is practicable after the failure is resolved, but not later than the next prescription.

(6) Pertinent concerns discovered in the PMP shall be documented in the patient record.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-854-243 Patient evaluation.
- WAC 246-854-244 Treatment plan.
- WAC 246-854-245 Informed consent.
- WAC 246-854-246 Written agreement for treatment.
- WAC 246-854-247 Periodic review.
- WAC 246-854-248 Long-acting opioids, including methadone.
- WAC 246-854-249 Episodic care.
- WAC 246-854-250 Consultation—Recommendations and requirements.
- WAC 246-854-251 Consultation—Exemptions for exigent and special circumstances.

WAC 246-854-252 Consultation—Exemptions for the osteopathic physician assistant.

WAC 246-854-253 Pain management specialist.

**WSR 18-14-090****PROPOSED RULES****STATE BOARD OF HEALTH**

[Filed July 2, 2018, 1:26 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-100-011 Definitions, 246-100-207 Human immunodeficiency virus (HIV) testing—Ordering—Laboratory screening—Interpretation—Reporting, and 246-100-208 Counseling standard—AIDS counseling. Amending various sections within Title 246 WAC to reflect the repeal of consent and opt-out options specific to HIV testing.

Hearing Location(s): On August 8, 2018, at 1:30 p.m., at the John A. Cherberg Building, Senate Hearing Room 3 (SHR3), 304 15th Avenue S.W., Olympia, WA 98501.

Date of Intended Adoption: August 8, 2018.

Submit Written Comments to: Caitlin Lang, P.O. Box 47990, Olympia, WA 98504-7990, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-4088, by July 31, 2018.

Assistance for Persons with Disabilities: Contact Caitlin Lang, phone 360-628-7342, TTY 360-833-6388 or 711, email [caitlin.lang@sboh.wa.gov](mailto:caitlin.lang@sboh.wa.gov), by July 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature passed SB 6580 (chapter 158, Laws of 2018), which requires any and all barriers to HIV testing be removed. The purpose of this proposal is to update three state board of health rule sections that contain consent and opt-out options specific to HIV testing to assure alignment with newly revised state law. As a result of the rule change, HIV testing will be subject to the same notification and consent requirements that apply to any other medical test.

Reasons Supporting Proposal: The proposal is necessary to make state board of health rules consistent with requirement changes pursuant to SB 6580 (chapter 158, Laws of 2018). The rule change normalizes HIV and treats it like any other medical testing.

Statutory Authority for Adoption: RCW 70.24.380.

Statute Being Implemented: SB 6580 (chapter 158, Laws of 2018).

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

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Caitlin Lang, 101 Israel Road S.E., Tumwater, WA 98504-7990, 360-628-7342; Implementation and Enforcement: Claudia Catastini, 310 Israel Road S.E., Tumwater, WA 98504-7838, 360-236-3458.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

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.

June 29, 2018  
Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

**WAC 246-100-011 Definitions.** The ~~((following))~~ definitions ~~((shall))~~ in this section apply ~~((in the interpretation and enforcement of))~~ throughout chapter 246-100 WAC unless the context clearly requires otherwise:

(1) "Acquired immunodeficiency syndrome (AIDS)" means illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality Weekly Report (MMWR), ~~((December 18, 1992))~~ April 11, 2014, Volume ~~((41))~~ 63, Number ~~((RR-17))~~ RR-03. A copy of this publication is available for review at the department and at each local health department.

(2) "AIDS counseling" means counseling directed toward:

(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and

(b) Assessing the individual's risk of HIV acquisition and transmission; and

(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

(3) "Anonymous HIV testing" means that the name or identity of the individual tested for HIV will not be recorded or linked to the HIV test result. However, once the individual testing positive receives HIV health care or treatment services, reporting of the identity of the individual to the state or local public health officer is required.

(4) "Board" means the Washington state board of health.

(5) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.

(6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

(7) "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

(8) "Confidential HIV testing" means that the name or identity of the individual tested for HIV will be recorded and linked to the HIV test result, and that the name of the individual testing positive for HIV will be reported to the state or local health officer in a private manner.

(9) "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose an immediate threat to present or future public health.

(10) "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination.

(11) "Department" means the Washington state department of health.

(12) "Detention" or "detainment" means physical restriction of activities of an individual by confinement for the purpose of controlling or preventing a serious and imminent threat to public health and may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the individual to accomplish such purposes.

(13) "Disease control measures" means the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans.

(14) "Health care facility" means:

(a) Any facility or institution licensed under chapter 18.20 RCW, assisted living facilities, chapter 18.46 RCW, birthing centers, chapter 18.51 RCW, nursing homes, chapter 70.41 RCW, hospitals, or chapter 71.12 RCW, private establishments, clinics, or other settings where one or more health care providers practice; and

(b) In reference to a sexually transmitted disease, other settings as defined in chapter 70.24 RCW.

(15) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

(16) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection, including but not limited to, pre- and post-test counseling, ~~((consent))~~ and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

(a) Monitoring previously diagnosed infection with HIV;

(b) Monitoring organ or bone marrow transplants;

(c) Monitoring chemotherapy;

(d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting such existence.

(17) "Infectious agent" means an organism such as a virus, rickettsia, bacteria, fungus, protozoan, or helminth that is capable of producing infection or infectious disease.

(18) "Isolation" means the separation, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible or who may spread the agent or contaminant to others.

(19) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW.

(20) "Local health officer" means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department, or his or her delegate appointed by the local board of health.

(21) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

(22) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(23) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:

- (a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;
- (b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;
- (c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;
- (d) Assessing emotional impact of HIV test results; and
- (e) Appropriate referral for other community support services.

(24) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

- (a) Helping an individual to understand:
  - (i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;
  - (ii) The nature, purpose, and potential ramifications of HIV testing;
  - (iii) The significance of the results of HIV testing; and
  - (iv) The dangers of HIV infection; and
- (b) Assessing the individual's ability to cope with the results of HIV testing.

(25) "Principal health care provider" means the attending physician or other health care provider recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or therapy for a patient.

(26) "Quarantine" means the limitation of freedom of movement of such well persons or domestic animals as have been exposed to, or are suspected to have been exposed to, an infectious agent, for a period of time not longer than the longest usual incubation period of the infectious agent, in such manner as to prevent effective contact with those not so exposed.

(27) "School" means a facility for programs of education as defined in RCW 28A.210.070 (preschool and kindergarten through grade twelve).

(28) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) Chlamydia trachomatis infection;
- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

(29) "Spouse" means any individual who is the marriage partner of an HIV-infected individual, or who has been the marriage partner of the HIV-infected individual within the ten-year period prior to the diagnosis of HIV-infection, and evidence exists of possible exposure to HIV.

(30) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of such designation, the person having primary responsibility for public health matters in the state.

(31) "Suspected case" or "suspected to be infected" means the local health officer, in his or her professional judgment, reasonably believes that infection with a particular infectious agent is likely based on signs and symptoms, laboratory evidence, or contact with an infected individual, animal, or contaminated environment.

(32) "Veterinarian" means an individual licensed under provisions of chapter 18.92 RCW, veterinary medicine, surgery, and dentistry and practicing animal health care.

**AMENDATORY SECTION** (Amending WSR 13-03-110, filed 1/17/13, effective 2/17/13)

**WAC 246-100-207 Human immunodeficiency virus (HIV) testing—Ordering—Laboratory screening—Interpretation—Reporting.** (1) Except for persons conducting seroprevalent studies under chapter 70.24 RCW, or ordering or prescribing an HIV test for another individual under subsections (4) and (5) of this section or under WAC 246-100-208(1), any person ordering or prescribing an HIV test for another individual, shall(:

~~(a) Obtain the consent of the individual, separately or as part of the consent for a battery of other routine tests provided that the individual is specifically informed verbally or in writing that a test for HIV is included; and~~

~~(b) Offer the individual an opportunity to ask questions and decline testing; and~~

~~(c) If the HIV test is positive for or suggestive of HIV infection, provide the name of the individual and locating information to the local health officer for follow-up (to pro-~~

vide)) and post-test counseling as required by WAC 246-100-209.

(2) The local and state health officer or authorized representative shall periodically make efforts to inform providers in their respective jurisdiction about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings."

(3) Health care providers may obtain a sample brochure about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings" by contacting the department's HIV prevention program at P.O. Box 47840, Olympia, WA 98504.

(4) Any person authorized to order or prescribe an HIV test for another individual may offer anonymous HIV testing without restriction.

(5) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) ~~((Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;~~

~~((b)))~~ Explain that ~~((the reason for HIV testing is))~~ donations are tested to prevent contamination of the blood supply, tissue, or organ bank donations;

~~((c)))~~ ~~((b))~~ At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session; and

~~((d)))~~ ~~((c))~~ Inform the individual that the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer.

(6) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform an HIV test, provide written information to the individual tested explaining:

- (i) What an HIV test is;
- (ii) Behaviors placing a person at risk for HIV infection;
- (iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;
- (iv) The potential risks of HIV testing; and
- (v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer; and

(iii) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session.

(c) Establish procedures to inform an applicant of the following:

(i) Post-test counseling specified under WAC 246-100-209 is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.

(7) Laboratories and other places where HIV testing is performed must demonstrate compliance with all of the requirements in the Medical test site rules, chapter 246-338 WAC.

(8) The department laboratory quality assurance section shall accept substitutions for enzyme immunoassay (EIA) screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

(9) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

(a) The test or sequence of tests has been approved by the FDA or the Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) Such information consists of relevant facts communicated in such a way that it will be readily understood by the recipient.

(10) Persons may inform a tested individual of the unconfirmed reactive results of an FDA-approved rapid HIV test provided the test result is interpreted as preliminarily positive for HIV antibodies, and the tested individual is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

AMENDATORY SECTION (Amending WSR 10-01-082, filed 12/15/09, effective 1/15/10)

**WAC 246-100-208 Counseling standard—AIDS counseling.** (1) Principal health care providers providing care to a pregnant woman who intends to continue the pregnancy and is not seeking care to terminate the pregnancy or as a result of a terminated pregnancy shall:

(a) Provide or ensure the provision of AIDS counseling as defined in WAC 246-100-011(2);

~~(b) ((When ordering or prescribing an HIV test, obtain the informed consent of the pregnant woman for confidential human immunodeficiency virus (HIV) testing, separately or as part of the consent for a battery of other routine tests provided that the pregnant woman is specifically informed verbally or in writing that a test for HIV is included;~~

~~(c) Offer the pregnant woman an opportunity to ask questions and decline testing;~~

~~(d) Order or prescribe HIV testing if the pregnant woman consents;~~

~~(e) If the pregnant woman refuses to consent, discuss and address her reasons for refusal and document in the medical record both her refusal and the provision of education on the benefits of HIV testing; and~~

~~(f)) If an HIV test is positive for or suggestive of HIV infection, provide the follow-up and reporting as required by WAC 246-100-209.~~

~~(2) ((Health care providers may obtain a sample brochure addressing the elements of subsection (1) of this section by contacting the department of health's HIV prevention program at P.O. Box 47840, Olympia, WA 98504-7840.~~

~~(3)) Principal health care providers shall counsel or ensure AIDS counseling as defined in WAC 246-100-011(2) and offer and encourage HIV testing for each patient seeking treatment of a sexually transmitted disease.~~

~~((4)) (3) Drug treatment programs under chapter 70.96A RCW shall provide or ensure provision of AIDS counseling as defined in WAC 246-100-011(2) for each person in a drug treatment program.~~