

**WSR 20-01-023**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed December 6, 2019, 11:46 a.m., effective January 6, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To satisfy the legislative directive to conduct negotiated rule making, required by RCW 36.28A.450 and 9A.16.040 (found in chapter 1, Laws of 2019).

Citation of Rules Affected by this Order: New WAC 139-12-010, 139-12-020, and 139-12-030.

Statutory Authority for Adoption: RCW 9A.16.040 (found in chapter 1, Laws of 2019) and 43.101.080.

Adopted under notice filed as WSR 19-21-178 on October 23, 2019.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 139-12-020, independent investigative team (IIT).**

- Removed "such as WSP.["]
- Added "the independent investigative function, provided it is not in an involved agency."

**WAC 139-12-020, initial incident response.**

- Inserted "police use of."

**WAC 139-12-020, member agency.**

- Inserted "police use of."

**WAC 139-12-030 Independent investigations criteria.**

- Replaced "factors" with "principles."
- Inserted "involved agency and the."
- Inserted "results in a compliant and complete investigation and."

**WAC 139-12-030 (1)(b).**

- Inserted "police use."
- Inserted "with the following exception:["]
- Moved section about specialized equipment underneath.
- Removed "no," added "not," removed "and," added "and the use is approved by the IIT commander." from section about specialized equipment.

**WAC 139-12-030 (2)(a).**

- Replaced "factors" with "principles."

**WAC 139-12-030 (2)(b).**

- Added a-f lettering.
- Inserted "Existing teams with [will] have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the nonlaw enforcement community representatives for review."
- Inserted "nonlaw enforcement."

**WAC 139-12-030 (4)(b).**

- Removed "each year."

**WAC 139-12-030 (4)(c).**

- Inserted "by the chief(s) and/or sheriff(s)."

- Replaced "panel" with "board."

**WAC 139-12-030 (4)(c)(vi).**

- Replaced "must" with "are expected to."
- Inserted "sustained."
- Inserted "police use of."
- Removed "incident."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 3, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 5, 2019.

Derek Zable  
Human Resource and  
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**Chapter 139-12 WAC**

**LAW ENFORCEMENT TRAINING AND COMMUNITY SAFETY ACT—INDEPENDENT INVESTIGATIONS CRITERIA (LETCSA)**

NEW SECTION

**WAC 139-12-010 Purpose.** In 2015 the U.S. Department of Justice issued a final report from the 21st Century Task Force on Policing. A core focus of that report addressed strategies for improving relationships, increasing community engagement, and fostering cooperation. The report recommended clear and comprehensive policies on the use of force, training on the importance of de-escalation, crisis intervention and mental health, the provision of first aid, and recommended external and independent investigations in officer involved shootings resulting in injury or death. Initiative 940 and SHB 1064 incorporated those recommendations and these WACs implement the requirement of an independent investigation that is completely independent of the involved agency. The goal of this requirement is to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.

Ultimately, this is about the sanctity of all human life; the lives of police officers and the lives of the people they serve and protect. The preservation of life should be at the heart of American policing. RCW 9A.16.040 provides a legal justification for officers whose use of deadly force meets the "good faith" standard. RCW 10.114.011 requires that where the use of deadly force by a peace officer results in death,

substantial bodily harm, or great bodily harm an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The independent investigation is a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency.

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

#### NEW SECTION

**WAC 139-12-020 Definitions. Best practices** - For the purpose of this chapter, best practices are defined as methods, techniques, and procedures that have consistently shown by research and experience to produce superior results and are established or proposed as a standard, suitable for widespread adoption in the law enforcement profession.

**Completed investigation** - The final work product of the IIT for the purpose of informing the prosecuting attorney's charging decision. An independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies.

**Deadly force** - As set forth in RCW 9A.16.010, "deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

**Evanescent evidence** - Physical evidence that may be degraded or tainted by human or environmental factors if left unprotected or unpreserved for the arrival of the independent investigative team (IIT); identification and contact information for witnesses to the incident; photographs and other methods of documenting the location of physical evidence and location/perspective of witnesses.

**Good faith standard** - As set forth in RCW 9A.16.040, "'good faith" is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual."

**Great bodily harm** - As set forth in RCW 9A.04.110, "great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

**Independent investigative team (IIT)** - A team of qualified and certified peace officer investigators, civilian crime scene specialists, and at least two non-law enforcement community representatives who operate completely independent of any involved agency to conduct investigations of police deadly force incidents. An IIT is created when multiple law enforcement agencies enter into a written agreement to investigate police use of deadly force incidents in their geographical regions. A single law enforcement agency may fulfill the

independent investigative function, provided it is not the involved agency.

**Initial incident response** - This is the period in time immediately following a police use of deadly force incident, and prior to the arrival of the IIT, when involved agency personnel on scene and other first responders immediately take actions to render the scene safe and provide or facilitate life-saving first aid to persons at the scene who have life threatening injuries.

**Involved agency** - The agency that employs or supervises the officer(s) who used deadly force. There can be more than one "involved agency."

**Member Agency** - Each of the agencies that enters into a written agreement to investigate police use of deadly force in their geographical region.

**Necessary** - As set forth in RCW 9A.16.010, "necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

**Prosecutor's review** - The period of time when the IIT presents a completed investigation to the prosecutor, who then reviews all the facts and makes a charging decision.

**Substantial bodily harm** - As set forth in RCW 9A.04.-110, "substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

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

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

#### NEW SECTION

##### **WAC 139-12-030 Independent investigation criteria.**

There are five principles that are fundamental to enhancing public trust in the integrity of independent investigations involving police use of deadly force:

- Independence;
- Transparency;
- Communication;
- Credible process; and
- Credible investigators.

Standards are necessary for the involved agency and the public to assess whether the actions taken by the IIT are independent, transparent, credible, and communicated in a manner that results in a compliant and complete investigation and builds public trust.

##### **(1) Independence.**

(a) Independence is essential to the integrity and objectivity of the investigation. Maintaining independence is achieved through compliance with rules and regulations designed to prohibit undue influence, and the appearance of undue influence, by the involved agency in the investigation.

(b) Standards for an investigation completely independent of the involved agency:

- Once the involved agency personnel and/or other first responders have rendered the scene safe and provided or facilitated life-saving first aid to persons at the scene who have life-threatening injuries, the involved agency will immediately call the IIT. Then the primary focus of the involved agency shifts to the protection and preservation of evanescent evidence in order to maintain the integrity of the scene until the IIT arrives. Once the IIT arrives, and the IIT commander has the appropriate resources on scene, the involved agency will relinquish control of the scene to the IIT.

- No member of the involved agency may participate in any way in the investigation of police use of deadly force conducted by the IIT, with the following exception:

- Specialized equipment belonging to the involved agency may not be used by the IIT unless: 1 - no reasonable alternative exists; 2 - the equipment is critical to carrying out the independent investigation; and 3 - the use is approved by the IIT commander. If the equipment is used, the non-law enforcement community representatives on the IIT must be notified about: 1 - why it needs to be used; and 2 - the steps taken to appropriately limit the role of any involved agency personnel in facilitating the use of that equipment.

- No information about the ongoing independent investigation of police use of deadly force will be shared with any member of the involved agency, except limited briefings given to the chief or sheriff of the involved agency about the progress of the investigation so that they can manage the internal administrative investigation and communicate with their community about the progress of the investigation.

- If the chief or sheriff of the involved agency requests that the IIT release the body cam video or other investigation information of urgent public interest, the IIT commander should honor the request with the agreement of the prosecutor of jurisdiction.

## (2) Transparency.

(a) Transparency is the critical element of procedural justice that allows community members to assess whether the process of the investigation is conducted in a trustworthy manner and complies with the standards for the five listed principles.

(b) Standards for the transparency of an independent investigation:

- The policies and operating procedures of the IIT will be available to the public.

- The names of the members, supervisors, commanders, and non-law enforcement community representatives on the IIT will be available to the public.

- A minimum of two non-law enforcement community representatives will be assigned to each IIT to:

- Participate directly in the vetting, interviewing, and/or selection of IIT investigators. (Existing teams will have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the non-law enforcement community representatives for review.)

- Review conflict of interest statements submitted within 72 hours of the commencement of each investigation by the investigators;

- Be present at the briefings with the involved agency(s) chief or sheriff;

- Have access to the investigation file when it is completed;

- Be provided a copy of all press releases and communication to the media prior to release; and

- Review notification of equipment use of the involved agency.

- The non-law enforcement community representatives must sign a binding confidentiality agreement at the beginning of each police use of deadly force investigation that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded.

- If the confidentiality agreement is violated, the non-law enforcement representative may be subject to prosecution under RCW 9A.76.020 (Obstructing a law enforcement officer) and chapter 10.97 RCW, Washington State Criminal Records Privacy Act. For the purpose of this chapter, "criminal background information" is the same as "criminal history information" as defined in RCW 10.97.030(4).

- The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.

- When an independent investigation is complete the information will be made available to the public in a manner consistent with applicable state law.

## (3) Communication.

(a) Communication is key to enhancing the public's perception of police legitimacy and fairness. A lack of open communication leads to suspicion and damages trust.

(b) Standards for communication during an independent investigation:

- A family member of the person against whom deadly force has been used will be notified as soon as they can be located by either the involved agency or the IIT, whichever is faster.

- A member of the IIT will be assigned as a family liaison within the first twenty-four hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the independent investigation and will give the family and the involved agency advance notice of all scheduled press releases.

- Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.

- If the person against whom deadly force is used is, or is believed to be a member of a federally recognized tribe:

- The involved agency will notify the governor's office of Indian affairs (GOIA) in accordance with RCW 10.114.021.

- A member of the IIT will be assigned as a tribal liaison within the first twenty-four hours and keep the tribe (or a representative of the tribe's choice) apprised of all significant developments of the investigation.

## (4) Credibility.

(a) In order for investigations to be viewed as credible it is critical to demonstrate that the procedures followed are consistent, known to the public, and rooted in best practices for homicide investigations, with particular attention focused

on those unique areas of evidence relevant to the officer's decision-making process. Equally important is the credibility of the investigators. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation.

(b) Standards for a credible independent investigative process:

- After life-saving first aid has been provided, members of the involved agency and other first responders at the scene will:

- Secure the incident scene and maintain its integrity until the IIT arrives.

- The perimeter must be clearly marked and protected.

- Evanescent evidence must be located and preserved, consistent with best practices published annually by the criminal justice training commission.

- The independent investigation will follow accepted best practices for homicide investigations published and annually updated by the WSCJTC.

- An involved agency conducting a timely internal administrative investigation for compliance with department policy and procedures is critical to maintaining public trust and is separate and distinct from the independent investigation required by the LETCSA. To allow the involved agency to move forward with the administrative investigation in a timely fashion, the independent investigation required by LETCSA must be conducted in a manner that does not inhibit the involved agency from doing so. To accomplish this:

- The IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and train all team members to observe them to ensure no member of the IIT receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements.

- The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish "prohibited content" to the IIT.

- If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.

(c) The standards for credible investigators include:

(i) Appointed Members.

The chiefs and sheriffs who sign a written agreement to support and participate in the IIT shall appoint:

- The IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.

- At least two non-law enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force. The Chiefs and Sheriffs of each regional team shall create a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s) and/or sheriff(s).

- All IIT leadership shall be commissioned peace officer(s), with previous experience in criminal investigations.

- The IIT supervisors shall be recommended by their agency to the IIT commander.

(ii) Selection Process for IIT Members.

The IIT leadership shall:

- Ensure all applicants meet all time, rank, and training prerequisites described in chapter xxx WAC.

- Ensure that qualified applicants are interviewed by a panel, which includes the non-law enforcement community representatives and other members of the IIT selected by the IIT commander.

- All applicants shall be interviewed using criteria pertinent for the position of an IIT investigator. The same questions should be asked of each applicant.

- At the conclusion of the panel the IIT commander shall consider the recommendations of the panel and select those best suited for the needs of the IIT.

(iii) Requirements for IIT Investigators.

- Applicants for the position of investigator must be employed by a member agency of the IIT.

- The applicant shall be a commissioned peace officer in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.

(iv) Periodic Appointment Review.

The chief or sheriff of a member agency, and the IIT commander shall review the appointment of their IIT members who have served three years for possible rotation or replacement.

(v) Training Requirements.

The credibility of an individual assigned to an IIT is grounded in two elements: training and experience in criminal investigations. Since some IIT members were chosen because of their experience in criminal investigations, it is important to clearly define expectations for both training and experience, and acknowledge the relationship between those two elements.

IIT members who do not meet the training requirement are eligible to participate on the IIT, but not in a lead position.

Civilian IIT members (i.e. Crime Scene Investigators, Evidence Technicians, etc.) are not required to obtain the Qualified Lead Investigator certificate, but the IIT leadership shall establish reasonable non-commissioned training requirements through their IIT protocol.

The CJTC will issue an "IIT Qualified Lead investigator certificate" to ensure that those who are assigned to a lead investigator role for an IIT meet the training requirements listed below by the end of 2020.

To obtain an IIT Qualified Lead Investigator certificate, candidates must:

- Provide proof of at least three years of uninterrupted experience as a certified peace officer, crime scene investigator, or related expertise in a discipline relevant to investigations.

- Provide proof of successful completion of the prescribed training classes, (or appropriate equivalent experience), listed in this chapter.

(A) Basic training classes:

- Basic homicide investigation;

- Interviewing and interrogation;
- LETCSA Violence De-escalation and Mental health training.

IIT Members who have two years or more of relevant, full-time criminal investigative work experience may substitute their work experience for the required Basic Training classes. County Sheriffs, Police Chiefs, and IIT Commanders are encouraged to promote continuing education as a best practice for all members assigned to the IIT.

(B) Advanced training classes.

A minimum of eight hours of training annually may include, but is not limited to, the following criminal investigation topics:

- Advanced homicide investigation techniques;
- Advanced interviewing and interrogation;
- Officer-involved shooting investigation;
- In-custody death investigation;
- Excited delirium and positional asphyxia;
- Bloodstain pattern analysis;
- Crime scene photography/videography and
- Other related training, seminars, and conferences or ongoing training as offered by WSCJTC or other training venues on an as available basis.

(C) In-service training.

- All IIT members shall receive priority registration to LETCSA training, required homicide investigations training, and recertification every three years.

- The IIT shall train as a unit at least annually.

(vi) Demonstrated History of Honorable Behavior.

Investigators assigned to an IIT are expected to have a work history free of a sustained finding of serious misconduct and/or a pattern of sustained complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the police use of deadly force.

Examples of disqualifying sustained misconduct and/or personal history include, but are not limited to:

- Discrimination of any type, based on protected classes identified under RCW 49.60.030(1).
- Theft, fraud, dishonesty, and abuse of authority including, but not limited to: Theft, falsifying an official police record or making a false statement, serious ACCESS (a centralized computer enforcement service system) violations, obtaining or disclosing confidential information, and excessive use of force.
- Dishonorable behavior including, but not limited to: Harassment, bullying, aggressive or intimidating behavior, or threats of violence, including domestic violence.

(vii) Conflicts of Interest.

Within 72-hours of the commencement of each investigation, investigators and non-law enforcement community representatives, must complete a "conflict of interest" assessment tool regarding any connection to the officers being investigated. The assessment (created by WSCJTC) will include questions about prior interactions or relationships with officers being investigated, and will address social conflict, work conflict, and bias. The conflict assessment will be reviewed and discussed by the non-law enforcement community representatives and the IIT commander. The conflict of interest assessments for investigators and non-law enforce-

ment community representatives will be developed at the March 2020 summit and adopted by the Commission at the June 2020 meeting.

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

**WSR 20-02-005**  
**PERMANENT RULES**  
**POLLUTION LIABILITY**  
**INSURANCE AGENCY**

[Filed December 18, 2019, 3:26 p.m., effective January 18, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends and updates the agency's public records rule to align with recommended model rules and to reflect current agency practices.

Citation of Rules Affected by this Order: Amending chapter 374-20 WAC.

Statutory Authority for Adoption: Chapter 42.56 RCW, Public Records Act.

Adopted under notice filed as WSR 19-20-123 on October 2, 2019 [and WSR 19-23-002 on November 6, 2019].

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 18, 2019.

Phi V. Ly  
 Legislative and  
 Policy Manager

AMENDATORY SECTION (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-010 Purpose.** The purpose of this chapter is to implement those provisions of (~~RCW 42.17.250 through 42.17.320~~) chapter 42.56 RCW relating to access to public records.

AMENDATORY SECTION (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-020 Definitions.** Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) The terms (~~("person,")~~) "public record(~~(s))" and "writing" have the same meanings as stated in RCW 42.17-020.~~

(2) "Agency" means the pollution liability insurance agency established pursuant to chapters 70.148 and 70.149 RCW (~~(- For purposes of WAC 374-20-030 through 374-20-100 inclusive, agency)~~) and shall also mean staff or employees of the pollution liability insurance agency.

(3) "Director" means the director of the agency.

(4) "Public records officer" means the designated records manager of the agency.

(5) "Designee" means the employee of the agency designated by the director or the public records officer to serve as the public records officer at the agency in the absence of the officer.

AMENDATORY SECTION (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-030 Description of organization.** (1) The (~~(location of the principal offices and the)~~) agency's mailing address (~~(of the agency are))~~ is:

Pollution Liability Insurance Agency  
State of Washington  
(~~(1015-10th Avenue, S.E.~~  
~~Mailstop: EN-12~~  
~~Olympia)~~) P.O. Box 40930  
Olympia, Washington 98504-0930

The agency's office is located at:  
300 Desmond Drive S.E.  
Lacey, Washington (~~(98504)) 98503~~

(2) The principal administrative and appointing officer of the agency is the director. The director may designate other officers or employees of the agency to act (~~(in)~~) on his or her behalf in the director's absence (~~(or with respect to those matters)~~) in which so doing would enhance the efficiency of the agency's operations.

(3) The agency implements and administers the pollution liability insurance programs established by chapters 70.148, 70.149, and 70.340 RCW.

(4) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request, should contact the public records officer of the pollution liability insurance agency using one of the following contact methods by mail:

PLIA Public Records Officer  
P.O. Box 40930  
Olympia, WA 98504-0930  
Phone: 800-822-3905  
Fax: 360-407-0509  
Email: pliamail@plia.wa.gov.

A request form is available on the agency's web site at [www.plia.wa.gov](http://www.plia.wa.gov).

(5) The public records officer will oversee compliance with the Public Records Act, chapter 42.56 RCW. The agency will provide the fullest assistance to requestors; create and maintain an index to public records of the agency for use by the public and agency officials; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

AMENDATORY SECTION (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-040 Public records available.** (1) (~~(A)~~) Times for inspection of records. Public records (~~(of the agency)~~) are available for (~~(public)~~) inspection and copying (~~(pursuant to these rules and subject to subsections (2), (3), and (4) of this section)~~) during agency business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the office of the agency. Many public records are also available for inspection and copying on the agency's web site at any time, at no cost.

(2) (~~(Availability of public records is subject to the exemptions and requirements of RCW 42.17.310, 42.17.315, and 70.148.060.~~

(3) ~~When a public record includes information the disclosure of which would lead to an unreasonable invasion of personal privacy, the agency shall delete such information before making the record available and the public records officer shall provide a written justification for the deletion.~~

(4) ~~The agency shall, upon request for identifiable public records, make them promptly available to any person. If public records requested are not readily available for inspection, the agency shall notify the requester when and where the records will be available.)~~ Records index. An index of public records, as described in WAC 374-20-050, is available for use by members of the public. The index may be accessed online at [www.plia.wa.gov](http://www.plia.wa.gov).

(3) Organization of records. The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take agency records from the agency's office without the permission of the public records officer or designee. A variety of records are available on the agency's web site at [www.plia.wa.gov](http://www.plia.wa.gov). Requestors are encouraged to view the documents available on the web site before submitting a records request.

(4) No duty to create records. The agency is under no obligation to create a new public record to satisfy a records request. Translating a record into an alternative electronic format at the request of a requestor does not constitute a new public record. Scanning paper copies to make electronic copies is a method of copying paper records and does not create a new public record.

AMENDATORY SECTION (Amending WSR 90-21-051, filed 10/15/90, effective 11/15/90)

**WAC 374-20-050 Records indexes.** (~~(1)~~) Effective July 1, 1990, the agency will maintain an index or indexes of:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990.

(2) Each index shall list the records they contain by date of issue, number, addressee, subject matter, or other identifying information appropriate to the type of record.

(3) Each index shall be revised or updated no less frequently than quarterly.

(4) The indexes developed by or for the agency shall be available to all persons under the same rules and under the same conditions as are applied to public records available for inspection and shall be available at the offices of the agency.) The records retention schedule established by the division of state archives of the office of the secretary of state serves as an index for the identification and location of the agency's records, including those described in RCW 42.56.070 (5).

The records retention schedule indexes records according to the record series title. Each title is further identified by a statement of function or purpose, and the retention period. The records retention schedule is available to the public for inspection and copying. With the assistance of the public records officer or designee, any person can access the agency's public records using the records retention schedule.

Policy statements and interpretive statements entered after June 30, 1990, and as defined in RCW 34.05.010, are indexed by number and subject matter and are available on the agency's web site.

**AMENDATORY SECTION** (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-060 Making a request(s) for public records.** ((1) All requests for inspection or copying made in person at the agency shall be made on a form substantially as follows:

REQUEST FOR PUBLIC RECORDS

Date ..... Time .....

Name .....

Address .....

Representing .....

Description of Records:

.....  
.....

.....  
I certify that lists of names obtained through this request for public records will not be used for commercial purposes.

.....  
Signature

Number of copies .....

Number of pages .....

Per page charge \$ .....

Total charge \$ .....

(2) All requests made in person may be made at the agency between the hours of 9:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. Monday through Friday, excluding legal holidays.

(3) A request for inspection or copying of public records may be made by mail in a letter containing the following information:

(a) The name and address of the person making the request;

(b) The organization or group that the person represents;

(c) The time of day and the calendar date on which the person wishes to inspect the public records;

(d) A description of the public records requested;

(e) A statement whether access to copying equipment is desired;

(f) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason;

(g) A statement that the record will not be used for commercial purposes.

(4) All requests by mail should be received at the agency at least three business days before the requested date of inspection to allow the public records officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

(5) The agency may in its discretion fill requests made by telephone.) (1) Any person wishing to inspect or copy public records of the agency must make the request in writing using the agency's request form, the agency's online portal, by letter, fax, or email addressed to the agency public records officer. The written request must include:

(a) Name of requestor;

(b) Address of requestor;

(c) Requestor's contact information, including telephone number and any email address;

(d) Identification of the requested public record(s) adequate for the public records officer or designee to locate the records;

(e) Whether the requestor is asking to inspect the record(s) or for copies;

(f) Whether the requestor would like an estimate of applicable charges before any copies are made; and

(g) The date and time of day of the request.

(2) A records request form is available for use by requestors at the office of the public records officer and online at [www.plia.wa.gov](http://www.plia.wa.gov).

(3) If the requestor refuses to identify themselves or provides insufficient contact information, the agency will respond to the extent feasible and consistent with the law.

AMENDATORY SECTION (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-070 Fees.** ((No fee shall be charged for inspection of public records. The agency may charge a reasonable fee, determined from time to time by the director, for providing copies of typed, printed, or written material of a maximum size of 8 1/2" by 14". The fee shall be the amount necessary to reimburse the agency for its actual costs incident to such copying. Fees for copies of nonstandard printed material or public records in nonwritten form may not exceed the agency's actual costs incident to such copying.)) (1) No fee shall be charged for the inspection of public records, including inspecting records on the agency's web site.

(2) In order to avoid unduly burdensome fee calculations, the agency will implement a fee schedule consistent with the Public Records Act. The agency adopts the state legislature's approved fees and costs for most of the agency records, as authorized in RCW 42.56.120 and as published in the agency's fee schedule.

(3) The fee schedule is available at the agency's office and on the agency's web site at [www.plia.wa.gov](http://www.plia.wa.gov).

(4) The agency will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The agency will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the agency may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The agency may enter into a contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges, or in response to a voluminous or frequently occurring request as allowed by RCW 42.56.120(4).

(5) A requestor may ask the agency to provide a summary of the applicable charges before any copies are made or before processing a customized service. The requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(6) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some smaller requests. If a fee waiver is requested, the requestor must submit the fee waiver request in writing describing how the conditions are met. A determination by the public records officer to waive all or part of copying fees will be made on a case-by-case review of the fee waiver request.

(a) To request a fee waiver, the requestor must submit the request in writing to the agency, describing how at least one of the conditions set forth in (b) of this subsection are met. If the public records officer determines condition(s) for a fee waiver are met, that decision will be documented in writing.

(b) The public records officer may grant a fee waiver request under the following conditions:

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

(ii) All of the records for an entire request are electronic and can be provided in a single email with attachments of a size equivalent to up to one hundred printed pages; or

(iii) The records responsive to an entire request consists of a number of duplicate documents.

(c) Fee waivers are not applicable to records provided in installments.

(7) Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency does not charge sales tax when it makes copies of public records.

(8) All required fees must be paid in advance of release of the copies or an installment of copies. The agency will notify the requestor of when payment is due.

(9) The agency may also charge actual costs of mailing, including the costs of the shipping container.

(10) Payment should be made by check or money order to the pollution liability insurance agency. The agency prefers not to receive cash. For cash payments it is within the public record officer's discretion to determine the denomination of bills and coins that will be accepted.

(11) The agency will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

#### NEW SECTION

**WAC 374-20-075 Responses to public records requests.** (1) The agency is prohibited by statute from disclosing lists of individuals for commercial purposes.

(2) Upon receipt of a request, the agency will assign a tracking number and record the request into the agency's public records request log.

(3) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records. The agency will process requests in the order that allows the largest number of requests to be processed in the most efficient manner.

(4) Following the initial evaluation of the request under subsection (3) of this section, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the agency's web site, providing the internet site or link to the specific records requested;

(ii) If copies are requested and the required fee is paid, send the copies to the requestor;

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available. The public records officer or designee may revise the estimate of when records will be available; or



(c) Acknowledge receipt of the request and ask the requestor to provide clarification for anything unclear, and provide to the greatest extent possible, a reasonable estimate of the time the agency will require to respond to the request if it is not clarified.

(i) Such clarification may be requested and provided by telephone, and recorded in writing;

(ii) If the requestor fails to respond to the agency's request for clarification and the entire request is unclear, the agency need not respond to it.

(d) The agency will respond to those portions of the request that are clear or deny the public record request.

(5) If the agency does not respond in writing within five business days of receipt of the request, then the requestor should contact the public records officer to determine the reason for the failure to respond.

(6) If the requested records contain information that may affect rights of others and are exempt from disclosure, then the public records officer may, prior to providing the records, give notice to the person with affected rights. This notice will include sufficient information so that the affected person(s) may contact the requestor and ask him or her to revise the request, or, if necessary, seek a court order to prevent or limit the disclosure. The notice to the affected person(s) will include a copy of the request.

(7) Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not, the public records officer will redact the exempt portions, provide the nonexempt portions, and provide an explanation for the redaction.

(8) The agency shall provide a viewing area to inspect public records, provided that doing so does not unduly burden the operation of the agency. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor will indicate which documents he or she wishes the agency to copy. The requestor must claim or review the assembled records within ten business days of the agency's issuance of the notice of availability. If the requestor or a representative of the requestor fails to claim or review the records within the ten business day period, the agency will close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which will be processed as a new request.

(a) After inspection is complete, the public records officer or designee shall make copies or arrange for copying. In accordance with the charge for copies set out in WAC 374-20-070, the requestor must pay the appropriate fee before the agency will release the copies.

(b) When the inspection of the requested records is complete and any requested copies are provided, the public records officer or designee will indicate in writing that the agency has conducted a reasonable search for the requested records, made the nonexempt records available for inspection, and closed the request.

(9) While not required, and with the consent of the requestor, the agency may decide to provide customized electronic access services and assess charges under RCW 42.56.-120 (2)(f). A customized service charge applies only if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The agency may charge a fee consistent with RCW 42.56.120 (2)(f) for such customized access.

(10) When electronic records are requested, the agency will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or at the agency's discretion, in a format that is reasonably translatable from the format in which the agency keeps the records. The agency is under no obligation to convert electronic records to a specific format identified by the requestor. When metadata is requested, the agency will provide the records in a native file format that preserves metadata where technically feasible. Metadata may be unavailable for records that require conversion to a nonnative format in order to apply exemptions.

(11) When it appears that the number of records responsive to a request may be large, that the process of locating, assembling, or reviewing the records may be lengthy, or that it is otherwise appropriate, the agency may provide records on an installment basis. The agency may wait to locate and assemble additional records in an installment until the requestor has claimed or inspected the previous installment. If an installment is not claimed or inspected within ten business days of the notice of availability, the agency may close the request.

(12) When the requestor: Withdraws the request, fails to clarify an entirely unclear request, fails to fulfill his or her obligations to inspect the records, or pay the deposit, the required fees for an installment, or make final payment for the requested copies, the public records officer will close the request. The agency will indicate to the requestor that the agency has closed the request unless the requestor received previous correspondence stating that the request would be closed under the above circumstances.

(13) If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide these on an expedited basis.

#### NEW SECTION

**WAC 374-20-076 Notice of availability.** (1) Once record(s) responsive to a request or any installment thereof have been located, assembled, reviewed, and prepared for release, and any affected parties notified, the agency will notify the requestor that those record(s) are available for inspection or copying.

(2) If the request asked for inspection of the record(s), then upon receipt of a notice of availability, the requestor

may inspect records by scheduling a viewing appointment with the public records officer or designee.

(3) If the requestor asked for copies of the record(s), then the notice of availability will state the costs required to be paid and any other allowable costs under WAC 374-20-070 or the Public Records Act, before release of copies of the records.

(4) If the requestor asked for a summary of applicable charges before any copies are made, then the notice of availability will state the estimated costs to make copies of the record(s) pursuant to WAC 374-20-070. The requestor must inform the agency if it would like copies of the identified record(s). The requestor may revise the request to reduce the number of copies to be made thus reducing the applicable charges.

(5) If, within ten business days of the agency's issuance of a notice of availability, the requestor fails to claim the records (or any installment thereof) by either scheduling a viewing appointment, making any required payment and picking up copies, or by requesting copies of the record(s), then the agency will close the request.

AMENDATORY SECTION (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-080 Statement of reasons for denial of public records request.** ~~((When the agency refuses, in whole or in part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.))~~ (1) When the agency denies, in whole or in part, a written records request, it shall cite the specific exemption authorizing the refusal and provide a brief explanation of how the exemption applies to the record withheld.

(2) The agency will maintain on its web site www.plia.wa.gov a list of the "other statute" exemptions from disclosure, outside those found in the Public Records Act, which may be applied to specific information or records of the agency. This list is for informational purposes only, and failure to list an exemption shall not affect the ability of any exemption used by the agency.

(3) The agency may deny a "bot" request, if the agency establishes that responding would cause excessive interference with other essential agency functions. A "bot" request is one of multiple records requests from a requestor to the agency within a twenty-four hour period which the agency reasonably believes was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 90-14-019, filed 6/27/90, effective 7/28/90)

**WAC 374-20-090 Reviews of denials of public records request.** ~~((Upon denial of a request for inspection of a public record, in whole or in part, the public records officer or other staff member denying the request shall refer the denial to the director or the director's designee for review. The director or the director's designee shall immediately review the denial and either affirm or reverse it. Such review shall be deemed complete at the end of the second business~~

~~day following the denial of inspection and shall constitute final agency action for the purpose of review. The final decision shall be sent to the person requesting inspection promptly following the decision.))~~ (1) **Petition for internal administrative review of denial of access.** Any requestor who objects to any denial of a records request may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of, or reasonably identify, the written statement by the public records officer or designee denying the request.

(a) The public records officer shall promptly provide the petition and any other relevant information to the agency official designated by the director to conduct the review.

(b) The agency official will immediately consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as the agency and the requestor mutually agree to.

(2) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(3) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

## WSR 20-02-007

### PERMANENT RULES

### POLLUTION LIABILITY

### INSURANCE AGENCY

[Filed December 18, 2019, 3:43 p.m., effective January 18, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adoption and application of rules required under the State Environmental Policy Act, RCW 43.21C.120 ensuring agency review for program sites.

Citation of Rules Affected by this Order: New chapter 374-100 WAC.

Statutory Authority for Adoption: RCW 43.21C.120.

Adopted under notice filed as WSR 19-20-121 on October 2, 2019 [and WSR 19-23-004 on November 6, 2019].

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 18, 2019.

Phi V. Ly  
Legislative and  
Policy Manager

### Chapter 374-100 WAC

#### STATE ENVIRONMENTAL POLICY ACT (SEPA)

##### NEW SECTION

**WAC 374-100-010 Authority.** The pollution liability insurance agency adopts these rules under RCW 43.21C.120 (State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

##### NEW SECTION

**WAC 374-100-020 Adoption by reference.** (1) The provisions of chapter 197-11 WAC (SEPA guidelines adopted by the department of ecology), are hereby adopted by PLIA, and are incorporated in and made a part of this chapter by reference herein, to the extent that the SEPA guidelines are applicable to the programs, activities, and actions of PLIA.

(2) The provisions of this chapter are intended to implement the provisions of chapter 197-11 WAC, and to be consistent therewith.

##### NEW SECTION

**WAC 374-100-030 Purpose.** (1) The purpose of this chapter is to implement chapter 197-11 WAC, SEPA rules, as applicable to the pollution liability insurance agency.

(2) These policies and procedures are developed to implement SEPA in a manner which reduces duplication, establishes effective and uniform rules, encourages public involvement, and promotes certainty with respect to the requirements of the act.

##### NEW SECTION

**WAC 374-100-040 Additional definitions.** In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "PLIA" means the pollution liability insurance agency.

(2) "Proponent" means applicant, as defined in WAC 197-11-716 or party with a proposal, as defined in WAC 197-11-784.

##### NEW SECTION

**WAC 374-100-050 Categorical exemptions.** The following activities of the PLIA are within the categorical

exemptions contained in the indicated subsections of WAC 197-11-800:

(1) Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation as provided in WAC 197-11-880 including, but not limited to:

(a) Performance of emergency removal and disposal of petroleum products from a tank;

(b) Performance of emergency removal and disposal of soil or groundwater contaminated with petroleum products;

(c) Approval of funding for emergency projects;

(d) Emergency disaster response or maintenance.

(2) All inspections conducted by PLIA of either private or public property for any purpose as provided in WAC 197-11-800 (12)(b) including, but not limited to:

(a) Performing initial investigations of a reported release of heating oil;

(b) Performing periodic review of an environmental covenant;

(c) Inspection related to insurance policies.

(3) All review and payment of claims as provided in WAC 197-11-800 (14)(e) including, but not limited to:

(a) Review and payment of insurance claims under the heating oil pollution liability insurance program;

(b) Review and payment of insurance claims under the commercial underground storage tank reinsurance program.

(4) Providing grants or loans by PLIA's underground storage tank loan and grant program to another agency, as provided in WAC 197-11-800(15).

##### NEW SECTION

**WAC 374-100-060 Summary of information which may be required of an applicant.** (1) The applicant for each proposal for which the PLIA is the lead agency shall submit a complete environmental checklist along with a complete application for the required approval.

(2) After review of the environmental checklist, the PLIA may require the applicant to submit additional information necessary to properly evaluate the potential environmental impacts of the project. Field investigation or research may be required of the applicant or conducted by the PLIA at the applicant's cost.

(3) Preparation of EIS is the responsibility of PLIA. The responsible official shall be satisfied that any EIS issued by the PLIA is in compliance with these rules and chapter 197-11 WAC.

(4) Whenever someone other than the PLIA prepares an EIS the responsible official shall:

(a) Coordinate scoping to ensure that the individual preparing the document receives all substantive information submitted by any agency or person.

(b) Direct the areas of research and study to be undertaken and the content and organization of the document.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the document.

(5) An EIS is required for each project for which a determination is made that the proposal will have a probable significant adverse impact on the environment. The applicant may prepare the EIS if judged by the PLIA to be qualified, have the PLIA develop the EIS, or hire a consultant to do so. In any case, the EIS shall be prepared under the direction of the responsible official at the expense of the applicant and final approval is that of the responsible official. Cost of preparing the EIS shall be paid by the applicant and shall include fees of the consultant, the PLIA consultation time and cost of any required materials. If the applicant chooses to hire a consultant to prepare the EIS, the consultant must be mutually agreed upon by the applicant and the PLIA. A performance bond in an amount specified by the PLIA may be required of the applicant to ensure payment of the PLIA expenses pursuant to WAC 197-11-914. Private applicants are encouraged to be involved in the EIS preparation process.

(6) A supplemental EIS shall be prepared as an addition to the EIS if the PLIA decides that:

(a) There are substantial changes to a proposal which will have a probable significant adverse environmental impact; or

(b) There is significant new information relative to the probable significant environmental impact of a proposal.

(c) Pursuant to WAC 197-11-600 (3)(c), written comments on the DEIS warrant additional discussion for purposes of its action than that found in the FEIS.

#### NEW SECTION

##### **WAC 374-100-070 Timing of the SEPA process.** (1)

As provided by WAC 197-11-055, the SEPA process shall be completed before the pollution liability insurance agency is irrevocably committed to a particular course of action. At the same time, the SEPA process should not be undertaken until a proposal is sufficiently definite to permit meaningful environmental analysis.

(2) When PLIA receives an application or proposal, the agency shall determine whether PLIA's SEPA action is "categorically exempt" or statutorily exempt from SEPA. If exempt, and WAC 197-11-305 does not remove categorical exempt status, PLIA has no further obligation under SEPA.

(3) The threshold determination and any required environmental impact statement (EIS) for PLIA nonproject actions shall be completed prior to official adoption of the action in question.

(4) The threshold determination and any required EIS for issuance of a loan or grant under PLIA's underground storage tank loan and grant program shall be completed prior to issuance of the loan or grant in question. Applicants shall provide all environmental and design information necessary to prepare the appropriate environmental document.

(5) The threshold determination and any required EIS for PLIA actions of a project nature shall in all cases be completed prior to the approval of the location or design of the project in question. Where the project involves remedial actions under the Model Toxics Control Act conducted a potentially liable person under an order or consent decree, the timing and review requirements of WAC 197-11-250 through 197-11-268 will govern as appropriate.

#### NEW SECTION

##### **WAC 374-100-080 Lead agency determination.** (1)

PLIA will endeavor to determine whether PLIA or another agency is the SEPA lead agency within five working days of receiving the nonexempt proposal. See WAC 197-11-050 and 197-11-922 through 197-11-940. If PLIA is not the lead agency, PLIA shall send the complete environmental checklist and a copy of the application or proposal to the lead agency with an explanation of why PLIA identified the agency as the lead agency.

(2) PLIA may determine it would be appropriate to share or divide lead agency responsibilities with other agencies. In such an event, one agency will be designated the nominal lead agency, and shall be responsible for complying with the duties of the lead agency under the SEPA rules. Other agencies with jurisdiction shall be notified of the agreement and determination of the nominal lead agency.

(3) Whenever PLIA is an agency of jurisdiction and determines that a DNS issued by another lead agency is inappropriate and that the proposal in question could cause significant harm to the resources under its jurisdiction, the agency may assume lead agency status per WAC 197-11-948. Within ten days of assuming lead agency status, PLIA will notify the proponent of the proposal in writing as to the reasons for its assumption of lead agency status. Prior to preparation of an EIS for the proposal, PLIA will consult with the proponent and give the proponent an opportunity to modify or change the proposal in such a way that an EIS may not be necessary as outlined in WAC 197-11-360(4).

#### NEW SECTION

##### **WAC 374-100-090 Availability, distribution, and costs of environmental documents.** (1)

When PLIA is the lead agency, PLIA personnel shall distribute SEPA documents as required by chapter 197-11 WAC unless another agency is nominal colead with PLIA. The following are acceptable methods of distribution:

(a) Email environmental documents including attached checklists and backup materials provided the recipient agency or interested party has made its email address available to PLIA;

(b) Mail environmental documents, including attached checklists and backup materials, on CDs or as hardcopies to agency mailing lists that include either general lists or lists for specific proposals or subject areas.

(2) A requestor asking for additional hard copies of a SEPA document may be required to pay additional copying fees per WAC 197-11-504.

(3) PLIA shall use reasonable methods to inform the public when PLIA issues a DNS under WAC 197-11-340, a mitigated DNS under WAC 197-11-350, a scoping notice under WAC 197-11-360, a draft EIS under WAC 197-11-455, a draft supplemental EIS under WAC 197-11-620, a final EIS under WAC 197-11-460, or when PLIA schedules a public hearing under WAC 197-11-502, 197-11-535, and 197-11-610. PLIA shall use two or more of the following reasonable methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements

associated with PLIA's non-SEPA decision (underlying governmental decision), public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notify persons or groups who have expressed interest in the proposal or in the type of proposal being considered, who have expressed interest in proposals located in the affected geographic area, and who PLIA has identified as potentially interested parties;

(b) Publish a notice in a newspaper of general circulation in the area in which the proposal will be implemented;

(c) Post the property with appropriate signage;

(d) Post notices and environmental documents on PLIA's web site.

(4) As required under WAC 197-11-508 for state agencies, PLIA shall submit the following environmental documents to the department of ecology for publication in the SEPA register:

(a) DNSs under WAC 197-11-340;

(b) DSs (scoping notices) under WAC 197-11-408;

(c) EISs under WAC 197-11-455, 197-11-460, and 197-11-620;

(d) Adoption notices to the extent required by WAC 197-11-610 and 197-11-630; and

(e) Notices of action under RCW 43.21C.080 and 43.21C.087.

#### NEW SECTION

**WAC 374-100-100 Agency policy—Substantive authority and mitigation.** (1) The policy of the pollution liability insurance agency is to avoid or mitigate adverse environmental impacts that may result from agency actions or approvals. This policy results from:

(a) The legislated duties of the agency with respect to protection of human health and the environment; and

(b) Recognition of the fact that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment (RCW 43.21C.020(3)).

(2) If an action is subject to SEPA, and the proposed activity requires an action, approval or permit from the agency, and is reasonably likely to have an adverse environmental impact as identified in an environmental document, the agency may:

(a) Require reasonable alternatives to the action, approval or permit and/or proven measures which will mitigate or eliminate the identified potential adverse impact, and make such alternatives and/or proven mitigation measures conditions of the agency's approval; or

(b) Deny the proposal if significant adverse impacts as identified in a final or supplemental environmental impact statement prepared under chapter 197-11 WAC are not satisfactorily avoided or mitigated by proven techniques.

#### NEW SECTION

**WAC 374-100-110 Designation of responsible official.** (1) The responsible official shall carry out duties and functions for the purpose of assuring PLIA's compliance with SEPA and the SEPA rules.

(2) When PLIA is the lead agency, the responsible official shall review the environmental checklist and make the threshold determination in compliance with this chapter, chapters 43.21C RCW and 197-11 WAC, and specifically, WAC 197-11-330.

(3) The responsible official shall carry out further SEPA compliance under WAC 197-11-340, 197-11-350, or 197-11-360, as appropriate. This includes notice and circulation requirements for threshold determinations.

#### NEW SECTION

##### **WAC 374-100-120 Procedures when consulted.**

When a request by another agency for consultation is made pursuant to the provisions of WAC 197-11-912, such request shall be referred for response to the responsible official who shall coordinate the research and field investigations which may be necessary, and supervise the transmittal of the requested information to the lead agency within the time periods specified by WAC 197-11-502.

#### NEW SECTION

**WAC 374-100-130 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

#### **WSR 20-02-018**

##### **PERMANENT RULES**

##### **DEPARTMENT OF**

##### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed December 19, 2019, 9:22 a.m., effective January 20, 2020]

Effective Date of Rule: January 20, 2020.

Purpose: This rule-making action is necessary to implement federal changes to the Supplemental Nutrition Assistance Program (SNAP) prohibiting individuals with substantial lottery and gambling winnings from receiving SNAP benefits. This change is required by Section 4009 of the Agricultural Act of 2014, implemented by United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) final rule, published on April 15, 2019, adopting provisions in 7 C.F.R. 273.11(r).

Citation of Rules Affected by this Order: New WAC 388-483-0005; and amending WAC 388-414-0001, 388-418-0005, and 388-489-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250.

Other Authority: 7 C.F.R. 273.11(r), 84 F.R. 15083.

Adopted under notice filed as WSR 19-22-067 on November 5, 2019.

Changes Other than Editing from Proposed to Adopted Version: Subsection (8) was struck from WAC 388-483-0005 as follows:

~~(8) If you regain eligibility for food assistance, your AU may become CE upon certification of the new basic food application if you meet CE criteria under WAC 388-414-0001.~~

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 3, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: December 18, 2019.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-05-010, filed 2/5/15, effective 3/8/15)

**WAC 388-414-0001 Do I have to meet all eligibility requirements for basic food? (1) What is "categorically eligible" (CE)?**

(a) Being categorically eligible (CE) means that you have already met requirements for the program. If you are CE, you do not have to meet every program requirement to be eligible for basic food.

(b) If your assistance unit (AU) is CE, you automatically meet the following requirements for basic food:

(i) Countable resource limit under WAC 388-470-0005;

(ii) Maximum gross monthly income under WAC 388-478-0060; and

(iii) Maximum net monthly income under WAC 388-478-0060.

(c) If your AU is CE and the information is available from another program, you do not need to provide the following for basic food:

(i) Social Security number information under WAC 388-476-0005;

(ii) Sponsored alien information under WAC 388-450-0155; and

(iii) Residency under WAC 388-468-0005.

(d) Being CE does not mean that your AU is guaranteed to get basic food benefits. If your AU is CE:

(i) You must still meet the other basic food program requirements under WAC 388-400-0040; and

(ii) If you meet the other program requirements, we must budget your AU's income to determine the amount of benefits your AU will receive.

(2) **Who is categorically eligible for basic food?** Your basic food AU is CE when your household meets the conditions in subsection (2)(a) or (b) below:

(a) Your AU's income that we do not exclude under WAC 388-450-0015 is at or under two hundred percent of the federal poverty guidelines we use for department programs.

(i) The federal government publishes the federal poverty guidelines on the health and human services web site. These are currently posted at <http://aspe.hhs.gov/poverty/index.shtml>.

(ii) The department uses the monthly value of the income guidelines for the current year beginning the first of April every year.

(iii) If your income is not over two hundred percent of the federal poverty guidelines, we provide your AU information about the department programs and resources in the community.

(b) Everyone in your AU receives one of the following cash assistance programs:

(i) Temporary assistance for needy families (TANF)/state family assistance (SFA) or tribal TANF under WAC 388-400-0005 and WAC 388-400-0010;

(ii) Aged, blind, or disabled (ABD) cash assistance under WAC 388-400-0060;

(iii) Supplemental security income (SSI) under Title XVI of the Social Security Act; or

(iv) Diversion cash assistance (DCA) under WAC 388-432-0005. DCA makes the basic food AU CE for the month it receives DCA and the following three months.

(3) **Who is not CE even if my AU meets the above criteria?**

(a) Even if your AU is CE, members of your AU are not eligible for basic food if they:

(i) Are not eligible because of their alien or student status;

(ii) Were disqualified from basic food under WAC 388-444-0055 for failing work requirements;

(iii) Are not eligible for failing to provide or apply for a Social Security number;

(iv) Receive SSI in a cash-out state (state where SSI payments are increased to include the value of the client's food stamp allotment); or

(v) Live in an institution not eligible for basic food under WAC 388-408-0040.

(b) If a person in your AU is not eligible for basic food, we do not include them as an **eligible member** of your CE AU.

(c) Your AU is not CE if:

(i) Your AU lost eligibility due to substantial lottery or gambling winnings as indicated under WAC 388-483-0005;

(ii) Your AU is not eligible because of striker requirements under WAC 388-480-0001;

~~((+))~~ (iii) Your AU is ineligible for knowingly transferring countable resources in order to qualify for benefits under WAC 388-488-0010;

~~((+))~~ (iv) Your AU refused to cooperate in providing information that is needed to determine your eligibility;

~~((+))~~ (v) The head of household for your AU failed to meet work requirements; or

~~((+))~~ (vi) Anyone in your AU is disqualified because of an intentional program violation under WAC 388-446-0015.

AMENDATORY SECTION (Amending WSR 19-01-105, filed 12/18/18, effective 2/1/19)

**WAC 388-418-0005 How will I know what changes to report?** (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

- (a) If you receive **cash** benefits, you need to tell us if:
  - (i) You move;
  - (ii) Someone moves out of your home;
  - (iii) Your total gross monthly income goes over the:
    - (A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or
    - (B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;
    - (iv) You have liquid resources more than six thousand dollars; or
    - (v) You have a change in employment, you need to tell us if:
      - (A) You get a job or change employers;
      - (B) Your schedule changes from part-time to full-time or full-time to part-time;
      - (C) You have a change in your hourly wage rate or salary; or
      - (D) You stop working.
    - (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:
      - (i) You move;
      - (ii) The child you are caring for moves out of the home;
      - (iii) Anyone related to the child you are caring for moves into or out of the home;
      - (iv) There is a change in the recipient child's earned or unearned income unless they are in school full-time as described in WAC 388-450-0070;
      - (v) The recipient child has liquid resources more than six thousand dollars;
      - (vi) A recipient child in the home becomes a foster child; or
      - (vii) You legally adopt the recipient child.
  - (2) If you do not receive cash assistance but you do receive benefits from basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, and tell us if:
    - (a) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; (~~(b)~~)
    - (b) You or a member of your household receives substantial lottery or gambling winnings in a single game that is equal to or over the elderly or disabled resource limit under WAC 388-470-0005 (8)(a); or
    - (c) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.

## Chapter 388-483 WAC

### SUBSTANTIAL LOTTERY OR GAMBLING WINNINGS

#### NEW SECTION

**WAC 388-483-0005 Do I qualify for food assistance if I have a substantial lottery or gambling win?** (1) Any household certified to receive food assistance will lose eligibility upon receipt of a substantial lottery or gambling win by any household member.

(2) A substantial lottery or gambling win is a cash prize that is:

(a) Equal to or over the elderly or disabled resource limit for food assistance, before taxes or other withholdings, under WAC 388-470-0005(8)(a); and

(b) Won in a single game as result of a single hand, bet, or ticket.

(3) If multiple individuals shared in the purchase of the ticket, hand, or similar bet, then we count only the portion of the winnings allocated to members of your household.

(4) You must report a substantial lottery or gambling win for food assistance as required under chapter 388-418 WAC.

(5) The loss of eligibility in subsection (1) of this section begins the first of the month following our termination letter under WAC 388-458-0030.

(6) If your AU lost eligibility due to a substantial win, your AU:

(a) Will not be CE under WAC 388-414-0001 when reapplying for food assistance; and

(b) Is not eligible for transitional food assistance (TFA) under WAC 388-489-0025.

(7) An AU that loses eligibility for food assistance due to a substantial win will remain ineligible until meeting the following criteria as part of a new food assistance application eligibility determination:

(a) The countable resource limit under WAC 388-470-0005;

(b) Maximum gross monthly income under WAC 388-478-0060; and

(c) Maximum net monthly income under WAC 388-478-0060.

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

**WAC 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period?** Your transitional food assistance benefits will end early if:

(1) Someone who gets transitional food assistance with you applies and is approved for temporary assistance for needy families while still living in your home. You may reapply to have your eligibility for basic food determined;

(2) We learn that you and your household are no longer residing in the state of Washington; or

(3) **All members** of your household are ineligible to get basic food for any of the following reasons:

(a) Refusal to cooperate with quality assurance (WAC 388-464-0001);

(b) Substantial lottery or gambling win (WAC 388-483-0005);

(c) Transfer of property to qualify for basic food assistance (WAC 388-488-0010);

~~((e))~~ (d) Intentional program violation (WAC 388-446-0015 and 388-446-0020);

~~((f))~~ (e) Fleeing felon or violating a condition of probation or parole (WAC 388-442-0010);

~~((g))~~ (f) Alien status (WAC 388-424-0020 and 388-424-0030);

~~((h))~~ (g) Employment and training requirements (WAC 388-444-0055 and 388-444-0075);

~~((i))~~ (h) Work requirements for able-bodied adults without dependents (WAC 388-444-0030);

~~((j))~~ (i) Student status (WAC 388-482-0005);

~~((k))~~ (j) Living in an institution where residents are not eligible for basic food (WAC 388-408-0040); or

~~((l))~~ (k) Deceased.

Derek I. Sandison

Director

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-125-035 Farm tank pickup and washing requirements.

### **WSR 20-02-026**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed December 19, 2019, 1:32 p.m., effective January 19, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-840-4651 Patient notification, secure storage, and disposal, the nursing care quality assurance commission (commission) adopted amendments to existing rule to implement the legislative requirement of SSB 5380, section 10 (chapter 314, Laws of 2019) regarding requiring advanced registered nurse practitioners who prescribe opioids to inform patients of their right to refuse an opioid prescription and document patient requests to avoid opioids.

Citation of Rules Affected by this Order: Amending WAC 246-840-4651.

Statutory Authority for Adoption: RCW 18.79.110 and 18.79.800, and 34.05.353.

Adopted under notice filed as WSR 19-18-040 on August 29, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 20, 2019.

Paula R. Meyer, MSN, RN, FRE

Executive Director

### **WSR 20-02-019**

#### **PERMANENT RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed December 19, 2019, 9:22 a.m., effective January 19, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-125 WAC, Farm milk storage tanks and bulk milk tanker—Requirements, by repealing WAC 16-125-035. Currently, WAC 16-125-035 requires that all milk must be picked up at least every forty-eight hours from farm tanks and all farm tanks must be emptied, washed, and sanitized at least once every forty-eight hours. By repealing this section, the rule will defer to the requirements of the 2017 Pasteurized milk ordinance (PMO) adopted under chapter 16-101 WAC. The PMO specifies a seventy-two-hour requirement for pickup and washing.

Citation of Rules Affected by this Order: Repealing WAC 16-125-035.

Statutory Authority for Adoption: RCW 15.36.021.

Adopted under notice filed as WSR 19-21-058 on October 11, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 1.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 18, 2019.



AMENDATORY SECTION (Amending WSR 18-20-086, filed 10/1/18, effective 11/1/18)

**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; and

(d) The patient's right to refuse an opioid prescription or order for any reason.

(2) The practitioner shall document such notification in the patient record. If the patient refuses an opioid prescription or order, the practitioner must document the patient's request and avoid prescribing or ordering opioids, unless the request is revoked by the patient.

(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.

### WSR 20-02-031

#### PERMANENT RULES DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed December 19, 2019, 4:03 p.m., effective January 19, 2020]

Effective Date of Rule: Thirty-one days after filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: WAC 110-03-0490 and 110-03-0520 allow parties twenty-one days to request review of initial decisions, which varies from the twenty days allowed in office of administrative hearings' model rule, WAC 10-08-211. The department of children, youth, and families (DCYF) finds that allowing twenty-one days is consistent with long-standing practices of its predecessor agencies, the departments of social and health services, children's administration and early learning.

Purpose: Establish procedures, practices, and requirements for DCYF's informal dispute resolution process and adjudicative proceedings.

Citation of Rules Affected by this Order: New WAC 110-03-0010, 110-03-0020, 110-03-0030, 110-03-0040, 110-03-0050, 110-03-0060, 110-03-0080, 110-03-0090, 110-03-0100, 110-03-0110, 110-03-0120, 110-03-0130, 110-03-0140, 110-03-0150, 110-03-0160, 110-03-0165, 110-03-0170, 110-03-0180, 110-03-0190, 110-03-0200, 110-03-0210, 110-03-0220, 110-03-0230, 110-03-0240, 110-03-0250, 110-03-0260, 110-03-0270, 110-03-0280, 110-03-0290, 110-03-0300, 110-03-0310, 110-03-0320, 110-03-

0330, 110-03-0340, 110-03-0350, 110-03-0360, 110-03-0370, 110-03-0380, 110-03-0390, 110-03-0400, 110-03-0410, 110-03-0420, 110-03-0430, 110-03-0440, 110-03-0450, 110-03-0460, 110-03-0470, 110-03-0480, 110-03-0490, 110-03-0500, 110-03-0510, 110-03-0520, 110-03-0530, 110-03-0540, 110-03-0550, 110-03-0560, 110-03-0570, 110-03-0580, 110-03-0585, and 110-03-0590.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Adopted under notice filed as WSR 19-19-062 on September 16, 2019.

Changes Other than Editing from Proposed to Adopted Version:

- Definition of "business hours" inserted in WAC 110-03-0020.
- Definition of "party" simplified in WAC 110-03-0020.
- "Sensory impairment" removed from definition of limited-English proficient person in WAC 110-03-0020.
- Definition of "sensory impairment" deleted from WAC 110-03-0020.
- "Sensory impaired" narrowed to "hearing impaired" in WAC 110-03-0130 and 110-03-0140(3).
- Final WAC 110-03-0140(3) allows video recording of a hearing in accordance with RCW 2.42.180, instead of the video recording serving as the official transcript.
- Subsection (5) deleted from WAC 110-03-0030.
- WAC 110-03-0060 revised to allow for oral hearing requests.
- WAC 110-03-0120(4) revised to require the administrative law judge (ALJ) to determine interpreter's suitability on the record.
- WAC 110-03-0160 (3)(b) revised to make an interpreter available for a party's representative or an individual who assists a party.
- WAC 110-03-0220(2) revised to allow an ALJ, when a DCYF rule is challenged, to admit evidence for later court review.
- WAC 110-03-0230(3) revised to require an ALJ to allow a hearing request to be amended during the hearing if DCYF amends notice of action.
- Fax number corrected in WAC 110-03-0530.
- Final WAC 110-03-0585 (3) and (5) revised to clarify that only final orders issued by DCYF's board of appeals will be indexed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 60, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 19, 2019.

Brenda Villarreal  
Rules Coordinator

## Chapter 110-03 WAC

### ADMINISTRATIVE HEARINGS

#### GENERAL PROVISIONS

#### NEW SECTION

**WAC 110-03-0010 Purpose and scope.** (1) Application. This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of children, youth, and families (DCYF).

(2) This chapter:

(a) Where appropriate, establishes rules encouraging informal dispute resolution between DCYF and persons or entities who disagree with the department's actions; and

(b) Regulates all hearings involving DCYF.

(3) The rules of this chapter are intended to implement and supplement chapter 43.216 RCW; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules of procedure adopted by the office of administrative hearings (OAH), chapter 10-08 WAC. If a provision of this chapter is broader or conflicts with a more specific provision in another applicable rule or law, the more specific rule or law applies.

(4) This chapter and any amendments to this chapter apply to cases pending before OAH or a review judge at the time of adoption unless the amendment or rule specifically states otherwise. An amendment to this chapter does not require that issues already addressed by OAH or a review judge be readdressed to comply with the amendment, unless the amendment expressly says otherwise.

(5) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine whether a hearing right exists, including the APA and DCYF program rules and laws.

(6) Specific DCYF hearing rules contained in other chapters within this title will prevail over the rules in this chapter.

(7) Effective July 1, 2019, this chapter, not chapter 388-02 or 170-03 WAC, applies to all cases from programs administered by DCYF in which DCYF or its predecessor agencies issued a written notice of an appealable decision, including written notices issued before July 1, 2019. A petition for review of an initial order filed before July 1, 2019, will be reviewed by the body to which the petition was filed.

#### NEW SECTION

**WAC 110-03-0020 Definitions.** The following definitions apply to this chapter:

"Adjudicative proceeding" means a proceeding in which an opportunity for a hearing occurs before an administrative

law judge (ALJ) concerning an administrative appeal of a DCYF action. Hearings and prehearing conferences are elements of adjudicative proceedings. An adjudicative proceeding may take place before the office of administrative hearings (OAH) and may also encompass review proceedings before a DCYF board of appeals (BOA) review judge.

"Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an adjudicative proceeding resulting in an initial order, or resulting in a final order if no appeal of the initial order is properly made or if no further agency appeal is available.

"Adverse action" or "DCYF action" or "department action" means licensing, the enforcement of a statute, the application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

"Board of appeals" or "BOA" means the DCYF board of appeals, the entity to which an initial order of an ALJ may be appealed and considered by a review judge.

"Business days" means all days except for Saturdays, Sundays, federal legal holidays, and state legal holidays listed in RCW 1.16.050(1).

"Business hours" means 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

"Calendar days" means all days including Saturdays, Sundays, federal legal holidays, and state legal holidays as listed in RCW 1.16.050(1).

"Case" means the entire adjudicative proceeding following the filing of a request for hearing with OAH.

"Continuance" means a change to a later date or time of a prehearing conference, hearing, or deadline for other action.

"DCYF" or "department" means the department of children, youth, and families.

"DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

"Documents" means papers, letters, writings, or other printed or written items.

"Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present, as provided in RCW 34.05.455. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

"File" means delivering documents to OAH or the BOA at the location designated in this chapter or in a notice or order received from OAH or the BOA. The date of filing is the date documents are actually received during office hours by OAH or the BOA.

(a) Filing may be by:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax transmission, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service; or

(v) Legal messenger service.

(b) A party cannot file documents by email, unless agreed in advance by OAH or BOA.

"Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order. However, in the case of administrative proceedings related to juvenile parole revocation, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile, or subsidy overpayments to child care providers the ALJ's decision is the final administrative decision.

"Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules. An ALJ or review judge may use the provisions of superior court civil rule 60 as a guide to determine what may be considered good cause.

"Hearing" means a meeting held before OAH or a review judge that gives an aggrieved party an opportunity to be heard, for the purpose of deciding issues of fact or law, in a dispute resulting from an appealable action taken against the party by DCYF.

"Initial order" is a decision made by an ALJ that may be reviewed by a review judge at any party's request.

"Judicial review" means a superior court's review of a final order.

"Limited-English-proficient person" or "LEP" means a person with limited ability to read, write, or speak English well enough to understand and communicate effectively.

"OAH" means the office of administrative hearings. This is a separate agency and not part of DCYF.

"Party" means DCYF or a person or entity named in a department action, or to whom a department action is directed.

"Prehearing conference" means a meeting scheduled and conducted by an ALJ in preparation for a hearing.

"Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF offices and divisions.

"Reconsideration" means reexamination of a final order on request of a party because the party believes a mistake was made.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Representative" means the person selected by a party to represent that party in an administrative hearing. A representative may be an attorney or a lay representative who is not an attorney.

"Review" means the act of reevaluating an initial order by examining the record and issuing the DCYF final order as provided by RCW 34.05.464.

"Review judge" or "BOA review judge" means an attorney designated by the DCYF board of appeals to act as the reviewing officer and who is authorized to review ALJ initial orders and to prepare and enter the final order.

"Rule" means a state agency regulation found in the Washington Administrative Code (WAC).

"Serve" or "service" means a procedure by which notice of legal action is given to a party.

(a) Unless otherwise stated in law or rule, a party may serve another party by one of the following methods:

- (i) Personal service (hand delivery);
- (ii) First class, registered, or certified mail;
- (iii) Fax, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service;

(v) Legal messenger service; or

(vi) By any other method authorized by chapter 10-08 WAC.

(b) Service for each method, respectively, is complete when:

(i) Personal service is made;

(ii) Mail is properly stamped, addressed, and deposited in the United States mail;

(iii) Fax produces proof of transmission;

(iv) A parcel is delivered to a commercial delivery service with charges prepaid; or

(v) A parcel is delivered to a legal messenger service with charges prepaid.

(c) A party cannot serve documents by email, unless agreed in advance by the receiving party.

(d) Notice and orders served by mail by OAH or BOA are served on the date of mailing.

"Stay" means an order temporarily halting the effective date of a DCYF action.

#### NEW SECTION

**WAC 110-03-0030 Computing time for meeting deadlines in the hearing process.** (1) When counting days to determine when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order.

For example, if an initial order is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday, or federal or state legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and federal and state legal holidays.

(4) The deadline ends at 5:00 p.m. Pacific Time on the last day.

### INITIATING AN ACTION

#### NEW SECTION

**WAC 110-03-0040 The right to a hearing.** (1) A person or entity has a right to a hearing to appeal an action by DCYF only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. There is no good cause exception to the requirement to timely request a hearing.

(2) Some DCYF programs may require a party to complete an agency review process before requesting a hearing.

The notice of DCYF action that DCYF sends a party will include information about this requirement.

(3) A party has a specific, limited time to request a hearing. The deadline for the request is set by statute or department rule. In cases where the department sends a notice of DCYF action, information about how, where, and when to request a hearing will be provided in the notice.

(4) A challenge to an appealable DCYF action is heard in an administrative hearing by an ALJ employed by OAH. Not all DCYF actions may be challenged through the hearing process.

(5) If a party properly requests a hearing that is authorized under subsection (1) of this section, OAH will schedule a hearing and serve written notice of it on the parties.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right.

#### NEW SECTION

**WAC 110-03-0050 Requesting a hearing.** (1) A request for a hearing for DCYF actions must be made as provided in the notice sent by DCYF. The request for hearing can be made by the party requesting the hearing or by the party's representative.

(2) The hearing request must include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DCYF action;

(c) Any assistance needed by the requesting party, such as an interpreter or accommodation for a disability; and

(d) A copy of the notice from DCYF stating the appealable action.

#### NEW SECTION

**WAC 110-03-0060 Filing the request for hearing.** (1) When a written request for a hearing is required, a party must file the request with OAH by one of the methods described in the definition of "file" in WAC 110-03-0020. Documents must be filed in a manner that shows proof of receipt.

(2) The request must be filed using the OAH address information provided in the notice of DCYF action, or by fax at 360-664-8721.

(3) OAH is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

(4) OAH can be contacted by phone at 360-407-2700 or (toll free) 800-583-8271.

#### NEW SECTION

**WAC 110-03-0080 Service of notice and documents.** (1) Whenever service is required under this chapter, it must be made as described in the definition of "serve" or "service" in WAC 110-03-0020.

(2) Service on DCYF should be made at the address provided in the notice of DCYF action.

(3) Documents must be served in a manner that shows proof of service, as provided in WAC 110-03-0090.

(4) A party must serve all parties, and a party's representative if the party is represented, at the same time the party

files a document with OAH or BOA, or when otherwise required by law.

#### NEW SECTION

**WAC 110-03-0090 Proof of service.** A party may prove that an opposing party was served with documents by providing any of the following:

(1) A sworn statement by the person who served the document;

(2) The certified mail receipt signed by the recipient;

(3) An affidavit or certificate of mailing;

(4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;

(5) Proof of fax transmission; or

(6) Acknowledgment by the party being served.

#### NEW SECTION

**WAC 110-03-0100 Representation.** (1) The party requesting the hearing may represent themselves or may have another person act as a representative.

(a) A representative may be either an attorney or a lay representative including, but not limited to, a friend, relative, community advocate, or paralegal.

(b) Current DCYF employees may not represent a party other than DCYF. Unless DCYF gives permission, no former DCYF employee may be a representative for a party other than DCYF, if that employee was actively involved in the party's case while working for DCYF, or if that employee was actively involved in the party's case while working for the department of early learning (DEL) or the department of social and health services (DSHS) on or before June 30, 2018.

(2) The representative must provide OAH and the other parties with the representative's name, address, and telephone number as soon as practically possible once the decision for representation is made. If the representative is an attorney, the attorney must file a written notice of appearance in the case. If the party's representative is not an attorney, the party must also provide a written statement to DCYF authorizing the release of the party's information to the representative.

(3) After notice of representation has been properly provided, a represented party will be considered served by service on the representative.

(4) A party must notify OAH and DCYF if a representative is no longer representing the party. Withdrawal of an attorney representative is accomplished by the attorney filing a notice of withdrawal with OAH. Withdrawal of a lay representative is accomplished by the party providing written notice to OAH, or by oral notice on the record, that the former lay representative is no longer representing the party.

(5) If the party chooses to be represented or advised by an attorney or lay representative, DCYF will not pay for that attorney's or lay representative's services, as provided under RCW 34.05.428.

(6) A request for representation as an Americans with Disabilities Act (ADA) accommodation may be made to OAH under WAC 10-24-010.

NEW SECTION

**WAC 110-03-0110 Appointment of an interpreter in the hearing process.** (1) If a party or witness has LEP, OAH will provide an interpreter during the hearing at no cost to the party or witness.

(2) If OAH is notified that a party is a LEP person, all notices concerning hearings must:

- (a) Be written in the party's primary language; or
- (b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

NEW SECTION

**WAC 110-03-0120 Interpreter qualifications.** (1) OAH must provide a qualified interpreter pursuant to chapters 2.42 and 2.43 RCW to assist any LEP party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Neither relatives of any party nor DCYF employees may be used as interpreters.

(4) The ALJ must make a determination at the beginning of the hearing, on the record, if an interpreter can accurately interpret all communication to and from the person requesting the service. This determination will be based on:

- (a) The stated needs of the person with LEP;
  - (b) The interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings;
  - (c) The interpreter's understanding of the basic vocabulary and procedures involved in the proceeding; and
  - (d) The interpreter's impartiality.
- (5) The parties and their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If, at any time before or during the hearing, the ALJ finds that the interpreter does not provide accurate and effective communication, OAH must provide another interpreter.

NEW SECTION

**WAC 110-03-0130 Waiver of interpreter services.** (1) A party who is eligible for appointment of a qualified interpreter under chapter 2.42 or 2.43 RCW may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record. When the request is made by a hearing-impaired party represented by counsel, the party's counsel must consent to the waiver.

(3) The ALJ must make a determination that the waiver has been knowingly, voluntarily, and intelligently made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the proceedings.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

NEW SECTION

**WAC 110-03-0140 Requirements that apply to the use of interpreters.** (1) Interpreters must:

(a) Use the interpretive mode that the parties, the LEP person, the interpreter, and the ALJ consider the most accurate and effective;

(b) Interpret statements made by the parties, witnesses, and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties unless required by law; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) If a party is hearing impaired, the ALJ may record a video of the hearing to be used for verifying the official transcript of the proceedings.

NEW SECTION

**WAC 110-03-0150 Requirements that apply to decisions involving LEP parties.** (1) When an interpreter is used at a hearing, the ALJ must explain on the record that decisions are written in English and that OAH will provide an interpreter for a sight translation of the decision at no cost to the party needing interpreter services.

(2) OAH must provide the party needing interpreter services information about how to obtain those services. Information about how to access interpreter services must be attached to or included in the decision or order. The individual who provides the interpreter services does not need to be the same individual who provided the interpreter services at the hearing.

(3) OAH or the review judge must provide a copy of a decision or order to an interpreter for use in sight translation.

NEW SECTION

**WAC 110-03-0160 Notice of hearing.** (1) When a hearing is requested, OAH serves the parties and their representatives, including all persons who have filed written petitions to intervene, with a written notice of the hearing date. The notice must be served not fewer than seven business days before the hearing date.

(2) The notice of hearing will include:

(a) The names, mailing addresses, and telephone numbers of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) The date of the hearing request;

(c) The official file or other reference number and the name of the proceeding;

(d) If DCYF intends to appear, the mailing address and telephone number of the office designated to represent DCYF;

(e) The name, mailing address, and telephone number of the ALJ who will preside, if known;

(f) The date, time, place, and nature of the hearing;

(g) The legal authority and jurisdiction for the hearing, including a reference to the particular sections of the statutes and rules involved; and

(h) A short and plain statement of the matters asserted by the agency.

(3) OAH will also include information with the notice of hearing stating:

(a) If a party fails to attend or participate, either personally or through a representative, in a prehearing conference or a hearing, the party may lose the right to a hearing and an order of default or an order dismissing the case may be entered against the party;

(b) If an LEP party, witness, party's representative, or individual assisting an LEP party needs an interpreter under WAC 110-03-0110 and 110-03-0120, OAH will provide a qualified interpreter at no cost to the requesting individual. The notice will include information on how to request interpreter services;

(c) Whether the hearing will be held by telephone or in person and how to request a change in the way it will be held;

(d) How to inform OAH of any special accommodation needs for a party or witness; and

(e) How to contact OAH if a party or witness has a safety concern.

(4) The ALJ and the parties may agree to shorten the amount of notice required by any rule.

(5) Any party may request that the hearing be rescheduled if OAH does not provide the amount of notice required by these rules.

#### PREHEARING PROCEDURES AND MISCELLANEOUS PROVISIONS

##### NEW SECTION

**WAC 110-03-0165 Intervention.** (1) An ALJ or other presiding officer may grant a petition for intervention pursuant to RCW 34.05.443.

(2) A request to intervene will be handled as a prehearing motion. The ALJ may allow intervention if:

(a) The intervenor is not a party to the matter but has a substantial interest in the outcome of the matter and the interest of the intervenor is not adequately represented by a party; or

(b) Other good cause exists.

(3) If intervention is granted, the intervenor, though not a party, must comply with this chapter as a party to the proceeding would, unless otherwise limited in the order granting intervention.

##### NEW SECTION

**WAC 110-03-0170 Prehearing conferences.** (1) One or more prehearing conferences may be required and conducted by an ALJ before a hearing. A prehearing conference may be set on the initiative of the ALJ or upon request of a party.

(2) OAH will send notice of the time and date of a prehearing conference to all parties and their representatives at least seven business days before the date of the prehearing conference except when:

(a) An ALJ converts a scheduled hearing into a prehearing conference; or

(b) The only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 110-03-0250.

(3) The ALJ must reschedule the hearing if necessary to comply with the prehearing notice requirement.

(4) An ALJ may conduct the prehearing conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(5) Attendance by the parties and their representatives at all scheduled prehearing conferences is mandatory. A party may lose the right to participate during the hearing if that party or that party's representative does not attend the prehearing conferences. A party's appeal may be dismissed if a party or that party's representative did not attend the prehearing conferences.

(6) Additional prehearing conferences may be requested by the parties or set by the ALJ to address procedural or other issues specific to the case.

##### NEW SECTION

**WAC 110-03-0180 Purposes of prehearing conferences.** (1) The purposes of the prehearing conferences are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference, the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation or safety issues;

(d) Agree to continue the hearing;

(e) Allow the parties to make changes in their own documents including, but not limited to, the DCYF notice of an appealable action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve a document containing the names and phone numbers of witnesses and copies of all documents and other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DCYF rule;

(k) Consider a motion for summary judgment or other motion;

(l) Determine any other procedural issues that may be raised by the parties; or

(m) Schedule child witness hearings.

(3)(a) If the parties resolve the dispute informally before the prehearing conference, DCYF must provide a written description of the agreed resolution to the persons involved, and the ALJ may consider the agreement before or at the prehearing conference.

(b) If all the issues are resolved, the parties may settle the matter by:

(i) Withdrawal by the appellant of the request for hearing to appeal DCYF action;

(ii) Withdrawal by the agency of the action that is the subject of the proceeding; or

(iii) Written stipulation (agreement) signed by each party and each party's representative, or the stipulation must be recited on the record at the hearing. If the ALJ accepts the stipulation, the ALJ will enter an order consistent with its terms. The entry of the order based on the stipulation will result in dismissal of the appeal consistent with the terms of the stipulated agreement.

#### NEW SECTION

##### **WAC 110-03-0190 Prehearing conference order.** (1)

After the prehearing conference ends, the ALJ will serve a prehearing conference order describing:

(a) The decisions made or actions taken during the conference;

(b) Any changes to DCYF's or any other party's initial documents; and

(c) Any agreements reached.

(2) A party may object to the prehearing conference order by notifying the ALJ in writing within ten calendar days after the order is served. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing conference order, the order will determine how the hearing will be conducted, including whether it will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause by subsequent order.

(4) Prehearing conference orders are not appealable.

#### NEW SECTION

##### **WAC 110-03-0200 Assignment and challenge of assignment of administrative law judge or review judge.**

(1) OAH assigns an ALJ at least five business days before the hearing. A party or a party's representative may learn which ALJ is assigned to the hearing by calling or writing to the OAH field office listed on the notice of hearing.

(2) A party may request a different ALJ under RCW 34.12.050 and 34.05.425.

(a) Under RCW 34.12.050, a party requesting a different ALJ must file a written motion of prejudice at least three business days before the hearing or at least three business days before any earlier stage of the proceeding at which the ALJ may issue a discretionary ruling;

(i) The motion of prejudice must include an affidavit stating the reasons that the party believes the assigned ALJ cannot fairly decide the case or other discretionary issue;

(ii) The party must file the request with the chief ALJ at the OAH headquarters and serve a copy of the request at the same time on all other parties and their representatives.

(iii) The first request for a different ALJ under RCW 34.12.050 will be automatically granted. Any subsequent request may be granted or denied in the discretion of the chief ALJ or the chief ALJ's designee.

(b) Under RCW 34.05.425, a party may also request that an ALJ or review judge be disqualified for bias, prejudice, conflict of interest, or any other good cause. A petition for disqualification is a written explanation requesting assignment of a different ALJ or review judge. The party or the

party's representative must file a petition by taking the following steps:

(i) File a written petition and an affidavit supporting the party's reasons for believing the assigned ALJ or review judge cannot hear the case fairly;

(ii) A party must promptly file the petition after receipt of notice indicating that the individual will preside or, if later, promptly upon discovery of facts establishing grounds for disqualification;

(iii) File the petition and supporting affidavit with OAH or BOA and serve a copy on all other parties and their representatives at the same time;

(iv) The ALJ or review judge whose disqualification is requested will decide whether to grant or deny the petition and must state the facts and reasons for the decision.

#### NEW SECTION

##### **WAC 110-03-0210 Rules an ALJ or review judge must apply when making a decision.** (1) The ALJ or review judge must first apply the DCYF rules adopted in the Washington Administrative Code.

(2) If no DCYF rule applies, the ALJ or review judge must decide the issues according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, rules, and appellate court decisions.

(3) When applying DCYF program rules regarding the substantive rights and responsibilities of the parties, the ALJ or review judge must apply the DCYF program rules in effect on the date the DCYF issued a written notice of a DCYF action, unless otherwise required by other rule or law. If DCYF amends its notice of action, the ALJ or review judge must apply the rules in effect on the date the amendment was made, unless otherwise required by other rule or law.

(4) When applying procedural rules, the ALJ or review judge must apply the rules that are in effect on the date the procedure is followed.

(5) The ALJ or review judge must apply the rules in this chapter beginning on the date each rule is effective.

#### NEW SECTION

##### **WAC 110-03-0220 Challenges to validity of DCYF rules.** (1) Neither an ALJ nor a review judge may decide that a DCYF rule is invalid or unenforceable. Only a superior or appellate court may decide this issue.

(2) If the validity of a DCYF rule is raised during the hearing, the ALJ or review judge may allow evidence and argument for later court review.

#### NEW SECTION

##### **WAC 110-03-0230 Amendment to notice of DCYF action or a party's request for hearing.** (1) The ALJ must allow DCYF to amend (change) the notice of DCYF action before or during the hearing to match the evidence and facts.

(2) If DCYF amends its notice, it must do so in writing and serve a copy on OAH and the other parties and their representatives at the same time.

(3) The ALJ must allow an appealing party or the party's representative to amend a hearing request before or during the hearing to conform with an amended notice of DCYF action.

(4) If either DCYF or a party makes an amendment, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from DCYF's earlier notice of action or from the party's request for hearing.

(5) If the ALJ grants a continuance, OAH must serve a new hearing notice on all parties and their representatives at least seven business days before the new hearing date.

#### NEW SECTION

**WAC 110-03-0240 Changes of address.** (1) The parties and their representatives must contact DCYF and OAH as soon as possible to update any changed name, mailing address, or telephone contact information.

(2) Unless informed of a different mailing address by a party or representative before documents are mailed by OAH or DCYF to the address on record, proper notice will be presumed to have been given.

#### NEW SECTION

**WAC 110-03-0250 Continuances.** (1) Any party or party's representative may request a continuance either orally or in writing and must notify all other parties of the request at the same time the request is made.

(2) Before contacting the ALJ to request a continuance, a party and the party's representative are encouraged to contact the other parties to determine if they will agree to a continuance.

(3) The party or representative requesting a continuance must inform the ALJ whether the other parties and their representatives agree to the continuance.

(a) If the parties agree to a continuance, the ALJ may grant the request.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant the request for continuance.

(4) If a continuance is granted, OAH will serve written notice of the new hearing date and time.

#### NEW SECTION

**WAC 110-03-0260 Failure to timely request a hearing, orders of dismissal, and orders of default.** (1) A party's failure to request a hearing on a DCYF action within the time limit required by statute or rule results in the action becoming final and the loss of any right to a hearing. A final order resulting from a party's failure to timely request a hearing may not be vacated. There is no good cause exception for failing to timely request a hearing.

(2) An order of dismissal served on the parties and their representatives by an ALJ to end an adjudicative proceeding may be based on withdrawal of the hearing request by the appealing party, the appealing party's failure to appear or refusal to meaningfully participate in the proceedings, a

request for dismissal based on a written agreement between the parties, or a request for dismissal made by DCYF.

(a) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to meaningfully participate, the DCYF action becomes the final agency action.

(b) If the hearing is dismissed pursuant to a written agreement between the parties, the parties must comply with the agreement.

(3)(a) If an appealing party fails to attend or refuses to meaningfully participate in a scheduled prehearing conference or hearing, an order of default may be entered.

(b) The order of default will include notice that the party against whom the default order was entered may file a written motion requesting that the order be vacated and the hearing reinstated.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a motion to vacate the default order within twenty-one calendar days of the date the order was served on the parties as provided under WAC 110-03-0270.

(d) After an order of default becomes a final order, the DCYF action will remain in effect and will be the final agency action.

#### NEW SECTION

**WAC 110-03-0270 Vacating an order of default or order of dismissal.** (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal that is not due to a party's failure to timely request a hearing to appeal a DCYF action, as provided in WAC 110-03-0260(1).

(2) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

(3) A request to vacate an order of default or dismissal based on a party's failure to attend or refusal to meaningfully participate in a prehearing conference or hearing must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was served. The order becomes a final order if no request is received by that date.

(a) A request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(b) OAH will schedule a hearing on the request to vacate the order.

(c) At the hearing, the ALJ will receive brief statements and argument from the parties on whether there is good cause for an order of default or dismissal to be vacated.

(d) The ALJ will vacate an order of dismissal or order of default and will reinstate the hearing if the party requesting reinstatement shows good cause for the order to be vacated.

(e) The ALJ will deny a motion to vacate if the ALJ determines that good cause was not shown.

(f) Any motion to vacate an order of dismissal or default that is filed more than twenty-one days after the order of dismissal or default was served on the parties and their representatives will be denied.



NEW SECTION

**WAC 110-03-0280 Stay of DCYF action.** Unless specific program rules or law provide otherwise, the appealing party may request that an ALJ or review judge stay (stop) a DCYF action until there is a decision entered by the ALJ or review judge. Stay of summary suspension of child care license actions are governed by WAC 110-03-0290.

NEW SECTION

**WAC 110-03-0290 Stay of summary suspension of child care license.** (1) The department may immediately and summarily suspend a child care license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 110-03-0040, 110-03-0050, and 110-03-0280 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license may obtain a stay of the effective date of the suspension only as set forth in this section.

(3) It is the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) The licensee's request for a stay of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension may be filed at any time until there is a decision entered by the ALJ on the merits of the suspension. The motion for stay, and documents and pleadings described in subsection (5) of this section, must be filed with the office of administrative hearings and served on the attorney general's office by noon on the seventh day before the stay hearing. Reply affidavits or declarations must be served on the licensee and licensee's attorney or representative, by noon on the day prior to the hearing.

(5) The motion for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay must be based on:

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

(6) The ALJ will not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion to offer oral testimony must be based on affidavits filed in support of or opposition to that motion.

(b) Oral testimony will only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

(7) Upon receipt of a motion for a stay, the ALJ must schedule a hearing on the motion, to occur no sooner than

seven business days from the date the request is received by OAH.

(8) The ALJ must not grant the motion for stay unless the ALJ makes specific findings that the stay is in the public interest and is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury, more than economic hardship alone, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license.

(9) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a motion for stay, will expedite the hearing and decision on the merits.

(10) The decision on the motion for stay is subject to review by the BOA at the request of either DCYF or the licensee. The request for review must be filed no later than seven business days after the decision is served on the parties by OAH.

(11) The review judge must promptly determine a request for review. The review judge's decision on the request for review of the ALJ's decision on a motion for stay is not subject to judicial review.

**HEARING PROCEDURES**NEW SECTION

**WAC 110-03-0300 Conduct of hearings.** (1) Hearings may be held in person or by telephone conference or other electronic means.

(2) Parties and their witnesses may appear in person or by telephone conference as determined by the ALJ. An ALJ may require parties or their witnesses to appear in person if the ALJ determines there is a compelling reason and the compelling reason is stated in a hearing notice or prehearing order.

(3) The parties have the right to see all documents, hear all testimony, and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served on the parties and their representatives in advance of the hearing.

(5) All hearings must be recorded.

NEW SECTION

**WAC 110-03-0310 Authority of the administrative law judge.** (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing. The ALJ's authority is limited to determining whether the action taken by the department was justified based on the evidence presented during the hearing. The ALJ does not have authority to substitute or impose an alternative sanction, remedy, or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and admit relevant evidence;

(g) Close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause, pursuant to RCW 34.05.449(5);

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits or testimony following a finding that the additional evidence is necessary to complete the record, provided all parties are given a full opportunity for cross-examination, rebuttal, or both;

(j) Take official notice of facts pursuant to RCW 34.05.-452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.-440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DCYF rule; and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon the ALJ's motion or the motion of any party, order that multiple administrative proceedings be consolidated for the hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that the waiver:

(a) Is necessary to avoid manifest injustice to the unrepresented party; and

(b) Would not prejudice any other party.

(5) The ALJ must make findings of fact based on the preponderance of the evidence standard, unless otherwise required by law or rule.

(6) The ALJ's authority is limited to those powers granted by statute or rule. The ALJ has no inherent or common law powers.

#### NEW SECTION

**WAC 110-03-0320 Procedures at the hearing.** (1) At the hearing, the ALJ:

(a) Explains the rights of the parties;

(b) Marks and admits or rejects exhibits;

(c) Sustains or overrules objections made by the parties, as provided by law;

(d) Ensures that a record is made;

(e) Explains that a decision is mailed after the hearing; and

(f) Notifies the parties of appeal rights.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) The record is closed at the end of the hearing if the ALJ does not allow more time to offer evidence.

#### NEW SECTION

**WAC 110-03-0330 Evidence.** (1) Evidence includes documents, objects, and testimony offered during the hearing to help prove a party's position.

(2) Evidence may include all or parts of original documents or copies of the originals.

(3) If a witness cannot appear at the hearing, a statement signed by the witness under oath or affirmation may be offered as evidence; however, an ALJ may give more weight to testimony that provides opportunity for cross-examination by the other parties.

(4) An ALJ's decision will be based only on admitted evidence.

#### NEW SECTION

**WAC 110-03-0340 Introduction of evidence into the record.** (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) The other parties agree to waive the deadline.

(2) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. Hearsay evidence is admissible if in the judgment of the ALJ it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(3) The ALJ may reject evidence, if it:

(a) Is not relevant;

(b) Repeats evidence already admitted;

(c) Is from a privileged communication protected by law; or

(d) Is otherwise legally improper.

(4) Evidence regarding character or reputation is admissible if the notice of DCYF action alleges the party against whom the action is taken lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care. In all other proceedings, evidence regarding character or reputation is admissible as provided by law. In cases where such evidence is admissible, the ALJ must exercise reasonable control over the number of character wit-

nesses to avoid duplication of testimony and evidence and needless consumption of time.

#### NEW SECTION

**WAC 110-03-0350 Objections to evidence.** (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit or offer argument about how much weight the ALJ should give the exhibit.

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

#### NEW SECTION

**WAC 110-03-0360 Stipulations.** (1) A stipulation is an agreement among two or more parties that certain facts or evidence are correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter the stipulation into the record.

(3) A stipulation may be made before or during the hearing.

(4) Any party bound by a stipulation may be permitted to withdraw it, in whole or in part, at any time prior to closure of the hearing, by showing that the stipulation was made inadvertently or under a bona fide mistake of fact and that its withdrawal will not unjustly prejudice the rights of other parties to the proceeding.

#### NEW SECTION

**WAC 110-03-0370 Exhibits.** (1) Exhibits are documents or other objects that a party wants the ALJ to consider as evidence. If the ALJ admits an exhibit into evidence, it will be considered by the ALJ in reaching a decision in the case.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

#### NEW SECTION

**WAC 110-03-0380 Official notice.** (1) Official notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code, or standard of practice.

(2) An ALJ may consider and admit evidence by taking official notice.

(3) If a party requests official notice, or if the ALJ intends to take official notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to official notice evidence.

#### NEW SECTION

**WAC 110-03-0390 Witnesses.** (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) Witnesses may include:

(a) A party: The appealing party or a DCYF representative; and

(b) Anyone a party or the ALJ asks to be a witness. This can include a person who has knowledge of relevant facts or an expert witness who is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Unless DCYF gives permission, no current or former DCYF employee may be an expert witness against DCYF if that employee was actively involved in the case while working for DCYF, or if that employee was actively involved in the case while working for the department of early learning (DEL) or the department of social and health services (DSHS) on or before June 30, 2018.

(4) The ALJ decides who may testify as a witness.

#### NEW SECTION

**WAC 110-03-0400 Requiring witnesses to testify or provide documents.** (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony or to provide books, documents, or other items.

(2) ALJs, DCYF, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf:

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena;

(b) There is no cost to the requesting party to have an ALJ prepare a subpoena, but the requesting party must pay for:

(i) Serving the subpoena;

(ii) Enforcing compliance with a subpoena; and

(iii) Witness fees required according to RCW 34.05.446

(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

#### NEW SECTION

**WAC 110-03-0410 Serving a subpoena.** (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person at least eighteen years old.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign, under penalty of perjury, a written, dated statement that includes the following:

(a) The first and last name and age of the person served with the subpoena;

(b) The date and time the subpoena was served;

(c) The street address or location where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

(4) A DCYF employee may serve a subpoena consistent with this section, as long as the employee is not the agency representative or a prospective witness in the case.

#### NEW SECTION

**WAC 110-03-0420 Testimony.** (1) All testimony of witnesses, including parties, must be made under oath or affirmation.

(2) Direct examination. All witnesses may be asked questions by the party who calls the witness to testify. Each witness:

(a) May testify in person, or by telephone if approved by the ALJ;

(b) May request an interpreter from OAH at no cost to the parties;

(c) May be subpoenaed and ordered to appear according to WAC 110-03-0400.

(3) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(4) If a party has a representative, only the representative, not the party, may question the witness.

(5) The ALJ may also question witnesses.

(6) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the ALJ may reject all of the related testimony of that witness or make a negative inference from the refusal to answer the question.

#### NEW SECTION

**WAC 110-03-0430 Burden of proof and standard of proof.** (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless a rule or the law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden and standard of proof.

#### NEW SECTION

**WAC 110-03-0440 Equitable estoppel.** (1) Equitable estoppel is a legal doctrine defined in case law that may only

be used as a defense to prevent DCYF from collecting an overpayment.

(2) Equitable estoppel contains five elements, all of which must be proved by clear and convincing evidence:

(a) DCYF made a statement or took action or failed to take an action, which is inconsistent with its later claim or position regarding an overpayment;

(b) The appealing party reasonably relied on DCYF's original statement, action or failure to act;

(c) The appealing party will be injured if DCYF is allowed to contradict the original statement, action or failure to act;

(d) Equitable estoppel is needed to prevent a manifest injustice; and

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel described in subsection (2) of this section have been proved by clear and convincing evidence, DCYF is estopped or prevented from enforcing its claim for repayment of the overpayment.

#### NEW SECTION

**WAC 110-03-0450 Closing the hearing record.** (1)

The hearing record is closed:

(a) At the end of the hearing if the ALJ does not allow more time to offer evidence or argument; or

(b) After the deadline set by the ALJ for offering evidence or argument has passed.

(2) Once the hearing record is closed, no more evidence may be taken without a determination by the ALJ of good cause.

#### NEW SECTION

**WAC 110-03-0460 Timing of the ALJ's decision.** (1)

Except as provided in subsection (2) of this section, after the record is closed, the ALJ must write an initial order and serve the initial order in writing within ninety calendar days, unless this period is waived or extended for good cause shown.

(2) The ALJ must issue an oral decision immediately following a parole revocation hearing and issue a final order within forty-eight hours of the hearing.

(3) The initial or final order may be served on a party by electronic distribution, with a party's agreement.

#### NEW SECTION

**WAC 110-03-0470 Contents of the hearing record.**

(1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing orders;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders, and exceptions;

- (h) A complete audio recording of the entire hearing, together with any transcript of the hearing;
  - (i) All final orders, initial orders, and orders on reconsideration;
  - (j) Matters placed on the record after an ex parte communication; and
  - (k) Staff memoranda or data submitted to the presiding officer, not inconsistent with RCW 34.05.455.
- (3) OAH must send the official record of the proceedings to DCYF or its designee. The record must be complete when it is sent.

#### NEW SECTION

**WAC 110-03-0480 Contents of the initial order.** The ALJ's initial order must:

- (1) Be correctly captioned, identifying DCYF, the name of the proceeding, and the docket number;
- (2) List the names of all parties and representatives who participated in the proceeding;
- (3) Contain numbered findings of fact based on the evidence in the record or officially noticed in the proceeding that the ALJ relied on in coming to a decision;
- (4) Identify and explain findings based substantially on credibility of evidence or on demeanor of witnesses;
- (5) Contain numbered conclusions of law and the reasons and basis for them, including citations of statutes and rules relied upon;
- (6) Contain an order disposing of all contested issues, stating the result and remedy ordered;
- (7) Contain a statement describing available procedures and time limits for requesting changes to the initial order or review by the BOA;
- (8) State when the decision becomes final; and
- (9) Include any other information required by law or DCYF program rules.

#### NEW SECTION

**WAC 110-03-0490 Finality of the initial order.** (1) Except as provided in subsection (3) of this section, the ALJ issues an initial order that becomes a final order:

- (a) Twenty-one days after the date the initial order is mailed to the parties, when none of the parties has timely requested a review; or
  - (b) When a request for review is dismissed.
- (2) The review judge issues the final order when a party timely requests a review of an initial order.
- (3) The ALJ will issue a final order in administrative proceedings concerning juvenile parole revocation, findings of financial responsibility for reimbursement for the cost of support, treatment, and confinement of a juvenile, and subsidy overpayments to child care providers.

#### NEW SECTION

**WAC 110-03-0500 Correcting clerical errors in ALJ's orders.** (1) A clerical error is a mistake that does not change the result or intent of the order. Some examples of clerical errors are missing or incorrect words, numbers, or dates.

(2) If a party disagrees with an ALJ's initial or final order because of a clerical error, the party may ask for a corrected order from the ALJ by making the request in writing and filing it with the OAH office that held the hearing. A copy of the request must be served on the other parties and their representatives at the same time.

(3) A request to correct a clerical error must be made within ten calendar days of the date the order was served on the parties by OAH.

(4) When asking for a corrected order, a party must clearly identify the clerical error.

(5) When a party requests a corrected order, the ALJ must either:

- (a) Serve a corrected order on all parties within three business days of receipt of the party's request for correction; or
- (b) Deny the request within three business days of receiving it.

(6) If a party does not file a petition to request review of an initial order, regardless of whether a clerical error is corrected or the request for correction is denied, the initial order becomes final twenty-one calendar days after the original initial order was served.

(7) Requesting correction of an initial order does not change the time requirements for filing a written petition for review of the initial order under WAC 110-03-0520.

### **POSTHEARING PROCESS**

#### NEW SECTION

**WAC 110-03-0510 Review of the initial order.** (1) Any party who disagrees with or wants a change in an initial order, other than correcting a clerical error, may seek review of the initial order with the BOA as provided in WAC 110-03-0520 through 110-03-0560.

(2) If more than one party requests review, each request must meet the deadlines described in WAC 110-03-0520.

(3) The review judge will consider a written request for review, any response or reply, the initial order, and the record before deciding if the initial order should be affirmed, reversed, or remanded for further proceedings. In reviewing the findings of fact in the record, the review judge will give due regard to the ALJ's opportunity to observe witnesses. Oral argument may be allowed, if the review judge determines that it is necessary.

(4) Review judges may not review final orders entered by an ALJ.

#### NEW SECTION

**WAC 110-03-0520 Time for requesting review of the initial order.** (1) A written petition for review must be filed so the BOA receives it on or before the twenty-first calendar day after the initial order was served on the requesting party. A party may submit the review request by facsimile transmission (fax), but only if the party also mails a copy of the request on the same day.

(2) A review judge may extend the deadline for requesting review of an initial order if a party:

(a) Asks for more time orally or in writing before the deadline expires; and

(b) Shows good cause for requesting more time.

(3) The BOA may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the twenty-one-day deadline;

(b) The party shows good cause for failing to file the request for review or failing to make a request for more time to file the request for review before the expiration of the twenty-one-day deadline; and

(c) The party shows good cause for requesting more time beyond the twenty-one-day deadline.

#### NEW SECTION

**WAC 110-03-0530 Requesting review of the initial order.** (1) A party must file the review request (petition for review) in writing and it must:

(a) Clearly identify the parts of the initial order with which the party disagrees; and

(b) Clearly present arguments and refer to evidence in the record supporting the party's position.

(2) The petition for review must be filed with the BOA and the party requesting review must serve copies on the other parties and their representatives and OAH at the same time the petition is filed.

(3) The petition for review must be filed with the BOA at the address stated in the instructions for obtaining review sent with the initial order or using the following contact information appropriate to the method of filing used:

Mailing address:

DCYF Board of Appeals

P.O. Box 40982

Olympia, WA 98504-0982

Physical address:

DCYF Board of Appeals

1115 Washington Street Southeast

Olympia, WA 98501

Fax: 360-586-5934

This information is current as of the effective date of these rules; however, parties should file documents using the address or fax information received with the initial order if it is different from the information provided here.

(4) The DCYF board of appeals can be contacted by phone at: 360-902-0278.

#### NEW SECTION

**WAC 110-03-0540 Response and reply to petition for review of the initial order.** (1) Any party may respond to a petition for review.

(2) If a party responds, the response must be filed on or before the seventh business day after the date a copy of the petition for review was served on the parties.

(3) The responding party must serve a copy of the response on all other parties and their representatives at the same time the response is filed.

(4) If a response is filed, a nonresponding party may reply to the response.

(5) If a party replies, the reply must be filed on or before the seventh business day after the date a copy of the response was served on the parties.

(6) The replying party must serve a copy of the reply on all other parties and their representatives at the same time the reply is filed.

(7) If a party needs more time to respond or reply, the party must contact the BOA by the deadline in subsection (2) or (5) of this section and show good cause for an extension of time.

#### NEW SECTION

**WAC 110-03-0550 Board of appeals decision process.** (1) After the deadlines required in WAC 110-03-0540, the record on review is closed unless, upon the motion of a party, a review judge finds good cause to keep it open or to reopen the record.

(2) A review judge is assigned by the BOA to review the initial order after the record is closed. The review judge only considers evidence considered by the ALJ, unless the review judge has reopened the record pursuant to subsection (1) of this section.

(3) The review judge will decide the appeal without oral argument, unless the review judge determines that oral argument is necessary for resolution of the appeal.

(4) The review judge enters a final order that affirms, changes, dismisses, or reverses the initial order, or remands (returns) the case to the administrative law judge for further specified action.

#### NEW SECTION

**WAC 110-03-0560 Authority of the review judge.** (1) The review judge reviews initial orders and enters final orders. The review judge has the same decision-making authority as the ALJ. The review judge considers the entire record and decides the case de novo (anew). In reviewing the findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) A review judge may remand (return) cases to OAH for further action and may authorize temporary relief if appropriate.

(3) A review judge's authority is limited to those powers granted by statute or rule. The review judge has no inherent or common law powers.

(4) The review judge's order is the DCYF final order in the case, and the review judge serves the final order on each party and the agency. If the review judge's final order upholds the department's action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the superior court after filing a petition for judicial review in accordance with WAC 110-03-0590.

#### NEW SECTION

**WAC 110-03-0570 Reconsideration of the final order.** (1) Reconsideration is asking a judge to reexamine a

final order because the party believes a mistake concerning a matter of law or fact was made.

(2) To request reconsideration of a final order, a party must file a petition for reconsideration with the office of OAH or the BOA that issued the final order. The petition for reconsideration must be filed within ten calendar days of the date the final order was served. The party requesting reconsideration must serve copies on all other parties and their representatives at the same time the petition is filed.

(3) Filing a petition for reconsideration does not stay the effectiveness of a final order.

(4) The petition for reconsideration must identify the parts of the final order with which the party disagrees and must identify the evidence in the hearing record that supports the party's position.

(5) Any nonrequesting party may, but is not required to respond to a request for reconsideration.

(6) If a nonrequesting party responds, the response must be filed so the ALJ or review judge receives it on or before the seventh business day after the date a copy of the petition for reconsideration was served on the parties.

(7) A responding party must serve a copy of the response on all other parties and their representatives at the same time the response is filed.

(8) If a response is filed, a nonresponding party may reply to the response.

(9) If a party replies, the reply must be filed so the office that issued the final order receives it on or before the seventh business day after the date a copy of the response was served on the parties.

(10) The replying party must serve a copy of the reply on all other parties and their representatives at the same time the reply is filed.

(11) If a party needs more time to respond or reply, the party must contact the office that issued the final order by the deadline in subsection (6) or (9) of this section and show good cause for an extension of time.

(12) If a party asks for reconsideration of the final order, the reconsideration process must be completed before requesting judicial review. However, a request for reconsideration of a final order is not required prior to requesting judicial review.

#### NEW SECTION

**WAC 110-03-0580 Ruling on request for reconsideration.** (1) An ALJ or review judge must dispose of a reconsideration request within twenty calendar days from the date a petition for reconsideration is filed, unless the ALJ or review judge serves notice that additional time is required or an extension of time to file a response or reply is granted.

(2) The same ALJ or review judge who entered the decision will dispose of the petition for reconsideration, unless that judge is unavailable.

(3) The ALJ or review judge must prepare and serve on all parties a written order:

(a) Granting the petition and dissolving or modifying the final order;

(b) Granting the petition and setting the matter for further hearing; or

(c) Denying the petition.

(4) If, within twenty calendar days of receipt of the reconsideration request, the ALJ or review judge does not dispose of the petition or serve the parties written notice setting a date by which the ALJ or review judge will act on the petition, the request is deemed denied.

(5) The ALJ or review judge decision on reconsideration is final on the date the written decision is served or the date the request is deemed denied as provided in subsection (4) of this section.

(6) An order denying reconsideration or a notice specifying the date by which there will be action on the petition is not subject to judicial review.

#### NEW SECTION

**WAC 110-03-0585 Index of significant decisions.** (1) The department's index of significant decisions, prepared under RCW 42.56.070(5), contains BOA orders that include an analysis or decision of substantial importance to the department in carrying out its duties.

(2) A final order may be relied upon, used or cited as precedent by a party if the final order has been indexed in the department's index of significant decisions.

(3) The department selects the orders to be included in its "index of significant decisions" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. The index of significant decisions will include orders meeting the criteria in subsections (1) and (3) of this section, issued by the department.

(4) The index will, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject and program; and pertinent legal citation.

(5) Any person may nominate a BOA order to be evaluated for indexing by submitting the request, reason why the person believes an order should be indexed, and a copy of the nominated order to the Board of Appeals, P.O. Box 40983, Olympia, WA 98504. The department will make a final decision as to whether to index the nominated order, and that decision is not appealable.

(6) The department will periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsections (1) and (3) of this section. The department may, at any time, delete a document from an index. Under RCW 42.56.070(6), a public record may not be cited in a proceeding if it has not been indexed.

(7) The index is a public record and is available for public inspection at <https://dcyf.wa.gov/board-of-appeals>. The index of significant decisions is located at the Board of Appeals, 1115 Washington St. S.E., Olympia, WA 98501.

#### NEW SECTION

**WAC 110-03-0590 Judicial review.** (1) Judicial review is the process of appealing a final agency order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing a written petition for judicial review in superior court pursuant to RCW 34.05.514 that meets the requirements of RCW 34.05.546. The petition must be properly filed and served, as required by RCW 34.05.542, within thirty calendar days of the date the review judge serves the final order in the case. However, as provided by RCW 34.05.470, if a petition for reconsideration has been properly filed, the thirty day period does not commence until the agency disposes of the petition for reconsideration. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties at the same time the petition is filed.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA. The petition must be hand delivered or mailed with proof of receipt.

(a) The physical location of the secretary is:

DCYF Office of the Secretary  
1500 Jefferson Street Southeast  
Olympia, WA 98501

The mailing address of the secretary is:

DCYF Office of the Secretary  
P.O. Box 40975  
Olympia, WA 98504-0975

(b) The physical location and mailing address for the DCYF BOA are as stated in WAC 110-03-0530.

(4) Service on the office of the attorney general and other parties of a copy of the petition for judicial review may be made at the following locations:

(a) The office of the attorney general may be served personally or by delivery at:

Office of the Attorney General  
7141 Cleanwater Drive S.W.  
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General  
P.O. Box 40124  
Olympia, WA 98504-0124

(b) Each party must be served at each party's address of record.

(5) A party may file a petition for judicial review only after it has exhausted administrative remedies, as provided under RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

**WSR 20-02-047**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed December 23, 2019, 1:33 p.m., effective February 1, 2020]

Effective Date of Rule: February 1, 2020.

Purpose: The department is amending WAC 388-410-0005 and 388-410-0015 to clarify which members of a household are and are not responsible for repaying cash overpayments, the circumstances where overpayments are recovered by means of a mandatory grant deduction, and that cash overpayments are not recovered from children.

Citation of Rules Affected by this Order: Amending WAC 388-410-0005 and 388-410-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Adopted under notice filed as WSR 19-21-048 on October 10, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: December 23, 2019.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-066, filed 3/29/19, effective 5/1/19)

**WAC 388-410-0005 Cash assistance overpayment amount and liability.** (1) The amount of overpayment for cash assistance households is determined by the amount of assistance received to which the assistance unit was not entitled.

(2) Cash overpayments are recovered from:

(a) Any ~~((individual))~~ adult member of an overpaid assistance unit, whether or not the member is currently a recipient;

(b) Any assistance unit of which ~~((#))~~ an adult member of the overpaid assistance unit has subsequently become a member; or

(c) A nonneedy caretaker relative or guardian who received ~~((the overpayment on behalf of))~~ assistance for a child who is in the assistance unit.



(3) A cash assistance overpayment is not recovered from:

~~(a) ((A nonneedy caretaker relative or guardian who did not receive the overpayment on behalf of a child;~~

~~(b))~~ A child who was in the assistance unit at the time the overpayment was accrued;

~~((c) A nonneedy caretaker relative or guardian who was assessed an overpayment for a child who is not currently part of the assistance unit;))~~ or

~~((d))~~ (b) A person not receiving assistance when an unintentional overpayment of less than thirty-five dollars is discovered, computed, or both.

(4) Overpayments resulting from incorrectly received cash assistance are reduced by:

(a) Cash assistance a household would have been eligible to receive from any other category of cash assistance during the period of ineligibility; and

(b) Child support the department collected for the month of overpayment in excess of the amount specified in (a) of this subsection; or

(c) Any existing grant underpayments.

(5) A cash assistance overpayment cannot be reduced by a food assistance underpayment.

(6) An underpayment from one assistance unit cannot be credited to another assistance unit to offset an overpayment.

(7) All overpayments occurring after January 1, 1982 are required to be repaid by mandatory grant deduction except where recovery is inequitable as specified in WAC 388-410-0010.

**AMENDATORY SECTION** (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-410-0015 Recovery of cash assistance overpayments by mandatory grant deduction.** (1) All overpayments of cash assistance are recovered by means of a mandatory deduction from future continuing assistance grants except:

(a) When a nonneedy caretaker relative or guardian was assessed an overpayment for a child who is not currently part of the assistance unit or.

(b) As specified by WAC 388-410-0010.

(2) All adult members of an overpaid assistance unit are responsible for repayment of an overpayment. Repayment may be from:

(a) Resources, ~~(and/or))~~ income, or both; or

(b) Deductions from subsequent grants; and

(c) An assistance unit member's estate.

(3) The mandatory grant deduction of an intentional overpayment is ten percent of the monthly grant payment standard.

(4) A monthly grant deduction of up to one hundred percent of the grant can be established when:

(a) The overpayment is intentional;

(b) The client has liquid resources available but refuses to use these resources in full or partial satisfaction of the overpayment; and

(c) The amount of income and resources remaining available to the assistance unit is not less than ninety percent of the grant payment standard.

(5) An unintentional overpayment is recovered by grant deduction of five percent of the monthly grant payment standard unless the client voluntarily requests a larger deduction in writing.

(6) A monthly deduction for overpayment recovery can be established against the clothing and incidental grant of a recipient in a nursing facility, intermediate care facility, or hospital. A monthly deduction cannot be established against the vendor payment to the nursing facility, intermediate care facility or hospital.

(7) When the monthly grant deduction is equal to or more than the current grant for which the client is eligible had no overpayment occurred, the grant is suspended.

(8) No more than the total amount of an overpayment may be collected by mandatory deduction from a client's public assistance grant. The client will receive compensation for an underpayment resulting from any erroneous monthly deduction.

### WSR 20-02-053

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed December 23, 2019, 3:11 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The forest land values rule is required by statute (RCW 82.33.140) to be effective on January 1, 2020.

Purpose: WAC 458-40-540 contains the forest land values used by county assessors for property tax purposes. This rule is being revised to provide the forest land values to be used during 2020. WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the first half of 2020.

Citation of Rules Affected by this Order: Amending WAC 458-40-540 Forest land values—2020 and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Adopted under notice filed as WSR 19-21-156 on October 22, 2019.

A final cost-benefit analysis is available by contacting Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606, TTY 1-800-451-7985, email BrentonM@dor.wa.gov, website dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 23, 2019.

Atif Aziz  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 19-02-069, filed 12/28/18, effective 1/1/19)

**WAC 458-40-540 Forest land values—((2019)) 2020.** The forest land values, per acre, for each grade of forest land for the ((2019)) 2020 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2019)) 2020 VALUES PER ACRE
1	1	\$((211)) <u>218</u>
	2	((209)) <u>216</u>
	3	((195)) <u>202</u>
	4	((143)) <u>148</u>
2	1	((180)) <u>186</u>
	2	((173)) <u>179</u>
	3	((166)) <u>172</u>
	4	((118)) <u>122</u>
3	1	((139)) <u>144</u>
	2	((135)) <u>140</u>
	3	((134)) <u>138</u>
	4	((103)) <u>106</u>
4	1	((108)) <u>112</u>
	2	((104)) <u>107</u>
	3	((103)) <u>106</u>
	4	((78)) <u>81</u>
5	1	((78)) <u>81</u>
	2	((69)) <u>71</u>
	3	((68)) <u>70</u>
	4	((48)) <u>50</u>
6	1	((40)) <u>41</u>
	2	((38)) <u>39</u>
	3	((38)) <u>39</u>
	4	((36)) <u>37</u>
7	1	((17)) <u>18</u>
	2	((17)) <u>18</u>
	3	((16)) <u>17</u>
	4	((16)) <u>17</u>
8	1	1

**AMENDATORY SECTION** (Amending WSR 19-14-013, filed 6/21/19, effective 7/1/19)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduc-**

**tion.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July 1 through December 31, 2019)) January 1 through June 30, 2020:

Washington State Department of Revenue  
**WESTERN WASHINGTON STUMPAGE VALUE TABLE**  
((July 1 through December 31, 2019))  
January 1 through June 30, 2020

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values	
Douglas-fir <sup>(2)</sup>	DF	1	\$((452)) <u>365</u>	
		2	((494)) <u>456</u>	
	3	3	((495)) <u>433</u>	
		4	((577)) <u>502</u>	
	5	5	((474)) <u>459</u>	
		9	((438)) <u>351</u>	
	Western Hemlock and Other Conifer <sup>(3)</sup>	WH	1	((286)) <u>206</u>
			2	((396)) <u>276</u>
		3	3	((384)) <u>280</u>
			4	((344)) <u>281</u>
Redcedar <sup>(4)</sup>	RC	1-5	((1045)) <u>892</u>	
		9	((1031)) <u>878</u>	
	Ponderosa Pine <sup>(5)</sup>	PP	1-5	((187)) <u>184</u>
			9	((173)) <u>170</u>
Red Alder	RA	1-5	((655)) <u>552</u>	
		9	((641)) <u>538</u>	

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Black Cottonwood	BC	1-5	<del>((79))</del> <u>53</u>
		9	<del>((65))</del> <u>39</u>
Other Hardwood	OH	1-5	<del>((337))</del> <u>309</u>
		9	<del>((323))</del> <u>295</u>
Douglas-fir Poles & Piles	DFL	1-5	<del>((758))</del> <u>763</u>
		9	<del>((744))</del> <u>749</u>
Western Redcedar Poles	RCL	1-5	<del>((1428))</del> <u>1447</u>
		9	<del>((1414))</del> <u>1433</u>
Chipwood <sup>(6)</sup>	CHW	1-5	<del>((15))</del> <u>13</u>
		9	<del>((13))</del> <u>11</u>
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-9	<del>((285))</del> <u>301</u>
Posts <sup>(8)</sup>	LPP	1-9	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-9	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

Washington State Department of Revenue  
**EASTERN WASHINGTON STUMPAGE VALUE TABLE**  
 ((July 1 through December 31, 2019))  
 January 1 through June 30, 2020

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir <sup>(2)</sup>	DF	6	<del>\$(296))</del> <u>258</u>
		7	<del>((310))</del> <u>272</u>
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	6	<del>((302))</del> <u>273</u>
		7	<del>((316))</del> <u>287</u>
Western Redcedar <sup>(4)</sup>	RC	6	<del>((1037))</del> <u>904</u>
		7	<del>((1051))</del> <u>918</u>
Ponderosa Pine <sup>(5)</sup>	PP	6	<del>((173))</del> <u>170</u>
		7	<del>((187))</del> <u>184</u>
Other Hardwood	OH	6	9
		7	9
Western Redcedar Poles	RCL	6	<del>((1373))</del> <u>1369</u>
		7	<del>((1387))</del> <u>1383</u>
Chipwood <sup>(6)</sup>	CHW	6	1
		7	1
Small Logs <sup>(6)</sup>	SML	6	21
		7	23
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	6-7	<del>((285))</del> <u>301</u>
Posts <sup>(8)</sup>	LPP	6-7	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	6-7	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	6-7	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6-7.
- (6) Stumpage value per ton.

- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through June 30, ((2019)) 2020:

**TABLE 9—Harvest Adjustment Table  
Stumpage Value Areas 1, 2, 3, 4, 5, and 9  
((July 1 through December 31, 2019))  
January 1 through June 30, 2020**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table  
Stumpage Value Areas 6 and 7  
((July 1 through December 31, 2019))  
January 1 through June 30, 2020**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
<b>II. Logging conditions</b>		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00

Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.

III. Remote island adjustment:

For timber harvested from a remote island	-\$50.00
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**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.

**WSR 20-02-055  
PERMANENT RULES  
DEPARTMENT OF REVENUE**

[Filed December 24, 2019, 8:31 a.m., effective January 24, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-20-252 is being amended to incorporate legislation from 2019 (ESSB 5993, Hazardous Substance Tax-Model Toxics Control Act).

Citation of Rules Affected by this Order: Amending WAC 458-20-252.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 19-21-168 on October 22, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 24, 2019.

Atif Aziz  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-22-012, filed 10/25/18, effective 11/25/18)

**WAC 458-20-252 Hazardous substance tax.** (1) Introduction. Under chapter 82.21 RCW (referred to in this rule as the "law"), a hazardous substance tax is imposed upon the wholesale value of certain substances and products, with specific credits and exemptions provided. The tax is an excise tax upon the privilege of possessing hazardous substances (~~or products~~) in this state.

Before July 1, 2019, the tax was imposed upon the wholesale value of the hazardous substance. Starting July 1, 2019, the tax is imposed in one of two ways:

Upon the wholesale value of certain hazardous substances ("value-based tax"); or

Upon the volume of certain hazardous substances ("volumetric tax").

The volumetric tax applies to petroleum products that are easily measured on a per barrel basis. The value-based tax applies to all other hazardous substances, including petroleum products that are not easily measured on a per barrel basis.

(a) Chapter 82.21 RCW defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also

provides authority to the director of the state department of ecology to designate by rule any other substance or product as hazardous that could present a threat to human health or the environment. (Chapter 173-342 WAC.)

(b) Chapter 82.21 RCW is administered exclusively under this rule. The law relates exclusively to the possession of hazardous substances and products. The law does not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege that incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any hazardous substance or product the department of revenue may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this rule the following definitions apply.

(a) "Tax" means the hazardous substance tax imposed under chapter 82.21 RCW.

(b) "Hazardous substance" means:

(i) Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following non-compound metals when in solid form in a particle larger than one hundred micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc. These substances consist of chemicals and elements in their purest form. A CERCLA substance that contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology;

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under section 136a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(iv) Anything else enumerated as a hazardous substance in chapter 173-342 WAC by the department of ecology.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane,

ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products that are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of the department of ecology in chapter 173-342 WAC.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" (~~is the tax measure or base. It~~) means the fair market value determined by the wholesale selling price.

In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

Before July 1, 2019, the wholesale value was the tax measure or base for all hazardous substances. Starting July 1,

2019, the wholesale value is the tax measure or base for all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington.

(ii) States of the United States or any political subdivisions of such other states.

(iii) The District of Columbia.

(iv) Territories and possessions of the United States.

(v) Any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

The term "natural person," for purposes of the tax exemption in subsection (4)(b) of this rule regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this rule, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this rule. Other terms not expressly defined in these chapters or this rule are to be given their common and ordinary meanings.

(l) "Barrel" means a container that holds forty-two gallons of a petroleum product, as defined in this rule. Starting July 1, 2019, it is the tax measure or base for petroleum products that are easily measured on a per barrel basis.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing a hazardous substance in this state.

(a) For value-based tax. The value-based tax rate is seven tenths of one percent (.007). The value-based tax measure or base is the wholesale value of the substance, as defined in this rule. Before July 1, 2019, the value-based tax applied to all hazardous substances. Starting July 1, 2019, the value-based tax rate applies to all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(b) For volumetric tax. Starting July 1, 2019, the volumetric tax rate is one dollar and nine cents per barrel and applies to petroleum products that are easily measured on a per barrel basis. Starting July 1, 2020, the volumetric tax rate on petroleum products will be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures as published by the United States Department of Commerce, Bureau of Economic Analysis for the most recent twelve-month period ending December 31st of the prior year.

(c) The department of revenue maintains lists of petroleum products that are easily measured, and petroleum products that are not easily measured, on a per barrel basis, on its website at dor.wa.gov. These lists are not exclusive. If additional petroleum products are identified in the future, the department will add them to the applicable list. Products added to the lists will be subject to hazardous substance tax for all periods that the tax applies, even if the product was not on a list at the time.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance that has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in subsection (14) of this rule. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation that establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in-state suppliers that reflect their payment of the tax or simple bills of lading or delivery documents revealing an in-state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature, rather than a business nature, is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer

for making sales to consumers, in an amount that is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than \$1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities that the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state that is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out-of-state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out-of-state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in-state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances that are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97. There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Any possession of an agricultural crop protection product that is solely for use by a farmer or certified applicator as an agricultural crop protection product and is warehoused in this state or transported to or from this state is tax exempt, provided that the person possessing the product does not use, manufacture, package for sale, or sell the product in this state. The following definitions apply throughout this subsection unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.-213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another,

including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(5) Credits. There are three distinct kinds of tax credits against liability that are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components that are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals that it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel that remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers that carry fuel into this state and/or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel that is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel that is purchased in this state for use in such fuel tanks. Formulas approved by the department of revenue for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel that is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.



(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

**Certificate of Credit for Fuel Carried from this State in Fuel Tanks**

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the taxes due upon all or any part of such fuel that is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. (if applicable)
Type of Business
Firm Name
Business Address
Registered Name (if different)
Tax Reporting Agent (if applicable)
Authorized Signature
Title
Identity of Fuel (kind and amount by volume)
Date:

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel that ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax that has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for

costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax that has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed under chapter 82.21 RCW.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. Additional information regarding recordkeeping requirements is provided in WAC 458-20-19301. The department of revenue will publish an excise tax bulletin listing other states' taxes that qualify for this credit.

(6) Newly defined hazardous substances. Under chapter 82.21 RCW the director of the department of ecology may identify and designate other substances or products as being hazardous substances for purposes of the tax. The director of the department of ecology may also delete substances or products previously designated as hazardous substances. Such actions are done by amending chapter 173-342 WAC.

(a) The law allows the addition or deletion of substances or products as hazardous substances by rule amendments, no more often than twice in any calendar year.

(b) When such additions or deletions are made, they do not take effect for tax purposes until the first day of the following month that is at least thirty days after the effective date of rule amendment by the department of ecology.

(i) Example. The department of ecology amends chapter 173-342 WAC by adding a new substance and the effective date of the amendment is June 15th. Possession of the substance does not become taxable until August 1st.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The exemption for previously taxed hazardous substances does not apply to "products" that have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the haz-

ardous ingredient(s) and end product(s) should use the *credit* provision explained at subsection (5)(a) of this rule.

(a) However, the term "product" is defined to mean only an item or items that contain a combination of both hazardous substance(s) and nonhazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical reaction that occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not

required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be the wholesale value determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in subsection (4)(a)(i) and (ii) of this rule. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only upon a special ruling by the department of revenue.

Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase - .....  
all purchases of .....  
(omit one) .....  
..... by .....  
(identify substance(s) purchased) (name of purchaser)  
who possesses registration no. ....  
.....  
(buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

- ..... The registered seller named below personally paid the tax upon possession of the hazardous substances.
..... A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller ..... Registration No. ....
Firm name ..... Address .....
Type of business .....
Authorized signature ..... Title .....
Date .....

WSR 20-02-056
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed December 24, 2019, 8:35 a.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department is adopting these rules with an effective date of January 1 because, per statute, these rules provide rates used for refunds and property valuations during 2020.

Purpose: The department is amending:

- WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2019, which is used when refunding property taxes paid in 2020, as required by RCW 84.69.100.
• WAC 458-30-262 to provide the interest rate and property tax component used when valuing classified farm and agricultural land during the 2020 assessment year, as required by RCW 84.34.065.
• WAC 458-30-590 to provide the rate of inflation published in 2019, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2020, as required by RCW 84.34.310.

Citation of Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100.

Adopted under notice filed as WSR 19-21-061 on October 11, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 24, 2019.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-02-058, filed 12/27/18, effective 1/1/19)

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest apply to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate is applied to the amount of the judgment or the amount of the refund, until paid:

Table with 3 columns: Year tax paid, Auction Year, Rate. Rows range from 1984 to 2000 with corresponding auction years and interest rates.

Year tax paid	Auction Year	Rate	COUNTY	PERCENT	COUNTY	PERCENT
2001	2000	5.98%	Cowlitz	<del>((1.21))</del> <u>1.05</u>	San Juan	<del>((0.78))</del> <u>0.73</u>
2002	2001	3.50%	Douglas	<del>((1.12))</del> <u>1.02</u>	Skagit	<del>((1.23))</del> <u>1.00</u>
2003	2002	1.73%	Ferry	<del>((1.05))</del> <u>0.98</u>	Skamania	<del>((1.12))</del> <u>0.98</u>
2004	2003	0.95%	Franklin	<del>((1.20))</del> <u>0.98</u>	Snohomish	<del>((1.16))</del> <u>1.01</u>
2005	2004	1.73%	Garfield	<del>((1.05))</del> <u>0.90</u>	Spokane	<del>((1.36))</del> <u>1.17</u>
2006	2005	3.33%	Grant	<del>((1.30))</del> <u>1.12</u>	Stevens	<del>((1.06))</del> <u>0.96</u>
2007	2006	5.09%	Grays Harbor	<del>((1.40))</del> <u>1.17</u>	Thurston	<del>((1.33))</del> <u>1.14</u>
2008	2007	4.81%	Island	<del>((0.97))</del> <u>0.88</u>	Wahkiakum	<del>((0.97))</del> <u>0.78</u>
2009	2008	2.14%	Jefferson	<del>((1.09))</del> <u>0.96</u>	Walla Walla	<del>((1.34))</del> <u>1.15</u>
2010	2009	0.29%	King	<del>((1.06))</del> <u>0.96</u>	Whatcom	<del>((1.22))</del> <u>1.01</u>
2011	2010	0.21%	Kitsap	<del>((1.17))</del> <u>1.01</u>	Whitman	<del>((1.42))</del> <u>1.33</u>
2012	2011	0.08%	Kittitas	<del>((1.07))</del> <u>0.92</u>	Yakima	<del>((1.28))</del> <u>1.11</u>
2013	2012	0.15%	Klickitat	<del>((1.05))</del> <u>0.94</u>		
2014	2013	0.085%				
2015	2014	0.060%				
2016	2015	0.085%				
2017	2016	0.340%				
2018	2017	1.130%				
2019	2018	2.085%				
<u>2020</u>	<u>2019</u>	<u>2.040%</u>				

AMENDATORY SECTION (Amending WSR 19-02-058, filed 12/27/18, effective 1/1/19)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year ~~((2019))~~ 2020, the interest rate and the property tax component that are used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is ~~((5.02))~~ 5.47 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	<del>((1.39))</del> <u>1.22</u>	Lewis	<del>((1.20))</del> <u>1.09</u>
Asotin	<del>((1.24))</del> <u>1.02</u>	Lincoln	<del>((1.25))</del> <u>1.09</u>
Benton	<del>((1.31))</del> <u>1.09</u>	Mason	<del>((1.24))</del> <u>1.05</u>
Chelan	<del>((1.12))</del> <u>0.98</u>	Okanogan	<del>((1.23))</del> <u>1.08</u>
Clallam	<del>((1.07))</del> <u>0.96</u>	Pacific	<del>((1.40))</del> <u>1.20</u>
Clark	<del>((1.24))</del> <u>1.01</u>	Pend Oreille	<del>((1.05))</del> <u>0.96</u>
Columbia	<del>((1.20))</del> <u>1.18</u>	Pierce	<del>((1.41))</del> <u>1.19</u>

AMENDATORY SECTION (Amending WSR 19-02-058, filed 12/27/18, effective 1/1/19)

**WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.** (1) **Introduction.** This rule provides the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's (department) obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department - Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based ~~((upon))~~ on the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from the farm and agricultural or timber land classifications that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	2013	1.314
2014	1.591	2015	0.251
2016	0.953	2017	1.553

YEAR	PERCENT	YEAR	PERCENT
2018	2.169	<u>2019</u>	<u>1.396</u>

**WSR 20-02-058**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed December 24, 2019, 9:07 a.m., effective January 24, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is updating WAC 458-20-13501 to include guidance on the preferential B&O tax rate provided in RCW 82.04.260. The rule will reflect legislative changes to RCW 82.04.260 that extend the expiration date of a preferential B&O tax rate for timber extracting and extracting for hire, timber manufacturing and processing for hire, and timber wholesaling activities to July 1, 2045. The department is also updating WAC 458-20-13501 to reflect legislative changes to RCW 82.04.260 that expand the preferential B&O tax rate to include the activity of manufacturing products defined in RCW 19.24.570(1).

Citation of Rules Affected by this Order: Amending WAC 458-20-13501 (Rule 13501) Timber harvest operations.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.16.020.

Adopted under notice filed as WSR 19-21-057 on October 11, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 24, 2019.

Atif Aziz  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-02-063, filed 1/4/16, effective 2/4/16)

**WAC 458-20-13501 Timber harvest operations. (1) Introduction.** Timber harvest operations generally consist of a variety of different activities. These activities may be subject to different tax rates or classifications under the business and occupation tax and public utility tax, depending on the nature of the activity.

(a) **Scope of rule.** This rule explains the application of the business and occupation (B&O), public utility, retail sales, and use taxes to persons performing activities associated with timber harvest operations. This rule explains how the public utility tax deduction provided by RCW 82.16.050 for the transportation of commodities to an export facility applies to the transportation of logs. It also explains how the B&O tax exemption provided by RCW 82.04.333 for small timber harvesters applies.

(b) **Additional information sources for activities associated with timber harvest operations.** In addition to the taxes addressed in this rule, the forest excise and real estate excise taxes often apply to certain activities or sales associated with timber harvest operations. Persons engaged in timber harvest operations should refer to the following rules for additional information:

- (i) WAC 458-20-135 Extracting natural products;
- (ii) WAC 458-20-136 Manufacturing, processing for hire, fabricating;
- (iii) WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment;
- (iv) Chapter 458-40 WAC Taxation of forest land and timber; and
- (v) Chapter 458-61A WAC Real estate excise tax.

(c) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(d) **Information regarding short-rotation hardwoods.** Persons cultivating short-rotation hardwoods are considered farmers. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers. "Short-rotation hardwoods" are hardwood trees, such as, but not limited to, hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years. RCW 84.33.035.

(2) **Timber harvesters.** Timber harvesters may engage in business activities that require them to report under the extracting, manufacturing, wholesaling, or retailing B&O tax classifications. Timber harvesters may qualify for preferential B&O tax rates on certain qualifying business activities. RCW 82.04.260(12).

The definition of "extractor" found in RCW 82.04.100 relates to the harvesting of trees (other than plantation Christmas trees) and is generally identical to the definition of "harvester" found in RCW 84.33.035. An exception is the specific provisions in the definition of "harvester" relating to trees harvested by federal, state, and local government entities. Both definitions include every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts (severs), or takes timber for sale or for commercial or industrial use. Both definitions exclude persons performing under contract the necessary labor or mechanical services for the extractor/harvester.

(a) **Timber purchasers to file information report.** A purchaser must report to the department of revenue (department) purchases of privately owned timber in an amount exceeding two hundred thousand board feet, if purchased in a voluntary sale made in the ordinary course of business. The report must contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name, address and contact information; seller's name, address, and contact information; sale date; termination date in sale agreement; total sale price; legal description of sale area; sale name; forest practice application/harvest permit number if available; total acreage involved in the sale; estimated net volume of timber purchased by tree species and log grade; and description and value of property improvements.

This report must be filed on or before the last day of the month following the purchase of the timber. A two hundred fifty dollar penalty may be imposed against a purchaser for each failure to satisfy the requirements for filing this report. These filing requirements are scheduled to expire July 1, 2018. RCW 84.33.088.

(b) **Extracting.** The felling, cutting (severing from land), or taking of trees is an extracting activity as defined in RCW 82.04.100. The extracting B&O tax classification applies to the value of the products extracted, which is the value of the severed trees prior to any manufacturing activity.

(i) Until July 1, 2045, timber extractors are eligible for a preferential B&O tax rate for timber extracting activities. RCW 82.04.260 (12)(a). Taxpayers reporting under the preferential Extracting Timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(ii) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

(c) **Manufacturing.** The cutting into length (bucking), delimiting, and measuring (for bucking) of felled, cut (severed), or taken trees is a manufacturing activity as defined in RCW 82.04.120. The manufacturing B&O tax is measured by the value of the products manufactured, which is generally the gross proceeds of sale. For more information regarding the value of products see RCW 82.04.450 and WAC 458-20-112.

If the product is delivered to a point outside the state, transportation costs incurred by the seller from the last point at which manufacturing takes place within Washington may be deducted from the gross proceeds of sale when determining the value of the product.

**Example 1.** In each of the following situations presume that the timber harvester delivers the product to the customer at a point outside the state:

(i) If there is no further manufacturing subsequent to manufacturing conducted at the harvest site, the measure of tax is the gross proceeds of the sale of the logs less transportation costs incurred by the seller from the harvest site to delivery to the customer;

(ii) If logs are hauled to a facility for processing into lumber, poles, or piles, the measure of tax is the gross proceeds of sale of the lumber, poles, or piles less transportation

costs incurred by the seller from the facility to delivery to the customer; and

(iii) If logs are hauled to a facility that only removes the bark, the measure of tax is the gross proceeds of sale of the logs less transportation costs incurred by the seller from the harvest site to the customer. This is because the mere removal of bark is not a manufacturing activity.

However, if at that facility the debarking is a part of a manufacturing process (e.g., cutting the logs into lumber), the entire process, including the debarking, is a manufacturing activity. In such a case, the measure of tax is the gross proceeds of sale of the products manufactured from the logs less transportation costs incurred by the seller from the facility to the customer.

(iv) Until July 1, 2045, persons who manufacture (A) timber into timber products or wood products; (B) timber products into other timber products or wood products; or (C) mass timber products defined in RCW 19.27.570(1), are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(b). Taxpayers reporting under the preferential Manufacturing of Timber or Wood Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(v) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

(d) **Selling.** The income from the sale of the logs is subject to tax under either the wholesaling or retailing B&O tax classification, as the case may be, unless exempt by law. The measure of tax is the gross proceeds of sale without any deduction for transportation costs.

(i) When determining the gross proceeds of sale, the timber harvester may not deduct amounts paid to others.

**Example 2.** A timber harvester enters into a contract with another person to perform the necessary labor and mechanical services for the harvesting of timber. The harvester is to receive sixty percent of the log sale proceeds, and the person contracting to perform the services is to receive forty percent. The log buyer purchases the logs for five hundred thousand dollars. The buyer pays three hundred thousand dollars to the harvester and two hundred thousand dollars to the person performing the harvesting services. The harvester's gross proceeds of sale is five hundred thousand dollars.

(ii) Retail sales tax must be collected and remitted on all sales to consumers, unless exempt by law. For wholesale sales, sellers must obtain and retain copies of their customers' reseller permits to document the wholesale nature of the transaction. For information on reseller permits see WAC 458-20-102 and 458-20-10201.

(iii) Until July 1, 2045, persons who sell at wholesale (A) timber extracted by the seller; (B) timber products manufactured by the seller from timber or other timber products; (C) wood products manufactured by the seller from timber or timber products; or (D) mass timber products defined in RCW 19.27.570(1) manufactured by the seller, are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(c). Taxpayers reporting under the preferential Wholesaling of Timber or Wood Prod-

ucts B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(iv) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

(e) **Multiple activities tax credit (MATC).** An extractor or manufacturer who sells the product extracted or manufactured must report under each of the appropriate "production" (extracting or manufacturing) and "selling" (wholesaling or retailing) classifications on the excise tax return. The extractor or manufacturer may then claim a multiple activities tax credit (MATC) as described in RCW 82.04.440 for the extracting tax (RCW 82.04.230) or manufacturing tax (RCW 82.04.240), provided the credit does not exceed the wholesaling or retailing tax liability. For a more detailed explanation of the MATC reporting requirements see WAC 458-20-19301.

(3) **Extractors for hire.** Persons performing extracting activities (labor or mechanical services), such as independent contractors, for timber harvesters are subject to tax under the extracting for hire B&O tax classification measured by the gross income from those services. RCW 82.04.280.

Until July 1, 2045, persons who extract timber for hire are eligible for a preferential B&O tax rate for timber extracting for hire activities. RCW 82.04.260 (12)(a). Taxpayers reporting under the preferential Extracting for Hire Timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

**Example 3.** Tree Severing Corporation (TSC) is hired by Timber Harvester to fell trees owned by Timber Harvester. TSC is performing an extracting activity, and is considered an extractor for hire with respect to those services. TSC (~~(owes B&O)~~) is subject to tax under the ((extractor)) Extracting for Hire Timber B&O tax classification measured by its gross income from the services.

Extracting activities commonly performed by extractors for hire include, but are not limited to:

- (a) Cutting or severing trees;
- (b) Logging road construction or maintenance;
- (c) Activities related to and performed on timber-producing property that are necessary and incidental to timber operations, such as:
  - (i) Slash cleanup and burning;
  - (ii) Scarification;
  - (iii) Stream and pond cleaning or rebuilding;
  - (iv) Restoration of logging roadways to a natural state;
  - (v) Restoration of wildlife habitat; and
  - (vi) Fire trail work.

(4) **Processors for hire.** Persons performing services as independent contractors for timber harvesters during the manufacturing portion of a timber harvest operation are subject to tax under the processing for hire B&O tax classification measured by the gross income from those services. RCW 82.04.280. For information regarding processors for hire see WAC 458-20-136.

Until July 1, 2045, persons who process for hire (a) timber into timber products or wood products; (b) timber products into other timber products or wood products; or (c) mass

timber products defined in RCW 19.27.570(1), are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(b). Taxpayers reporting under the preferential Processing for Hire Timber Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

**Example 4.** Tree Services Inc. (TSI) is hired to delimit and buck severed trees at the harvest site by the owner of the severed trees, the TTT Company. TSI is a processor for hire and is subject to ((B&O)) tax under the Processing for Hire Timber Products B&O tax classification. TTT then hires Chopper Services to transport the logs by helicopter from where the logs were delimited and bucked to a location from which the logs will be transported to a mill. Under these circumstances, Chopper Services is a processor for hire as the manufacturing of the logs has started. However, if the manufacturing process on those logs had not yet begun Chopper Services would be an extractor for hire. In either case, the measure of tax is the gross income from the services.

Persons performing processing for hire or extracting for hire services for consumers must collect and remit retail sales tax on those services unless otherwise exempt by law.

(5) **Hauling activities.** Persons performing services for timber harvesters are often required to haul logs by motor vehicle from the harvest site over public roads. The income attributable to this hauling activity is subject to the public utility tax (PUT).

Effective August 1, 2015, RCW 82.16.020 provides a reduced PUT rate for most log transportation businesses. A "log transportation business" means the business of transporting logs by truck, except when the transportation meets the definition of urban transportation business or occurs exclusively on private roads. RCW 82.16.010. The distinction between motor and urban transportation is explained in WAC 458-20-180. If the hauling is exclusively performed over private roads, the gross income from the transportation activity is subject to tax under the service and other activities B&O tax classification, not the PUT.

**Example 5.** Hauler A hauls logs over private roads from the harvest site to the transfer site where the logs are unloaded. Hauler B hauls these logs over both private and public roads from the transfer site to a mill. The income received by Hauler A is subject to tax under the service and other activities B&O tax classification. The income received by Hauler B is subject to the public utility tax.

(a) **Subcontracting hauls to a third party.** If the person hired to haul logs by motor carrier subcontracts part or all of the hauling to a third party, the amount paid to the third party is subject to the public utility tax if any part of the transportation performed by the third party occurred on a public road, and is subject to the B&O tax if the transportation occurred exclusively on private roads. The person originally hired to haul the logs by motor carrier may be entitled to claim the deduction for jointly furnished services in computing its PUT liability, depending on the circumstances. See WAC 458-20-179 for more information on the PUT deduction for services furnished jointly. No similar deduction is available under the B&O tax.

(b) **Hauls using own equipment.** If the person hauls the product using his or her own equipment, and has established hauling rates that are paid to third-parties for comparable hauls, these rates may be used to establish the measure of tax for the hauling activity. Otherwise, the measure of the tax should be all costs attributable to the hauling activity including, but not limited to, the following costs relative to the hauling equipment: Depreciation; repair parts and repair labor; and wages and benefits for employees or compensation to contractors driving or maintaining the equipment. If appropriate records are not maintained to document these costs, the department will accept one-third of the gross income derived from a contract for all labor or mechanical services beginning with the cutting or severance of trees through the hauling services as the measure of the tax under the motor transportation PUT classification.

(c) **Deduction for hauls to export facilities.** Refer to subsection (13) of this rule for information regarding the deduction available for certain log hauls to export facilities.

(6) **Common timber sale arrangements.** Persons who sell and/or take timber may be subject to various taxes including the B&O tax, timber excise tax, and real estate excise tax. There are a number of ways in which harvesting activities are conducted and timber is sold. The timing of the transfer of ownership of, or the contractual right to sever, standing timber determines which taxes are due and who is liable for remitting tax.

The following examples briefly identify two common types of timber sale arrangements and then state a conclusion as to the taxes that apply. These examples are not an all-inclusive list of the different types of timber sale arrangements, or the variations that may occur. These examples presume that the trees being harvested are not Christmas trees, and that no participant is a federal, state, or local government entity.

(a) **Example 6. Sale of standing timber (stumpage sales).** In this type of arrangement, Seller (landowner or other owner of the rights to standing timber) sells standing timber to Buyer. Buyer receives title to the timber from Seller before it is severed from the stump. Buyer may hire Contractor to perform the harvesting activity.

The tax consequences are:

(i) Seller is liable for real estate excise tax. A sale of real property has occurred under RCW 82.45.060. Refer to chapter 458-61 WAC for information on the real estate excise tax.

(ii) Buyer is liable for both timber excise tax and B&O tax. Buyer is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Buyer "from the...land of another under a right or license...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.

(iii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.

(b) **Example 7. Sale of harvested timber (logs).** In this type of sales transaction, Seller (landowner or other owner of the rights to standing timber) hires Contractor to perform the harvesting activity. Contractor obtains all the necessary cutting permits, performs all of the harvesting activities from severing the trees to delivering the logs for scaling, and



makes all the arrangements for the sale of the logs. Contractor, in effect, is performing the harvesting and marketing services for Seller. Seller retains title to the logs until after they are scaled, at which time title transfers to Buyer.

The tax consequences are:

(i) Seller is liable for both timber excise tax and B&O tax. Seller is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Seller is "the person who from the person's own land or from the land of another under a right or license granted by lease or contract...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.

(ii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.

(iii) There is no real estate excise tax liability because there is no sale of real property under chapter 82.45 RCW.

**(7) Equipment and supplies used in timber harvest operations.** The retail sales tax applies to all purchases of equipment, component parts of equipment, and supplies by persons engaging in timber operations unless a specific exemption applies. Purchases of fertilizer and spray materials (e.g., pesticides) for use in the cultivating of timber are also subject to the retail sales tax, unless purchased for resale as tangible personal property. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department.

If a person using property in Washington incurs a use tax liability, and prior to that use paid a retail sales or use tax on the same property to another state or foreign country (or political subdivision of either), that person may claim a credit for those taxes against the Washington use tax liability.

**(a) Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment used by manufacturers. Persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

**(b) Property manufactured for commercial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O tax and use tax on the value of the property manufactured, unless a specific exemption applies. WAC 458-20-134 defines and provides information on commercial or industrial use, and WAC 458-20-112 describes how to determine the value of products. If the person also extracts the product, B&O tax is due under the extracting tax classification, and a MATC may be taken.

**Example 8.** ABC Company severs trees, manufactures the logs into lumber, and then uses the lumber to construct an office building. The use of the lumber by ABC in constructing its office building is a commercial or industrial use. ABC is subject to tax under the Extracting Timber and Manufacturing of Timber or Wood Products B&O tax classifications and may claim a MATC. ABC is also responsible for remitting use tax on the value of the lumber incorporated into the office building.

**(8) Seeds and seedlings.** Persons cultivating timber often purchase or collect tree seeds that are raised into tree seedlings. The growing of the seed may be performed by the person cultivating timber, or through the use of a third-party grower. In the case of a third-party grower, the seed is provided to the grower and tree seedlings are received back after a specified growing period.

**(a) Responsibility to remit retail sales or use tax.** The purchase of seeds or seedlings by a person cultivating timber is subject to the retail sales tax. If the seller fails to collect retail sales tax, the buyer must remit retail sales tax (commonly referred to as "deferred sales tax") or use tax, unless otherwise exempt by law. The use of seed collected by a person cultivating timber is subject to use tax. In the case of seed provided to third-party growers in Washington, the seed owner, and not the third-party grower, incurs any use tax liability on the value of the seed. The value of seedlings brought into and used in Washington is subject to the use tax, unless retail sales or use tax was previously paid on the seedlings or on the seed from which the seedlings were grown.

**(b) Limited sales and use tax exemptions for conifer seeds.** RCW 82.08.850 and 82.12.850 provide retail sales and use tax exemptions for certain sales or uses of conifer seeds. A deferral mechanism is also available if the buyer cannot at the time of purchase determine whether the purchase is eligible for the sales tax exemption.

**(i) Retail sales tax exemption.** Retail sales tax does not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller if the seed is to be used for growing timber outside Washington. This exemption also applies to the sale of conifer seed to an Indian tribe or member and is to be used for growing timber in Indian country, again only if the seed is immediately placed into freezer storage operated by the seller. For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.

This exemption applies only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate to substantiate the exempt nature of these sales.

**(ii) Deferring payment of retail sales tax if unable to determine whether purchase qualifies for the retail sales tax exemption.** If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the tax exemption must remit to the department the amount of sales tax that would have been paid at the time of purchase. It is important to note that the sales tax liability may be deferred only if the seller immediately places the conifer seed into freezer storage operated by the seller.

**(iii) Tax paid at source deduction.** A buyer who pays retail sales tax on the purchase of conifer seed and subse-

quently determines that the sale qualifies for the tax paid at source deduction may claim a deduction on its excise tax return. The deduction is allowed only if the buyer keeps and preserves records that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid.

(iv) **Use tax exemption.** Use tax does not apply to the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This exemption applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or member and the seedlings will be used for growing timber in Indian country. If the owner of the conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed qualifies for this exemption, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.

(9) **Activities or income incidental to timber operations.** The following activities or income, and the applicable tax classifications are often associated with timber operations. These tax-reporting requirements apply even if these activities are incidental to the person's primary business activity.

(a) **Taking other natural products from timberland.** The value of natural products such as boughs, mushrooms, seeds, and cones taken for sale or commercial or industrial use is subject to the tax under the extracting B&O tax classification. The sale of these products is subject to B&O tax under the wholesaling or retailing tax classification, as the case may be. Persons both extracting and selling natural products should refer to WAC 458-20-19301 for an explanation of the MATC reporting requirements. The retail sales tax applies to sales to consumers, unless a specific exemption applies.

(b) **Timber cruising, scaling, and access fees.** Gross income from timber cruising, scaling services, and allowing others to use private roads is subject to tax under the service and other activities B&O tax classification. This tax classification also applies to access fees for activities such as hunting, taking firewood, bough cutting, mushroom picking, or grazing. Charges to allow a person to take an identified quantity of tangible personal property are considered sales of that property. See subsection (9)(d) of this rule.

(c) **Planting, thinning, and spraying.** The service and other activities B&O tax applies to the gross proceeds of sale received for planting trees or other vegetation, precommercial thinning, and spraying or applying fertilizers, pesticides, or herbicides.

(d) **Sales of firewood and Christmas trees.** Sales of firewood, Christmas trees, and other tangible personal property are either wholesale (subject to B&O tax under the wholesaling tax classification) or retail (subject to B&O tax under the retailing tax classification and also to retail sales tax) sales, depending on the nature of the transaction. These sales are often made in the nature of charges allowing the buyer to select and take an identified quantity of the property (e.g., six cords of firewood or two Christmas trees).

(e) **Unloading logs from logging trucks.** Gross income from the unloading of logs from logging trucks onto rail cars at transfer points is subject to the retailing B&O and retail sales taxes when the activity is a rental of equipment with operator. RCW 82.04.050. For more information regarding the rental of equipment with an operator see WAC 458-20-211. If this activity is not a rental of equipment with operator, gross income from the activity is subject to tax under the service and other activities B&O tax classification. The income from unloading of logs from logging trucks is subject to tax under the stevedoring B&O tax classification if performed at an export facility as a part of or to await future movement in waterborne export. For tax-reporting information regarding services associated with interstate or foreign commerce see WAC 458-20-193D.

(f) **Transporting logs by water.** Gross income received for transporting logs by water (e.g., log booming and rafting) or log patrols is subject to tax under the "other public service business" classification of the public utility tax.

This tax classification applies to the gross income from this activity even if the person segregates a charge for boomsticks used while transporting the logs. In many cases logs will be towed to a location specified by the customer for storage. Any charges for boomsticks while the logs are stored are rentals of tangible personal property and subject to the tax under the retailing B&O tax classification and retail sales tax if to a consumer. For information regarding the rental of tangible personal property see WAC 458-20-211.

(g) **Export sorting yard operations.** Export sorting yard operations generally consist of multiple activities. These activities can include, but are not necessarily limited to, services such as weighing, tagging, banding, appraising, and sorting of logs. Other incidental activities, such as the debarking, removal of imperfections such as crooks, knots, splits, and seams, and trimming of log ends to remove defects, are also performed as needed. Income received by persons performing the export sorting yard activities as identified in this subsection is subject to tax under the service and other activities B&O tax classification.

(10) **Harvesting Christmas trees.** Persons growing, producing, or harvesting Christmas trees are either farmers or extractors under the law, as explained below. Activities generally associated with the harvesting of Christmas trees, such as cutting, trimming, shearing, and bailing (packaging) are not manufacturing activities because they are not the "cutting, delimiting, and measuring of felled, cut, or taken trees" under RCW 82.04.120.

(a) **Plantation Christmas tree operations.** Persons growing or producing plantation Christmas trees on their own lands or on lands in which they have a present right of possession are farmers. RCW 82.04.213. Plantation Christmas trees are Christmas trees that are exempt from the timber excise tax under RCW 84.33.170. This requires that the Christmas trees be grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising Christmas trees. RCW 82.04.035 and 84.33.035.

(i) Gross income from wholesale sales of plantation Christmas trees by farmers is exempt from B&O tax. RCW

82.04.330. Gross income from retail sales of plantation Christmas trees by farmers is subject to the retailing B&O tax and to retail sales tax. For information on sales of agricultural products by farmers see WAC 458-20-210.

(ii) Farmers growing or producing plantation Christmas trees may purchase seeds, seedlings, fertilizer, and spray materials at wholesale. RCW 82.04.050 and 82.04.060.

(iii) Persons performing cultivation or harvesting services for farmers are generally subject to the service and other activities B&O tax on the gross income from those services. See WAC 458-20-209 for information on farming for hire and horticultural services performed for farmers.

(b) **Other Christmas tree operations.** Persons who either directly or by contracting with others for the necessary labor or mechanical services fell, cut, or take Christmas trees other than plantation Christmas trees are extractors. RCW 82.04.100. The tax-reporting instructions regarding extracting and extracting for hire activities provided elsewhere in this rule apply.

(11) **Timber harvest operations in conjunction with other land clearing or construction activities.** Persons sometimes engage in timber harvest operations in conjunction with the clearing of land for the construction of residential communities, golf courses, parks, or other development. In such cases, these persons are engaging in separate business activities, and income from each may be subject to different tax liabilities. Income attributable to the timber harvest operations is subject to tax under the tax classifications as described elsewhere in this rule. Income attributable to the clearing of land for the construction of the residential community, golf course, park, or other development is subject to the wholesaling, retailing, retail sales, or public road construction tax, as the case may be. Refer to WAC 458-20-170, 458-20-171, and 458-20-172 for tax-reporting information regarding these construction activities. Persons performing landscape and horticultural services such as cutting or trimming trees after the land is developed should refer to WAC 458-20-226.

(12) **Logging road construction and maintenance.** Constructing or maintaining logging roads (whether active or inactive) is considered an extracting activity. Income derived from this activity is subject to the extracting or extracting for hire B&O tax, as the case may be. This income is not subject to the retail sales tax. A person constructing or maintaining a logging road is a consumer of all materials incorporated into the logging road. The purchase or use of these materials is subject to either the retail sales or use tax.

(a) **Logging road materials provided without charge.** Landowners/timber harvesters may provide materials (e.g., crushed rock) without charge to persons constructing or maintaining logging roads. In such cases, while both the person providing the materials without charge and the person applying the materials to the road are consumers under the law, tax is due only once on the value of the materials. The person constructing or maintaining the roads is responsible for remitting use tax on the value of the materials, unless that person documents that the landowner or timber harvester previously remitted the appropriate retail sales or use tax.

Alternatively, the person may take a written statement from the landowner/timber harvester certifying that the land-

owner/timber harvester has remitted (for past periods) and/or will remit (for future periods) all applicable retail sales or use taxes due on materials provided without charge. This statement must identify the period of time, not to exceed four years, for which it is effective. The statement must identify the landowner/timber harvester's tax reporting account number and must be signed by a person who is authorized to make such a representation.

(b) **Extracted or manufactured logging road materials.** Persons constructing or maintaining logging roads are subject to the B&O and use taxes on the value of applied materials they extract or manufacture from private pits, quarries, or other locations. The measure of tax is the value of the extracted or manufactured products, as the case may be. See WAC 458-20-112 for additional information regarding how to determine the "value of products."

(i) If the person either directly or by contracting with others extracts and crushes, washes, screens, or blends materials to be incorporated into the road, B&O tax under the extracting classification is due on the value of the extracted product before any manufacturing. B&O tax under the manufacturing classification, and use tax are also due upon the value of manufactured product. If the "cost basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value includes the cost of transportation to a processing point, but does not include any transportation from the processing point to the road site. A MATC may be taken when computing the B&O tax as explained in WAC 458-20-19301.

(ii) In the case of fill dirt, sand, gravel, or rock that is extracted from a location away from the logging road site, but not further processed, B&O tax under the extracting classification, and use tax are due upon the value of the extracted product. If the "cost of production basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value does not include transportation costs to the road site.

(iii) The mere severance of fill dirt, sand, gravel, or rock from outcroppings at the side of a logging road for placement in the road is a part of the logging road construction or maintenance activity. The person incorporating these materials into the road does not incur a tax liability for either the extracting or the use of these materials.

(13) **Deduction for hauling logs to export yards.** RCW 82.16.050 provides a public utility tax deduction for amounts derived from the transportation of commodities from points of origin within this state to an export elevator, wharf, dock, or shipside ("export facility") on tidewater or navigable tributaries of tidewaters. The commodities must be forwarded from the facility, without intervening transportation, by vessel and in their original form, to an interstate or foreign destination. No deduction is allowed when the point of origin and the point of delivery are located within the corporate limits of the same city or town.

(a) **Conditions for deduction.** This deduction is available only to the person making the last haul, not including hauls within the export facility, before the logs are put on the ship. This deduction is not available if the haul starts in the same city or town where the export facility is located.

The deduction is available only if:

(i) The logs eventually go by vessel to another state or country; and

(ii) The form of the logs does not change between the time the logs are delivered to the export facility and the time the logs are put on the ship. The mere removal of bark from the logs (debarking) or the incidental removal of imperfections (see subsection (9)(g), of this rule) while the logs are at the export facility is not itself a manufacturing activity, nor does it result in a change in the "original form" of the logs as contemplated by RCW 82.16.050.

(b) **Documentation requirements for deduction.** The log hauler must prove entitlement to the deduction. Delivery tickets that show delivery to an export facility are not, alone, sufficient proof. A certificate from the export facility operator is acceptable additional proof if it is substantially in the following form. Rather than a certificate covering each haul, a "blanket certificate" may be used for a one-year period of time if no significant changes in operation will occur within this period of time.

**Exemption certificate for logs delivered to an export facility**

The undersigned export facility operator hereby certifies:

That \_\_\_\_\_ percentage or more of all logs hauled to the storage facilities at \_\_\_\_\_, the same located on tidewater or navigable tributaries thereto, will be shipped by vessel directly to an out-of-state or foreign destination and the following conditions will be met:

- 1. The logs will not go through a process to change the form of the logs before shipment to another state or country.
- 2. There will be no intervening transportation of these logs from the time of receipt at the export facility until loaded on the vessel for the interstate or foreign journey.

Trucking Firm \_\_\_\_\_  
 Trucking Firm Address \_\_\_\_\_  
 Trucking Firm UBI# \_\_\_\_\_  
 Export Facility Operator \_\_\_\_\_  
 Operator UBI# \_\_\_\_\_  
 Person Giving Statement \_\_\_\_\_  
 Title of Person Giving Statement \_\_\_\_\_

(c) **Examples.** The following examples identify a number of facts and then state a conclusion regarding the deductibility of income derived from hauling logs to export facilities. Unless specifically provided otherwise, presume that the logs are shipped directly to another country from the export facility.

(i) **Example 9.** Logs are hauled from the harvest site to an export facility. While the bark will be removed from fifty percent of the logs, no other processing takes place. Because the mere removal of bark is not considered a change in the form of the logs, the export facility may provide a certificate in the above form indicating that all logs at this facility will ultimately be shipped to another country. The hauler may then claim a deduction for one hundred percent of this haul.

(ii) **Example 10.** Logs are hauled from the harvest site to an export sorting area. At this location further sorting takes place and eighty percent of the logs are hauled approximately one mile on public roads to shipside and shipped to another country. The other twenty percent of the logs are sold to local sawmills. The haul to the sorting yard is subject to tax because there is another haul from the sorting yard to shipside. It is immaterial that the hauler may be paid based on an "export" rate.

The haul from the sorting yard to shipside is deductible if it does not start and end within the corporate limits of the same city or town, and the hauler obtains the appropriate exemption certificate. The haul to the local sawmills is not deductible.

(iii) **Example 11.** Logs are hauled from the harvest site to an export facility. The hauler is aware that all logs will need to be hauled a distance of approximately one-half mile across the export facility yard to reach the ship when it arrives at the dock. The dock is located next to the export facility. The hauler may take the deduction, provided the appropriate exemption certificate is obtained. Movement of the logs within the export facility is not an intervening haul.

(14) **Small timber harvesters - Business and occupation tax exemption.** RCW 82.04.333 provides a limited exemption from B&O tax for small harvesters. A small harvester may take a deduction for an amount not to exceed one hundred thousand dollars per tax year from the gross receipts or value of products proceeding or accruing from timber harvested. A deduction may not reduce the amount of tax due to less than zero.

A "small harvester" means every person who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. Small harvester does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods. RCW 84.33.035.

(a) **Registration - Tax return.** A person whose only business activity is as a small harvester of timber and whose gross income in a calendar year from the harvesting of timber is less than one hundred thousand dollars, is not required to register with the department for B&O tax purposes. This person must nonetheless register with the forest tax division of the department for payment of the timber excise tax. See chapters 84.33 RCW and 458-40 WAC for more information regarding the timber excise tax.

An unregistered small harvester of timber is required to register with the department for B&O tax purposes in the month when the gross proceeds received during a calendar year from the timber harvested exceed the exempt amount. The harvester must then file and report on an excise tax return all proceeds received during the calendar year to the time when the filing of the excise tax return is required.

(b) **Examples.** In each of the following examples, the harvester must register with the department's forest tax division for the payment of timber excise tax, and must report under the appropriate tax classifications as described above in this rule.

(i) **Example 12.** A small harvester not currently registered with the department for B&O tax purposes harvests timber in June and again in August, receiving fifty thousand dollars in June and two hundred thousand dollars in August from the sale of the logs harvested.

B&O tax is due on the entire two hundred fifty thousand dollars received from the sale of logs. The small harvester must register with the department in August when the receipts from the timber harvesting business exceed the one hundred thousand dollars exemption amount. An excise tax return is to be filed in the appropriate period as provided in WAC 458-20-22801.

(ii) **Example 13.** A person is primarily engaged in another business that is currently registered with the department for B&O tax purposes and has monthly receipts of two hundred fifty thousand dollars. The person is a small harvester as defined in RCW 84.33.035 and receives sixty thousand dollars from the sale of the timber harvested.

B&O tax remains due on two hundred fifty thousand dollars from the other business activities. The sixty thousand dollars received from the sale of logs is exempt and is not reported on the person's excise tax return. The exemption applies to the activity of harvesting timber and receipts from the sale of logs are not combined with the receipts from other business activities to make the sale of logs taxable.

(iii) **Example 14.** A small harvester not otherwise registered with the department for B&O tax purposes contracts with a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive sixty percent and the logging company forty percent of the log sale proceeds. The log purchaser pays two hundred fifty thousand dollars for the logs during the calendar year, paying one hundred fifty thousand dollars to the small harvester and one hundred thousand dollars to the logging company.

For the small harvester, B&O tax is due on the entire two hundred fifty thousand dollars paid for the logs. The small harvester is taxed upon the gross sales price of the logs without deduction for the amount paid to the logging company. RCW 82.04.070. The small harvester must register with the department for B&O tax purposes in the month when, for the calendar year, the proceeds from all timber harvested exceed one hundred thousand dollars. The logging company is taxed on the one hundred thousand dollars it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.035.

**WSR 20-02-059**  
**PERMANENT RULES**  
**BOARD OF ACCOUNTANCY**

[Filed December 24, 2019, 9:08 a.m., effective January 24, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is needed to update various section and subsection references which have changed due to recently adopted changes in other rules.

Citation of Rules Affected by this Order: Amending WAC 4-30-080, 4-30-122, and 4-30-124.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 19-21-155 on October 22, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 24, 2019.

Charles E. Satterlund, CPA  
Executive Director

AMENDATORY SECTION (Amending WSR 13-22-001, filed 10/23/13, effective 1/1/14)

**WAC 4-30-080 How do I apply for an initial individual CPA license?** (1) To qualify to apply for an initial license you must meet the following criteria and requirements:

(a) Good character requirements of RCW 18.04.105 (1)(a);

(b) Education requirements of WAC 4-30-060;

(c) Examination requirements of WAC 4-30-062;

(d) Experience requirements of WAC 4-30-070;

(e) Achieve and document a passing grade of ninety percent or better on a course covering the complete content of the AICPA Code of Professional Conduct;

(f) Achieve and document a passing grade of ninety percent or better on a board-approved initial course covering the Washington State Public Accountancy Act, related board rules, and board policies.

(2) If more than four years have lapsed since you passed the examination, you must meet the CPE requirements of WAC 4-30-134 ~~((2)(a))~~ (5) within the thirty-six month period immediately preceding submission of your license application. That CPE must include CPE hours in ethics and regulation meeting the requirements of WAC ~~((4-30-134(6)))~~ 4-30-132(7). This regulatory ethics portion of the combined one hundred twenty-hour CPE requirement must be com-

pleted within the six month period immediately preceding submission of your license application.

(3) You must provide the required information, documents, and fees to the board either by making application through the board's online application system or on a form provided upon request. You must provide all requested information, documents and fees to the board before the application will be evaluated.

(4) Upon assessment of your qualifications and approval of your application, your licensed status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

(5) Your initial license will expire on June 30 of the third calendar year following initial licensure.

(6) You may not use the title CPA until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

**AMENDATORY SECTION** (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

**WAC 4-30-122 If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or a CPA-Inactive certificate out of retirement?** If you notify the board that you wish to retire your license or CPA-Inactive certificate prior to the end of your renewal cycle, pursuant to RCW 18.04.215, you may renew your license or CPA-Inactive certificate out of retirement at a later date and are not subject to the requirements of reinstatement; however, you may not use the title CPA or CPA-Inactive or exercise the privileges related to those titles until you renew out of retirement.

If you previously held a license and requested that the license be retired, you are not eligible to apply for CPA-Inactive certificate holder status.

To apply to renew a license or a CPA-Inactive certificate out of retirement, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To apply to renew out of retirement, you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not used the title CPA or CPA-Inactive during the time in which your license or CPA-Inactive certificate was retired; and

(b) Met the CPE requirements to renew out of retirement in WAC 4-30-134(~~((4))~~) (5); and

(2) All applicable fees.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license or CPA-Inactive certificate will expire on June 30th of the third calendar year following the calendar year of the renewal out of retirement. The CPE reporting period for your next renewal begins on January 1<sup>st</sup> of the calendar year in which the renewal of your retired license or CPA-Inactive certificate was approved by the board and ends on December 31<sup>st</sup> of the second calendar year following approval of the renewal out of retirement. CPE credit hours utilized to qualify for renewal of a retired license or CPA-Inactive certificate cannot be utilized for subsequent renewal of your credential renewed out of retirement.

You may not use the title CPA or CPA-Inactive until your renewal out of retirement application has been approved.

**AMENDATORY SECTION** (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

**WAC 4-30-124 How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?** If your individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) until your individual credential has been reinstated by the board.

Individuals who held a valid license on June 30, 2001, and individuals obtaining a license after June 30, 2001, are not eligible to reinstate as CPA-Inactive certificate holders.

To reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a nonlicensee firm owner you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information and documents, and fees have been submitted to the board.

To reinstate, you must submit to the board:

(1) Complete reinstatement information including your certification that you have:

(a) *For those who wish to reinstate a license or CPA-Inactive certificate:* Not used the title CPA or CPA-Inactive during the time in which your individual license or CPA-Inactive certificate was lapsed; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner:* Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134(~~((6))~~) (5); and

(d) Met the CPE supporting documentation requirements in WAC 4-30-138;

(2) Source documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-30-138;

(3) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or practice privileges;

(4) Other required documents; and

(5) All applicable fees.

Upon approval of your reinstatement application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement cannot be utilized for subsequent renewal of your reinstated credential.

You may not use the restricted title(s) until your reinstatement application has been approved and posted to the board's database.

### WSR 20-02-062

#### PERMANENT RULES

#### PUBLIC DISCLOSURE COMMISSION

[Filed December 24, 2019, 12:04 p.m., effective January 24, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Concerning the efficient administration of campaign finance and public disclosure reporting and enforcement as well as the disclosure of contributions from political committees to other political committees. Amending Title 390 WAC to implement both chapters 428 and 261, Laws of 2019, SHB 1195 and ESHB 1379.

Citation of Rules Affected by this Order: New WAC 390-05-518 and 390-24-211; repealing WAC 390-05-195, 390-19-020, 390-19-030, 390-24-032 and 390-24-105; and amending WAC 390-05-002, 390-05-007, 390-05-010, 390-05-205, 390-05-210, 390-05-215, 390-05-220, 390-05-235, 390-05-290, 390-05-300, 390-05-305, 390-05-400, 390-05-505, 390-05-507, 390-05-515, 390-05-520, 390-05-525, 390-16-001, 390-16-011A, 390-16-037, 390-16-042, 390-16-043, 390-16-058, 390-16-059, 390-16-063, 390-16-071, 390-16-105, 390-16-115, 390-16-125, 390-16-230, 390-16-238, 390-16-310, 390-16-320, 390-16-325, 390-18-010, 390-18-025, 390-18-027, 390-18-030, 390-18-040, 390-18-050, 390-19-010, 390-19-040, 390-19-050, 390-20-0101, 390-20-014, 390-20-017, 390-20-020, 390-20-020A, 390-20-052, 390-20-110, 390-20-111, 390-20-120, 390-20-125, 390-20-130, 390-20-140, 390-20-143, 390-20-144, 390-20-145, 390-20-146, 390-20-150, 390-24-010, 390-24-020, 390-24-025, 390-24-160, 390-24-200, 390-24-205, 390-24-301, 390-28-020, 390-28-025, 390-28-040, 390-28-060, 390-28-070, 390-28-080, 390-28-090, 390-28-100, 390-37-005, 390-37-050, 390-37-060, 390-37-061, 390-37-062, 390-37-063, 390-37-070, 390-37-100, and 390-37-182.

Statutory Authority for Adoption: RCW 42.17A.110(1), SHB 1195 and ESHB 1379, Laws of 2019.

Adopted under notice filed as WSR 19-16-097 on August 1, 2019, and WSR 19-21-125 on October 18, 2019.

Changes Other than Editing from Proposed to Adopted Version: Provides that the top five contributors or top three

PAC donors included in political advertising can be calculated from the date the advertisement is submitted for publication (WAC 390-18-025); provides a reasonable efforts standard for sponsors attempting to identify top three PAC donors included in political advertising (WAC 390-18-025); changes the maximum surface area for paraphernalia exempted from political advertising sponsor disclosure to a size of 4"x15" (WAC 390-18-030); restores a specific exemption from political advertising disclosure for skydiving (WAC 390-18-030); permits commercial advertisers the option to respond to requests for accounting materials through in-person inspection or electronically (WAC 390-18-050); Clarifies process for reinstating a suspension of lobbying activities (WAC 390-20-017); and includes reference to statements of understanding and proposed stipulations as part of the executive director's case resolution authority (WAC 390-37-060).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 84, Repealed 5.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 84, Repealed 5.

Date Adopted: December 5, 2019.

Sean Flynn  
General Counsel

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-002 Mission and purpose of the public disclosure commission.** (1) The public disclosure commission was created by the passage of Initiative 276 in 1972 for the principal purpose of providing the public with accurate information about certain financial affairs of candidates and elected officials, about the financing of election campaigns and the sponsors of political advertising, and about expenditures made in the course of lobbying. The passage of Initiative 134 in 1992 further expounded the purpose of the commission and the law.

(2) The duties, responsibilities, and powers of the commission, and provisions for establishing the commission and appointing the members thereof, are set forth in chapter 42.17A RCW.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-007 Public disclosure commission—Description of organization.** (1) The public disclosure commission is a five-member commission appointed by the gov-

ernor with the consent of the senate. The commission is assisted by ~~((a))~~ staff ~~((consisting of)), who are managed by an executive director ((and such other employees as are necessary)) appointed by the commission.~~

(2) Electronic communications to the commission should be sent to [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov). The commission's website is located at <https://www.pdc.wa.gov>. Mailings to the commission should be addressed ((as follows)) to: Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-010 Purpose of rules.** The purpose of these rules is to implement the provisions of chapter 42.17A RCW ~~((Initiatives 276 and 134))~~, referred to throughout as the act, by declaring the policies of the commission, particularly with regard to the interpretation and enforcement of the act by the commission.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-205 Definition—Consumable.** ~~((RCW 42.17A.005 (13)(a),))~~ The definition of contribution in the act excludes the actual cost of consumables furnished at a ticketed fund-raising event. This exclusion applies to the amount paid for food, beverages, preparation, catering or entertainment furnished at the event. For this purpose of ~~((RCW 42.17A.005))~~ the act and these rules, the term "consumable" includes the amount paid for food, beverages, event preparation, catering or entertainment cost furnished at the event.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-210 Definition—Contribution.** (1) The term "contribution" as defined in the act and used in these rules shall be deemed to include, among other things, furnishing services, property or rights on an unequal basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution is provided, it shall be reported at its fair market value per WAC 390-05-235 and, pursuant to RCW 42.17A.405 and 42.17A.410, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) **Duplicating political advertising.** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, digital, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee, is a contribution to the candidate or political committee.

(3) **Consulting with a ~~((state, local or judicial))~~ candidate.** An expenditure made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a candidate, or the candidate's authorized com-

mittee or agent, is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a candidate, or the candidate's authorized committee or agent, when:

(a) Any arrangement, coordination, or direction by the candidate, or the candidate's authorized committee or agent, is given to the expending person prior to the publication, distribution (digital or otherwise), display or broadcast, of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; ~~((or))~~

(b) An expenditure is made based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or the candidate's authorized committee or agent, with a view toward having an expenditure made; ~~((or))~~

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or

(d) An expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, or the candidate's authorized committee or agent. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a candidate, or the candidate's authorized committee or agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(4) **Consulting with a caucus political committee.** An expenditure ~~((that does not qualify)), not otherwise qualifying~~ as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a caucus political committee or its agent, is a contribution to such caucus political committee. An expenditure is presumed to be made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a caucus political committee or its agent, when:

(a) Any arrangement, coordination, or direction by the caucus political committee, its agent, or another political committee financed, controlled or operated by the caucus, is given to the expending person prior to the publication, distribution, display, or broadcast of political advertising or electioneering communications, or prior to an expenditure being made by that person supporting that caucus political committee, or one or more of the candidates supported by it, or opposing one or more of those candidates' opponents; ~~((or))~~

(b) An expenditure is made based on information about the caucus political committee's plans, projects, or needs provided to the expending person by the caucus political committee, its agent, or another political committee financed, controlled, or operated by the caucus with a view toward having an expenditure made; ~~((or))~~



(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the caucus political committee or another political committee financed, controlled, or operated by the caucus; or

(d) The expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the caucus political committee, its agent, or another political committee financed, controlled, or operated by the caucus. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a caucus political committee or its agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(5) **Consulting with a bona fide political party.** An expenditure ~~((that does not qualify)), not otherwise qualifying~~ as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a bona fide political party or its agent, is a contribution to such bona fide political party. An expenditure is presumed to be made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a bona fide political party, when:

(a) Any arrangement, coordination or direction by the bona fide political party, its agent, or a political committee financed, controlled or operated by the party is given to the expending person prior to the publication, distribution, display, or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that bona fide political party, or one or more of the candidates supported by it, or opposing one or more of those candidates' opponents; ~~((☞))~~

(b) An expenditure is made based on information about the bona fide political party's plans, projects, or needs provided to the expending person by the bona fide political party or its agent with a view toward having an expenditure made; ~~((☞))~~

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the bona fide political party or a political committee financed, controlled, or operated by the bona fide political party; or

(d) An expenditure is made by, through, or in consultation with, any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the bona fide political party, its agent, or a political committee financed, controlled, or operated by the bona fide political party. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of the bona fide political party, a political committee financed, controlled, or operated by a bona fide political party or their agents, when a person performs only ministerial functions for two or more

candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(6) **Consulting with other political committees.** An expenditure made by a person in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination, or direction by the political committee, its agent, or another political committee financed, controlled, or operated by the committee is given to the expending person prior to the publication, distribution (digital or otherwise), display, or broadcast of political advertising, or prior to an expenditure being made by that person benefiting that political committee; ~~((☞))~~

(b) An expenditure is made based on information about the political committee's plans, projects, or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made; ~~((☞))~~

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by, through, or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent, or another political committee financed, controlled, or operated by the committee. However, there is no presumption that an expenditure is made in cooperation, consultation, concert, or collaboration with, or at the request or suggestion of a political committee or its agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-215 Receipt of a campaign contribution.** "Receipt" of a campaign contribution, as that term is used in the act and in these rules, shall be deemed to occur as follows:

(1) For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW 42.17A.560, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.

(2) For all other contributions, receipt shall be deemed to occur at the earliest date of the following:

(a) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson, or agent obtains possession of the contribution; ~~((☞))~~

(b) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson, or agent is informed of the contribution, or becomes aware that the campaign, or in the case of an earmarked contribution, the intermediary or conduit(§) has possession of the contribution; or

(c) The date that the contribution becomes available for use by the candidate or committee.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-220 Definition—Consideration.** "Consideration" as that term is used in the act and in these rules shall be deemed to include anything of value promised ((~~or~~)), paid, or transferred in return for a person's property or services rendered or to be rendered(§) including, but not limited to, reimbursement for traveling or other expenses.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-235 Definition—Fair market value.** (1) "Fair market value" ((~~in this~~)) as that term is used in the act and in these rules means the amount of money which a purchaser willing, but not obliged, to buy would pay a seller willing, but not obligated, to sell, for property, goods, or services.

(2)(a) In reference to real property, "fair market value" or "value," as used in the act and in these rules is the ((~~amount in cash which~~)) present cash value that a well-informed buyer or lessee, willing but not obligated to buy or lease that property, would pay, and ((~~which~~)) that a well-informed seller, or lessor, willing but not obligated to sell or lease it, would accept, taking into consideration all uses to which the property is adapted and might in reason be applied.

(b) If, in determining "fair market value" or "value," the amount a buyer would pay and the amount a seller would accept would be based on varying standards, then the fair market value of the contribution shall be based on the amount the contributor would ordinarily accept for selling the property, rather than the amount the candidate or political committee would ordinarily pay. For example, if a contributor who sells property in the ordinary course of their business at a wholesale price donates such property to a candidate or political committee who would ordinarily pay the retail price as a consumer, then the fair market value of the contribution shall be the wholesale price.

(3)(a) Any person who donates an item for sale, raffle, auction or awarding at a fund-raising event is making a contribution to the recipient candidate or political committee in an amount equal to the fair market value of the item donated.

(b) Any person who buys a donated item makes a contribution equal in value to the difference between the purchase or auction price and the fair market value of the donated item.

(c) If the purchase or auction price is the same as the fair market value, the buyer's contribution is zero. If the purchase or auction price is less than the fair market value, the buyer's contribution is zero and the donor's contribution is reduced to the amount of the sale or auction price.

(4) The value of any in-kind contribution donated to any candidate or political committee subject to contribution limits

pursuant to RCW 42.17A.405 or 42.17A.410 shall not, when combined with other contributions to that candidate or political committee, exceed the donor's applicable contribution limit as set forth in RCW 42.17A.405 or 42.17A.410. The value of an in-kind contribution donated as an exempt contribution to a bona fide political party committee or other political committee eligible to receive exempt funds is only subject to the limit imposed by RCW 42.17A.420.

(5)(a) Except as provided in WAC 390-16-207, if a person permits a candidate, a candidate's authorized committee, or a political committee to use the telephones of a business, union, organization, or other entity without charge for the purpose of making local campaign-related calls, the telephone usage is an in-kind contribution and shall be valued at its fair market value or, if no fair market value is ascertainable, ((~~\$~~)) one dollar per telephone per calendar day or part thereof.

(b) If ((~~the~~)) calls are permitted with assessed charges, the ((~~the~~)) charges are also an in-kind contribution unless the candidate, the candidate's authorized committee, or the political committee reimburses the person in full within thirty days of making ((~~the toll~~)) such calls.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-290 Political advertising definitions.** (1) "Mass communication," as that term is used in the act and in these rules, means a communication, digital or otherwise, intended to reach a large audience through any of the following methods:

(a) Advertising displays, newspaper advertising, billboards, signs;

(b) Brochures, articles, tabloids, fliers, periodicals;

(c) Radio or television presentations;

(d) Sample ballots (see WAC 390-17-030);

(e) Online or other electronic transmission methods;

(f) One hundred or more letters, emails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a thirty-day period; and

(g) Other mass means of disseminating political advertising, unless excluded by chapter 42.17A RCW or Title 390 WAC.

(2) "Online" means disseminating through a network of interconnected computers or devices, such as the internet or similar systems enabling electronic dissemination or exchange of communications. Examples include, but are not limited to, internet websites, social media, and other digital platforms, emails, and text messages.

(3) "Political advertising" ((~~is defined under RCW 42.17A.005 to~~)) as that term is defined in the act and used in these rules includes a mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

((~~4~~)) Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto, in a regularly published ((~~newspaper, periodical,~~)) print or electronic medium, or on a radio or television broad-

cast, where payment for the space or time of such content is not normally required.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-300 Suspension of reporting requirements for small jurisdictions.** ~~((From the effective date of RCW 42.17A.135;))~~ The following reporting requirements ~~((are suspended))~~ do not apply in jurisdictions with fewer than ~~((one))~~ two thousand registered voters, as of the date of the most recent general election in the jurisdiction:

(1) The F-1 financial reports of public officials required by RCW 42.17A.700 and WAC 390-24-010, 390-24-020 and 390-24-025;

(2) The L-5 public agency lobbying reports required by RCW 42.17A.635 and WAC 390-20-120;

(3) The C-1 through C-4 campaign finance reports required for ballot issues by RCW 42.17A.205 through 42.17A.240 and 42.17A.425, and WAC 390-16-011, 390-16-031, 390-16-036, 390-16-041, and independent campaign expenditure reports (C-6) required for ballot issues by RCW 42.17A.255 and WAC 390-16-050 ~~((: Provided, that reporting requirements shall be reinstated by order of the commission at its next regular or special meeting if:~~

~~((a) A certified "petition for disclosure" containing the valid signatures of fifteen percent of the number of registered voters of the jurisdiction as of the date of the most recent general election in the jurisdiction is filed with the commission; or~~

~~((b) The jurisdiction has by ordinance, resolution or other official action petitioned the commission to void the suspension with respect to elected officials, candidates and ballot propositions for the jurisdiction.~~

~~If reporting requirements are reinstated by petition, the commission shall promptly notify all known affected candidates and incumbent elected officials of their duty to file disclosure reports. Such individuals and committees shall be ordered to file the required statements within thirty days of the commission order).~~

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-305 Petition for disclosure—Form.** ~~((H))~~ The registered voters of a jurisdiction where reporting requirements are suspended may petition the commission to reinstate the reporting requirements suspended in jurisdictions with fewer than two thousand registered voters, as provided under RCW 42.17A.135 and this section.

(1) The commission shall reinstate the reporting requirements in a jurisdiction with fewer than two thousand registered voters at its next regular or special meeting, if:

(a) A certified "petition for disclosure" containing the valid signatures of fifteen percent of the number of registered voters of the jurisdiction as of the date of the most recent general election in the jurisdiction is filed with the commission; or

(b) The jurisdiction has by ordinance, resolution, or other official action petitioned the commission to void the suspen-

sion with respect to elected officials, candidates and ballot propositions for the jurisdiction.

(2) If reporting requirements are reinstated by petition, the commission shall promptly notify all known affected candidates and incumbent elected officials of their duty to file disclosure reports, and direct such persons to file the required statements within thirty days of the commission order.

(3) A petition for disclosure shall be filed electronically using the means provided by the PDC, or if an electronic method has not been provided, the petition shall be filed on legible, on 8-1/2 x 11" paper, and shall). The petition must include the following information:

(a) The name of the jurisdiction;

(b) A request that public disclosure be required;

(c) The names and addresses of all known candidates and ballot proposition committees in the jurisdiction who will be required to report;

(d) The legibly printed name and address and the legal signature of at least fifteen percent of the number of registered voters in the jurisdiction as of the date of the most recent general election in the jurisdiction.

~~((2))~~ (4) The petition shall be verified and certified by the auditor or elections officer of the county or counties in which the jurisdiction is located. The signatures shall be verified by comparing the signatures on the petition to the signatures on the voter registration roll. The auditor shall place ((his)) the auditor's seal on each verified page of the petition in order to certify it to the commission.

~~((3))~~ (5) A suggested form for petition is:

"We, the undersigned citizens and registered voters of (name of jurisdiction), request that the Public Disclosure Commission order disclosure in (name of jurisdiction)."

~~((4))~~ (6) A suggested form for the petition of a jurisdiction by ordinance, resolution, or other official action is:

"We, the (governing board) of (name of jurisdiction) request that the Public Disclosure Commission order disclosure in (name of jurisdiction). This request is made pursuant to RCW 42.17A.135 and WAC 390-05-305."

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-400 Changes in dollar amounts.** Pursuant to the ~~((requirement))~~ authority in RCW 42.17A.125 that the commission ~~((biennially))~~ may revise the ~~((dollar amounts found in Initiative 134 and RCW 42.17A.410))~~ monetary contribution limits and reporting thresholds and code values of the act to reflect changes in economic conditions, the previous and current amounts are:

Code Section	Subject Matter	Previous	Current
.005	<del>((Definition of))</del> <u>Reporting threshold for "Independent Expenditure" for political advertising</u>	\$950	<del>((*))</del> <u>\$1,000</u>
<u>.255</u>	<u>Reporting threshold for "Independent Expenditure" not otherwise reported</u>	<u>\$100</u>	<u>\$100</u>
.445(3)	Reimbursement of candidate for loan to own campaign	\$5,500	\$6,000
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$19,000  \$950	\$20,000  \$1,000
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office Candidates for school board office Candidates for hospital district	\$950 \$950 \$1,900 \$1,900 \$950 \$950 \$950 \$950	\$1,000 \$1,000 \$2,000 \$2,000 \$1,000 \$1,000 \$1,000 \$1,000
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$950 \$1,900	\$1,000 \$2,000
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.95 per voter .50 per voter .50 per voter	\$1.00 per registered voter .50 per registered voter .50 per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall State parties and caucuses County and leg. district parties Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.95 per voter .50 per voter .50 per voter	\$1.00 per registered voter .50 per registered voter .50 per registered voter
.405(7)	Limits on contributions to political parties		

Code Section	Subject Matter	Previous	Current
	and caucus committees		
	To caucus committee	\$950	\$1,000
	To political party	\$5,000	\$5,500
.410(1)	Candidates for judicial office	\$1,900	\$2,000
.475	Contribution must be made by		
	written instrument	\$95	\$100
.710	<u>Code values for statement of personal financial affairs - See WAC 390-24-301</u>		

(\*) Chapter 304, Laws of 2018 amended the definition of independent expenditure, changing the dollar threshold element of that definition to one-half the contribution limit from an individual per election.)

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-505 Electioneering communication exclusions.** ~~((+))~~ "Electioneering communication," as ~~((used))~~ defined in the act and used in these rules, does not include communications ~~((listed in RCW 42.17A.005 (22) (b)).~~

~~(2) "Electioneering communication" also does not include:~~

~~(a) Letters to the editor or comparable communications to news media described in RCW 42.17A.005 (22)(b)(iii);~~

~~(b) Communications conveyed through web sites, emails, telephone calls, or in-person leaflet/pamphlet drops at street addresses; or~~

~~(c) Communications conveyed in a manner not specified in RCW 42.17A.005(22)) expressly excluded from the definition in the act, such as communications conveyed through websites, emails, telephone calls, or in-person leaflet/pamphlet drops at street addresses.~~

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-507 Definition—Funding sources for electioneering communications.** (1) "Source of funds" for purposes of reporting a payment of promise to pay for an electioneering communication means a person who contributes anything of value for the communication, including a loan, gift, advance, payment, pledge, or personal or professional services for less than full consideration.

(2) Goods, services, property, or rights other than money or its equivalent are deemed to have a monetary value equivalent to their fair market value.

~~((3) "Source of funds" does not include those things of value specified in RCW 42.17A.005 (16)(a)(i).))~~

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-515 ((Member.)) Exclusion from contributions, independent expenditures, and electioneering communications—Communications within membership organizations.** (1) In determining whether ~~((a))~~ an organization's political communications ~~((is to a "member" as that~~

~~term is used in RCW 42.17A.005 and 42.17A.255, and for the purposes of RCW 42.17A.405, 42.17A.410 and 42.17A.420:~~

~~((+)) are limited to its "members" for purposes of communications that are excluded from the definitions of a contribution, independent expenditure, or electioneering communication, as provided in RCW 42.17A.005 of the act and used in these rules, the commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and ~~((whether it has))~~ formal organizing documents, membership criteria, and services it provides its members. An organization will not be considered a membership organization if it is primarily a commercial entity or for-profit entity selling products to customers even though it may refer to its customers as "members."~~

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account ~~((such factors as))~~:

~~((a))~~ Whether the members affirmatively accept membership ~~((and))~~;

~~((b))~~ The rights and obligations conferred on members by the organization, including whether members have the right to vote for:

~~((a))~~ (i) Election of directors or officers; ~~((or~~

~~((b))~~ (ii) Changes to the articles or bylaws; or

~~((c))~~ (iii) The disposition of all or substantially all of the assets of the organization or on a merger or dissolution~~((:)); and~~

~~((c))~~ A required payment of a predetermined amount of membership dues ~~((is also a factor; however, an organization will not be considered a membership organization if it is primarily a commercial entity or for-profit entity selling products to customers even though it may refer to its customers as "members."))~~.

(3) If ~~((a membership))~~ an organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134 (e)-(g), the commission will consider ~~((the organization and its members as qualifying for~~

~~the exemption in RCW 42.17A.005 (16)(b)(v) and (22)(b)(vii), unless the communication was not sent primarily to members. However,)) these FEC criteria ((are not the only)) as indicators of legitimate membership organizations or valid members ((a determination that will be made by the commission on a case-by-case basis as necessary)).~~

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider whether any distribution to nonmembers is incidental and isolated.

#### NEW SECTION

**WAC 390-05-518 Definition—Nonreimbursed public office related expense.** A "nonreimbursed public office related expense" is an expenditure incurred by an elected or appointed official, or a member of the official's immediate family, solely because of being an official.

AMENDATORY SECTION (Amending WSR 13-12-017, filed 5/24/13, effective 6/24/13)

**WAC 390-05-520 Definition—Periodical.** For electioneering communications ~~and other political advertising,~~ "periodical" means a ~~digital or paper~~ publication ~~((on paper))~~ that is serial in nature and appears or is intended to appear indefinitely, issued regularly or at stated intervals at least once every three months. ~~((For all other political advertising, "periodical" means a publication that is serial in nature and appears or is intended to appear indefinitely, issued regularly or at stated intervals at least once every three months.))~~

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-05-525 Definition—Public service announcement.** (1) "Public service announcement," as that term is used in the act and in these rules, means a communication that ~~((meets))~~ is all of the following ~~((criteria. The communication is))~~:

- (a) Designed to benefit or promote the community's health, safety, or welfare or nonprofit community events;
- (b) Not selling a product or service;
- (c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;
- (d) Of primary interest to the ~~((general))~~ public and is not targeted to reach only voters or voters in a specific jurisdiction;
- (e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;
- (f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing, digitally communicating, or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and
- (g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach, or awareness activities.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-05-195 Date of receipt of mailed items.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-001 Campaign finance disclosure.** Pursuant to chapter 42.17A RCW, candidates, political committees, and other persons participating in elections are subject to reporting requirements with the public disclosure commission. This chapter provides information on how to meet those requirements. To provide the public with full and immediate disclosure, electronic filing is ~~((preferred and sometimes))~~ required where the commission has provided an electronic filing method. The executive director may waive the electronic filing requirement and allow for the use of another written format ~~((on the basis of hardship))~~ based on a filer's lack of technological ability to file electronically. Links to electronic filing systems, forms and the instructions for filing can be found on the PDC website.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-011A Sponsored political committee.** (1) "Sponsored political committees," "sponsors of political committees," and "authorized committees," as those terms are used in the act and these rules, are defined in RCW 42.17A.005. This rule applies to political committees that are not authorized by a candidate, or by the public official against whom recall charges have been filed.

(2) A sponsored political committee ~~((shall))~~ must include on its C-1pc the name of at least one sponsor in the committee's name.

(3) ~~((To determine if a political committee))~~ For purposes of determining whether a political committee is sponsored, as defined in RCW 42.17A.005, by having received eighty percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders ((under RCW 42.17A.005(46))), the political committee organized to support or oppose a particular candidate or ballot proposition ((shall)) must consider all contributions received by the committee in the previous twelve months.

(4) A sponsored political committee must amend its C-1pc sixty days before an election in which it participates if the committee's name on its most recently filed C-1pc does not include at least one current sponsor. To determine if the committee received eighty percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders ~~((under RCW 42.17A.005(46)))~~ at the time of the amendment:

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition ~~((shall))~~

must consider all contributions received in the previous twelve months through the date of filing the amended C-1pc.

(b) A committee organized to support or oppose a particular candidate or ballot proposition (~~(shall)~~) must consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-037 Purpose of campaign expenditures—How to report.** (1) Any person required to report the "purpose" of an expenditure under RCW 42.17A.240(6), or 42.17A.255 (5)(b) (~~(shall)~~), must identify any candidate(s) or ballot proposition(s) that are supported or opposed by the expenditure unless such candidate(s) or ballot proposition(s) have been previously identified in a statement of organization of the person required to be filed under RCW 42.17A.205 (2)(f) and (g);

(2) Whenever an expenditure is made to a candidate or a political committee pursuant to an agreement or understanding of any kind regarding how the recipient will use the expenditure, the report (~~(shall)~~) must describe in detail that agreement or understanding and the goods and/or services to be provided.

Example A: If an expenditure is made directly to a vendor for get-out-the-vote (GOTV) phone calls or robocalls, the purpose (~~(shall)~~) must include the following details:

Vendor Name	Purpose	Amount
ABC Robocall	GOTV—phone bank 28th and 29th Legislative districts	\$1,000

Example B: If an expenditure is made directly to a vendor for printing, the purpose (~~(shall)~~) must include the following details:

Vendor Name	Purpose	Amount
ABC Printing	5,000 brochures	\$3,000

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-042 Debts and obligations—Contingent liabilities—How to report.** (1) Pursuant to RCW 42.17A.-240 and 42.17A.005, "promise," "promise to pay," "debt" and "obligations" mean:

- (a) Any oral or written order or agreement placed for goods, services, or anything else of value;
- (b) Any offer to purchase advertising space, broadcast time, or other written, broadcast, or digital advertising-related product or service;
- (c) Any contractual contingent liability; or
- (d) Provided that the amount of the debt or obligation in (a), (b), or (c) of this subsection owed to a vendor is more than seven hundred fifty dollars, and the vendor has not been paid in full for the goods received, invoices submitted, or services performed within the time periods specified below:

(i) For reports due within thirty days of an election, debts or obligations of more than seven hundred fifty dollars must be reported if the debt or obligation has been outstanding for more than five business days as of the last day of the reporting period.

(ii) For reports due during any other reporting period, debts or obligations of more than seven hundred fifty dollars must be reported if the debt or obligation has been outstanding for more than ten business days as of the last day of the reporting period.

(2) A contractual contingent liability (e.g., an additional fee to be paid to a political consultant or other person conditioned upon the candidate winning the election) is reportable as a debt or obligation from the time the contract or agreement is entered into until the liability is voided, paid or otherwise satisfied.

(3) Regularly recurring expenditures, of the same type and same or similar amount that have been reported at least once, need not be reported as debt unless they are past due as of the last day of the reporting period. Examples of recurring obligations that can be reported as recurring expenditures rather than debt include rent, utilities, insurance, cellular phone costs, and payments to campaign staff.

~~((4) There is no requirement for a candidate or political committee to report any debt owed by a third party such as a consultant or vendor provided that the obligation or expenditure to the third party has already been reported by the candidate or political committee.))~~

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-043 Candidates and political committees—Public inspection of books of account.** (1) RCW 42.17A.005 defines "books of account" for candidates and political committees as "a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day."

(2) RCW 42.17A.225 and 42.17A.235 require that candidates and political committees participating in an election as defined in RCW 42.17A.005, must make their books of account available for public inspection. The public inspection of books of account is not intended to be an exhaustive audit of all contributions received and expenditures made.

(3) Any individual who requests to publicly inspect the books of account of a candidate or political committee, must make the request during the period beginning ten calendar days before a primary, general, or special election, by contacting the filer's email address listed on the C-1 report for a candidate, or the C-1pc report for a political committee.

(4) The inspection of the books of account may occur on weekdays, unless the treasurer for the candidate or committee agrees otherwise, beginning on the eighth day before the election, excluding legal holidays, for at least two consecutive hours between 9:00 a.m. and 5:00 p.m. at a location that is agreed upon by the treasurer and the individual requesting the inspection. If the treasurer and requestor are unable to agree on a location and the treasurer has not provided digital access to the books of account, the default location for an

appointment must be a place of public accommodation selected by the treasurer within a reasonable distance from the treasurer's office. However, if the treasurer is located out-of-state, the default location must be within the state of Washington and reasonably accessible to both parties. The inspection must be allowed within forty-eight hours of the date and time the request was made at the agreed-upon location, provided that if the request is not made by 3:00 p.m. on the third day preceding an election, the candidate or political committee need only make best efforts to accommodate the request.

(5) The treasurer for the candidate or committee may make the books of account available electronically, in lieu of scheduling an in-person inspection, or if a location cannot be agreed upon by both parties. If the campaign's only copy of its books of account is maintained electronically with security protections, the person requesting the inspection must be given sufficient instruction to allow the inspection to proceed.

(6) The books of account, ledger and other supporting documentation must be maintained by the treasurer and kept current within one business day. The books of account of a candidate or political committee include the following: A ledger, spreadsheet, or similar listing of contributions, expenditures, loans, debts and obligations to substantiate the information disclosed on the PDC campaign finance reports. ~~((If a ledger is not sufficiently kept,))~~ The books of account must include the underlying source documents such as receipts, invoices, copies of contribution checks, copies of canceled checks for expenditures, digital transactions, notes, or other documentation concerning expenditures, orders placed, and loans. ~~((In the absence of those types of source documents, the campaign or committee must make the check register available.))~~ The campaign or committee is not required to provide the name and address of contributors who gave twenty-five dollars or less in the aggregate in total contributions.

(7) The candidate or political committee is not required to make copies of its books of account for the requestor. ~~((Videotaping))~~ Videorecording, photographing, or photocopying of the records is not required to be permitted but may be agreed to by both parties during or in advance of the inspection.

(8) At the time of making the appointment, the person requesting to inspect the books of account must provide the name(s) and contact information for all individuals who will be in attendance for the inspection. The requestor(s) must show photo identification prior to the inspection beginning, and the candidate or political committee may deny the inspection from occurring if photo identification is not provided.

(9) The records required by this section ~~((shall))~~ must be available for audit or examination by the PDC at any time upon request from the PDC.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-058 Independent expenditure—Definition and application.** (1) "Independent expenditure," as that

term is used in chapter 42.17A RCW, other than RCW 42.17A.255, and as used in these rules, ((except RCW 42.17A.255;)) means an "expenditure" as defined in RCW 42.17A.005 that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for public office subject to the filing requirements in chapter 42.17A RCW, by a person who is not:

(i) A candidate for that office;

(ii) An authorized committee of that candidate for that office;

(iii) A person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office.

(b) It is made in support of any or in opposition to a candidate for office by a person with whom the candidate has not collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(c) The expenditure pays in whole or in part for any political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name;

(d) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value ~~((equal to or greater than one-half the contribution limit from an individual per election))~~ of one thousand dollars or more. A series of expenditures, each of which is under ~~((one-half the contribution limit from an individual per election))~~ one thousand dollars, constitutes one independent expenditure if their cumulative value is ~~((equal to or greater than one-half the contribution limit from an individual per election))~~ one thousand dollars or more; and

(e) The expenditure is not a contribution as defined in RCW 42.17A.005 and ~~((clarified by))~~ provided in WAC 390-05-210.

(2) Exempt activities. The following activities are not considered independent expenditures for purposes of RCW 42.17A.255, 42.17A.630, or 42.17A.320:

(a) Ordinary home hospitality;

(b) A news item, feature, commentary, or editorial, or communications with journalists or editorial staff designed to elicit the same, in a regularly scheduled news medium that is of ~~((primary))~~ interest to the ~~((general))~~ public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(c) Participation in the creation of a publicly funded voters' pamphlet statement in written or video form;

(d) An internal political communication primarily limited to:

(i) The members of or contributors to a political party organization or political committee;

(ii) The officers, management staff, or stockholders of a corporation or similar enterprise; or

(iii) The members of a labor organization or other membership organization.



(e) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or the property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally ~~((made shall))~~ assessed must be reported as an in-kind contribution at its fair market value and counts toward any applicable contribution limit of the person providing the facility; or

(f) The rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of two hundred fifty dollars personally paid by the worker.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-059 Electioneering communication reporting threshold.** (1) A "sponsor" of an electioneering communication is defined in RCW 42.17A.005~~((46))~~.

(2) For the purposes of RCW 42.17A.005~~((22))~~, an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

(a) Identifies the same candidate in one or more communications satisfying RCW 42.17A.005 ~~((22))~~ (21)(a)(i) and (ii) or these rules;

(b) Is made by the same sponsor of one or more of the communications;

(c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market or aggregate value of one thousand dollars or more; and

(d) Is not a communication ~~((exempted from reporting))~~ excluded from the meaning of "expenditure" under RCW 42.17A.005~~((23))~~ or ~~((commission))~~ by these rules.

(3) When the ~~((electioneering communication or))~~ communications (including radio ~~((or))~~, television ~~((transmissions))~~, electronic, mailings, billboards, newspapers ~~((and/or))~~, online, or periodicals reach the one thousand dollar threshold, the sponsor ~~((shall electronically))~~ must report to the commission as required by RCW 42.17A.305 within twenty-four hours of, or on the first working day after, the date the ~~((electioneering))~~ communication is first broadcast, transmitted electronically, erected, distributed, published online or by other media, or otherwise ~~((published))~~ presented to the public.

(4) Once the one thousand dollar threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17A.305 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the one thousand dollar threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of the PDC ((Form)) C-6 Report, a prorated portion of independent expenditure and electioneering communications expenditures ~~((shall))~~ must be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration ~~((shall))~~ must be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing.** (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of chapter 42.17A RCW to disclose an independent expenditure of one hundred dollars or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of one thousand dollars or more that is presented to the public within twenty-one days of an election, that supports or opposes a ~~((candidate or ballot measure, and))~~ ballot proposition, or that qualifies as an independent expenditure and supports or opposes a candidate.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$1,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$1,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be dis-

closed(~~(-include)~~), including the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a)(i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005 must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320 and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from providing on a C-6 form the sources of any funds received by the committee for an electioneering communication, unless the committee received funds that were earmarked or otherwise designated for the communication.

(3) An out-of-state political committee (~~(shall)~~) must report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication as defined in RCW 42.17A.005.

(4) The sponsor of an electioneering communication (~~(shall)~~) must report pursuant to RCW 42.17A.305 and these rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

(5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005, (~~(shall)~~) must file pursuant to RCW 42.17A.305 and these rules regarding electioneering communications.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-071 Annual report of major contributors and persons making independent expenditures.** RCW 42.17A.630 requires that:

(1) Any person, other than an individual, must file with the commission an annual "Special Political Expenditures" report, if the person:

(a) (~~(who)~~) Made contributions to any state office candidates (~~(and)~~) or statewide ballot proposition committees totaling more than the aggregate amount during the preceding calendar year for contributions referenced in WAC 390-05-400(~~(:)~~); or

(b) (~~(who)~~) Made independent expenditures regarding state office candidates and statewide ballot propositions totaling more than the aggregate amount during the preceding calendar year for independent expenditures on political advertising, referenced in WAC 390-05-400(~~(:)~~, ~~shall file with the commission an annual report~~). (~~(This)~~)

(2) The report (~~(shall not be)~~) is not required of a lobbyist employer filing an annual L-3 report pursuant to RCW 42.17A.630 or of a candidate's authorized committee or a political committee, provided the information has been properly reported pursuant to RCW 42.17A.235 and 42.17A.240.

(~~(2) The report is entitled~~) (3) The "Special Political Expenditures" (~~(and)~~) report is designated "C-7."

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-105 Mini campaign reporting—Eligibility.** (1) A candidate or candidate's authorized committee, as those terms are defined in (~~(RCW 42.17A.005)~~) the act and these rules, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed five thousand dollars; and

(b) No contribution or contributions from any person other than the candidate exceed five hundred dollars in the aggregate. However, a bona fide political party may pay the candidate's filing fee provided by law without that payment disqualifying that candidate from eligibility under this section.

(2) A political committee, as that term is defined in RCW 42.17A.005, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures exceed five thousand dollars; and

(b) No contribution or contributions from any person exceed five hundred dollars in the aggregate.

(3) A continuing political committee, as that term is defined in (~~(RCW 42.17A.005)~~) the act and these rules, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(a) Neither aggregate contributions nor aggregate expenditures during a calendar year exceed five thousand dollars; and

(b) No contribution or contributions from any person exceed five hundred dollars in the aggregate.

(4) A candidate or political committee that exceeds one or both of the thresholds set out in either subsection (1), (2), or (3) of this section after registering as a mini reporting campaign (~~(shall)~~) will no longer qualify for the mini reporting option and (~~(shall)~~) must comply with the provisions of chapter 42.17A RCW(~~(:)~~) including, but not limited to, disclosure of contributions and expenditures, disclosure of last minute contributions, applicable contribution limits, false political advertising, sponsor identification, and public inspection of campaign books of account.

(5) Candidates and political committees eligible for mini campaign reporting are required to comply with all applicable provisions of chapter 42.17A RCW including, but not limited to, false political advertising, sponsor identification,

and public inspection of campaign books of account unless specifically exempted under subsections (1) through (3) of this section.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-115 Mini campaign reporting—Registration and recordkeeping.** The exemptions allowed in WAC 390-16-105 ~~((shall))~~ will be granted to a candidate or political committee, including a continuing political committee, only upon compliance with the following conditions:

(1) A candidate ~~((shall))~~ must file a C-1 registration with the commission within fourteen days of first:

(a) Receiving contributions, making expenditures, reserving space or facilities or purchasing commercial advertising space or broadcast time to promote ~~((his or her))~~ their candidacy;

(b) Giving ~~((his or her))~~ the candidate's consent to another person to take any of the actions in (a) of this subsection on behalf of the candidate ~~((any of the action in (a) of this subsection))~~; or

(c) Announcing publicly or filing a declaration of candidacy with the appropriate elections official.

(2) A political committee ~~((shall))~~ must file a C-1pc registration with the commission within fourteen days after its organization or after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

(3) The statement filed under subsections (1) and (2) of this section ~~((shall))~~ must declare that the political committee will not exceed the contribution or expenditure limits set out in WAC 390-16-105.

(4) In addition to complying with subsections (2) and (3) of this section, a continuing political committee ~~((shall))~~ must also file a C-1pc between January 1st and January 31st for each year in which the committee intends to use the mini reporting system. Failure to file a new registration statement during January will automatically terminate the committee's entitlement to use the mini reporting system until such time as a new C-1pc is filed.

(5) A candidate or political committee using the mini reporting option ~~((shall))~~ must keep current records in sufficient detail to allow the candidate or political committee to make reports otherwise required by RCW 42.17A.205 through 42.17A.240 in the event that the filing of such reports becomes necessary as a result of exceeding the contribution or expenditure limitation pursuant to the provisions of WAC 390-16-125.

(6) The candidate or political committee treasurer ~~((shall))~~ must comply with the requirements for public inspection of campaign books pursuant to WAC 390-16-043.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-125 Mini campaign reporting—Exceeding limitations.** (1) A candidate or political committee wishing to change from mini to full reporting must apply ~~((in electronic writing))~~ electronically to the PDC for authorization to change reporting options before the limitations

specified in WAC 390-16-105 are exceeded. A complete application ~~((shall))~~ must include all of the following documents:

(a) An amended registration statement (Form C-1 for candidates, Form C-1pc for political committees) selecting the full reporting option as provided in RCW 42.17A.225 through 42.17A.240;

(b) PDC forms C-3 and C-4 with relevant schedules and attachments disclosing all contributions and expenditures to date reportable under RCW 42.17A.240 for the election campaign, or in the case of continuing political committees, for the calendar year; and

(c)(i) If the applicant is a candidate, a statement affirming that all candidates registered with the PDC for the office being sought have been notified personally in writing of the application, and the manner and date of such notification;

(ii) If the applicant is the treasurer of a political committee supporting or opposing a ballot proposition, a statement affirming that all treasurers of all political committees registered with the commission as supporting or opposing the proposition have been notified personally in writing of the application, and the manner and date of such notification; or

(iii) If the applicant is the treasurer of a county or legislative district party committee, a statement affirming that the treasurer of that party committee's counterpart in any other major political party has been notified personally in writing of the application, and the manner and date of such notification.

(2) An application that is submitted without the required documents described in subsection (1) of this section is incomplete and will not be processed or approved. If the applicant provides the missing documents, the application will be determined to be complete on the date the documents are received by the commission.

(3) If a complete application is received by the PDC on or before August 31st for the general election or thirty business days prior to the date of other elections, the executive director will approve the application.

(4) If a complete application is received by the commission after the deadlines set out in subsection (3) of this section, the executive director will approve the application only if one or more of the following factors are present:

(a) The applicant is a candidate and, after the application deadline, a write-in opponent has filed for office in accordance with chapter 29A.24 RCW;

(b) After the application deadline, an independent expenditure as defined in RCW 42.17A.005 is made in support of the applicant's opponent or in opposition to the applicant; or

(c) When a candidate or political committee on one side of an election campaign or proposition has been approved to change reporting options under this section, each opponent of that candidate or political committee is approved to change options as of the date that opponent's complete application is received by the PDC.

(5) The executive director may approve an application to change reporting options after the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 have been exceeded only if the applicant:

(a) Meets the deadlines provided in subsection (3) of this section;

(b) Acknowledges the violation and demonstrates compliance with WAC 390-16-105(4); and

(c) Takes any other action required by the PDC to address the violation.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-230 Surplus campaign funds—Use in future.** (1) If after the last day of the election cycle for candidates as defined in RCW 42.17A.005 any contribution is received or an expenditure is made from surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or political committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at ~~((his or her))~~ the candidate's last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or political committee ~~((shall))~~ must file (a) a final report for the previous campaign as provided in RCW 42.17A.235 and 42.17A.240; and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17A.205, 42.17A.235 and 42.17A.240. The surplus funds may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." All augmentations to and all expenditures made from the retained surplus funds after the last day of the election cycle ~~((shall))~~ must be reported in detail as to source, recipient, purpose, amount and date of each transaction.

(2) For candidates as defined in RCW 42.17A.005, if at any time after the last day of the election cycle, any contribution is received or expenditure is made from such surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or authorized committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at ~~((his or her))~~ the candidate's last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or authorized committee ~~((shall))~~ must file (a) a final report for the previous campaign as provided in RCW 42.17A.235 and 42.17A.240; and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17A.205, 42.17A.235 and 42.17A.240. The surplus funds as of the last day of the election cycle may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." "Funds from previous campaign" carried forward by a candidate to ~~((his or her))~~ the candidate's new campaign are not subject to contribution limits set forth in RCW 42.17A.405.

(3) A political committee formed to support or oppose a particular ballot proposition or particular candidates which retains surplus funds to use in support or opposition of other candidates or of other ballot propositions has become a con-

tinuing political committee and must thereafter register and report in accordance with chapter 42.17A RCW.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-238 Personal use of contributions—Standard.** (1) Except as specifically allowed by chapter 42.17A RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17A.445.

(2) An expenditure of a candidate's campaign funds ~~((shall))~~ will be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.

(3) If an activity or expenditure is both personal and campaign-related, the campaign may pay no more than the fair market value of its share of the activity or expenditure. For example, if a candidate incurs costs for child care, the campaign may reimburse the candidate only for any portion of the expense that occurred directly as a result of the candidate's campaign activities. Also, if a candidate uses a personal vehicle for campaign purposes, the campaign may reimburse the candidate for:

(a) The prorated share of documented gasoline, maintenance and insurance costs directly related to the campaign's usage of the vehicle; or

(b) The standard mileage rate established by the Internal Revenue Service for those documented miles directly related to the campaign's usage.

(4) Examples of expenditures presumed to be for personal use include, but are not limited to:

(a) Mortgage, rent, utility, telephone, or maintenance expenses for personal living accommodations;

(b) Clothing purchases and maintenance expenses not related to the campaign;

(c) Automobile expenses not related to the campaign;

(d) Travel expenses not related to the campaign;

(e) Household food items;

(f) Restaurant expenses except for in-person fund-raising or campaign organizational activities;

(g) Tuition payments not related to the campaign;

(h) Admission to sporting events, concerts, theaters, or other forms of entertainment unless the event is primarily related to the candidate's campaign;

(i) Club membership fees, dues and payments;

(j) Health club or recreational facility membership fees, dues and payments;

(k) Social, civic, ~~((fraternal,))~~ or professional membership dues, fees and payments unless the expenditure occurs during an election year and membership is required to gain access to the organization's mailing list for campaign purposes or other facilities for the candidate's campaign;

(l) Home or business internet service provider costs;

(m) Home or business newspaper and periodical subscriptions;

(n) Greeting cards to persons who would customarily receive such cards (e.g., family, friends and business associates).

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-310 Limitations on contributions.** The limitations on contributions as provided in RCW 42.17A.420, 42.17A.405, and 42.17A.410 (~~(shall be)~~) are as follows:

(1)(a) The limitation on contributions in RCW 42.17A.405 or 42.17A.410 (~~(shall)~~) do not apply to a "candidate" as that term is defined in RCW 42.17A.005 when the candidate is contributing to (~~(his or her)~~) the candidate's own campaign using (~~(his or her)~~) the candidate's own personal funds as defined in WAC 390-17-305.

(b) The limitation on contributions in RCW 42.17A.420, 42.17A.405, or 42.17A.410 (~~(shall)~~) apply to contributions to the candidate from the candidate's spouse, domestic partner or other immediate family members.

(2) Contributions by spouses are considered separate contributions. Contributions by domestic partners are considered separate contributions.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions and the contribution is properly attributed to the emancipated minor child if:

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children (~~(shall)~~) will be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to that parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship (~~(shall)~~) must be aggregated for purposes of determining the limitations of contributions under RCW 42.17A.420, 42.17A.405, or 42.17A.410.

(5) The limitations on contributions (~~(shall)~~) apply separately to the contributions made by a partnership, limited liability partnership and limited liability corporation from the contributions made by an individual partner or member. However, contributions made from or charged against the capital account of an individual partner, or member of a limited liability partnership or limited liability corporation (~~(shall)~~) must be aggregated with the partner's or member's individual contributions for purposes of determining the limitations on contributions under RCW 42.17A.420, 42.17A.405, or 42.17A.410.

(6) The limitations on contributions in RCW 42.17A.420, 42.17A.405, and 42.17A.410 (~~(shall)~~) apply separately to the contributions made by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations and their local

units) unless the criteria in RCW 42.17A.455 and WAC 390-16-309 are met.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-320 Candidates in small political subdivisions—Reporting.** (1) (~~(According to)~~) As provided in RCW 42.17A.200 and 42.17A.135(7), a candidate for election in any political subdivision must fully report (~~(pursuant to chapter 42.17A RCW and Title 390 WAC)~~) if the candidate receives five thousand dollars or more in contributions or expects to receive five thousand dollars or more in contributions during an election cycle.

(2) It is presumed the candidate "expects to receive" five thousand dollars or more when any one of the following first occurs:

(a) The candidate or candidate's authorized committee receives at least five thousand dollars in aggregate contributions, including contributions from the candidate;

(b) The candidate is seeking the same office last sought, the candidate's election is in the current calendar year, and (~~(his or her)~~) the candidate's campaign contributions in the previous election for the same office were five thousand dollars or more in the aggregate;

(c) The contributions received on or before March 31st of the election year total one thousand two hundred fifty dollars or more;

(d) The contributions received on or before June 30th of the election year total two thousand five hundred dollars or more;

(e) The contributions received on or before September 30th of the election year total three thousand seven hundred fifty dollars or more; or

(f) The candidate otherwise anticipates that five thousand dollars or more will be received during the election cycle.

(3) Surplus funds carried over from a candidate's previous campaign are not contributions to the candidate's new campaign and do not count toward the five thousand dollar reporting threshold.

(4) A candidate or candidate's authorized committee that receives, or expects to receive, five thousand dollars or more (~~(shall)~~) must:

(a) Within two weeks of the date the reporting obligation begins under subsection (1) or (2) of this section, file:

(i) A candidate registration, PDC (~~(form)~~) C-1 Report;

(ii) A personal financial affairs statement, PDC (~~(form)~~)

F1 Report and, if relevant, the F1 Supplement; and

(iii) Contribution and expenditure reports, PDC (~~(forms)~~) C3 and C4 reports with appropriate attachments and schedules; and

(b) Otherwise comply with the campaign finance reporting and other provisions of chapter 42.17A RCW and Title 390 WAC.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-16-325 Dissolution of committees.** (1) Dissolution is the process by which a committee officially ceases

doing business, pursuant to RCW 42.17A.225 and 42.17A.235. Dissolution does not relieve the candidate, elected official, or officers from any obligations to address violations that occurred before the committee was dissolved.

(2) To initiate dissolution, the committee must file a notice of intent to dissolve.

(3) The official ~~((form))~~ report for filing a notice of intent to dissolve a committee is designated "D-1." The D-1 must be filed using the electronic filing system provided by the commission. The commission is required to post each committee's notice of intent to dissolve on the commission website upon receipt.

(4) On the D-1 ~~((form))~~ Report, the candidate or authorized committee officer must attest to the following:

(a) The committee has concluded its activities in all respects and has ceased to function and intends to dissolve;

(b) The committee has no outstanding debts or obligations, will not make any expenditure other than those related to the dissolution process, and will not engage in any political activity or any other activity that generates additional reporting requirements;

(c) The committee has filed a final report;

(d) No complaint or court action under chapter 42.17A RCW is pending against the committee and it has not been informed by the commission of any possible violations or technical corrections which remain unresolved;

(e) The committee has no outstanding penalties under chapter 42.17A RCW as assessed by the commission or a court;

(f) The committee accepts an ongoing obligation to maintain compliance with these conditions and an affirmative duty to notify the commission of any noncompliance; and

~~((The committee understands that the committee's bank account may not be closed before the political committee has dissolved; and~~

~~((The treasurer is obligated to preserve books of account, bills, receipts, and all other financial records for five years (or as otherwise required by chapter 42.17A RCW)).~~

(5) If, sixty days after a committee has filed its D-1, the committee is in compliance with the above requirements and has not notified the commission in writing that it revokes its intent to dissolve, the committee ~~((shall))~~ will be deemed to be dissolved.

(6) The executive director will promptly acknowledge by electronic writing the committee's dissolution. The acknowledgment of dissolution will be posted on the commission's website when sent to the committee.

(7) If the committee has not met the requirements for dissolution, the executive director will promptly notify the committee by electronic writing that it is not eligible to dissolve, and explain the reasons for its ineligibility. The committee may initiate the process again once it has come into compliance with the requirements.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-18-010 Sponsor identification of advertising, political advertising, electioneering communications,**

**and independent expenditures.** (1) For the purposes of chapter 42.17A RCW and Title 390 WAC:

(a) "Sponsor of political advertising, electioneering communication, or independent expenditure" is, as used in the act and in these rules, and defined in RCW 42.17A.005.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, independent expenditures that are for political advertising ~~((and/or)), or~~ electioneering communications, subject to the provisions of chapter 42.17A RCW and as defined in RCW 42.17A.005 or 42.17A.255.

(2) All advertising ~~((shall))~~ must clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). Additional requirements apply for the following:

(a) Political committees that sponsor political advertising costing or having a fair market value of one thousand dollars or more supporting or opposing a ballot ~~((measure))~~ proposition must clearly identify the "top five contributors" to that political committee, as well as the "top three donors" of all political committees identified as a "top five contributor," pursuant to WAC 390-18-025.

(b) Advertising undertaken as an independent expenditure or electioneering communication ~~((shall))~~ must comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors," as well as the "top three donors" to political committee contributors, and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17A.320.

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to identify the "top five contributors" to that political committee ~~((pursuant to WAC 390-18-025)), as well as the "top three donors" to political committee contributors.~~ This requirement does not apply to bona fide political parties sponsoring independent expenditures.

(3) Required sponsor identification ~~((shall))~~ must be displayed in printed advertisements:

(a) In an area set apart from other printed matter;

(b) On the first page or fold of advertising consisting of more than one page that is intended to be presented as a single item (e.g., 3-page letter with return envelope). Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient;

(c) By respective sponsor on advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously.

(4) Required sponsor identification ~~((shall))~~ must be clearly identified or spoken in advertising on radio, by telephone, or on television.

(5) Required sponsor identification ~~((shall))~~ must be clearly identified, spoken or displayed on advertising on websites, social media and other digital communication. Political committee websites and other online forums created by a political committee must include sponsor identification.

(6) With advertising for which no payment is demanded or for which a cost or fair market value is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed, disseminated or broadcast.

(7) If more than one person sponsors specific advertising, the identity of each sponsor must be identified. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor, provided the contribution is not earmarked for the advertising and is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-18-025 Advertising—Identification of "top five contributors" and "top three donors to PAC contributors."** Sponsors must identify the "top five contributors" when required to be included in political advertising, as provided in WAC 390-18-010. When the "top five contributor" list includes one or more political committees, the sponsor must further identify and separately include in the advertisement the collective "top three donors to PAC contributors" to all such political committees. This section explains how the sponsor should identify such "top three donors to PAC contributors."

(1) For purposes of RCW 42.17A.320 (~~((2), (4), (5) and (6))~~), "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions (~~(exceeding seven hundred)~~) of one thousand dollars or more during the twelve-month period preceding the date on which the advertisement is published or otherwise presented to the public. The sponsor may calculate the twelve-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation. If more than five contributors give an amount equal to the largest aggregate contribution exceeding (~~(seven hundred dollars)~~) the threshold value and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement (~~(shall)~~) must select five of these contributors to identify as the top five contributors.

(2)(a) If a political committee keeps records necessary to track contributions used according to the use intended by its contributors, (~~(and the committee subsequently makes independent expenditures for)~~) that committee may identify the top contributions to the advertisement(~~(s supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose)~~), as opposed to identifying the overall top five contributors to the committee (~~(as is otherwise required by RCW 42.17A.320 and this section)~~), if such identified contributors made contributions that were intended and actually used to pay for the advertisement.

(b) For purposes for identifying the top five contributors, the sponsor should not include contributions earmarked,

tracked, and used for purposes other than paying for the advertisement. However, if a sponsor uses a contributor's contributions earmarked for (~~(independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used with respect to)~~) advertising for a different candidate or slate of candidates (~~(without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure)~~) than the candidate or candidates intended by the contributor, the sponsor must include such contribution in determining the "top five contributors" of the actual advertisement for which the contribution was used.

(3) For purposes of RCW 42.17A.350 "top three donors to PAC contributors" means the three individuals or entities, other than political committees, who gave the largest aggregate contributions to one or more political committee listed as a "top five contributor," totaling one thousand dollars or more during the twelve-month period preceding the date on which the advertisement was published or otherwise presented to the public. The sponsor may calculate the twelve-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation.

(a) If any of the contributors to a "top five" political committee is itself a political committee, the sponsor must identify the top three contributors to that political committee. Such process continues until the sponsor has identified the top three nonpolitical committee contributors for each "top five" political committees. If more than three contributors to a "top five" political committee have given an amount equal to the largest aggregate contribution, the sponsor may select three of these contributors to identify as the "top three donors to PAC contributors."

(b) If there is more than one political committee identified as a "top five contributor," the sponsor must identify the top three nonpolitical committee contributors to each "top five" political committee, and then determine the "top three donors to PAC contributors" collectively from that list.

(c) The sponsor should not include contributions to a "top five" political committee contributor for purposes of identifying the "top three donors to PAC contributors" if both:

(i) The contribution to the "top five" committee was reported as an earmarked contribution for a purpose other than the advertisement in question; and

(ii) The "top five" committee has provided written verification to the sponsor before the initial publication or public presentation of the advertisement, confirming that such contribution was tracked and used for such other purpose.

(4) For purposes of determining the "top three donors to PAC contributors," the sponsor must make reasonable efforts to identify the contributions made to a political committee. Reasonable efforts include searching through reports of contributions filed with the commission or any other state, as well as requests made to any political committee that has not disclosed its contributions to the commission or in any other state. After making reasonable efforts, the sponsor may rea-

sonably rely on the information reported to the commission, and will not be liable for any omission or miscalculation because a contribution to any "top five" political committee has not been reported to the commission.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-18-027 Definition—Medium that does not include a visual image.** (1) For electioneering communications identifying sponsors and top five contributors as required by RCW 42.17A.320, a "medium that does not include a visual image" means ((radio)) audio only, such as radio, which is transmitted without a visual component.

(2) For independent expenditures identifying sponsors and top five contributors as required by RCW 42.17A.320, a "medium that does not include a visual image" means audio only, such as radio or telephone transmissions, without a visual component.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising.** (1) RCW 42.17A.320 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," "top three donors to PAC contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) ((because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers—size 4" x 15" or smaller, buttons, e-cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files,)) and 42.17A.350:

(a) Campaign paraphernalia, including novelty or sundry items intended for individual distribution and use, with a printing surface area smaller than 4" x 15" square inches, including expandable surface area such as a balloon when expanded, or where such identification is otherwise impractical to provide a readable text;

(b) Newspaper ads of one column inch or less (excluding online ads)((, noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders,));

(c) Reader boards where a message is affixed in movable letters, ((ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers of a comparable size as

worn by an individual, sunglasses, sun visors, swizzle sticks,)) or skywriting;

(d) State or local voter's pamphlets published pursuant to law((, tickets to fund raisers, water towers, whistles,)); and

(e) Yard signs - size 4' x 8' or smaller((, yo-yos, and all other similar items)).

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW 42.17A.320 in a manner that is compatible with the device and technology used to display the advertising.

(4) Political advertising created and distributed by an individual using their own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends in the aggregate less than one hundred dollars to produce and distribute the advertising or less than fifty dollars to produce and distribute online advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 (16)(a)(ii) or (iii) or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

((\*) (i) A letter, flier, handbill, text, email or other digital communications from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(4)); or

((\*) (ii) Disseminated on the individual's social media site, personal website, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.



AMENDATORY SECTION (Amending WSR 16-22-046, filed 10/28/16, effective 11/28/16)

**WAC 390-18-040 Use of the terms "reelect," "retain," and "return."** (1) The term "reelect" when used in an advertisement represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

(2) The term "reelect" may be used in an advertisement by a nonincumbent candidate who has previously been elected to the office being sought provided that in the same advertisement it is clearly stated that the candidate is not the incumbent.

(3) The term "retain" in an advertisement represents that the candidate is the incumbent but does not necessarily imply that the candidate attained the office by election.

(4) The term "return" in an advertisement represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was necessarily attained by election.

(5) Whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedures, the candidate holding an office in the affected district or political subdivision may, in an advertisement, use the term "reelect," "retain" or "return," as appropriate, if the candidate is seeking the same office in the revised district or political subdivision.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-18-050 Commercial advertisers—Public inspection of records.** (1) "Commercial advertiser" as that term is used in the act and these rules means any person, as defined in the act, including individuals and entities, that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public whether through brochures, fliers, newspapers, magazines, television, radio, billboard, direct mail advertising, printing, paid internet or digital communications, or any other means of mass communications used for the purpose of appealing, directly or indirectly for votes or for financial or other support in any election campaign.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if it has been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the advertising or communications to the original purchaser must maintain the information as required in this section.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, as defined in RCW 42.17A.005, must maintain current books of account and related materials as required by this section. Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person,

~~((without reference to, or permission from, the PDC;))~~ and provided:

(a) In person during normal business hours; ~~((and))~~ or

(b) ~~((If requested))~~ Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided(~~;~~ ~~or~~

~~(C) On the PDC's open access platform, if one is provided by the PDC for such purpose).~~

(4) Information regarding political advertising or electioneering communications must be made available within twenty-four hours of the time when the advertisement or communication initially has been publicly distributed or broadcast, and within twenty-four hours of any update or change to such information. Such records must be maintained for a period of no less than ~~((three))~~ five years after the date of the applicable election.

(5) The information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345 are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified, and whether the advertising or communication supports or opposes the candidate or ballot measure;

(b) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employee identification number, or other verifiable identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;

(c) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

(6) In addition to subsection (5) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For digital communication platforms: A description of the demographic information (e.g., age, gender, race, location, etc.) of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the total number of impressions generated by the advertisement of communication.

(7) At the request of the PDC, each commercial advertiser required to comply with this section ~~((shall))~~ **must** provide to the PDC copies of the information described above.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-19-010 ((Intent of electronic filing)) Submission of required materials electronically.** (1) The public disclosure commission (PDC) was created and empowered by initiative of the people to provide timely and meaningful public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ~~((insure))~~ **ensure** compliance with ~~((contribution limits and other campaign finance restrictions))~~ **this chapter.**

(2) Full and prompt access to the ~~((political finance data filed))~~ **information required** by persons subject to the law is best realized through ~~((wide-spread))~~ use of electronic ~~((filing alternatives-))~~ **reporting.** For this reason, the Washington state legislature ~~((has mandated that certain filers submit their PDC reports electronically. The PDC makes available to all candidates, public officials, lobbyists, lobbyist employers, and political committees that are required to file reports under this chapter electronic filing alternatives for submitting reports, and encourages all persons required to report under the disclosure law to utilize the electronic filing alternatives provided by the PDC))~~ **and the commission have mandated the use of electronic reporting, and the commission also requires that other materials, such as applications, statements, notices, payments, or other items required under the provisions of chapter 42.17A RCW be submitted to the PDC electronically, where the PDC has made an electronic method available.**

(3) Persons subject to reporting requirements under this chapter must file reports using the electronic reporting method provided or approved by the PDC.

(4) Persons required to provide the PDC with electronic contact information must provide an email address or other electronic format, if such alternate format has been approved by the PDC.

(5) Any person required to provide information electronically, or required to provide electronic contact information, but who does not do so, is in violation of RCW 42.17A.055 and may be subject to enforcement action unless the person has sought and been granted an exception under WAC 390-19-050.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-19-040 Electronic ((filing)) submission of required materials—Date of receipt, verification, and amendments.** (1) An electronic report is filed when it is received and validated by the PDC computer system. The PDC ~~((shall))~~ **will** notify the ~~((filer))~~ **person reporting** that the electronic report has been received.

(2) An electronic report is timely filed if received on or before 11:59 p.m. Pacific Time on the prescribed ~~((filing))~~ **reporting date.**

(3) An electronic report that is infected with a virus, damaged, or is improperly formatted is not properly filed with the PDC and ~~((shall))~~ **will** be rejected.

(4) To amend an electronically filed report, the ~~((filer shall electronically refile the))~~ **entire report must be electronically refiled.**

(5) Where no electronic method has been provided, or where the executive director has approved a hardship exemption to the electronic requirement, the date of receipt of any properly addressed mailed application, report, statement, notice, payment, or other item required under the provisions of chapter 42.17A RCW is the date shown by the post office cancellation mark on the envelope. Any item mailed to the PDC under the provisions of chapter 42.17A RCW that does not include a post office cancellation mark is presumed to be provided timely if received by the PDC within five business days of the due date.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-19-050 Electronic ((filing)) submission of required materials—Exceptions.** ~~((+))~~ **The PDC executive director may make exceptions on a case-by-case basis for ~~((candidates whose authorized committees))~~ persons who lack the technological ability to ~~((file reports))~~ submit required materials electronically.**

~~((2))~~ **A person seeking an exception ~~((under RCW 42.17A.245 shall))~~ must electronically file with the executive director of the PDC a written statement of reasons why the ~~((authorized committee))~~ person lacks the ability to ~~((file reports))~~ submit required materials electronically. For required reports, the request should be submitted by the tenth day of the month preceding the month in which the report is due so that action on the request can be com-**

pleted before the filing deadline. The request does not suspend the reporting requirement of any portion of chapter 42.17A RCW. Upon receipt of a filed request, the executive director may request further information from the applicant in consideration of the request. The executive director will issue a decision to approve or deny a request for an exception to an electronic submittal requirement within thirty days of receiving a filed request, which may be extended if further information is provided upon request by the executive director.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 390-19-020 Electronic filing—Mandatory filing.

WAC 390-19-030 Electronic filing—Reporting threshold.

#### **Chapter 390-20 WAC**

#### **~~((FORMS FOR))~~ REPORTING LOBBYING ~~((REPORTS, ELECTED OFFICIALS AND LEGISLATORS))~~ ACTIVITIES**

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

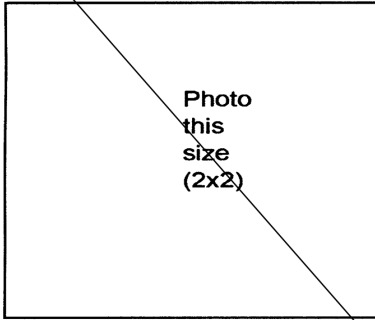
**WAC 390-20-0101 ~~((Forms for))~~ Lobbyist registration.** ~~((The official form for lobbyist registration as required by RCW 42.17A.600 is designated "L-1," revised 12/14. Copies of this form are available on the commission's web site, [www.pdc.wa.gov](http://www.pdc.wa.gov), and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any paper attachments shall be on 8-1/2" x 11" white paper.~~

 <b>PUBLIC DISCLOSURE COMMISSION</b> 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 TOLL FREE 1-877-601-2929		<b>LOBBYIST REGISTRATION</b>		<b>L1</b> (12/14)		THIS SPACE FOR OFFICE USE	
1. Lobbyist Name							
Permanent Business Address						Business Telephone Numbers	
City State Zip						Permanent ( ) Temporary ( ) Cell Phone ( ) or Pager	
2. Temporary Thurston County address during legislative session						E-Mail Address	
3. Employer's name and address (person or group for which you lobby)						Employer's occupation, business or description of purpose of organization	
4. Name and address of person having custody of accounts, receipts, books or other documents which substantiate lobbyist reports. (Person responsible for producing the lobbyist employer's annual L-3 report.)						E-Mail Address	
5. What is your pay (compensation) for lobbying? \$ _____ per _____ (hour, day, month, year) Other: Explain:				Description of employment (check one or more boxes)			
				<input type="checkbox"/> Full time employee <input type="checkbox"/> Part time or temporary employee <input type="checkbox"/> Contractor, retainer or similar agreement <input type="checkbox"/> Unsalaries officer or member of group			
6. Are you reimbursed for lobbying expenses? Explain which expenses. <input type="checkbox"/> Yes: \$ _____ per _____ <input type="checkbox"/> Yes: I am reimbursed for expenses. <input type="checkbox"/> No: I am not reimbursed for expenses.				Does employer pay any of your lobbying expenses directly? If yes, explain which ones.			
7. How long do you expect to lobby for this organization? <input type="checkbox"/> Permanent lobbyist <input type="checkbox"/> Only during legislative session <input type="checkbox"/> Other, Explain:							
8. Is your employer a business or trade association or organization which lobbies on behalf of its members or a representative entity which lobbies on behalf of businesses, groups, associations, or organizations? If "yes," attach a list showing the name and address of each member or funder who has paid fees, dues or other payments over \$1,450 during either of the past two years or is expected to pay over \$1,450 this year. <input type="checkbox"/> No <input type="checkbox"/> Yes. However, no member or funder has paid, pays, or is expected to pay over \$1,450. <input type="checkbox"/> Yes. The list is of parties attached							
9. Does your employer have a connected, related or closely affiliated political action committee which will provide funds for you to make political contributions including purchase tickets to fund raising events? If so, list the name of that political action committee. <input type="checkbox"/> No <input type="checkbox"/> Yes. Name of the committee is:							
10. If lobbyist is a company, partnership or similar business entity which employs others to perform actual lobbying duties, list name of each person who will lobby. (See WAC 390-20-143 and 144 for instructions.)							
11. Areas of interest. Lobbying is most frequent before legislative committee members or state agencies concerned with following subjects:				Remarks:			
CODE SUBJECT 01 <input type="checkbox"/> Agriculture 02 <input type="checkbox"/> Business and consumer affairs 03 <input type="checkbox"/> Constitutions and elections 04 <input type="checkbox"/> Education 05 <input type="checkbox"/> Energy and utilities 06 <input type="checkbox"/> Environmental affairs - natural resources - parks 07 <input type="checkbox"/> Financial institutions and insurance 08 <input type="checkbox"/> Fiscal				CODE SUBJECT 09 <input type="checkbox"/> Health Care 10 <input type="checkbox"/> Higher education 11 <input type="checkbox"/> Human services 12 <input type="checkbox"/> Labor 13 <input type="checkbox"/> Law and justice 14 <input type="checkbox"/> Local government 15 <input type="checkbox"/> State government 16 <input type="checkbox"/> Technology 17 <input type="checkbox"/> Transportation 18 <input type="checkbox"/> Other - Specify:			
<b>CERTIFICATION:</b> I hereby certify that the above is a true, complete and correct statement.				<b>EMPLOYER'S AUTHORIZATION:</b> Confirming the employment authority to lobby described in this registration statement.			
12. LOBBYIST'S SIGNATURE				EMPLOYER'S SIGNATURE, NAME TYPED OR PRINTED, AND TITLE			
DATE				DATE			

PDC Form L-1 (rev. 12/14)

**NOT VALID UNLESS SIGNED BY BOTH**

**LOBBYIST IDENTIFICATION FORM**



**NAME:**  
**BUSINESS ADDRESS:**

**PHONE:**

**OLYMPIA ADDRESS:**

**PHONE:**

**EMPLOYERS' NAMES:**

**YEAR FIRST EMPLOYED AS A LOBBYIST:**  
**BIOGRAPHY:**

**INSTRUCTIONS**

- **ATTACH THIS PAGE TO YOUR L-1 REGISTRATION.**
- **ATTACH 2" x 2" PASSPORT TYPE PHOTO. PHOTO SHOULD BE HEAD AND SHOULDERS, FULL FACE, AND TAKEN WITHIN LAST 12 MONTHS.**
- **PLEASE WRITE NAME, LIGHTLY IN PENCIL, ON BACK OF PHOTO BEFORE ATTACHING.**
- **PHOTOS WILL NOT BE RETURNED.**
- **PLEASE SEE INSTRUCTION BOOKLET FOR EXAMPLE OF BIOGRAPHY.**
- **LIST ALL EMPLOYERS ON THIS PAGE.**

PDC FORM L-1, PAGE 2 (Rev. 2/05)

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The rules in this chapter set forth the reporting requirements for lobbying activities and legislative activities of governmental units, as required under chapter 42.17A RCW.

AMENDATORY SECTION (Amending WSR 99-12-069, filed 5/27/99, effective 6/27/99)

**WAC 390-20-014 Registration during last calendar quarter of the biennial registration period.** (1) The registration of a lobbyist who registers during the last calendar quarter of an even-numbered year is valid until the second Monday of January three years ~~((hence))~~ later, unless it is terminated or suspended before that day.

(2) ~~((The lobbyist is))~~ Lobbyists are required to file monthly expense reports ~~((PDC Form))~~ L-2 Report for each month in which ~~((he or she is))~~ they are registered, even if no reportable lobbying expenditures are made.

(3) ~~((The))~~ Lobbyist employers ~~((shall))~~ must file the employer's report ~~((PDC Form))~~ L-3 Report for each calendar year or portion thereof in which a lobbyist employed by them is registered.

AMENDATORY SECTION (Amending WSR 85-24-020, filed 11/26/85)

**WAC 390-20-017 Suspension of registration.** ~~((A lobbyist by notifying the commission in advance in writing))~~ Lobbyists may temporarily suspend ~~((his or her))~~ their registration ~~((for any month(s)))~~ by amending the registration to indicate the months in which no lobbying will be done, no expenditures will be made for lobbying, and no compensation will be received for lobbying. The amendment must be made before the beginning of the suspension period.

AMENDATORY SECTION (Amending WSR 15-01-064, filed 12/11/14, effective 1/11/15)

**WAC 390-20-020A L-2 Reporting guide.**

**For Entertainment, Receptions, Travel and Educational Expenditures**

<p>Typical Expenditures* (Only permitted if receipt could not reasonably be expected to influence the performance of the officer's or employee's official duties.)</p>	<p><del>((Expense Included on Line 5))</del></p>	<p><u>Itemize Expense ((Included on Line 15))?</u></p>	<p>Give Copy of <del>((L-2 or))</del> <u>Monthly Expense Report or Memo Report to Elected Official?</u></p>
<b>Entertaining State Officials, Employees or Their Families:</b>			
<input type="checkbox"/> Any type of entertainment occasion costing \$50 or less	<p><del>((Yes))</del></p>	<p>No</p>	<p>No</p>
<input type="checkbox"/> Breakfast, lunch or dinner for legislator or other state official or employee (singly, or in conjunction with family member(s)) and total cost for occasion is: <ul style="list-style-type: none"> <li>◦ \$50 or less</li> <li>◦ More than \$50, and amount attributable to legislator/family is more than \$50</li> </ul>	<p><del>((Yes))</del></p>	<p>No Yes</p>	<p>No Yes</p>
<input type="checkbox"/> Tickets to theater, sporting events, etc.	<p><del>((Yes))</del></p>	<p>Yes</p>	<p>No</p>
<input type="checkbox"/> Golf outing	<p><del>((Yes))</del></p>	<p>Yes</p>	<p>No</p>
<p>Receptions:</p>			

~~((a))~~ (1) During the period when the suspension is effective, the ~~((commission))~~ PDC will not require L-2 Reports to be filed.

~~((b))~~ The lobbyist may ~~reinstates the registration by notifying the commission in writing.~~ The notification must state the date the reinstatement is to be effective. It must also affirm that information on the original L-1 registration is still correct or include an amended L-1 Form.

~~((c))~~ (2) The registration shall be reinstated upon the expiration of the suspension period indicated on the amended registration, or if the lobbyist further amends the registration in advance to indicate a new date of reinstatement. The lobbyist must update any information on the registration upon reinstatement.

(3) Notification under this rule does not suspend or modify the requirement in RCW 42.17.150(4) for a new registration each odd-numbered year.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-20-020 ~~((Forms for))~~ Reporting lobbyist ~~((report of))~~ expenditures.** The official ~~((form for the lobbyist))~~ report of expenditures is designated "L-2," which includes the L-2 Memo Report. ~~((Copies of this form are))~~ This report is available on the ~~((commission's))~~ PDC's website, www.pdc.wa.gov, and at the ~~((Commission))~~ PDC Office, Room 206, Evergreen Plaza Building, Olympia, Washington. ~~((Any attachments shall be on 8-1/2" x 11" white paper.))~~

<p align="center"><b>Typical Expenditures*</b> <b>(Only permitted if receipt could not reasonably be expected to influence the performance of the officer's or employee's official duties.)</b></p>	<p align="center"><del>((Expense Included on Line 5))</del></p>	<p align="center"><b>Itemize Expense</b> <del>((Included on Line 15))?</del></p>	<p align="center"><b>Give Copy of</b> <del>((L-2 or))</del> <b>Monthly Expense Report or Memo Report to Elected Official?</b></p>
<p><input type="checkbox"/> Reception to which the entire legislature, all members of a chamber, or any of the two largest caucuses recognized in each chamber are invited and is:</p> <ul style="list-style-type: none"> <li>◦ Sponsored by a person other than a lobbyist;</li> <li>◦ Attended by individuals other than legislators, lobbyists, and lobbyist employers;</li> <li>◦ A social event; and</li> <li>◦ Does not include a sit-down meal.</li> </ul>	<p align="center"><del>((Yes))</del></p>	<p align="center">Yes Disclose list of attendees (submitting sign-in sheet is sufficient). A per-person cost is not required</p>	<p align="center">No</p>
<p><input type="checkbox"/> All other receptions</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">Yes</p>	<p align="center">Yes, if the food and beverage cost for the legislator and family members exceeds \$50</p>
<p><b>Travel-Related Expenditures for Officials, Employees:</b></p>			
<p><input type="checkbox"/> Travel, lodging, meals for office-related appearance or speech at lobbyist employer's annual conference</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">Yes</p>	<p align="center">Yes</p>
<p><input type="checkbox"/> Travel, lodging, meals for office-related tour of lobbyist employer's manufacturing plant or other facility</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">Yes</p>	<p align="center">Yes</p>
<p><b>Educational Expenditures for Officials, Employees:</b></p>			
<p><input type="checkbox"/> Travel, lodging, meals, tuition to attend seminar sponsored by nonprofit organization</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">Yes</p>	<p align="center">Yes</p>
<p><b>Other Lobbying-Related Items:</b></p>			
<p><input type="checkbox"/> Flowers costing any amount to officials, staff and/or family</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">No</p>	<p align="center">No</p>
<p><input type="checkbox"/> Candy costing \$50 or less per official or employee</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">No</p>	<p align="center">No</p>
<p><input type="checkbox"/> Golf balls, coffee cups or other promotional items</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">No</p>	<p align="center">No</p>
<p><input type="checkbox"/> Fruit baskets costing \$50 or less per official or employee</p>	<p align="center"><del>((Yes))</del></p>	<p align="center">No</p>	<p align="center">No</p>

Note: References to employees or staff do not constitute authority to provide impermissible items to regulatory, contracting or purchasing employees.

**AMENDATORY SECTION** (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

**WAC 390-20-052 Application of RCW 42.17A.635—Reports of agency lobbying.** ~~((Pursuant to the authority granted in RCW 42.17A.635(8), the commission adopts the following interpretations))~~ Regarding the reporting of lobbying by public agencies pursuant to RCW 42.17A.635:

(1) The phrase "in-person lobbying" contained in RCW 42.17A.635 (5)(d)(v)(B) includes activity which is intended to influence the passage or defeat of legislation, such as testifying at public hearings, but does not include activity which is not intended to influence legislation, such as attending a hearing merely to monitor or observe testimony and debate.

(2) The phrase "a legislative request" contained in RCW 42.17A.635 (5)(d)(ii) includes an oral request from a member of the legislature or its staff.

(3)(a) When any subagency (i.e., department, bureau, board, commission or agency) within a state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district (i.e., primary agency) has independent authority to expend public funds for lobbying, that subagency may file a separate L-5 reporting the information required by RCW 42.17A.635(5).

(b) When a subagency elects to file its own, separate L-5, it ~~((shall))~~ **must** notify the ~~((commission))~~ **PDC** and the administrative head of the primary agency of its intentions

~~((in writing))~~ electronically. The primary agency ~~((shall))~~ does not thereafter need to include information for the subagency in its L-5, and ~~((shall))~~ will have no legal obligation for the filings of the subagency.

(4) Pursuant to RCW 42.17A.635(6), certain local agencies may elect to have lobbying activity on their behalf reported by their elected officials, officers and employees in the same manner as lobbyists who register and report under RCW 42.17A.600 and 42.17A.615:

(a) Whenever such a local agency makes such an election, it shall provide the ~~((commission))~~ PDC with a ~~((written))~~ notice electronically.

(b) After such an election, those who lobby on behalf of such local agency ~~((shall))~~ must register and report all lobbying activity reportable under RCW 42.17A.635(5) in the same manner as lobbyists who are required to register and report under RCW 42.17A.600 and 42.17A.615. Such a local agency shall report pursuant to RCW 42.17A.630.

(c) In order to terminate such an election, such a local agency ~~((shall))~~ must provide the ~~((commission with a written))~~ PDC with notice electronically, and ~~((it shall))~~ report pursuant to RCW 42.17A.635(5) thereafter.

(d) The exemptions from reportable lobbying activity contained in RCW 42.17A.635 (5)(d) apply to all agencies, whether or not they have exercised the election to report in the same manner as lobbyists who report under RCW 42.17A.600, 42.17A.615, and 42.17A.630. The exemptions contained in RCW 42.17A.610 (1), (4) and (5) do not apply to any agency.

(5) Unless an agency has elected to report its lobbying pursuant to RCW 42.17A.635(6) and subsection (3) of this section, an agency ~~((shall))~~ must include the reportable lobbying activity on its behalf by an elected official in its quarterly report. Such an elected official does not file any separate report of that activity.

(6) Reportable in-person lobbying by elected officials, officers and employees:

(a) An elected official does not engage in reportable in-person lobbying on behalf of an agency unless and until that elected official has expended in excess of twenty-five dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington during any three-month period as provided in RCW 42.17A.635 (5)(d)(v)(B).

(b) Other officers and employees do not engage in reportable in-person lobbying on behalf of their agency unless and until they have, in the aggregate, expended in excess of twenty-five dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington or they have, in the aggregate, engaged in such lobbying for more than four days or parts thereof during any three month period as provided in RCW 42.17A.635 (5)(d)(v)(B).

(c) When limits in (a) or (b) of this subsection have been exceeded, the agency ~~((shall))~~ must report such elected official, officer, or employee as a "person who lobbied this quarter" on the front of ~~((PDC Form))~~ L-5 Report and include a

listing of those excess expenditures as noted on that ~~((form))~~ report.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-20-110 ~~((Forms))~~ Reporting for lobbyist employers ~~((report))~~**. The official ~~((form))~~ report for statement by employers of registered lobbyists as required by RCW 42.17.180 is designated "L-3." ~~((Copies of this form are))~~ This report is available on the ~~((commission's))~~ PDC's website, www.pdc.wa.gov, and at the ~~((Commission))~~ PDC Office, Olympia, Washington. ~~((Any paper attachments shall be on 8-1/2" x 11" white paper.))~~

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-20-111 ~~((Form for))~~ Lobbyist employers ~~((report))~~ reporting of political contributions**. The official ~~((form))~~ report entitled "Employer of Lobbyist Monthly Political Contribution Report" as required by RCW 42.17A.-630 (2)(a) is designated "L-3c." Hard copies of this ~~((form))~~ report are available for download on the ~~((commission's))~~ PDC's website, www.pdc.wa.gov, and at the ~~((Commission))~~ PDC Office, Olympia, Washington. Any attachments must be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-20-120 ~~((Forms for report of))~~ Reporting legislative activity by public agencies**. The official ~~((form))~~ report for ~~((the report of))~~ legislative activity by public agencies as required by RCW 42.17A.635 is designated "L-5." ~~((Copies of this form are))~~ This report is available on the ~~((commission's))~~ PDC's website, www.pdc.wa.gov, and at the ~~((Commission))~~ PDC Office, Olympia, Washington. ~~((Any attachments shall be on 8-1/2" x 11" white paper.))~~

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-20-125 ~~((Forms for))~~ Registration and reporting by sponsors of grass roots lobbying campaigns**. The official ~~((form))~~ report for registration and reporting by sponsors of grass roots lobbying campaigns as required by RCW 42.17A.640 is designated "L-6." Hard copies of this ~~((form))~~ report are available for download on the ~~((commission's))~~ PDC's website, pdc.wa.gov, and at the ~~((Commission))~~ PDC Office, Olympia, Washington. Any attachments shall be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-20-130 ~~((Forms for))~~ Statement of employment of legislators, state officers, and state employees**. The official ~~((form))~~ report for statement of employment of legislators, state officers, and state employees as required by RCW 42.17A.645 is designated "L-7." Hard copies of this



form are available for download on the (~~commission's~~) PDC's website, www.pdc.wa.gov, and at the (~~Commission~~) PDC Office, Olympia, Washington. Any paper attachments shall be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-20-140 Loss of (~~RCW 42.17A.610~~) exemption(s) from registering and reporting lobbying activities.** (1) For the purpose of determining compliance with RCW 42.17A.650, a lobbyist's employer (~~shall be~~) is responsible for the applicability of all of the exemptions provided in RCW 42.17A.610 to any lobbyist the employer employs, pays, or agrees to pay.

(2) The commission recognizes that a lobbyist who initially intends in good faith to utilize the "casual lobbying" exemption from registration and reporting which is provided in RCW 42.17A.610(4) may thereafter become ineligible for that exemption, thus violating RCW 42.17A.600 (~~and/or~~) or 42.17A.615 by not having registered (~~and/or~~) or reported within the prescribed time periods.

(3) The commission (~~shall~~) will not commence enforcement proceedings against a lobbyist or (~~his or her~~) their employer in circumstances described in subsection (2) of this section if the lobbyist:

(a) Registers pursuant to RCW 42.17A.600 before doing any lobbying in excess of the exemption limitations in RCW 42.17A.610(4); and

(b) Files a report on (~~Form~~) the L-2 Report when next due under RCW 42.17A.615, (~~which report includes~~) including all reportable information for the lobbying activities cumulatively causing the exemption limitations to be reached.

(4) The duty under RCW 42.17A.655(1) of a person required to register as a lobbyist to obtain and preserve all records necessary to substantiate required financial reports (~~shall~~) includes such records of all activities which cumulatively cause the RCW 42.17A.610(4) exemption limitations to be reached and exceeded.

(5) A lobbyist whose only compensation or other consideration for lobbying is payment of or reimbursement for expenditures not required to be reported per RCW 42.17A.615 (3)(a) through (d), does not qualify for exemption from registration and reporting per RCW 42.17A.610(4).

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

**WAC 390-20-143 Application of lobbying provisions to organizations.** (1) A lobbyist other than (~~a natural person shall be deemed~~) an individual will be considered to have properly restricted its lobbying activities and is eligible for the RCW 42.17A.610(5) "casual lobbying" exemption during any three-month period in which its agents or employees do not make an expenditure of more than thirty-five dollars for or on behalf of legislators, state elected officials, public officers or employees of the state of Washington.

(2) A lobbyist other than (~~a natural person~~) an individual which does sponsor or coordinate or directly make unreported expenditures exceeding thirty-five dollars during a

three-month period, as fully described in subsection (1) of this section, must register and report as required by RCW 42.17A.600 and 42.17A.615: Provided, that it can satisfy these requirements by having an individual agent (a) register and report(~~s~~) as a lobbyist, and (b) include (~~as part of Form L-2~~) a report of these and all other lobbying expenditures made on behalf of the (~~nonnatural person~~) individual during that three-month period as part of the L-2 Report.

(3) An entity(~~s~~) including, but not limited to, a law firm, consulting firm, advertising agency, or other similar organization, which receives or expects to receive compensation for lobbying from any person, must register and report as a lobbyist pursuant to RCW 42.17A.600 and 42.17A.615: Provided, that membership dues or contributions to a non-profit organization made for the purpose of promoting a general interest and not in return for lobbying on behalf of any specific member or contributor (~~shall~~) will not be regarded as compensation for this purpose. Registration statements and reports (~~shall~~) must list as the lobbyists both the firm or organization and each individual acting on its behalf. The person paying the compensation (~~shall~~) must report under RCW 42.17A.630 as a lobbyist's employer.

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

**WAC 390-20-144 Registration and reporting by lobbyist organizations.** (1) Any firm, company, association, or similar organization required to register as a lobbyist (~~shall~~) must file one registration statement (~~(PDC Form)~~) L-1 Report for each employer for (~~whom~~) which the organization will lobby.

(a) The lobbying organization will (~~attach to~~) include with the registration statement a photo and the biographical information required by RCW 42.17A.605 (~~(page 3 of the L-1 Form)~~) for each individual agent of the organization who is authorized to lobby for that particular employer.

(b) If the agent is authorized to lobby for several employers, only one photo and biographical sheet need be submitted.

(c) The organization (~~will~~) must notify the (~~commission in writing~~) PDC electronically when there is any change in the employment or assignment of agents who lobby.

(2) One monthly expenditure report (~~(PDC Form)~~) L-2 Report (~~shall~~) must be submitted showing all expenditures made by the organization and its agents. It is unnecessary to prorate or attribute expenditures to individual agents of the organization. However, expenditures for entertainment exceeding fifty dollars per occasion (~~shall~~) must identify the individual agent(s) who were present at the occasion. The L-2 report (~~shall~~) must be signed by the president or chief executive officer of the lobbying organization.

(3) If any individual agent of the organization ceases to lobby or the organization terminates that agent's authority to lobby, the organization (~~shall notify PDC in writing or by~~) must make such notation electronically on the L-2 report of the termination.

AMENDATORY SECTION (Amending WSR 85-24-020, filed 11/26/85)

**WAC 390-20-145 Reporting of lobbying events.** (1) A meeting or other gathering of individuals for which lobbying is a purpose or reasonably foreseeable result ~~((shall))~~ must be ~~((reportable))~~ reported by or on behalf of the sponsoring person in accordance with WAC 390-20-143 and other applicable provisions of law: Provided, that the executive director is authorized to ~~((state in writing))~~ provide written guidance how all reportable information relative to a particular gathering ~~((shall))~~ must be reported on ~~((Form))~~ the L-2 Report whenever the application of the appropriate provisions of law is unclear to the reporting person, and this interpretation ~~((shall))~~ must be reviewed and approved, modified or rejected by the commission at its next regular or special meeting.

(2) Any other lobbyist reporting such a gathering may incorporate by reference in ~~((his Form))~~ their L-2 ((a Form)) Report, an L-2 Report which is filed on the sponsor's behalf and which reports the gathering in accordance with applicable provisions of law, including WAC 390-20-143(2) and subsection (1) of this ~~((rule))~~ section.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-20-146 Reporting of field trips and other excursions.** (1) All persons required to file reports pursuant to RCW 42.17A.615 who provide field trips or other excursions to elected and appointed officials, and other individuals required to file the Personal Financial Affairs Statement ~~((PDC Form))~~ F-1 Report ~~((shall))~~ must file, on the appropriate monthly L-2 or L-2 Memo Report, the identity of persons attending the field trip or other excursion along with the date, pro rata cost, and a brief description of the field trip or other excursion.

(2) All persons required to file pursuant to RCW 42.17A.710 who attend a field trip or other excursion paid for or provided by a lobbyist, lobbyist employer, or other person paying for or providing field trips or other excursions ~~((shall))~~ must report the date, name of the person paying for or providing the field trip or excursion, pro rata cost attributable to the filer, applicable code value, and a brief description of the field trip or other excursion as part of the F-1 statement that covers the date of the field trip or other excursion.

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

**WAC 390-20-150 Changes in dollar amounts.** Pursuant to the commission's authority in RCW 42.17A.125~~((2))~~ to revise the monetary reporting thresholds found in chapter 42.17A RCW to reflect changes in economic conditions, the following revisions are made:

Statutory Section	Subject Matter	Amount and Date	Revision
		Enacted or Last Revised	Effective December 1, 2014
.600 (1)(i)	Lobbyist employer's members or funders	\$500 (1973)	\$1,450

Statutory Section	Subject Matter	Amount and Date	Revision
		Enacted or Last Revised	Effective December 1, 2014
.610(5)	Casual lobbying threshold	\$25 (1982)	\$35
.615 (2)(a)	Itemize entertainment expenditures	\$25 (1978)	\$50
.630 (2)(a)	Contributions disclosed by lobbyist employer on monthly report (L-3c)	\$100 (1990)	\$110
.635 (5)(d)(v)	Nonpublic funds spent on gifts provided by public agency	\$15 (1979)	\$25
.640(1)	Grass roots lobbying	\$500/ \$1,000 (1985)	\$700/ \$1,400

**Chapter 390-24 WAC**

**~~((FORMS FOR))~~ REPORTS OF FINANCIAL AFFAIRS**

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-24-010 ~~((Forms))~~ Submissions for statement of financial affairs.** The official ~~((form for))~~ statement((s)) of financial affairs as required by RCW 42.17A.-700 is designated "F-1~~((s))~~," ~~((Copies of this form are))~~ and is available on the commission's website, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. ~~((Any paper attachments must be on 8-1/2" x 11" white paper.))~~

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-24-020 ~~((Forms for))~~ Amending the statement of financial affairs.** (1) The official form for amending statements of financial affairs as required by RCW 42.17A.-700 for all persons who have previously filed the ~~((Form))~~ F-1 is designated ~~((Form))~~ "F-1A."

(2) ~~((No more than three F-1A forms may be filed to amend a previously submitted statement of financial affairs (Form F-1). The form can))~~ The annual financial affairs reporting requirement may be met by filing an F-1A to update information included in a previously filed F-1, in lieu of filing a new F-1. This may be done for up to three years, after which point a new F-1 filing must be made. The F-1A may be used only to update information required on an F-1.

(3) The commission reserves the right to reject ~~((amendatory forms))~~ the use of an F-1A to update information and instead require a new ((statement of financial affairs (Form)) F-1((s))) at any time the amendments are confusing or create misunderstandings. Authority is delegated to the commission's executive director to make this determination.

(4) Copies of ~~((Form))~~ the F-1A are available on the commission's website, www.pdc.wa.gov and at the Commission Office, Olympia, Washington. Any paper attachments must be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-24-025 Time for filing statement of financial affairs.** ~~((It shall be the policy of the public disclosure commission to construe the filing requirements of RCW 42.17A.700 for elected officials in the following manner: It is the interpretation of the commission that:))~~

(1) Any person holding elected public office, except as exempted by the terms of RCW 42.17A.700, and any appointed official and professional staff member listed or referenced in RCW 42.17A.700, and any appointed official required to comply with the reporting requirements of RCW 42.17A.700 by any other statute ~~((is))~~ are required to file the ~~((statement of financial affairs if such person holds such public office between January 1 and April 15 of any year. Such report shall be for the preceding calendar year.~~

(2) Any local elected official whose term of office expires immediately after December 31 shall file a statement of financial affairs for the calendar year which ended on that date.

(3) Any local elected official who resigns his public office prior to the completion of his current term of office shall file a statement of financial affairs covering that portion of the year that he was in office)) F-1 for each partial or full calendar year that such person has served.

(a) For any officer or official who leaves public office prior to January 1st, the F-1 must cover only the portion of the previous year that such person was in office.

(b) For any officer or official appointed to office between January through November, the F-1 filed at the time of appointment must cover the immediately preceding twelve-month period. For any officer or official appointed to office in December, the F-1 filed at the time of appointment must cover the preceding twelve-month period ending December 31st of the same year.

(2) Any person required to file an F-1 must electronically file the F-1 with the commission under the relevant periods as follows:

(a) Between January 1st and April 15th of each year immediately following the year, or portion of the year served;

(b) As alternative to (a) of this subsection, within sixty days of leaving public office, for any officer or official who leaves office before January 1st of the following year; or

(c) Within two weeks of appointment for any person appointed to a vacancy in office during the months of January through November, or between January 1st and January 15th for any person appointed to a vacancy in December.

AMENDATORY SECTION (Amending WSR 13-11-009, filed 5/2/13, effective 6/2/13)

**WAC 390-24-160 Definition—Professional staff member.** (1) A professional staff member of the office of the governor and of the legislature includes all individuals retained on a full or part-time basis whose primary responsibilities require the exercise of judgment and discretion in policy related matters~~((s))~~ including, but not limited to, such individuals who are involved in the development of legislation. A professional staff member does not include individu-

als retained primarily for clerical, ministerial, or internal accounting and bookkeeping purposes.

(2) The commission needs a complete and accurate list of professional staff members of the governor, the senate, and the house of representatives, in order to properly and fairly administer the personal financial affairs disclosure requirements applicable to executive state officers as defined in RCW 42.17A.705. Each December, the executive director ~~((shall))~~ will ask the governor, the secretary of the senate, and the clerk of the house to provide the commission by January 15th, the names and positions of the professional staff members meeting the criteria set forth in subsection (1) of this section, who are expected to be retained during the ensuing year, and to provide periodic updates throughout the year as necessary to reflect changes in professional staff. ~~((The executive director will present to the commission the lists of professional staff members received from the governor, senate, and house of representatives and post the lists on the commission's web site.))~~

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-24-200 Descriptions of real property.** (1) For the purposes of reporting real property as required by RCW 42.17A.710 (1)(h) through (k), the filer ~~((shall))~~ must list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. ~~((2))~~ Each property description ~~((shall))~~ must be followed by the name of the county in which the property is located.

(2) Pursuant to RCW 42.17A.710(2), a judge, prosecutor, sheriff, or their immediate family member who is required under RCW 42.17A.710 (1)(h) through (k) to disclose the personal residence of the judge, prosecutor, or sheriff, may satisfy that reporting requirement by instead reporting:

(a) The city or town; and

(b) The type of residence, such as a single-family or multifamily residence, and the nature of ownership.

AMENDATORY SECTION (Amending WSR 86-08-030, filed 3/26/86)

**WAC 390-24-205 ~~((Report of))~~ Reporting on compensation received for legislation prepared, promoted or opposed, for the statement of financial affairs (F-1).** ~~((+))~~ Pursuant to RCW ~~((42.17.241 [42.17A.710]))~~ 42.17A.710 (1)(e), ~~((an))~~ as part of the F-1, unless part of their duties as an elected official, state executive officer, or professional staff member of a governmental entity, if an official has prepared, provided, or opposed any legislation, rule, rate, or standard for compensation, the official must provide ~~((in each report required by that subsection:~~

(a) The name of each governmental entity of which the official is an officer or employee;

(b) A statement of each)) information regarding:

(1) Each person for whom such services have been provided and the subject area ~~((an))~~ about which the reporting official has prepared, promoted or opposed ~~((any))~~ legislation, rule, rate, or standard ~~((for such entity;~~

(e) The); and

(2) The current or deferred compensation received or promised for said service (and;

(d) All other persons for whom such services have been performed for current or deferred compensation, together with an itemization of such actual or proposed legislation, rules, rates and standards, and the amount of compensation paid or promised for the service.

(2) A person need not report the information described in subsection (1)(a), (b), and (c) of this section as to any entity of which such person is an elected official) for each person.

	<u>Amount Last Revised</u>	<u>Revision Effective May 21, 2019</u>
Dollar Code C	(((\$20,000-\$39,999)) \$24,000-\$47,999	(((\$24,000-\$47,999)) \$60,000-\$99,999
Dollar Code D	(((\$40,000-\$99,999)) \$48,000-\$119,999	(((\$48,000-\$119,999)) \$100,000-\$199,999
Dollar Code E	(((\$100,000)) \$120,000 and up	(((\$120,000 and up)) \$200,000-\$499,999
Dollar Code F		\$500,000-\$749,999
Dollar Code G		\$750,000-\$999,999
Dollar Code H		\$1,000,000 or more

NEW SECTION

**WAC 390-24-211 Reporting on public or private office held for the statement of financial affairs (F-1).** An elected official or executive state officer is not required to report the office, directorship, or position held in a public or private office for service on a governmental board, commission, association, or functional equivalent, when such service is part of the elected official's or executive state officer's official duties.

AMENDATORY SECTION (Amending WSR 15-01-066, filed 12/11/14, effective 1/11/15)

**WAC 390-24-301 Changes in dollar amounts of reporting thresholds and code values for the statement of financial affairs (F-1).** Pursuant to the commission's authority in RCW 42.17A.125((2)) to revise the monetary reporting thresholds and code values found in chapter 42.17A RCW to reflect changes in economic conditions, the following revisions are made:

<u>Statutory Section</u>	<u>Subject Matter</u>	<u>Amount Enacted or Last Revised</u>	<u>Revision Effective January 12, 2015</u>
.710 (1)(b)	Bank Accounts	\$20,000	\$24,000
.710 (1)(b)	Other Intangibles	\$2,000	\$2,400
.710 (1)(c)	Creditors	\$2,000	\$2,400
.710 (1)(f)	Compensation	\$2,000	\$2,400
.710 (1)(g)(ii)	Business Entity	\$10,000	\$12,000
.710 (1)(g)	Bank Interest Paid	\$2,400	\$2,900
.710 (1)(h)	Real Property-Acquired	\$10,000	\$12,000
.710 (1)(i)	Real Property-Divested	\$10,000	\$12,000
.710 (1)(j)	Real Property-Held	\$10,000	\$12,000
.710 (1)(k)	Real Property-Business	\$20,000	\$24,000
.710 (1)(l)	Food and Beverages	\$50	
		<u>Amount Last Revised</u>	<u>Revision Effective May 21, 2019</u>
.710 (2)	Dollar Code A	Up to ((\$3,999)) \$4,449	Up to ((\$4,499)) \$29,999
	Dollar Code B	(((\$4,000-\$19,999)) \$4,500-\$23,999	(((\$4,500-\$23,999)) \$30,000-\$59,999

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 390-24-032 Definition—Nonreimbursed public office related expense.
- WAC 390-24-105 Definition—Written sworn statement.

**Chapter 390-28 WAC**

~~(HARDSHIP EXEMPTIONS—HEARING EXAMINER SYSTEM)~~ **MODIFICATIONS OF REPORTING REQUIREMENTS—PROCEDURES**

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-28-020 Definition—Applicant.** The term applicant for the purposes of chapter 390-28 WAC ((shall)) means any ((person as defined in RCW 42.17A.005 that)) individual required to file a statement of financial affairs who seeks a modification of the filing requirements pursuant to RCW 42.17A.120 and these rules.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-28-025 Hearing to modify reporting requirements.** (1) Any ((person)) individual who considers compliance with any of the reporting requirements of chapter 42.17A RCW to be a manifestly unreasonable hardship in a particular case may apply for a modification of such reporting requirements pursuant to RCW 42.17A.120 and further pursuant to these rules.

(2) A hearing to modify the reporting requirements ((shall)) will be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC) ((shall be followed)), unless otherwise modified by chapter 390-28 WAC.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-28-040 Hearing to modify reporting—Pre-hearing procedure and requirements.** (1) An applicant must ((file)) electronically submit with the commission a ((written)) request for a hearing for suspension or modifica-

tion of reporting requirements. The request should be submitted by the tenth day of the month preceding the month in which the report is due so that action on the request can be completed before the filing deadline.

(2) The request (~~(should)~~ must contain (a) the required report completed to the extent possible, (b) ~~((the applicant's evidence to be submitted at the hearing, (e)))~~ a statement of reasons why the reporting of required information would cause a manifestly unreasonable hardship, with as much detail as possible, and (c) any relevant evidence regarding the request. (A general statement, such as "violates right of privacy" ~~((shall))~~ will not be deemed as sufficient compliance with this requirement.) The applicant is encouraged to also include a proposed modification to the required reporting which, in the applicant's opinion, will relieve the perceived hardship.

(3) The ~~((filing))~~ submission of a request for modification ~~((shall))~~ does not suspend the reporting requirement of any portion of chapter 42.17A RCW. The reporting obligation remains in effect unless the commission grants the request pursuant to a hearing.

AMENDATORY SECTION (Amending WSR 17-03-028, filed 1/6/17, effective 2/6/17)

**WAC 390-28-060 Hearing to modify reporting—~~((Administrative law judge))~~ Brief adjudicatory proceedings—Presiding officer.** ~~((1) The commission may request through the office of administrative hearings the appointment of an administrative law judge to hear individual applicants.~~

~~(2) After such hearing is concluded, the administrative law judge shall prepare and distribute to the applicant and each commissioner a proposed decision determining the issue. The applicant shall have five business days to file with the commission specific objections to the administrative law judge's **proposed** decision and to request an opportunity to present additional evidence to the commission. When written objections are timely filed, the commission, at the time of review and ratification, shall consider the whole record or such portions as may be cited by the administrative law judge, applicant or executive director. The commission may also hear additional testimony.~~

~~(3) If the applicant files objections to the administrative law judge's proposed decision, the filing requirement from which the applicant has sought modification shall not be suspended unless the commission, upon notice of the filing of objections, determines that a temporary suspension is justifiable pursuant to the criteria set out in RCW 42.17A.120. Such suspension of filing requirements shall be granted only until the decision is finalized by formal action of the commission.~~

~~(4) At the next meeting at which the matter can be lawfully considered, the commission shall review and either ratify or modify or revise the proposed order.)~~ Reporting modification requests may be heard in a brief adjudicatory proceeding, as provided under the Administrative Procedure Act, RCW 34.05.482 through 34.05.494, and WAC 390-37-140 through 390-37-144. The commission may preside over the proceedings. Alternatively, one of the following persons may act as the presiding officer: The commission chair;

another commissioner appointed by the chair; or, at the request of the commission chair, an administrative law judge through the office of administrative hearings.

AMENDATORY SECTION (Amending WSR 07-14-117, filed 7/3/07, effective 8/3/07)

**WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement.** (1) An applicant may choose to waive a personal appearance at a hearing conducted pursuant to chapter 390-28 WAC. In the event that an applicant chooses to waive such appearance, ~~((that person shall))~~ the applicant must submit a written, sworn statement setting out in detail the rationale for requesting modification or suspension.

~~(2) The commission ~~((or the administrative law judge, shall proceed to))~~ or presiding officer will~~ decide the application in the same manner as if an appearance were made. However, in the event the commission, or ~~((the administrative law judge))~~ presiding officer is not able to reach a conclusion on the request because of an insufficiency of the evidence, the hearing may be adjourned for the purposes of gathering further evidence, or the application may be denied.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions.** (1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17A.120 ~~((shall be))~~ are considered to be a public record. However, if a modification of reporting requirements is requested by a filer because of a concern for personal safety that is caused by the potential disclosure of information required to be reported, upon request by the filer, the information submitted for that modification request regarding that safety concern will not be made public prior to, or at the hearing on the request for modification. In accordance with RCW 42.17A.120, any information provided or prepared for the modification hearing will remain exempt from public disclosure under chapters 42.17A and 42.56 RCW to the extent it is determined at the hearing that disclosure of such information would reasonably present a personal safety risk to the applicant or a member of their family. If no written order is entered based on findings pursuant to this section, then the exempted information will become available for public disclosure.

~~(2) Except as otherwise provided in subsection (1) of this section, there is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17A.120, the commission or presiding officer may close the hearing or a portion of the hearing or hearing record ~~((The commission may close a hearing or portion of a hearing or hearing record))~~ for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:~~

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure

of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17A.120; or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

~~((2))~~ (3)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission or presiding officer must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection ~~((4))~~ (2)(a) or (b) of this section;

(ii) An open hearing or record to report the information would ~~((work))~~ present a manifestly unreasonable hardship ~~((or)),~~ or personal safety risk, to the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission or presiding officer has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17A RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a closed session identifying the matters for which the applicant requests modification under these rules ~~((shall))~~ will be considered confidential by the commission or presiding officer pursuant to a protective order which ~~((shall))~~ will be entered by the commission or presiding officer unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge, acting as the presiding officer, determines that testimony in private may be necessary, the judge ~~((shall))~~ will immediately adjourn the hearing and refer the matter to the commission.

~~((3))~~ (4) Any decision or order ~~((adverse to an applicant))~~ rendered by the commission or ~~((the administrative law judge shall))~~ presiding officer must be in writing or stated in the record ~~((and shall be)),~~ however any dispositive order accompanied by findings of fact and conclusions of law must be in writing. The full commission may review any order rendered by a presiding officer, pursuant to WAC 390-37-144.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-28-090 Hearing to modify reporting—Required findings.** (1) The commission or presiding officer, after a hearing, as provided in these rules, may suspend the applicable reporting requirement of chapter 42.17A RCW if ~~((#))~~ the commission or presiding officer finds that the literal application of such requirement works a manifestly unreasonable hardship in the case under consideration and if it also finds that such suspension or modification will not frustrate the purposes of the act. The commission ~~((shall))~~ or presiding officer must suspend or modify such reporting requirement or requirements only to the extent necessary to substantially

relieve such hardship, and only upon clear and convincing proof to support such claim.

(2) The commission or presiding officer may approve a modification for the length of an elected official's term of office, or up to three years for an executive state officer. If the commission has approved a modification for more than one year, and there is a material change in the applicant's circumstances or relevant information after the initial year, then the applicant must request a modification at least one month prior to the next filing deadline (rather than at the conclusion of the approval period).

(3) The commission or presiding officer may apply a modification retroactively to previously filed reports. In such cases, the previously reported information of the kind that is no longer being reported is confidential and exempt from public disclosure under this chapter and chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 14-15-013, filed 7/3/14, effective 8/3/14)

**WAC 390-28-100 Reporting modifications—Possible qualifications—Standards—Statement of financial affairs.** (1) Under RCW 42.17A.120, the commission or presiding officer may modify reporting requirements, including the statement of financial affairs, if literal application of the requirement would work a manifestly unreasonable hardship and the suspension or modification would not frustrate the purpose of the law. One or more of the following may be considered by the commission or presiding officer as possible qualifications for a reporting modification with respect to the statement of financial affairs, when ~~((it is in the public interest))~~ such standard is met:

(a) **Banks, savings accounts, insurance policies - Financial interests.** An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17A.710 (1)(b) if:

(i) The financial institution or other entity in which the applicant held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the applicant; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 (1)(f) and (g), if:

(i) Public disclosure would violate any legally recognized confidential relationship that serves a legitimate business interest;

(ii) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the applicant in whole or in part;

(iii) Such reporting would present a manifestly unreasonable hardship to the applicant including but not limited to adversely affecting the competitive position of an entity in which the applicant had an interest of ten percent or more as described in RCW 42.17A.120; and

(iv) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the applicant's immediate family, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest is not a present or prospective source of income to the applicant or to any other person who is dependent upon the applicant for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17A.120.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17A.710 (1)(h) through (k):

(i) Under WAC 390-24-200, the filer (~~shall~~) must list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description (~~shall~~) must be followed by the name of the county in which the property is located.

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county. Judges, prosecutors, or sheriffs may describe a personal residence in the alternative manner provided under RCW 42.17A.710(2), and WAC 390-24-200 without a modification.

(iii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider (~~a modification, for example, when the filer or his or her immediate family member has received a threat, has a no contact order, or presents a similar personal safety concern.~~

A prospective) and grant such a modification to (allow nondisclosure) amend the description of a residential address (may be granted if) to the extent necessary to protect the applicant or an immediate family member who has received a threat, (been issued) has obtained a no contact order, or (presents) has presented a similar personal safety concern.

(e) **Other.** An applicant may be exempted from reporting information otherwise required under RCW 42.17A.710 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of other common requests will be considered as follows:

(i) **Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission).** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows:

(A) The names of the business clients for whom the applicant has done legal work;

(B) Other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means;

(C) The names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, web site, or similar promotional materials; and

(D) Governmental clients that have done business with the law firm.

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing any required information of which the applicant is aware, when the applicant certifies (~~he or she~~) that the applicant is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a nonincumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable business clients of the law firm.

(iii) **Motor vehicle dealers.** An applicant may satisfy the reporting requirements of RCW 42.17A.710 (1)(g) and WAC 390-24-020 by disclosing:

(A) All purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office;

(B) Other business and governmental entities that purchased or leased ten or more vehicles from the dealership;

(C) Business customers who paid in excess of twenty thousand dollars for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) for the purchase of parts and/or service.

(iv) **Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant.** When an applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable customers from whom compensation in excess of the disclosure threshold estab-

lished under RCW 42.17A.710 (1)(g)(ii) has been received as follows:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) The business and other governmental customers or clients of the applicant's spouse/domestic partner and of the entity of which the applicant is aware; and

(C) Any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

(c) Separate property court decree under chapter 26.09 RCW;

(d) Domestic partnership agreement under chapter 26.60 RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-005 Complaint review and categorization.** (1) PDC staff, upon receiving or initiating a complaint, will promptly conduct an initial review and preliminarily assign matters to certain categories.

(2) Upon initial review, a matter may be preliminarily categorized as:

(a) Unfounded or frivolous, pursuant to WAC 390-37-060;

(b) A ~~((remedial))~~ remediable violation, pursuant to RCW 42.17A.005;

(c) Appropriate for resolution as a technical correction, pursuant to RCW 42.17A.005;

(d) A minor violation, appropriate for alternative resolution alternatives, pursuant to WAC 390-37-061;

(e) Appropriate ~~((for))~~ to initiate an investigation as to whether or not there has been a material ~~((actual))~~ violation ~~((eligible for resolution pursuant to RCW 42.17A.005(2)))~~;

(f) Appropriate for referral to the attorney general, pursuant to WAC 390-37-042; or

(g) Other status as authorized and appropriate under chapter 42.17A RCW or Title 390 WAC.

(3) Each enforcement matter will be posted ~~((by PDC staff))~~ on the PDC's public case-tracking database, where its status will be updated from time to time as appropriate until the matter is closed, to apprise the parties and general public.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint.** (1) Within ten days of receipt by the PDC of a complaint which on its face appears to have merit, or initiation of a complaint by the PDC staff, the PDC staff ~~((shall))~~ must notify the respondent that a complaint has been filed, along with an explanation of possible next steps, including the categorization process under WAC 390-37-005. Sending the complaint to the respondent's email address of record as provided to the PDC ~~((shall))~~ will constitute sufficient notice.

(2) The notice ~~((shall))~~ must set forth the nature of the complaint and the statutory and/or rule provision(s) alleged to have been violated.

(3) Respondents who wish to respond must file their response electronically within fourteen days of being notified by PDC staff, addressing the alleged noncompliance in the complaint. The response may address the respondent's view of which category or categories appropriately address the alleged noncompliance pursuant to WAC 390-37-005 ~~((remedial))~~ remediable, technical corrections, etc.). The PDC staff may provide for a shorter response period ~~((for complaints received within sixty days of an))~~ in order to conclude a timely investigation so the public will not be deprived of important information before the election.

(4) If an alternative response to the alleged violation has been issued as provided by this chapter, the notice ~~((shall))~~ must also describe that response, including any conditions the respondent is required to meet.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-060 ~~((Enforcement)) Case initiation and resolution procedures—Alternative responses to noncompliance—Technical corrections—Investigation of complaints—Initiation of adjudicative proceeding.~~** (1) Upon receipt or initiation of a complaint, the PDC staff will conduct an initial review ~~((of the complaint))~~ pursuant to WAC 390-37-005.

(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC's jurisdiction, the executive director will inform the complainant and, as appropriate, the respondent why no further action is warranted.

(b) The executive director may resolve a matter as a technical correction pursuant to RCW 42.17A.755. PDC staff will notify the respondent of the need to make a correction and the deadline by which that correction must be made. The deadline will be no less than ~~((five))~~ two days and no more than ~~((thirty))~~ fourteen days from the date of the notification. The failure to make the requested correction may result in the initiation of an investigation or other enforcement action.

(c) The executive director may resolve a matter as a ~~((remedial))~~ remediable violation pursuant to RCW 42.17A.-755.

(d) The executive director may resolve any complaint that alleges minor violations of chapter 42.17A by issuing a formal written warning. If the resolution is conditioned upon



the respondent reaching or maintaining compliance, specific expectations and any deadlines will be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

(e) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint that alleges minor or remediable violations or warrants a technical (~~(violations of)~~) correction under chapter 42.17A RCW.

(f) The executive director may enter into a statement of understanding, in accordance with WAC 390-37-142.

(g) The executive director may propose a stipulation to the commission before or after conducting an investigation.

(h) The executive director may initiate an investigation whenever an initial review of a complaint indicates that a material violation may have occurred.

~~((g))~~ (i) The executive director may, with the concurrence of the commission chair or vice chair, refer a complaint to the attorney general, in accordance with WAC 390-37-042.

(j) The executive director (~~(shall)~~) must report at each regular commission meeting a summary covering the period since the previous commission meeting of all complaints initiated or received; how they were categorized; the nature of the allegations; conformance to required timelines; and actions taken and resolutions achieved pursuant to the alternatives provided for under chapter 42.17A RCW, such as dismissals, requests for technical correction, warning letters, complaint publication, statements of understanding, initiations of investigations, status reviews, stipulations, referrals to the attorney general's office, brief adjudicative proceedings, or commission hearings.

(2) If the executive director determines an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) If the executive director determines an investigation is warranted, an initial hearing (also referred to as a "case status review") (~~(shall)~~) will be held pursuant to WAC 390-37-071 within ninety days of the complaint being initiated or received.

(4) Following the initial hearing (case status review), and further investigation if needed, the executive director may initiate an adjudicative proceeding before the commission whenever the facts support that (~~(an actual)~~) a material violation has occurred and the matter is not appropriate for a dismissal or an alternative resolution.

(5) The respondent and complainant (~~(shall)~~) must be notified of the date of the adjudicative proceeding or a report on an enforcement matter resulting from a complaint no later than ten calendar days before that date. The notice (~~(shall)~~) must contain the information required by RCW 34.05.434, the staff investigative report, and any charges to be adjudicated. The notice, whenever possible, will be delivered electronically.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-061 Enforcement procedures—Alternative responses to noncompliance—Goals and objectives—Factors to be considered.** (1) In considering appropriate responses to (~~(actual)~~) violations, (~~(as that term is used in the act,)~~) the PDC staff will consider(~~(s)~~) whether an investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the PDC's mission and public expectations by allowing the expedited resolution of minor violations and technical reporting errors, and the focusing of resources on more significant violations of chapter 42.17A RCW and Title 390 WAC.

(2) A minor violation is (~~(an actual)~~) a violation that occurs:

(a) When required information is not timely disclosed, but the public is not deprived of critical information; (~~(or)~~)

(b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information(~~(-)~~); or

(c) When any other violation of chapter 42.17A RCW has occurred that does not materially affect the public interest.

(3) In authorizing an alternative response to alleged noncompliance, the executive director may consider the nature of the alleged violation and any relevant circumstances including, but not limited to, the factors described in subsection (4) of this section: Provided, that, if after weighing the relevant circumstances and factors, the executive director determines that there is evidence that so warrants, the allegations (~~(shall)~~) must be addressed through an investigation as provided by WAC 390-37-060.

(4) The factors the executive director may consider in permitting an alternative response to noncompliance, an investigation, or an adjudicative proceeding include, but are not limited to:

An alternative response to noncompliance may be appropriate if ...	An investigation and possible adjudicative hearing may be appropriate if ...
It appears that noncompliance resulted from a good-faith error, omission, or misunderstanding.	It appears that the noncompliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.
The respondent is a first-time filer.	The respondent has experience in complying with the applicable requirements.

<b>An alternative response to noncompliance may be appropriate if ...</b>	<b>An investigation and possible adjudicative hearing may be appropriate if ...</b>
The respondent's compliance history indicates the noncompliance was isolated or limited in nature, and not indicative of systematic or ongoing problems.	The noncompliance is part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization.
The impact of the noncompliance on the public was minimal.	The noncompliance deprived the public of timely or accurate information during a time-sensitive period in a campaign, legislative session, etc., or otherwise had a significant or material impact on the public.
The respondent's organization or campaign was relatively unsophisticated or small.	The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well financed and staffed.
The total expenditures by the respondent in the campaign or statement period were relatively modest.	The campaign or statement period involved significant expenditures by the respondent.
The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.	The late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period.
There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.	It appears the respondent or anyone else benefited politically or economically from the noncompliance.
Personal emergency or illness of the respondent or member of his or her immediate family contributed to the noncompliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Other emergencies such as fire, flood, or utility failure prevented compliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
PDC staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	PDC staff or equipment error did not appear to contribute to the noncompliance.
The noncompliance resulted from the respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions, a lack of clarity in the rule or statute, or uncertainty concerning the valid application of the commission's rules.	It appears the respondent understood the application of staff's guidance or instructions, and did not dispute the valid application of the commission's rules.
The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).	The respondent appeared negligent or unwilling to address the noncompliance.
The respondent made a good-faith effort to comply, including by consulting with PDC staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.	The respondent failed to provide a timely or adequate response to the complaint, or was otherwise uncooperative.
The alleged violation was or is being addressed under an analogous local ordinance, regulation, or policy.	The commission has primary jurisdiction over the alleged violation.
The alleged violation presents a new question or issue for the commission's interpretation.	The alleged violation does not present a case of first impression.
Other factors relevant to a particular case	

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-062 Enforcement procedures—Alternative responses—Cases resolvable by stipulation prior to ~~((completion of))~~ an investigation—Penalty schedule.**

(1) The purpose of WAC 390-37-062 is to set forth a schedule of violations and penalties that may be agreed to by a respondent pursuant to a stipulation prior to an investigation, as authorized by RCW 42.17A.755. That schedule appears in the table below.

(2) A violation not set forth in the schedule may be resolved pursuant to a stipulation, provided that the proposed penalty amount is within the dollar ranges listed in the schedule.

(3) "Occasion" as used in the schedule means ~~((an "actual violation," as defined in RCW 42.17A.005,))~~ a violation found by the commission.

(4) Only ~~((actual))~~ violations within the last five years will be considered for determining whether the violation under consideration ~~((shall))~~ will be deemed a second or third occasion.

(5) Any proposed stipulation ~~((shall))~~ must be in writing, must include a brief recitation of the facts, violations, and penalty, and be signed by each party to the stipulation or their representative and provided by 4:00 p.m. three business days preceding the commission meeting. The executive director ~~((shall))~~ will sign for PDC staff.

(6) The commission has the option of accepting, modifying or rejecting the proposed stipulation. If the commission accepts the stipulation, or modifies the stipulation with the agreement of the parties, the commission ~~((shall))~~ will enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation, the commission staff may consider whether:

- (a) An investigation should be initiated; or
- (b) The matter may appropriately be resolved in another manner.

(7) In determining whether to accept the stipulation, the commission may consider the nature of the violation(s), and any aggravating and/or mitigating factors as provided in WAC 390-37-182.

<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
Filed missing report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Report is filed late and is incomplete or inaccurate.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Respondent failed to file or timely file accurate and complete campaign disclosure reports:</b>			
<b>Cash Receipts Monetary Contributions Report (C-3 report)</b>			
Filed missing C-3 report or amended C-3 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to timely deposit monetary contributions within five business days of receipt.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to include employer and occupation information for contributors of more than \$100.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Campaign Summary Receipts and Expenditures Report (C-4 report)</b>			
Filed missing C-4 report or amended C-4 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to report a contractual contingent liability.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly dispose of surplus funds.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250

<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Independent Expenditure Report (C-6 report)</b>			
Filed missing C-6 report or amended C-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Report is incomplete or inaccurate.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Out-of-State Political Committee Report (C-5 report)</b>			
Filed missing C-5 report or amended C-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Last Minute Contribution Report (LMC report)</b>			
Filed missing LMC report or amended LMC report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Exceeding Contribution Limits</b>			
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Other Alleged Violations</b>			
<b>Exceeding Mini Reporting Threshold</b>			
Filed C-3 and C-4 reports for full reporting after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Failure to file electronically</b>			
Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition.</b>			
Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Failure to file Lobbyist Registration report (L-1 report)</b>			
Filed missing L-1 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
<b>Failure to File Agency Lobbying Report (L-5 report)</b>			
Filed missing L-5 report or amended L-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000

<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
<b>Grassroots Lobbying Report (L-6 report)</b>			
Filed missing L-6 report or amended L-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
<b>Sponsor identification requirements for political advertising</b>			
Political advertising failed to include any sponsor identification, or included improper or misleading sponsor identification.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
<b>Party preference requirement for political advertising</b>			
Political advertising failed to include a candidate's party preference.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
<b>Use of current picture requirement in political advertising</b>			
Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
<b>Political advertising or electioneering communication—Libel or defamation per se</b>			
Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Commercial advertisers—Public inspection of documents</b>			
Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain <del>((documents-ø))</del> records and books of account <del>((as required by WAC 390-16-050))</del> , or make such information available by the methods provided under WAC 390-18-050.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Candidates and political committees—Public inspection of books of accounts</b>			
Candidates or political committees who fail to accommodate requests for public inspection as required by WAC 390-16-043.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Limitations on employers or labor organizations</b>			
Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400

(8) In a matter where the PDC staff have completed an investigation or resolved the matter as a technical correction, as authorized in RCW 42.17A.755, the schedule set forth in the table above is not applicable.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas.** (1) During the course of a PDC audit or investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena ~~((shall))~~ must:

- (a) Specifically describe the information which is sought~~((;))~~; and
- (b) Set forth a reasonable time and place for the production of the information~~((;))~~; and
- (c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission or the presiding officer may issue a subpoena under RCW 42.17A.110(6) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, text messages, records, memoranda, electronically stored data, or other evidence that the commission deems relevant and material.

(3) As provided in the act, the commission or executive director may apply in superior court for authorization to issue a subpoena before issuing the subpoena, in circumstances where appropriate.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director after an investigation has been commenced.** The executive director, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, ~~((does))~~ provides reason to believe that a violation has occurred, but also shows that the respondent is in substantial compliance with the relevant statutes or rules, or shows that formal enforcement action is not warranted. The executive director ~~((shall))~~ must report at each regular commission meeting all complaints dismissed.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings).** (1) An enforcement hearing (adjudicative proceeding) ~~((shall))~~ will be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding ~~((shall))~~ must be heard by the commission, except for brief adjudicative proceedings which ~~((are))~~ may be conducted by ~~((the chair or the chair's designee))~~ a presiding officer pursuant to WAC 390-37-142. The commission may request through the office of administrative hearings the appointment of an administrative law judge to preside over any adjudicatory proceeding.

(3) The commission or the presiding officer ~~((shall))~~ have the authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Rule on procedural matters, objections, and motions;
- (d) Rule on offers of proof and receive relevant evidence;
- (e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;
- (h) Take official notice of facts pursuant to RCW 34.05.-452(5);
- (i) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (j) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (k) Issue an order of default pursuant to RCW 34.05.440;
- (l) Take any other action necessary and authorized by any applicable statute or rule;
- (m) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and
- (n) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through (m) of this subsection, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may:

- (a) Find that the respondent did not violate chapter 42.17A RCW, as alleged, and dismiss the case; or
- (b) Find that the respondent violated chapter 42.17A RCW, as alleged, and determine the sanction, if any, to be imposed; or
- (c) Find that the respondent is in apparent violation of chapter 42.17A RCW, and that the commission's statutory remedies are inadequate, and enter an order referring the matter to the attorney general or another appropriate law enforcement agency as provided in RCW 42.17A.105 and 42.17A.-755.

(6) Upon the conclusion of an adjudicative proceeding or after submission of memos, briefs or proposed findings when requested by the presiding officer, the commission:

(a) ~~((Shah))~~ Must set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order within thirty days, unless extended by the presiding officer due to the complexity of the case or other good cause; and

(b) ~~((Shah))~~ Must serve the parties by electronic communication a copy of the findings of fact, conclusions of law and decision and order.

(7) Once the commission has drafted and approved an order, the executive director is authorized to sign orders on behalf of the commission at the discretion of the commission.

**AMENDATORY SECTION** (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

**WAC 390-37-182 Penalty factors (full adjudicatory proceedings).** (1) In assessing a penalty after a full adjudicatory proceeding, the commission considers the purposes of

chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in subsection (3) of this section.

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time ~~((actual))~~ violation;

(b) ~~((Shah))~~ Must assess a penalty for a second ~~((actual))~~ violation by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) ~~((Shah))~~ Must assess successively increased penalties for succeeding ~~((actual))~~ violations pursuant to the following schedule:

<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
Filed missing report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
Report is filed late and is incomplete or inaccurate.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,000 - \$3,000
<b>Respondent failed to file or timely file accurate and complete campaign disclosure reports:</b>			
<b>Cash Receipts Monetary Contributions Report (C-3 report)</b>			
Filed missing C-3 report or amended C-3 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to timely deposit monetary contributions within five business days of receipt.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to include employer and occupation information for contributors of more than \$100.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
<b>Campaign Summary Receipts and Expenditures Report (C-4 report)</b>			
Filed missing C-4 report or amended C-4 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to report a contractual contingent liability.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly dispose of surplus funds.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
<b>Independent Expenditure Report (C-6 report)</b>			

<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
Filed missing C-6 report or amended C-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
Report is filed late and is incomplete or inaccurate.	\$0 - \$1,500	\$1,500 - \$2,500	\$2,500 - \$10,000
<b>Out-of-State Political Committee Report (C-5 report)</b>			
Filed missing C-5 report or amended C-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
<b>Last Minute Contribution Report (LMC report)</b>			
Filed missing LMC report or amended LMC report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
<b>Exceeding contribution limits</b>			
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	\$0 - \$1,500	\$1,500 - \$2,500	\$2,500 - \$10,000
<b>Other Alleged Violations:</b>			
<b>Exceeding mini reporting threshold</b>			
Filed C-3 and C-4 reports for full reporting after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
<b>Failure to file electronically</b>			
Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
<b>Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition</b>			
Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
<b>Failure to File Lobbyist Registration Report (L-1 report)</b>			
Filed missing L-1 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
<b>Failure to File Agency Lobbying Report (L-5 report)</b>			
Filed missing L-5 report or amended L-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
<b>Grassroots Lobbying Report (L-6 report)</b>			
Filed missing L-6 report or amended L-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500



<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
<b>Sponsor identification requirements for political advertising</b>			
Political advertising failed to include any sponsor identification or included improper or misleading sponsor identification.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
<b>Party preference requirement for political advertising</b>			
Political advertising failed to include a candidate's party preference.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
<b>Use of current picture requirement in political advertising</b>			
Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.	\$0 - \$500	\$500 - \$1,000	\$1,000 - \$1,500
<b>Political advertising or electioneering communication—Libel or defamation per se</b>			
Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Commercial advertisers—Public inspection of documents</b>			
Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain <del>((documents or))</del> records and books of account <del>((as required by WAC 390-18-050)), or make such information available by the methods provided under WAC 390-18-050.</del>	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Candidates and political committees—Public inspection of books of account</b>			
Candidates or political committees who fail to accommodate requests for public inspections as required by WAC 390-16-043.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Limitations on employers or labor organizations</b>			
Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400

(3) In addition to the requirements of RCW 42.17A.755, the commission may consider the nature of the violation and any relevant circumstances, including the following factors:

(a) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(b) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(c) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(d) Amount of financial activity by the respondent during the statement period or election cycle;

(e) Whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Whether the respondent or any person, including an entity or organization, benefited politically or economically from the noncompliance;

(h) Personal emergency or illness of the respondent or member of his or her immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) PDC staff or equipment error, including technical problems at the PDC preventing or delaying electronic filing;

(k) The respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions;

(l) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

(m) Whether the respondent is a first-time filer;

(n) Good faith efforts to comply, including consultation with PDC staff prior to initiation of enforcement action and cooperation with PDC staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(o) Penalties imposed in factually similar cases; and

(p) Other factors relevant to a particular case.

(4) The commission may consider the factors in subsections (1) through (3) of this section in determining whether to suspend a portion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

(5) Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation, or a greater amount if agreed to by the parties, pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

(6) The penalty schedule for brief enforcement proceedings is provided under WAC 390-37-143.

## WSR 20-02-068

### PERMANENT RULES

#### HEALTH CARE AUTHORITY

[Filed December 26, 2019, 8:18 a.m., effective January 26, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is revising this section to correct a cross-reference in subsection (3)(a)(i). The reference to the department of health (DOH), chapter 246-329 WAC does not exist. This subsection should reference DOH, chapter 246-329 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-533-0600.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 19-21-030 on October 7, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 26, 2019.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-122, filed 9/21/15, effective 10/22/15)

**WAC 182-533-0600 Planned home births and births in birthing centers.** (1) **Client eligibility.** The medicaid agency covers planned home births and births in birthing centers for clients who choose to give birth at home or in an agency-approved birthing center and:

(a) Are eligible for the alternative benefit package under WAC 182-501-0060, categorically needy or medically needy scope of care under WAC 182-533-0400(2);

(b) Have an agency-approved medical provider who has accepted responsibility for the planned home birth or birth in birthing center under this section;

(c) Are expected to deliver the child vaginally and without complication (i.e., with a low risk of adverse birth outcome); and

(d) Pass the agency's risk screening criteria. The agency provides these risk-screening criteria to qualified medical services providers.

(2) **Qualified providers.** Only the following provider types may be reimbursed for planned home births and births in birthing centers:

(a) Physicians licensed under chapters 18.57 or 18.71 RCW;

(b) Nurse midwives licensed under chapter 18.79 RCW; and

(c) Midwives licensed under chapter 18.50 RCW.

**(3) Birthing center requirements.**

(a) Each participating birthing center must:

(i) Be licensed as a childbirth center by the department of health (DOH) under chapter ((246-349)) 246-329 WAC;

(ii) Be specifically approved by the agency to provide birthing center services;

(iii) Have a valid core provider agreement with the agency; and

(iv) Maintain standards of care required by DOH for licensure.

(b) The agency suspends or terminates the core provider agreement of a birthing center if it fails to maintain DOH standards cited in (a) of this subsection.

**(4) Home birth or birthing center providers.** Home birth or birthing center providers must:

(a) Obtain from the client a signed consent form in advance of the birth;

(b) Follow the agency's risk screening criteria and consult with, or refer the client or newborn to, a physician or hospital when medically appropriate;

(c) Have current, written, and appropriate plans for consultation, emergency transfer and transport of a client or newborn to a hospital;

(d) Make appropriate referral of the newborn for pediatric care and medically necessary follow-up care;

(e) Inform parents of required prophylactic eye ointment and newborn screening tests for heritable or metabolic disorders, and congenital heart defects, and send the newborn's blood sample to the DOH for testing. Parents may refuse these services for religious reasons under RCW 70.83.020. The provider must obtain the signature from the parent(s) on:

(i) The reverse side of the screening card to document refusal of screenings for heritable or metabolic disorders; and

(ii) A waiver form to document refusal of prophylactic eye ointment or a screening for congenital heart defects;

(f) Inform parents of the benefits and risks of Vitamin K injections for newborns; and

(g) Have evidence of current cardiopulmonary resuscitation (CPR) training for:

(i) Adult CPR; and

(ii) Neonatal resuscitation.

**(5) Planned home birth providers.** Planned home birth providers must:

(a) Provide medically necessary equipment, supplies, and medications for each client;

(b) Have arrangements for twenty-four hour per day coverage;

(c) Have documentation of contact with local area emergency medical services to determine the level of response capability in the area; and

(d) Participate in a formal, state-sanctioned, quality assurance improvement program or professional liability review process.

**(6) Limitations.** The agency does not cover planned home births or births in birthing centers for women identified with any of the following conditions:

(a) Previous cesarean section;

(b) Current alcohol or drug addiction or abuse;

(c) Significant hematological disorders or coagulopathies;

(d) History of deep venous thrombosis or pulmonary embolism;

(e) Cardiovascular disease causing functional impairment;

(f) Chronic hypertension;

(g) Significant endocrine disorders including preexisting diabetes (type I or type II);

(h) Hepatic disorders including uncontrolled intrahepatic cholestasis of pregnancy or abnormal liver function tests;

(i) Isoimmunization, including evidence of Rh sensitization or platelet sensitization;

(j) Neurologic disorders or active seizure disorders;

(k) Pulmonary disease;

(l) Renal disease;

(m) Collagen-vascular diseases;

(n) Current severe psychiatric illness;

(o) Cancer affecting the female reproductive system;

(p) Multiple gestation;

(q) Breech presentation in labor with delivery not imminent; or

(r) Other significant deviations from normal as assessed by the provider.

**WSR 20-02-070**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

[Filed December 26, 2019, 9:49 a.m., effective January 26, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending this chapter to clarify the frequency of reconciliations, and to update timelines standards criteria for enrollment of rural health clinics to include receipt of medicare certification letter. The agency is also amending this chapter to clarify that the agency covers dental services under 42 C.F.R. 491.2.

Citation of Rules Affected by this Order: Amending WAC 182-549-1100, 182-549-1200, 182-549-1300, 182-549-1400, 182-549-1450, and 182-549-1500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 19-23-075 on November 19, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: December 26, 2019.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 18-10-058, filed 4/27/18, effective 5/28/18)

**WAC 182-549-1100 Rural health clinics—Definitions.** This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or chapter 182-500 WAC, the definitions found in the Webster's New World Dictionary apply.

**"APM index"** - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI).

**"Base year"** - The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

**"Encounter"** - A face-to-face visit between a client and a qualified (~~rural health clinic (RHC))~~ RHC provider (e.g., a physician, dentist, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

**"Encounter rate"** - A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

**"Enhancements (also called managed care enhancements or supplemental payments)"** - A monthly amount paid (~~for each client enrolled with a managed care organization (MCO). MCOs may contract with RHCs to provide services under managed care programs. RHCs receive enhancements from the medicare agency in addition to the negotiated payments they receive from the MCOs for services provided to enrollees~~) by the agency to RHCs through a managed care organization (MCO) that has contracted with the RHC to provide services to clients enrolled with the MCO. The enhancement is in addition to the negotiated payment that RHCs receive from the MCO. RHCs participating in the payment method described in WAC 182-549-1450 (5)(b) do not receive enhancements.

**"Fee-for-service"** - A payment method the agency uses to pay providers for covered medical services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program, except those services provided under the agency's prepaid managed care organizations or those services that qualify for an encounter payment.

**"Interim rate"** - The rate established by the agency to pay a rural health clinic for covered RHC services prior to the establishment of a permanent rate for that facility.

**"Medicare cost report"** - The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

**"Mobile unit"** - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

**"Permanent unit"** - The objects, equipment, and supplies necessary for the provision of the services furnished directly by the RHC are housed in a permanent structure.

**"Rebasing"** - The process of recalculating encounter rates using actual cost report data.

**"Rural area"** - An area that is not delineated as an urbanized area by the U.S. Census Bureau.

**"Rural health clinic (RHC)"** - A clinic, as defined in 42 C.F.R. 405.2401(b), that is primarily engaged in providing RHC services and is:

- Located in a rural area designated as a shortage area as defined under 42 C.F.R. 491.2;
- Certified by medicare as an RHC in accordance with applicable federal requirements; and
- Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

**"Rural health clinic (RHC) services"** - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 C.F.R. Part 491.9.

**AMENDATORY SECTION** (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

**WAC 182-549-1200 Rural health clinics—Enrollment.** (1) To participate in the Title XIX (medicaid) program or the Title XXI (CHIP) program and receive payment for services, a rural health clinic (RHC) must:

- (a) Receive RHC certification for participation in the Title XVIII (medicare) program according to 42 C.F.R. 491;
- (b) Sign a core provider agreement with the medicaid agency;

- (c) Comply with the clinical laboratory improvement amendments (CLIA) of 1988 testing for all laboratory sites per 42 C.F.R. Part 493; and

- (d) Operate in accordance with applicable federal, state, and local laws.

- (2) An RHC may be a permanent or mobile unit. If an entity owns clinics in multiple locations, each individual site must be certified by the (~~medicaid~~) agency in order to receive reimbursement from the agency as an RHC.

- (3) The agency uses one of two timeliness standards for determining the effective date of a medicaid-certified RHC.

- (a) The agency uses medicare's effective date if the RHC returns a properly completed core provider agreement and RHC enrollment packet within sixty days from the date of medicare's letter notifying the clinic of the medicare certification.

(b) The agency uses the date the ~~((signed core provider agreement is received))~~ medicare certification letter is received by the agency if the RHC returns the properly completed core provider agreement and RHC enrollment packet after sixty days of the date of medicare's letter notifying the clinic of the medicare certification.

**AMENDATORY SECTION** (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

**WAC 182-549-1300 Rural health clinics—Services.**

(1) Rural health clinic (RHC) services are defined under 42 C.F.R. 440.20(b).

(2) The medicaid agency pays for RHC services when they are:

(a) Within the scope of a client's benefit package. ~~((Refer to))~~ See WAC 182-501-0060; and

(b) Medically necessary as defined in WAC 182-500-0070.

(3) RHC services may be provided by any of the following individuals in accordance with 42 C.F.R. 405.2401, 491.7, and 491.8:

- (a) Physicians;
- (b) Physician assistants (PA);
- (c) Nurse practitioners (NP);
- (d) Nurse midwives or other specialized nurse practitioners;
- (e) Certified nurse midwives;
- (f) Registered nurses (RN) or licensed practical nurses (LPN); ~~((and))~~
- (g) Psychologists or clinical social workers; and
- (h) Dental services specified in 42 C.F.R. Sec. 440.100.

**AMENDATORY SECTION** (Amending WSR 17-12-016, filed 5/30/17, effective 7/1/17)

**WAC 182-549-1400 Rural health clinics—Reimbursement and limitations.** (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency ~~((calculates))~~ calculated RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM ~~((utilizes))~~ used the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates ~~((are))~~ were increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result ~~((is))~~ was the year 2009 APM rates for each RHC that ~~((chooses))~~ chose to be reimbursed under the APM.

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM ~~((will be))~~ are at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an ~~((RHC's))~~ RHC submits its first audited medicare cost report ~~((is available))~~ to the agency, the agency pays the RHC an average encounter rate of other similar RHCs ~~((whether the RHC is classified as hospital-based or free-standing))~~ within the state, otherwise known as an interim rate. Similar RHCs are defined as either all hospital based or all free-standing RHCs;

(b) Upon ~~((availability))~~ submission of the RHC's first audited medicare cost report, the agency sets RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the RHC has provided during the time period covered in the audited cost report. RHCs receive this rate for the remainder of the calendar year during which the audited cost report became available to the agency. The agency then increases the encounter rate ~~((is then increased))~~ each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively using a weighted average of one hundred percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

(6) This subsection describes the encounter rates that the agency ~~((pays))~~ paid RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC ~~((has))~~ had the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM (~~((uses))~~ used) each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency (~~((will recoup))~~ recouped) from RHCs any amount paid in excess of the encounter rate established in this section. This process (~~((is))~~ was) specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates (~~((will be))~~ are) increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency (~~((will recoup))~~ recouped) from RHCs any amount paid in excess of the encounter rate established in this section. This process (~~((is))~~ was) specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency (~~((will))~~ periodically rebases) the encounter rates using the RHC cost reports and other relevant data. Rebasing (~~((will be))~~ is) done only for RHCs that are reimbursed under the APM.

(e) The agency (~~((will ensure))~~ makes sure) that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating RHCs for services provided beginning July 1, 2017.

(a) Each RHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, base-line per member per month (PMPM) rate for each RHC. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the RHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the RHC a PMPM payment each month in addition to the amounts the MCO pays the RHC.

(iv) The agency may prospectively adjust the RHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) RHC encounter rate changes.

~~((iv))~~ (v) In accordance with 42 U.S.C. 1396a (bb)(5) (A), the agency performs an annual reconciliation.

(A) If the RHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(~~((iii))~~) (iv) of this subsection.

(B) If the RHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(~~((iii))~~) (iv) of this subsection.

AMENDATORY SECTION (Amending WSR 17-22-070, filed 10/27/17, effective 1/1/18)

**WAC 182-549-1450 Rural health clinics—General payment information.** (1) The medicaid agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(2) Rural health clinic (RHC) services and supplies incidental to the provider's services are included in the encounter rate payment.

(3) The agency pays for non-RHC services provided in an RHC on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(4) For clients enrolled with a managed care organization (MCO), that MCO pays for covered RHC services (~~((are paid for by the MCO))~~).

(5) For clients enrolled with MCOs, the RHC receives an encounter rate using either the method described in (a) or (b) of this subsection.

(a) (~~((The agency makes supplemental payments, called enhancements, to the MCOs who distribute them to the RHCs. These payments are in addition to the amounts paid to the RHC by the MCO as described in subsection (4) of this section.))~~ RHCs receive an enhancement payment in addition to the MCO's negotiated payment. The ~~((supplemental))~~ agency makes enhancement payments (~~((are paid))~~) in amounts necessary to (~~((ensure))~~ make sure) that the RHC receives the full encounter rate to comply with 42 U.S.C. 1396a (bb)(5) (A).

(i) The RHCs receive a monthly enhancement payment for each managed care client assigned to them by an MCO.

(ii) To (~~((ensure))~~ make sure) that each RHC receives the appropriate amounts (~~((are paid to each RHC))~~), the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency (~~((will))~~ compares) the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter

rate) less the fee-for-service equivalent of MCO services. If the RHC has been overpaid, the agency (~~(will)~~) recoups the appropriate amount. If the RHC has been underpaid, the agency (~~(will)~~) pays the difference. For dates of service on and after January 1, 2018, reconciliations (~~(will be)~~) are conducted in the calendar year following the calendar year for which the enhancements were paid. Reconciliations (~~(will be)~~) are conducted by the agency or the clinic with final review and approval by the agency. The process of settling over or under payments may extend beyond the calendar year in which the reconciliations were conducted.

(b) Effective January 1, 2018, instead of distributing monthly enhancement payments to the RHCs, MCOs (~~(will)~~) pay the full encounter rate directly to participating clinics for encounter-eligible services.

(i) RHC participation in this option is voluntary. The RHC must notify the agency in writing whether it will participate or not by no later than November 1st prior to the year of participation.

(ii) The agency performs (~~(an annual)~~) a reconciliation with the MCO as outlined in the MCO contract. Reconciliations (~~(ensure)~~) make sure appropriate amounts are paid to each RHC and that MCOs are not put at risk for, or have any right to, the enhancement portion of the claim. If an MCO has been overpaid, the agency (~~(will)~~) recoups the appropriate amount. If an MCO has been underpaid, the agency (~~(will)~~) pays the difference.

(iii) RHCs participating in the revised alternative payment method (APM) as described in WAC 182-549-1400(8) (~~(will)~~) are not (~~(be)~~) eligible to receive encounter payments directly from MCOs under this section.

(6) Only those services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for services provided to clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

AMENDATORY SECTION (Amending WSR 15-05-020, filed 2/9/15, effective 3/12/15)

**WAC 182-549-1500 Rural health clinics—Change in scope of service rate adjustment.** In accordance with 42 U.S.C. 1396a (bb)(3)(B), the agency (~~(will)~~) adjusts its payment rate to a rural health clinic (RHC) to take into account any increase or decrease in the scope of the RHC's services. The procedures and requirements for any such rate adjustment are described below.

**(1) Triggering events.**

(a) An RHC may file a change in scope of services rate adjustment application on its own initiative only when:

(i) The cost to the RHC of providing covered health care services to eligible clients has increased due to one or more of the following:

(A) A change in the type of health care services the RHC provides;

(B) A change in the intensity of health care services the RHC provides. Intensity means the total quantity of labor and

materials consumed by an individual client during an average encounter has increased;

(C) A change in the duration of health care services the RHC provides. Duration means the length of an average encounter has increased;

(D) A change in the amount of health care services the RHC provides in an average encounter;

(E) Any change comparable to (a)(i)(A) through (D) of this subsection in which the type, intensity, duration or amount of services has decreased and the cost of an average encounter has decreased; and

(ii) The cost change equals or exceeds:

(A) An increase of one and three-quarters percent in the prospective payment system (PPS) rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate;

(B) A decrease of two and one-half percent in the PPS rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate; or

(C) A cumulative increase or decrease of five percent in the PPS rate per encounter as compared to the current year's cost per encounter; and

(iii) The costs reported to the agency to support the proposed change in scope rate adjustment are reasonable under state and federal law.

(b) At any time, the agency may instruct the RHC to file a cost report with a statement of whether the RHC asserts that its PPS rate should be increased or decreased due to a change in the scope of services (the RHC "position statement").

(i) The RHC must file a completed cost report and position statement no later than ninety calendar days after receiving the instruction from the agency to file an application;

(ii) The agency reviews the RHC's cost report and position statement (~~(will be reviewed)~~) under the same criteria listed above for an application for a change in scope adjustment;

(iii) The agency (~~(will)~~) does not request more than one change in scope in a calendar year.

**(2) Filing requirements.**

(a) The RHC may apply for a prospective change in scope of service rate adjustment, a retrospective change in scope of service rate adjustment, or both, in a single application.

(i) Unless instructed to file an application by the agency, the RHC may file no more than one change in scope of service application per calendar year; however, more than one type of change in scope may be included in a single application.

(ii) The RHC must file for a change in scope of service rate adjustment no later than ninety days after the end of the calendar year in which the RHC believes the change in scope occurred or in which the RHC learned that the cost threshold in subsection (1)(a)(ii) of this section was met, whichever is later.

(b) Prospective change in scope.

(i) To file a prospective change in scope of service rate adjustment application, the RHC must submit projected costs sufficient to establish an interim rate. A prospective change is a change the RHC plans to implement in the future. The

interim rate adjustment (~~((will go))~~) goes into effect after the change takes effect.

(ii) The interim rate is subject to the post change in scope review and rate adjustment process defined in subsection (5) of this section.

(iii) If the change in scope occurs fewer than ninety days after the RHC submitted a complete application to the agency, the interim rate must take effect no later than ninety days after the complete application was submitted to the agency.

(iv) If the change in scope occurs more than ninety days but fewer than one hundred eighty days after the RHC submitted a complete application to the agency, the interim rate takes effect when the change in scope occurs.

(v) If the RHC fails to implement a change in service identified in its prospective change in scope of service rate adjustment application within one hundred eighty days, the application is void and the RHC may resubmit the application to the agency, in which case, (a)(i) of this subsection does not apply.

(c) Retrospective change in scope.

(i) A retrospective change in scope of service rate adjustment application must state each qualifying event listed in subsection (1)(a)(i) of this section that supports its application and include twelve months of data documenting the cost change caused by the qualifying event. A retrospective change in scope is a change that took place in the past and the RHC is seeking to adjust its rate based on that change.

(ii) If approved, a retrospective rate adjustment takes effect on the date the RHC filed the complete application with the agency.

**(3) Supporting documentation.**

(a) To apply for a change in scope of service rate adjustment, the RHC must include the following documentation in the application:

(i) A narrative description of the proposed change in scope;

(ii) A description of each cost center on the cost report that was or will be affected by the change in scope;

(iii) The RHC's most recent audited financial statements, if audit is required by federal law;

(iv) The implementation date for the proposed change in scope; and

(v) Any additional documentation requested by the agency.

(b) A prospective change in scope of service rate adjustment application must also include a projected medicare cost report with supplemental schedules necessary to identify the medicare cost per visit for the twelve-month period following implementation of the change in scope.

(c) A retrospective change in scope of service rate adjustment application must also include the medicare cost report with supplemental schedules necessary to identify the medicare cost per visit and encounter data for twelve months or the fiscal year following implementation of the proposed change in scope.

**(4) Review of the application.**

(a) Application processing.

(i) The agency (~~((must))~~) reviews the application for completeness, accuracy, and compliance with program rules.

(ii) Within sixty days of receiving the application, the agency (~~((must notify))~~) notifies the RHC of any deficient documentation or requests any additional information that is necessary to process the application.

(iii) Within ninety days of receiving a complete application, the agency (~~((must))~~) sends the RHC:

(A) A decision stating whether it will implement a PPS rate change; and

(B) A rate-setting statement.

(iv) Failure to act within ninety days (~~((will))~~) means that the change is considered denied by the agency and the RHC may appeal the decision as provided for in subsection (6) of this section.

(b) Determining rate for change in scope.

(i) The agency (~~((must))~~) sets an interim rate for prospective changes in scope by adjusting the RHC's existing rate by the projected average cost per encounter of any approved change. The agency (~~((will))~~) reviews the costs to determine if they are reasonable, and sets a new interim rate based on the determined cost per encounter.

(ii) The agency (~~((must))~~) sets an adjusted encounter rate for retrospective changes in scope by adjusting the RHC's existing rate by the documented average cost per encounter of the approved change. Projected costs per encounter may be used if there are insufficient historical data to establish the rate. The agency (~~((will))~~) reviews the costs to determine whether they are reasonable, and sets a new rate based on the determined cost per encounter.

(c) If the RHC is paid under an alternative payment methodology (APM), any change in scope of service rate adjustment (~~((requested))~~) approved by the (~~((RHC will modify))~~) agency modifies the PPS rate in addition to the APM.

(d) The agency may delegate the duties related to application processing and rate setting to a third party. The agency retains final authority for making decisions related to changes in scope.

**(5) Post change in scope of services rate adjustment review.**

(a) If the change in scope application was based on a year or more of actual encounter data, the agency may conduct a post change in scope rate adjustment review.

(b) If the change in scope application was based on less than a full year of actual encounter data, the RHC must submit the following information to the agency within eighteen months of the effective date of the rate adjustment:

(i) Medicare cost report with supplemental schedules necessary to identify the medicare cost per visit and encounter data for twelve consecutive months of experience following implementation of the change in scope; and

(ii) Any additional documentation requested by the agency.

(c) The agency (~~((will))~~) conducts the post change in scope review within ninety days of receiving the cost report and encounter data from the RHC.

(d) If necessary, the agency (~~((will))~~) adjusts the encounter rate within ninety days to (~~((ensure))~~) make sure that the rate reflects the reasonable cost of the change in scope of services.

(e) A rate adjustment based on a post change in scope review (~~((will))~~) takes effect on the date the agency issues its adjustment. The new rate (~~((will be))~~) is prospective.



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(f) If the RHC fails to submit the post change in scope cost report or related encounter data, the agency (~~must~~) provides written notice to the clinic of the deficiency within thirty days.

(g) If the RHC fails to submit required documentation within five months of this deficiency notice, the agency may reinstate the prechange in scope encounter rate going forward from the date the interim rate was established. The agency may recoup any overpayment to the RHC ((may be recouped by the agency)).

(6) **Appeals.** Appeals of agency action under this section are governed by WAC 182-502-0220, except that any rate change begins on the date the agency received the change in scope of services rate adjustment application.

### WSR 20-02-071

#### PERMANENT RULES

#### POLLUTION LIABILITY INSURANCE AGENCY

[Filed December 26, 2019, 11:37 a.m., effective January 26, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amends and expands the agency's technical assistance program to the owners and operators of petroleum underground storage tanks.

Citation of Rules Affected by this Order: Amending chapter 374-80 WAC.

Statutory Authority for Adoption: RCW 70.149.040.

Adopted under notice filed as WSR 19-20-122 on October 2, 2019, [and WSR 19-23-003 on November 6, 2019].

Changes Other than Editing from Proposed to Adopted Version: The amendments clarify program procedures to include: (1) How to notify PLIA of suspected and confirmed releases; (2) how PLIA conducts an initial investigation of a heating oil tank release; (3) describes environmental covenants where PLIA is the holder; and (4) identifies the process by which PLIA issues an opinion on whether actions meet the substantive requirements of the Model Toxics Control Act. This rule also increases the fee for the heating oil technical assistance program to \$1,000 per an applicant.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 26, 2019.

### Chapter 374-80 WAC

#### ((HEATING OIL TANKS)) ADVICE AND TECHNICAL ASSISTANCE PROGRAM

AMENDATORY SECTION (Amending WSR 03-06-015, filed 2/21/03, effective 3/24/03)

**WAC 374-80-010 Authority and purpose.** The purpose of this chapter is to establish a program for providing technical assistance ~~((to the owners and operators of active or abandoned heating oil tanks if contamination resulting from a release from a heating oil tank is suspected))~~ to a person regarding a release or suspected release of (1) heating oil from an active, decommissioned, or abandoned heating oil tank; or (2) petroleum from a qualified petroleum storage tank system. Under this program, the agency will provide advice and technical assistance regarding a completed or proposed independent remedial action and application of chapters 70.149 and 70.105D RCW.

Any opinion provided by the agency under this program is advisory only and not binding upon either the agency or the department of ecology. Participation in this program is not a settlement with the state under the Model Toxics Control Act. Persons conducting independent remedial actions do so at their own risk, and may be required to take additional remedial actions by the department of ecology if such actions are determined to be necessary under the Model Toxics Control Act.

AMENDATORY SECTION (Amending WSR 97-20-094, filed 9/29/97, effective 10/30/97)

**WAC 374-80-020 Definitions.** Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a consumptive use heating oil tank system that has been abandoned or decommissioned and is no longer in service or use.

(2) "Active heating oil tank" means a consumptive use heating oil tank that is in use.

(3) "Agency" means the Washington state pollution liability insurance agency (PLIA).

(4) ~~((("Corrective action" means those actions reasonably required to be under taken by an owner or operator to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order or similar legal requirement, at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington.~~

~~(5))~~ "Applicant" means the person seeking advice and assistance from the petroleum technical assistance program, whose application has been accepted by the agency.

(5) "Decommissioned heating oil tank" means a heating oil tank system that has been removed from operation by an approved method such as abandonment in place (e.g., clean-

ing and filling with an inert material) or by removal from the ground.

(6) "Director" means the director of the Washington state pollution liability insurance agency.

~~((6))~~ (7) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuel in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or ~~((for industrial processing or))~~ the generation of electrical energy or waste oil, hoists, pipelines, spills from transportation or a form of transport.

~~((7))~~ "Owner" means the person, or his or her authorized representative, legally responsible for an active or abandoned heating oil tank, its contents, and the premises upon which the heating oil tank is located.

(8) "Owner or operator" means a person in control of, or having the responsibility for, the daily operation of a heating oil tank.

~~((9))~~ (8) "Heating oil tank system" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located.

(9) "MTCA" means the Model Toxics Control Act, chapter 70.105D RCW and implementing regulations in chapters 173-340 and 173-204 WAC.

(10) "Petroleum" means any petroleum-based substance including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. The term petroleum includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, mineral spirits, Stoddard solvents, waste oils and heating oils. The term petroleum does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute.

(11) "Petroleum storage tank system" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other substances. The systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. "Petroleum storage tank system" does not include any storage tank system regulated under chapter 70.105 RCW.

(12) "Program" means petroleum technical assistance program.

(13) "Qualified petroleum storage tank system" means a storage tank system that has been identified as eligible for services under the petroleum technical assistance program by the department of ecology based on the relative risk posed by the release to human health and the environment.

(14) "Release" means any intentional or unintentional entry of ~~((heating oil))~~ petroleum into the environment~~((-~~

~~((10))~~ "Service provider" means an independent contractor responsible for site assessment, testing or analysis of the results of testing.

~~((11))~~ "Site assessment" means an investigation of a heating oil tank site to determine if a release of heating oil has occurred.

~~((12))~~ "Sampling and testing" means an approved and recognized technique(s) or procedure(s) for measuring or determining the presence and extent of hydrocarbons in soil and/or water, including, but not limited to, a spill, leak, emission, escape, or leaching into the environment.

(15) "Remedial action" has the same meaning as defined in RCW 70.105D.020.

(16) "Sampling and testing" means a PLIA-approved and recognized technique(s) or procedure(s) for measuring or determining the presence and extent of hydrocarbons in soil and/or water.

(17) "Site" has the same meaning as "facility" as defined in RCW 70.105D.020.

(18) "Site characterization" means an investigation of the nature and extent of the release.

**AMENDATORY SECTION** (Amending WSR 03-06-015, filed 2/21/03, effective 3/24/03)

**WAC 374-80-040 Procedures.** ~~((1))~~ The agency will provide, as resources permit, technical assistance to the owners and operators of active or abandoned heating oil tanks if contamination resulting from a release from an active or abandoned heating oil tank is suspected. Technical assistance regarding administrative requirements may include observation of testing, site assessment, as well as review of the results of reports and other appropriate review activities approved by the director.

(2) Such technical assistance will be provided only upon request by the owner of a heating oil tank. If the operator of a heating oil tank is not the owner, the operator must provide the agency with specific written authorization of the owner before technical assistance is provided, or before a site is visited by a representative of the agency.

(3) To receive technical assistance under this program, the owner or operator of an active or abandoned heating oil tank must submit an application, provided by the agency, requesting advice and assistance, and agreeing to the terms of the program.

(4) Upon receipt of a request for technical assistance, the agency will provide the tank owner or operator:

- (a) Information regarding procedures for the program;
- (b) An application requesting technical assistance;
- (c) An agreement between the tank owner and the agency regarding the procedures and reimbursement requirements of the program.

(5) Technical assistance provided under the program may include:

- (a) Observation of sampling and testing, site assessment or other appropriate assessments scheduled by the tank owner;
- (b) Interpretation of the results of testing and/or assessment(s);

(c) A report from PLIA to the heating oil tank owner of the results of testing and/or assessment(s); and

(d) Other appropriate activities approved by the director.

(6) The heating oil tank owner or operator will select a service provider to perform sampling and testing, site assessment or other appropriate assessments. The tank owner or operator will enter into an agreement with the service provider regarding scope or extent of work and fees for services.

(7) Technical assistance will be provided only if sampling and testing as well as site assessment are performed in accordance with sampling, testing and assessment protocols approved by the director.

(8) The original copy of the results of all testing and site assessment activities must be forwarded to the agency for review and evaluation.

(9) Upon completion of review and evaluation, the agency will, in writing, inform the heating oil tank owner of the results of review and assessment of data. The agency report will note whether it appears there is or is not contamination present at the site. If contamination is discovered, the report will note whether or not the contamination appears to be a threat to human health and the environment. If the contamination does appear to be a threat to human health and the environment, the heating oil tank owner will be advised of the requirement for corrective action. The determination as to whether or not the contamination appears to be a threat to human health and the environment will be made in accordance with the terms and requirements of the Model Toxics Control Act (chapter 70.105D RCW) and its regulations (chapter 173-340 WAC).))

**(1) Application.** To receive advice and technical assistance under this program, a person who is conducting or otherwise interested in independent remedial actions where there is a suspected or confirmed release of petroleum or heating oil from a qualified petroleum storage tank system or a heating oil tank, must submit an application provided by the agency requesting advice and assistance and agreeing to the terms of the program.

**(2) Eligibility.** An applicant that has received funding from the PLIA underground storage tank loan and grant program; the heating oil pollution liability insurance program; or the commercial underground storage tank reinsurance program are presumed eligible for the program unless a specific determination is made by PLIA or the department of ecology that the applicant does not have a qualified petroleum storage tank system.

**(3) Services.** The agency may provide the following advice and technical assistance under the program:

(a) Observe and/or interpret the results of sampling and testing, site characterization results, or other appropriate assessments conducted by the applicant;

(b) Provide technical assistance on how to meet the substantive requirements of MTCA;

(c) Review planned independent remedial actions for a site or property and provide written opinions on whether further remedial action is likely necessary to meet the substantive requirements of MTCA;

(d) Review completed independent remedial actions for a site or property and provide written opinions on whether further remedial action is necessary to meet the substantive requirements of MTCA; and

(e) Other appropriate activities approved by the director.

(4) The applicant may select an independent contractor to perform site characterization, sampling and testing, or other remedial actions. The independent contractor is not to be considered for any purpose an employee or agent of PLIA. The applicant will enter into an agreement with the contractor regarding scope or extent of work and fees for services.

**(5) Sampling, testing, and site characterization protocols.** The agency will provide requested advice and technical assistance only if sampling, testing, and site characterization are performed in accordance with protocols approved by the director.

**(6) Rescinding opinions.** The agency may rescind a no further action determination if PLIA's understanding of the conditions at the site change and the site no longer meets the substantive requirements of MTCA.

(a) Where the issues are minor or administrative in nature, the agency will provide the applicant with a notice of suspension detailing the issues to be addressed. The applicant will have sixty days to address the issues. If the issues are addressed to PLIA's satisfaction, the notice of suspension will be removed. If the issues are not addressed to PLIA's satisfaction, the agency will issue a letter rescinding the no further action determination. PLIA may notify the department of ecology of this action.

(b) Where the issues are substantive in nature, the agency will issue a letter rescinding the no further action determination. PLIA will notify the department of ecology of this action.

## NEW SECTION

**WAC 374-80-045 Environmental covenant.** (1) **Consultation.** Where PLIA issues a written opinion under this program, and the remedial action requires an environmental covenant, PLIA must consult with and seek comment on the draft environmental covenant from a city or county department with land use planning authority for real property subject to the covenant. The consultation and opportunity for comment must take place before the property owner records the environmental covenant.

(2) **Periodic review.** Where PLIA has issued a written opinion under this program, and the remedial action requires an environmental covenant, PLIA must conduct a review of the effectiveness of the environmental covenant periodically. The agency must conduct the periodic review at least once every five years.

(3) **Violation.** If the terms of the environmental covenant are not complied with, the agency may rescind the no further action determination.

(a) Where the issues are minor or administrative in nature, the agency will provide the applicant with a notice of suspension detailing the issues to be addressed. The applicant must address the issues within sixty days. If the issues are addressed to PLIA's satisfaction, the notice of suspension will be removed. If the issues are not addressed to PLIA's satisfaction, the agency will issue a letter rescinding the no further action determination. PLIA may notify the department of ecology of this action.

(b) Where the issues are substantive in nature, the agency will issue a letter rescinding the no further action determination. PLIA will notify the department of ecology of this action.

(4) **Termination.** If the conditions at the site requiring an environmental covenant no longer exist, the property owner may petition the agency to have the covenant terminated. PLIA will seek public comment on the proposed termination of the environmental covenant. If, after the public comment period, PLIA agrees to termination of the environmental covenant, the agency will seek termination by consent of the covenant.

(5) **Reimbursement.** The agency may recover costs related to environmental covenants from the applicant and/or the property owner. These costs are not covered by WAC 374-80-050.

AMENDATORY SECTION (Amending WSR 03-06-015, filed 2/21/03, effective 3/24/03)

**WAC 374-80-050 Reimbursement.** (1) The agency ~~((shall collect, from the heating oil tank owner or operator requesting technical assistance, the costs incurred in providing such advice and assistance.~~

~~(2) Funds received by the agency from cost reimbursement must be deposited in the heating oil pollution liability trust account.~~

~~(3) Costs incurred that shall be covered in reimbursement may include travel costs and expenses associated with monitoring site assessment, review of reports and analyses and preparation of written opinions and conclusions. The fee for such technical assistance will be \$350.00.~~

~~(4) The fee must be paid prior to the agency issuing its report of review and assessment of data.)~~ must collect, from the applicant, a fee to cover the costs incurred in providing advice and technical assistance under the program.

(2) The fee for providing advice and technical assistance under this program is:

(a) One thousand dollars if there is a release or suspected release of heating oil from an active, decommissioned, or abandoned heating oil tank system.

(b) Seven thousand five hundred dollars if there is a release or threatened release of petroleum from a qualified petroleum storage tank system.

(3) The applicant must pay the fee upon acceptance into the program. No advice or technical assistance will be provided until the fee has been paid.

(4) The fee is nonrefundable. However, if the agency determines that an applicant's petroleum storage tank system is ineligible after the applicant enters the program, the agency may refund the fee.

(5) Fees received by the agency under the program must be deposited in the heating oil pollution liability trust account.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 374-80-030 Communications.

#### WSR 20-02-072

#### PERMANENT RULES

#### BUILDING CODE COUNCIL

[Filed December 26, 2019, 1:21 p.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: The purpose of this permanent rule making is to amend the 2018 Uniform Plumbing Code, as directed by the state building code council on November 8, 2019. The implementation date is July 1, 2020.

Citation of Rules Affected by this Order: Amending 9.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 19-16-154 on August 7, 2019.

Changes Other than Editing from Proposed to Adopted Version: Proposed changes to WAC 51-56-0400, water consumption table 407.2 was modified; and proposed changes to WAC 51-56-0800, 807.3 was struck.

A final cost-benefit analysis is available by contacting Richard Brown, 1500 Jefferson Street S.E., phone 360-407-9277, email Richard.Brown@des.wa.gov, website www.sbcc.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 9, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 8, 2019.

Doug Orth  
Chair

AMENDATORY SECTION (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

**WAC 51-56-003 Uniform Plumbing Code.** The ~~((2015))~~ 2018 edition of the Uniform Plumbing Code, including Appendices A, B, and I, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted by reference with the following additions, deletions and exceptions: Provided that chapters 12 and 14 of this code are not adopted. Provided further, that those requirements of the Uniform Plumbing Code relating to venting and combustion air of fuel fired appliances as found in chapter 5 and those portions of the code addressing building sewers are not adopted.

AMENDATORY SECTION (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

**WAC 51-56-008 Implementation.** The Uniform Plumbing Code adopted by chapter 51-56 WAC shall become effective in all counties and cities of this state on July 1, ((2016)) 2020.

AMENDATORY SECTION (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

**WAC 51-56-0200 Chapter 2—Definitions.**

**205.0 Certified Backflow Assembly Tester** - A person certified by the Washington state department of health under chapter 246-292 WAC to inspect (for correct installation and approval status) and test (for proper operation), maintain and repair (in compliance with chapter 18.106 RCW) backflow prevention assemblies, devices and air gaps.

**210.0 Hot Water** - Water at a temperature exceeding or equal to 100°F.

**211.0 Insanitary** - A condition that is contrary to sanitary principles or is injurious to health. Conditions to which "insanitary" shall apply include the following:

- (1) A trap that does not maintain a proper trap seal.
- (2) An opening in a drainage system, except where lawful, that is not provided with an approved liquid-sealed trap.
- (3) A plumbing fixture or other waste discharging receptor or device that is not supplied with water sufficient to flush and maintain the fixture or receptor in a clean condition, except as otherwise provided in this code.
- (4) A defective fixture, trap, pipe, or fitting.
- (5) A trap, except where in this code exempted, directly connected to a drainage system, the seal of which is not protected against siphonage and backpressure by a vent pipe.
- (6) A connection, cross-connection, construction, or condition, temporary or permanent, that would permit or make possible by any means whatsoever for an unapproved foreign matter to enter a water distribution system used for domestic purposes.
- (7) The foregoing enumeration of conditions to which the term "insanitary" shall apply, shall not preclude the application of that term to conditions that are, in fact, insanitary.

**218.0 Plumbing System** - Includes all potable water, building supply and distribution pipes, all reclaimed or other alternate source water systems, all rainwater systems, all plumbing fixtures and traps, all drainage and vent pipe(s), and all building drains including their respective joints and connection, devices, receptors, and appurtenances within the property lines of the premises and shall include potable water piping, potable water treating or using equipment, medical gas and medical vacuum systems, and water heaters: Provided, That no certification shall be required for the installation of a plumbing system within the property lines and outside a building.

**221.0 Spray Sprinkler Body** - The exterior case or shell of a sprinkler incorporating a means of connection to the piping system designed to convey water to a nozzle or orifice.

**225.0 Water Heater (consumer electric storage)** - A consumer product that uses electricity as the energy source to heat domestic potable water, has a nameplate input rating of twelve kilowatts or less, contains nominally forty gallons but no more than one hundred twenty gallons of rated hot water storage volume, and supplies a maximum hot water delivery temperature less than one hundred eighty degrees Fahrenheit.

**Water Heater (mini-tank electric)** - A small electric water heater that has a measured storage volume of more than one gallon and a rated storage volume of less than twenty gallons.

**Water/Wastewater Utility** - A public or private entity, including a water purveyor as defined in chapter 246-290 WAC, which may treat, deliver, or do both functions to reclaimed (recycled) water, potable water, or both to wholesale or retail customers.

AMENDATORY SECTION (Amending WSR 17-10-074, filed 5/3/17, effective 6/3/17)

**WAC 51-56-0400 Chapter 4—Plumbing fixtures and fixture fittings.**

**402.5 Setting.** Fixtures shall be set level and in proper alignment with reference to adjacent walls. No water closet or bidet shall be set closer than fifteen (15) inches (381 mm) from its center to any side wall or obstruction nor closer than thirty (30) inches (762 mm) center to center to any similar fixture. The clear space in front of any water closet or bidet shall be not less than twenty-four (24) inches (610 mm). No urinal shall be set closer than twelve (12) inches (305 mm) from its center to any side wall or partition nor closer than twenty-four (24) inches (610 mm) center to center.

- EXCEPTIONS:
- 1. The clear space in front of a water closet, lavatory or bidet in dwelling units and sleeping units shall be not less than 21 inches (533 mm).
  - 2. The installation of paper dispensers or accessibility grab bars shall not be considered obstructions.

**405.4 Application.** No individual, public or private corporation, firm, political subdivision, government agency, or other legal entity, may, for purposes of use in the state of Washington, distribute, sell, offer for sale, import, install, or approve for installation any plumbing fixtures or fittings unless the fixtures or fittings meet the standards as provided for in this chapter.

**407.2 Water Consumption.** The maximum water use allowed in gallons per minute (gpm) or liters per minute (lpm) for any of the following faucets and replacement aerators is the following:

Lavatory faucets	((2.5)) <u>2.2</u> gpm/9.5 lpm
Kitchen faucets	((2.5)) <u>2.2</u> gpm/9.5 lpm
Replacement aerators	((2.5)) <u>2.2</u> gpm/9.5 lpm
Public lavatory faucets other than metering	0.5 gpm/1.9 lpm

**407.4 Metering Valves.** Lavatory faucets located in restrooms intended for use by the general public shall be equipped with a metering valve designed to close by spring or water pressure when left unattended (self-closing).

EXCEPTIONS: 1. Where designed and installed for use by persons with a disability.  
2. Where installed in day care centers, for use primarily by children under 6 years of age.

**408.2 Water Consumption.** Showerheads shall have a maximum flow rate of not more than 2.5 gpm at 80 psi (9.5 L/m at 552 kPa), in accordance with ASME A112.18.1/CSA B125.1.

EXCEPTION: Emergency use showers shall be exempt from the maximum water usage rates.

**408.4 Waste Outlet.** Showers shall have a waste outlet and fixture tailpiece not less than two (2) inches (50 mm) in diameter. Fixture tailpieces shall be constructed from the materials specified in Section 701.1 for drainage piping. Strainers serving shower drains shall have a waterway at least equivalent to the area of the tailpiece.

EXCEPTION: In a residential dwelling unit where a 2 inch waste is not readily available and approval of the AHJ has been granted, the waste outlet, fixture tailpiece, trap and trap arm may be 1-1/2 inch when an existing tub is being replaced by a shower sized per Section 408.6(2). This exception only applies where one shower head rated at 2.5 gpm is installed.

**408.6 Shower Compartments.** Shower compartments, regardless of shape, shall have a minimum finished interior of nine hundred (900) square inches (0.58 m<sup>2</sup>) and shall also be capable of encompassing a thirty (30) inch (762 mm) circle. The minimum required area and dimensions shall be measured at a height equal to the top of the threshold and at a point tangent to its centerline. The area and dimensions shall be maintained to a point of not less than seventy (70) inches (1,778 mm) above the shower drain outlet with no protrusions other than the fixture valve or valves, shower head, soap dishes, shelves, and safety grab bars or rails. Fold-down seats in accessible shower stalls shall be permitted to protrude into the thirty (30) inch (762 mm) circle.

EXCEPTIONS: 1. Showers that are designed to comply with ICC/ANSI A117.1.  
2. The minimum required area and dimension shall not apply for a shower receptor having overall dimensions of not less than thirty (30) inches (762 mm) in width and sixty (60) inches (1,524 mm) in length.

**411.2 Water Consumption.** Water closets shall have a maximum consumption not to exceed 1.6 gallons (6.0 L) of water per flush in accordance with ASME A112.19.2/CSA B45.1. No water closet that operates on a continuous flow or continuous flush basis shall be permitted.

EXCEPTIONS: 1. Water closets located in day care centers, intended for use by young children may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.  
2. Water closets with bed pan washers may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.

3. Blow out bowls, as defined in ANSI/ASME A112.19.2M, Section 5.1.2.3 may have a maximum water use of 3.5 gallons per flush or 13.25 liters per flush.

**412.1 Application.** Urinals shall comply with ASME A112.19.2/CSA B45.1, ASME A112.19.19, or CSA B45.5/IAPMO Z124. Urinals shall have an average water consumption not to exceed 1 gallon (3.8 L) of water per flush. No urinal that operates on a continuous flow or continuous flush basis shall be permitted.

**414.3 Drainage Connection.** Domestic dishwashing machines shall discharge indirectly through an air gap fitting in accordance with Section ((807.4)) 807.3 into a waste receptor, a wye branch fitting on the tailpiece of a kitchen sink, or dishwasher connection of a food waste disposer. Commercial dishwashing machines shall discharge indirectly through an air gap.

**415.2 Drinking Fountain Alternatives.** This section is not adopted. See Building Code chapter 29.

**418.3 Location of Floor Drains.** Floor drains shall be installed in the following areas:

1. Toilet rooms containing two (2) or more water closets or a combination of one (1) water closet and one (1) urinal, except in a dwelling unit. The floor shall slope toward the floor drains.
2. Laundry rooms in commercial buildings and common laundry facilities in multifamily dwelling buildings.

#### **420.0 Sinks**

**420.1 Application.** Sinks shall comply with ASME A112.19.1/CSA B45.2, ASME A112.19.2/CSA B45.1, ASME A112.19.3/CSA B45.4, or CSA B45.5/IAPMO Z124. Moveable sink systems shall comply with ASME A112.19.12.

**420.2 Water Consumption.** Sink faucets shall have a maximum flow rate of not more than 2.2 gpm at 60 psi (8.3 L/m at 414 kPa) in accordance with ASME A112.18.1/CSA B125.1.

EXCEPTION: Clinical sinks, laundry trays, service sinks.

**422.0 Minimum Number of Required Fixtures.** For minimum number of plumbing fixtures required, see Building Code Chapter 29 and Table 2902.1.

Sections 422.1 through 422.5 and Table 422.1 are not adopted.

**AMENDATORY SECTION** (Amending WSR 17-10-074, filed 5/3/17, effective 6/3/17)

#### **WAC 51-56-0500 Chapter 5—Water heaters.**

**501.1 Applicability.** The regulations of this chapter shall govern the construction, location, and installation of fuel burning and other types of water heaters heating potable water. The minimum capacity for water heaters shall be in accordance with the first hour rating listed in Table 501.1(2). See the Mechanical Code for combustion air and installation of all vents and their connectors. No water heater shall be hereinafter installed that does not comply with the manufacturer's installation instructions and the type and model of

each size thereof approved by the authority having jurisdiction. A list of accepted water heater appliance standards is referenced in Table 501(2). Listed appliances shall be

installed in accordance with the manufacturer's installation instructions. Unlisted water heaters shall be permitted in accordance with Section 504.3.2.

TABLE 501.1(2)<sup>1,3</sup>

Number of Bathrooms	1 to 1.5			2 to 2.5				3 to 3.5			
	1	2	3	2	3	4	5	3	4	5	6
Number of Bedrooms	1	2	3	2	3	4	5	3	4	5	6
First Hour Rating <sup>2</sup> , Gallons	<del>((42))</del> 38	<del>((54))</del> 49	<del>((54))</del> 49	<del>((54))</del> 49	<del>((67))</del> 62	<del>((67))</del> 62	<del>((80))</del> 74	<del>((67))</del> 62	<del>((80))</del> 74	<del>((80))</del> 74	<del>((80))</del> 74

Notes: <sup>1</sup>The first hour rating is found on the "Energy Guide" label.  
<sup>2</sup>Nonstorage and solar water heaters shall be sized to meet the appropriate first hour rating as shown in the table, and shall be capable of delivering hot water at the maximum system demand flow, as calculated in Section 610.0 or Appendix A, as applicable.  
<sup>3</sup>For replacement water heaters, see Section ~~((401.4.1.1.1))~~ 102.4.

**504.1 Location.** Water heater installation in bedrooms and bathrooms shall comply with one of the following:

(1) Fuel-burning water heaters may be installed in a closet located in the bedroom or bathroom provided the closet is equipped with a listed, gasketed door assembly and a listed self-closing device. The self-closing door assembly shall meet the requirements of Section 505.1.1. The door assembly shall be installed with a threshold and bottom door seal and shall meet the requirements of Section 505.1.2. All combustion air for such installations shall be obtained from the outdoors in accordance with the International Mechanical Code. The closet shall be for the exclusive use of the water heater.

(2) Water heater shall be of the direct vent type.

**505.2 Safety Devices.** All storage-type water heaters deriving heat from fuels or types of energy other than gas, shall be provided with, in addition to the primary temperature controls, an over-temperature safety protection device constructed, listed, and installed in accordance with nationally recognized applicable standards for such devices and a combination temperature and pressure relief valve.

**506.0 Combustion Air.** For issues relating to combustion air, see the Mechanical Code.

Sections 506.1 through 506.9 are not adopted.

Sections 507.6 through 507.9 are not adopted.

**507.2 Seismic Provisions.** Water heaters shall be anchored or strapped to resist horizontal displacement due to earthquake motion. Strappings shall be at points within the upper one-third and lower one-third of its vertical dimensions. At the lower point, a distance of not less than four (4) inches (102 mm) shall be maintained from the controls to the strapping.

**507.13 Installation in Garages.** Appliances in garages and in adjacent spaces that open to the garage and are not part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices and ignition sources are located not less than eighteen (18) inches above the floor unless listed as flammable vapor ignition resistant.

**507.16 Venting of Flue Gases - Delete entire section.**

Sections 507.18 through 507.22 are not adopted.

**509.0 Venting of Equipment.** Delete entire section.

**510.0 Sizing of Category I Venting Systems.** Delete entire section.

**511.0 Direct Vent Equipment.** Delete entire section.

AMENDATORY SECTION (Amending WSR 17-10-074, filed 5/3/17, effective 6/3/17)

**WAC 51-56-0600 Chapter 6—Water supply and distribution.**

**601.1 Applicability.** This chapter shall govern the materials, design and installation of *water supply systems*, including backflow prevention devices, assemblies and methods used for backflow prevention.

**603.1 General.** Cross-connection control shall be provided in accordance with the provisions of this chapter. Devices or assemblies for protection of the public water system must be models approved by the department of health under WAC 246-290-490. The authority having jurisdiction shall coordinate with the local water purveyor where applicable in all matters concerning cross-connection control within the property lines of the premises.

No person shall install any water operated equipment or mechanism, or use any water treating chemical or substance, if it is found that such equipment, mechanism, chemical or substance may cause pollution or contamination of the domestic water supply. Such equipment or mechanism may be permitted only when equipped with an approved backflow prevention device or assembly.

**603.2 Approval of Devices or Assemblies.** Before any device or assembly is installed for the prevention of backflow, it shall have first been approved by the authority having jurisdiction. Devices or assemblies shall be tested for conformity with recognized standards or other standards acceptable to the authority having jurisdiction. Backflow prevention devices and assemblies shall comply with Table 603.2, except for specific applications and provisions as stated in Section 603.5.1 through 603.5.21.

All devices or assemblies installed in a potable water supply system for protection against backflow shall be maintained in good working condition by the person or persons having control of such devices or assemblies. Such devices or assemblies shall be tested in accordance with Section 603.4.2 and WAC 246-290-490. If found to be defective or inopera-

tive, the device or assembly shall be replaced or repaired. No device or assembly shall be removed from use or relocated or other device or assembly substituted, without the approval of the authority having jurisdiction.

Testing shall be performed by a Washington state department of health certified backflow assembly tester.

**TABLE 603.2**  
**Backflow Prevention Devices, Assemblies and Methods**  
**The following line is deleted from the table:**

Device, Assembly or Method	Applicable Standards	Pollution (Low Hazard)		Contamination (High Hazard)		Installation
		Back Siphonage	Back Pressure	Back Siphonage	Back Pressure	
Backflow preventer for carbonated beverage dispensers (two independent check valves with a vent to the atmosphere.)	ASSE 1022	X				Installation includes carbonated beverage machines or dispensers. These devices operate under intermittent or continuous pressure conditions.

**603.4.2 Testing.** For devices and assemblies other than those regulated by the Washington department of health in conjunction with the local water purveyor for the protection of public water systems, the authority having jurisdiction shall ensure that the premise owner or responsible person shall have the backflow prevention assembly tested by a Washington state department of health certified backflow assembly tester:

- (1) At the time of installation, repair or relocation; and
- (2) At least on an annual schedule thereafter, unless more frequent testing is required by the authority having jurisdiction.

**603.4.9 Prohibited Location.** Backflow prevention devices with atmospheric vents or ports shall not be installed in pits, underground or in submerged locations. Backflow preventers shall not be located in any area containing fumes or aerosols that are toxic, poisonous, infectious, or corrosive.

**603.5.6 Protection from Lawn Sprinklers and Irrigation Systems.** Potable water supplies to systems having no pumps or connections for pumping equipment, and no chemical injection or provisions for chemical injection, shall be protected from backflow by one of the following:

- (1) Atmospheric vacuum breaker (AVB).
- (2) Pressure vacuum breaker backflow prevention assembly (PVB).
- (3) Spill-resistant pressure vacuum breaker (SVB).
- (4) Reduced pressure principle backflow prevention assembly (RP).
- (5) A double check valve backflow prevention assembly (DC) may be allowed when approved by the water purveyor and the authority having jurisdiction.

**603.5.10 Steam or Hot Water Boilers.** Potable water connections to steam or hot water boilers shall be protected by an air gap or a reduced pressure principle backflow preventer.

**603.5.12 Beverage Dispensers.** Potable water supply to carbonators shall be protected by a listed reduced pressure principle backflow preventer as approved by the authority having jurisdiction for the specific use. The backflow preventer (~~shall be located in accordance~~) shall comply with Section 603.4.3. The piping downstream of the backflow preventer shall not be of copper, copper alloy, or other material that is affected by carbon dioxide.

**603.5.14 Protection from Fire Systems.** Except as provided under Sections 603.5.14.1 and 603.5.14.2, potable water supplies to fire protection systems that are normally under pressure, including but not limited to standpipes and automatic sprinkler systems, except in one or two family or townhouse residential flow-through or combination sprinkler systems piped in materials approved for potable water distribution systems, shall be protected from back-pressure and back-siphonage by one of the following testable assemblies:

- 1. Double check valve backflow prevention assembly (DC).
- 2. Double check detector fire protection backflow prevention assembly.
- 3. Reduced pressure principle backflow prevention assembly (RP).
- 4. Reduced pressure detector fire protection backflow prevention assembly.

Potable water supplies to fire protection systems that are not normally under pressure shall be protected from backflow and shall meet the requirements of the appropriate standard(s) referenced in Table 1401.1.

**604.14 Plastic Pipe Termination.** Plastic water service piping may terminate within a building, provided the connection to the potable water distribution system shall be made as near as is practical to the point of entry and shall be accessible. Barbed insert fittings with hose clamps are prohibited as a transition fitting within the building.



**606.5 Control Valve.** A control valve shall be installed immediately ahead of each water-supplied appliance and immediately ahead of each slip joint or appliance supply.

Parallel water distribution systems shall provide a control valve either immediately ahead of each fixture being supplied or installed at the manifold, and shall be identified with the fixture being supplied. Where parallel water distribution system manifolds are located in attics, crawl spaces, or other locations not accessible, a separate shutoff valve shall be required immediately ahead of each individual fixture or appliance served.

**608.3 Expansion Tanks, and Combination Temperature and Pressure-Relief Valves.** A water system provided with a check valve, backflow preventer, or other normally closed device that prevents dissipation of building pressure back into the water main, independent of the type of water used, shall be provided with an approved, listed, and adequately sized expansion tank or other approved device having a similar function to control thermal expansion. Such expansion tank or other approved device shall be installed on the building side of the check valve, backflow preventer, or other device and shall be sized and installed in accordance with the manufacturer's installation instructions.

EXCEPTION: Instantaneous hot water systems installed in accordance with the manufacturer's installation instructions.

~~((608.3.1 A water system containing storage water heating equipment shall be provided with an approved, listed, adequately sized combination temperature and pressure relief valve, except for listed nonstorage instantaneous heater having an inside diameter of not more than three (3) inches (80 mm). Each such approved combination temperature and pressure relief valve shall be installed on the water heating device in an approved location based on its listing requirements and the manufacturer's installation instructions. Each such combination temperature and pressure relief valve shall be provided with a drain in accordance with Section 608.5.))~~

**608.5 Discharge Piping.** The discharge piping serving a temperature relief valve, pressure relief valve or combination of both shall have no valves, obstructions or means of isolation and be provided with the following:

(1) Equal to the size of the valve outlet and shall discharge full size to the flood level of the area receiving the discharge and pointing down.

(2) Materials shall be rated at not less than the operating temperature of the system and approved for such use or shall comply with ASME A112.4.1.

(3) Discharge pipe shall discharge independently by gravity through an air gap into the drainage system or outside of the building with the end of the pipe not exceeding 2 feet (610 mm) and not less than 6 inches (152 mm) above the ground pointing downwards.

(4) Discharge in such a manner that does not cause personal injury or structural damage.

(5) No part of such discharge pipe shall be trapped or subject to freezing.

(6) The terminal end of the pipe shall not be threaded.

(7) Discharge from a relief valve into a water heater pan shall be prohibited.

EXCEPTION: Where no drainage was provided, replacement water heating equipment shall only be required to provide a drain pointing downward from the relief valve to extend between two (2) feet (610 mm) and six (6) inches (152 mm) from the floor. No additional floor drain need be provided.

**609.9 Disinfection of Potable Water System.** New or repaired *potable water* systems shall be disinfected prior to use where required by the *authority having jurisdiction*. The method to be followed shall be that prescribed by the health authority or, in case no method is prescribed by it, the following:

(1) The *pipe system* shall be flushed with clean, *potable water* until *potable water* appears at the points of outlet.

(2) The system or parts thereof shall be filled with a water-chlorine solution containing not less than 50 parts per million of chlorine, and the system or part thereof shall be valved-off and allowed to stand for twenty-four hours; or, the system or part thereof shall be filled with a water-chlorine solution containing not less than 200 parts per million of chlorine and allowed to stand for three hours.

(3) Following the allowed standing time, the system shall be flushed with clean, *potable water* until the chlorine residual in the water coming from the system does not exceed the chlorine residual in the flushing water.

(4) The procedure shall be repeated when a standard bacteriological test for drinking water, performed by a laboratory certified for drinking water in Washington state, shows unsatisfactory results indicating that *contamination* persists in the system.

**609.11 Insulation of Potable Water Piping.** Domestic water piping within commercial buildings shall be insulated in accordance with Section C403.2.8 and Table C403.2.8 or Section C404.6 of the Washington State Energy Code, as applicable.

**610.4 Sizing Water Supply and Distribution Systems.** Systems within the range of Table 610.4 may be sized from that table or by the method set forth in Section 610.5.

Listed parallel water distribution systems shall be installed in accordance with their listing.

**611.1 Application.** Drinking water treatment units shall comply with NSF 42 or NSF 53. Water softeners shall comply with NSF 44. Ultraviolet water treatment systems shall comply with NSF 55. Reverse osmosis drinking water treatment systems shall comply with NSF 58. Drinking water distillation systems shall comply with NSF 62.

The owner of a building that serves potable water to twenty-five or more people at least sixty or more days per year and that installs drinking water treatment units including, but not limited to, the treatment units in Section 611.1, may be regulated (as a Group A public water system) by the Washington state department of health under chapter 246-290 WAC. See Washington state department of health publication 331-488 for guidance.

**612.1 General.** Where residential fire sprinkler systems are installed, they shall be installed in accordance with the International Building Code or International Residential Code.

Sections 612.2 through 612.7.2 are not adopted.

AMENDATORY SECTION (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

**WAC 51-56-0900 Chapter 9—Vents.**

~~(903.1 Applicable Standards. Vent pipe and fittings shall comply with the applicable standards referenced in Table 701.1, except that:~~

~~1. No galvanized steel or 304 stainless steel pipe shall be installed underground and shall be not less than 6 inches (152 mm) above ground.~~

~~2. ABS and PVC DWV piping installations shall be installed in accordance with applicable standards in Table 1401.1. Except for individual single family dwelling units, materials exposed within ducts or plenums shall have a maximum flame spread index of 25 and a maximum smoke developed index of 50, when tested in accordance with ASTM E-84 and UL 723-.)~~

**908.2.4 Water Closet.** This section is not adopted.

**911.1 Circuit Vent Permitted.** A maximum of eight fixtures connected to a horizontal branch drain shall be permitted to be circuit vented. Each fixture drain shall connect horizontally to the horizontal branch being circuit vented. The horizontal branch drain shall be classified as a vent from the most downstream fixture drain connection to the most upstream fixture drain connection to the horizontal branch. Given its grease-producing potential, restaurant kitchen equipment shall not be connected to a circuit vented system.

AMENDATORY SECTION (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

**WAC 51-56-1500 Chapter 15—Alternate water sources for nonpotable applications.**

~~(1501.1.1 Allowable use of Alternative Water. Where approved or required by the authority having jurisdiction, alternate water sources (reclaimed (recycled) water, gray water and on-site treated nonpotable water) shall be permitted to be used in lieu of potable water for the applications identified in this chapter. Reclaimed (recycled) water shall not be used to flush toilets or for other indoor use in any residential property or dwelling unit where residents have access to plumbing systems for repairs or modifications.~~

~~**1501.2 System Design.** Alternate water source systems shall be designed in accordance with this chapter by a registered design professional or person who demonstrates competency to design the alternate water source system as required by the authority having jurisdiction. Components, piping, and fittings used in an alternate water source system shall be listed.~~

~~**1501.7 Minimum Water Quality Requirements.** The minimum water quality for alternate water source systems shall meet the applicable water quality requirements for the intended application as determined by the authority having jurisdiction. In the absence of water quality requirements, the EPA/625/R-04/108 contains recommended water reuse~~

~~guidelines to assist regulatory agencies develop, revise, or expand alternate water source water quality standards.~~

~~The treatment for gray water used to flush toilets or urinals shall be oxidized, coagulated, filtered and disinfected, and be consistent at all times with Washington Class A reclaimed water or better and be approved by the authority having jurisdiction.~~

~~**1501.11.2.3 Discovery of Cross-Connection.** In the event that a cross-connection is discovered, the following procedure, in the presence of the AHJ, shall be activated immediately:~~

~~(1) Reclaimed (recycled) water piping to the building shall be shutdown at the meter, and the reclaimed (recycled) water riser shall be drained.~~

~~(2) Potable water piping to the building shall be shut down at the meter.~~

~~(3) The cross-connection shall be uncovered and disconnected.~~

~~(4) The building shall be retested following procedures listed in Sections 1501.11.2.1 and 1501.11.2.2.~~

~~(5) The potable water system shall be chlorinated with 50 parts per million (ppm) chlorine for twenty-four hours.~~

~~(6) The potable water system shall be flushed after twenty-four hours, and a standard bacteriological test for drinking water shall be performed by a laboratory certified for drinking water in Washington state. Where test results are satisfactory to the authority having jurisdiction, health authority having jurisdiction, and the water purveyor, the potable water system shall be permitted to be recharged. See also chapter 246-290 WAC.~~

~~**1501.13.1 General.** An abandoned system or part thereof covered under the scope of this chapter shall be disconnected from remaining systems, drained, plugged, and capped in an approved manner. Components of the abandoned system including, but not limited to, pipe, tubing, fittings, and valves shall not be used for potable water systems.~~

~~**1502.0 Gray Water Systems, is not adopted.** Gray water shall not be used for irrigation except as permitted by the department of health rules.~~

~~**1503.4 Connection to Potable or Reclaimed (Recycled) Water Systems.** Reclaimed (recycled) water systems shall have no connection to a potable water supply or alternate water source system. Potable water is permitted to be used as makeup water for a reclaimed (recycled) water storage tank provided the water supply inlet is protected by an approved air gap in accordance with this code.~~

~~**1504.1 General.** The provisions of this section shall apply to the installation, construction, alteration, and repair of on-site treated nonpotable water systems intended to supply uses such as water closets, urinals, trap primers for floor drains and floor sinks, and other uses approved by the authority having jurisdiction.~~

~~**1504.7 On Site Treated Nonpotable Water Devices and Systems.** Devices or equipment used to treat nonpotable water for on-site use in order to maintain the minimum water quality requirements determined by the authority having jurisdiction shall be listed or labeled (third-party certified) by~~

a listing agency (accredited conformity assessment body) or approved for the intended application. Devices or equipment used to treat gray water or sewage for use in water closet and urinal flushing, surface irrigation, and similar applications shall oxidize, coagulate, filter and disinfect the gray water or sewage, and be consistent at all times with Washington Class A reclaimed water or better and be approved by the authority having jurisdiction.

~~1504.10.2 Reserved.~~) **1501.1 Applicability.** The provisions of this chapter and the Washington state department of health shall apply to the construction, alteration, and repair of alternate water source systems for nonpotable applications.

**AMENDATORY SECTION** (Amending WSR 16-02-044, filed 12/30/15, effective 7/1/16)

**WAC 51-56-1600 Chapter 16— Nonpotable rainwater catchment systems.**

~~((1601.11.1 General. An abandoned system or part thereof covered under the scope of this chapter shall be disconnected from remaining systems, drained, plugged and capped in an approved manner. Components of the abandoned system including, but not limited to, pipe, tubing, fittings and valves shall not be used for potable water systems.~~

**1602.0 Nonpotable Rainwater Catchment Systems.**

~~1602.1 General. The installation, construction, alteration, and repair of rainwater catchments systems intended to supply uses such as water closets, urinals, trap primers for floor drains and floor sinks, irrigation, industrial processes, water features, cooling tower makeup and other uses shall be approved by the authority having jurisdiction.~~

EXCEPTION: Exterior irrigation piping.

~~1602.11.2.3 Discovery of Cross Connection. In the event that a cross connection is discovered, the following procedure, in the presence of the AHJ, shall be activated immediately:~~

(1) Rainwater catchment water piping to the building shall be shutdown at the meter, and the rainwater water riser shall be drained.

(2) Potable water piping to the building shall be shutdown at the meter.

(3) The cross connection shall be uncovered and disconnected.

(4) The building shall be retested following procedures listed in Sections 1603.11.2.1 and 1603.11.2.2.

(5) The potable water system shall be chlorinated with 50 parts per million (ppm) chlorine for twenty four hours.

(6) The potable water system shall be flushed after twenty four hours, and a standard bacteriological test for drinking water shall be performed by a laboratory certified for drinking water in Washington state. Where test results are satisfactory to the authority having jurisdiction, health authority having jurisdiction, and the water purveyor, the potable water system shall be permitted to be recharged. See also chapter 246-290 WAC.)

**1601.1 Applicability.** The provisions of this chapter and the Washington state department of health shall apply to the construction alteration and repair of nonpotable rainwater catch systems.

**WSR 20-02-084**

**PERMANENT RULES**

**DAIRY PRODUCTS COMMISSION**

[Filed December 30, 2019, 7:12 a.m., effective January 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington dairy products commission is adding public records disclosure procedures to its rules as required by RCW 42.56.040. The rules will establish procedures for the commission to follow in response to requests for public records, including the schedule used by the commission for recovering the costs of producing public records.

Citation of Rules Affected by this Order: New WAC 142-50-010, 142-50-020, 142-50-030, 142-50-040, 142-50-050, 142-50-060, 142-50-070, 142-50-080, 142-50-090, 142-50-100, and 142-50-110.

Statutory Authority for Adoption: RCW 15.44.060 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 19-21-137 on October 21, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 11, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 30, 2019.

Celeste Piette  
Senior Director

Operations and Business Management

**Chapter 142-50 WAC**

**PUBLIC RECORDS**

NEW SECTION

**WAC 142-50-010 Purpose.** The purpose of this chapter is to ensure compliance by the Washington dairy products commission with chapter 42.56 RCW, Public Records Act. These rules provide information to persons requesting access to the commission's public records and establish procedures for both requestors and commission staff.

NEW SECTION

**WAC 142-50-020 Definitions.** "Commission" means the Washington dairy products commission.

"Disclosure" means inspection or copying.

"Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics.

"Writing" means handwriting, typewriting, printing, photostating, telefaxing, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated.

#### NEW SECTION

**WAC 142-50-030 Public records officer.** (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer.

(2) The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

#### NEW SECTION

**WAC 142-50-040 Requests for public records.** (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail at 4201 198th Street S.W., Lynnwood, WA 98036, or by email at PRR@wadairy.org. The written request should include:

- (a) The name of the person requesting the record and his or her contact information;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify the records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

- (a) Public records made available for inspection may not be removed from the area the commission makes available for inspection.
- (b) Inspection of any public records will be conducted in the presence of the public records officer or designee.
- (c) Public records may not be marked or altered in any manner during inspection.
- (d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission office and the availability of authorized staff to operate that equipment.

#### NEW SECTION

**WAC 142-50-050 Response to public records request.** (1) The public records officer shall respond to public records requests within five business days by:

- (a) Providing the record;
  - (b) Providing a link or address for a record available on the internet under RCW 42.56.520;
  - (c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request; or
  - (d) Denying the public records request. Responses refusing, in whole or in part, the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the records withheld or to any redactions in records produced.
- (2) Additional time to respond to the request may be based upon the need to:
- (a) Clarify the intent of the request;
  - (b) Locate and assemble the information requested;
  - (c) Notify third persons or agencies affected by the request; or
  - (d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public record request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

#### NEW SECTION

**WAC 142-50-060 Fees—Inspection and copying.** (1) No fee shall be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120.

(4) For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington dairy products commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(5) The commission or its designee may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

NEW SECTION

**WAC 142-50-070 Processing of public records requests—Electronic records.** (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records:

(a) The commission has the discretion to determine whether to provide records electronically or in paper form.

(b) When a requestor requests records in an electronic format, the public records officer will endeavor to provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the commission and is generally commercially available, or in a format that is reasonably translatable from the format in which the commission keeps the record.

NEW SECTION

**WAC 142-50-080 Protection of public records.** In order to adequately protect the commission's public records, the following will apply:

(1) Public records made available for inspection may not be removed from the area the commission makes available for inspection. The commission has the discretion to designate the means and the location for the inspection of records.

(2) Inspection of any public records will be conducted in the presence of a designated commission employee.

(3) Public records may not be marked or altered in any manner during inspection.

(4) After inspection is complete, the public records officer or designee will make requested copies or arrange for copying.

(5) Public records that are maintained in a file or jacket, or in chronological order, may not be dismantled except by a designated commission employee for purposes of copying.

(6) Whenever a public records request involves an entire file, a group of records, or a large number of records, the commission is allowed a reasonable time to review the records to determine whether information is exempt from disclosure under chapter 42.56 RCW or other law.

NEW SECTION

**WAC 142-50-090 Exemptions.** The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.44 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.44 RCW, with respect to domestic or export marketing activities or individ-

ual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070).

(4) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

NEW SECTION

**WAC 142-50-100 Review of denials of public records requests.** (1) Any person who objects to the denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within ten business days following receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

**WAC 142-50-110 Records index.** The commission shall establish a records index, which shall be made available for public review.

**WSR 20-02-086****PERMANENT RULES****FRUIT COMMISSION**

[Filed December 30, 2019, 8:15 a.m., effective January 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this new chapter is to establish procedures the Washington state fruit commission will follow to provide full access to public records and to implement the provisions of the Public Records Act (chapter 42.56 RCW). The rule will establish procedures in response to requests for public records, including the schedule used by the commission for recovering the costs of producing public records.

Citation of Rules Affected by this Order: New WAC 224-12-100, 224-12-105, 224-12-110, 224-12-115, 224-12-120, 224-12-125, 224-12-130, and 224-12-135.

Statutory Authority for Adoption: RCW 42.56.040 and 42.56.120.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 19-21-162 on October 22, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 30, 2019.

B. J. Thurlby  
President

#### NEW SECTION

**WAC 224-12-100 Description of commission, address and telephone number of the Washington state fruit commission.** Headquartered at 105 S. 18th Street, Suite 205, Yakima, WA 98901, the Washington state fruit commission serves Washington soft tree fruit producers by supporting the industry in the areas of education, research, and marketing. The telephone number is 509-453-4837.

#### NEW SECTION

**WAC 224-12-105 Public records officer.** (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its president may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

#### NEW SECTION

**WAC 224-12-110 Request for public records.** (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington State Fruit Commission, 105 S. 18th Street, Suite 205, Yakima, WA 98901. The request may also be submitted by fax to 509-453-4880 or by email to [legal@wastatefruit.com](mailto:legal@wastatefruit.com). The written request must include:

- (a) The name, address, and telephone number or other contact information of the person requesting the records;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during the inspection; and

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

#### NEW SECTION

**WAC 224-12-115 Response to public records requests.** (1) The public records officer shall respond to public records requests within five business days by:

(a) Making the records available for inspection or copying;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing, in whole or in part, the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

(4) In the event the requested records name a specific person or pertain to a specific person and may be exempt

from disclosure, the commission may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

#### NEW SECTION

##### **WAC 224-12-120 Fees—Inspection and copying.** (1)

No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington state fruit commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

(5) For email requests that encompass more than twenty separate emails the commission may deliver said emails via electronic storage device; the commission works with third-party computer technicians who may be required to help fulfill public record solicitations. The commission may charge actual technician time fees to the requestor.

#### NEW SECTION

**WAC 224-12-125 Exemptions.** The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.28 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.28 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be

available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2) and 42.56.290).

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(5)).

#### NEW SECTION

##### **WAC 224-12-130 Review of denial of public records requests.** (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's president or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

#### NEW SECTION

**WAC 224-12-135 Records index.** The commission shall establish a records index, which shall be made available for public review. The index includes the following records:

- (1) Commission authorizing statute;
- (2) Commission rules;
- (3) Minutes of commission meetings; and
- (4) Commission board roster.

#### **WSR 20-02-087**

##### **PERMANENT RULES**

##### **DEPARTMENT OF LICENSING**

[Filed December 30, 2019, 9:23 a.m., effective January 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Correcting the number of hours required for hazardous material training from the December 17, 2018, filing for minimum training requirements.

This amendment reduces the number of required hours for hazardous material training on a commercial driver license endorsement from twenty hours to sixteen hours to reflect the number reached in agreement with stakeholders. While federal regulations specify that the hazardous materials curriculum must be taught in its entirety, the number of hours required to do so remain unspecified. In working with stakeholders, the commercial driver license program con-

cluded that the number of hours to teach the curriculum amounted to sixteen hours, or two business days.

Citation of Rules Affected by this Order: Amending WAC 308-100-033.

Statutory Authority for Adoption: RCW 46.01.110 and 46.25.085.

Adopted under notice filed as WSR 19-20-088 on September 30, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 30, 2019.

Damon Monroe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 19-01-078, filed 12/17/18, effective 1/17/19)

**WAC 308-100-033 Minimum training requirements.**

(1) Approval for a course of instruction in the operation of a commercial motor vehicle will only be granted if the course of instruction:

(a) Is provided by, and under the direct supervision of, a training provider that has an application with the department approving the course of instruction offered by the training provider. Beginning on February 7, 2020, the training provider must also be listed on the Federal Motor Carrier Safety Administration's Training Provider Registry that is established under 49 C.F.R. 380.700; and

(b) **Class A course - Minimum requirements for approval:** A course of instruction for students seeking a class A CDL must follow the class A training curriculum defined in C.F.R. Appendix A to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Forty hours of classroom instruction;
- (ii) Eighteen hours of street driving training;
- (iii) Sixteen hours of training in backing maneuvers;
- (iv) Sixteen hours of proficiency development; and
- (v) Seventy hours of combined lab training, range training, and observation.

(c) **Class B course - Minimum Requirements:** A course of instruction for students seeking a class B CDL must follow the class B training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Forty hours of classroom instruction;
- (ii) Fourteen hours of street driving training;

- (iii) Eight hours of training in backing maneuvers;
- (iv) Eight hours of proficiency development; and
- (v) Ten hours of combined lab training, range training, and observation.

(d) **Class C course - Minimum requirements:** A course of instruction for students seeking a class C CDL must follow the class B training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Forty hours of classroom instruction;
- (ii) Fourteen hours of street driving training;
- (iii) Eight hours of training in backing maneuvers;
- (iv) Eight hours of proficiency development; and
- (v) Ten hours of combined lab training, range training, and observation.

(e) **Upgrade from either class B or C to class A - Minimum requirements:** A course of instruction for students seeking to upgrade from a class B or C to a class A must follow the class A behind the wheel training curriculum defined in C.F.R. Appendix A to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Eighteen hours of street driving training;
- (ii) Sixteen hours of training in backing maneuvers;
- (iii) Sixteen hours of proficiency development; and
- (iv) Thirty hours of combined lab training, range training, and observation.

(f) **Upgrade from a class C to class B - Minimum requirements:** A course of instruction for students seeking to upgrade from a class C to a class B must follow the class B behind the wheel training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Fourteen hours of street driving training;
- (ii) Eight hours of training in backing maneuvers;
- (iii) Eight hours of proficiency development; and
- (iv) Ten hours of combined lab training, range training, and observation.

(g) **Passenger endorsement - Minimum requirements:** A course of instruction for students seeking a passenger endorsement must follow the passenger endorsement training curriculum defined in C.F.R. Appendix C to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Four hours of classroom/theory instruction;
- (ii) Ten hours of proficiency development.

(h) **School bus endorsement - Minimum requirements:** A course of instruction for students seeking a school bus endorsement must follow the school bus endorsement training curriculum defined in C.F.R. Appendix D to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Twenty hours of classroom/theory instruction;
- (ii) Ten hours of proficiency development.

(i) **Passenger and school bus endorsement - Minimum requirements:** A course of instruction for students seeking a passenger and school bus endorsement must follow the passenger and school bus endorsement training curriculum defined in C.F.R. Appendix C and D to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:



- (i) Twenty hours of classroom/theory instruction;
- (ii) Ten hours of proficiency development.

(j) **Hazardous material endorsement - Minimum requirements:** A course of instruction for students seeking a HAZMAT endorsement must follow the hazardous material endorsement training curriculum defined in C.F.R. Appendix E to Part 380 as it existed on the (effective date of the WAC). The course must include not less than: (~~Twenty~~) Sixteen hours of classroom/theory instruction;

(k) In addition to the class A, B, and C curriculum as defined above, each class room training must include a minimum thirty minute section on "Truckers Against Trafficking."

(2) Students must complete all portions of the training within one year of completing the first portion.

### WSR 20-02-089

#### PERMANENT RULES

#### DEPARTMENT OF COMMERCE

[Filed December 30, 2019, 10:20 a.m., effective January 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Commerce amended rules concerning the Energy Independence Act to reflect changes in renewable resource eligibility enacted by the legislature in 2019. Commerce adopted new rules to establish cost values to be used by consumer-owned utilities when they incorporate greenhouse gas emission damage costs in resource evaluation, planning, and acquisition, as required by RCW 19.280.030 (3).

Citation of Rules Affected by this Order: New WAC 194-40-010, 194-40-020 and 194-40-100; and amending WAC 194-37-040, 194-37-120, and 194-37-130.

Statutory Authority for Adoption: RCW 19.405.100, 19.285.080.

Adopted under notice filed as WSR 19-22-074 on November 5, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 30, 2019.

Sarah Coggins  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

**WAC 194-37-040 Definitions.** The definitions in chapter 19.285 RCW apply throughout this chapter.

(1) "Annual revenue requirement" and "total annual revenue requirement" mean that portion of a utility's annual budget approved by its governing body for the target year that is intended to be recovered through retail electricity sales in the state of Washington in the target year, or as otherwise documented by the utility pursuant to WAC 194-37-150.

(2) "Biennial target" means a utility's biennial conservation target.

(3) "BPA" means the Bonneville Power Administration.

(4) "Measurement protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty the amount of energy savings that will result from the installation of a conservation measure. Industry standards include a range of appropriate protocols reflecting a balancing of cost and accuracy, such as the application of a deemed savings value established through industry processes for a measure that has broad application and uniform characteristics and the use of engineering calculations, metering, utility billing analysis, and computer simulation for a measure installed as part of a customer-specific project.

(5) "Multifuel generating facility" means a generating facility that is capable of producing energy from more than one nonrenewable fuel, renewable fuel, or nonfuel energy source, either simultaneously or as alternatives, provided that at least one fuel source (energy source) is a renewable resource and the relative quantities of electricity production can be measured or calculated, and verified.

(6) "NWPCC" means Pacific Northwest Electric Power and Conservation Planning Council also known as the Northwest Power and Conservation Council. Its calculation of avoided costs and publications are available at [www.nwcouncil.org](http://www.nwcouncil.org).

(7) "REC" means renewable energy credit.

(8) "Regional technical forum" or "RTF" means a voluntary advisory committee that reports to the executive director of the NWPCC and whose members are appointed by the NWPCC's chair.

(9) "Renewable energy target" means the amount, in megawatt-hours or RECs, necessary for a utility to satisfy the requirements of RCW 19.285.040 (2)(a) in a specific target year.

(10) "Substitute resource" means reasonably available electricity or generating facilities, of the same contract length or facility life as the eligible renewable resource the utility invested in to comply with chapter 19.285 RCW requirements, that otherwise would have been used to serve a utility's retail load in the absence of chapter 19.285 RCW requirements to serve that retail load with eligible renewable resources.

(11) "Target year" means a specific year in which a utility must comply with the renewable energy requirements of chapter 19.285 RCW.

(12) "Ten-year potential" means the ten-year cost effective conservation resource potential.

(13) "Utility" means a consumer-owned electric utility, as the term consumer-owned utility is defined in RCW 19.29A.010, that is a qualifying utility.

(14) "Verification protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty that a conservation measure was installed and is in service. Industry standards include a range of appropriate protocols reflecting a balance of cost and accuracy, such as tracking installation of measures through incentive payments and the use of on-site inspection of measures installed as part of a customer-specific project.

(15) "Vintage" means the year in which electricity is generated.

(16) "Weather-adjusted load" means load calculated after variations in peak and average temperatures from year to year are taken into account.

~~((16))~~ (17) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is an independent, renewable energy registry and tracking system for the region covered by the Western Interconnection. WREGIS creates renewable energy certificates, WREGIS certificates, for verifiable renewable generation from units that register in the registry and tracking system.

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

**WAC 194-37-120 Documentation of use of eligible renewable resources and RECs for compliance.** A utility using an eligible renewable resource or REC for compliance with a requirement of chapter 19.285 RCW must document that use by following the procedures in this section.

(1) **Documentation of energy from eligible renewable resources.** Each utility using an eligible renewable resource for compliance must document the following for each resource:

(a) The electricity was generated by a generating facility that is an eligible renewable resource;

(b) The electricity was generated during the target year;

(c) If the utility sold, exchanged, or otherwise transferred the electricity to any person other than its retail customer, the utility retained ownership of the nonpower attributes; and

(d) The utility retired, consistent with the requirements of subsection (2) of this section, any RECs representing the nonpower attributes associated with the electricity or, if no RECs have been created, the utility has committed to use the nonpower attributes exclusively for the compliance purpose stated in its documentation.

(2) **Documentation of renewable energy certificates.** Each utility using a REC for compliance must document the following:

(a) The REC represents the output of an eligible renewable resource;

(b) For a REC from electricity generated by a resource other than freshwater, the vintage of the REC is the year immediately prior to the target year, the year of the target year, or the year immediately after the target year; and

(c) For a REC from electricity generated by freshwater:

(i) The vintage of the REC is the target year;

(ii) The REC was acquired by the utility through ownership of the generation facility or through a transaction that conveyed both the electricity and the nonpower attributes of the electricity; and

(iii) For RECs from projects marketed by the Bonneville Power Administration, the utility received the REC through a transaction with the Bonneville Power Administration that conveyed both the electricity and the nonpower attributes of the electricity.

(d) The utility has ~~((removed the REC from circulation by transferring))~~ retired the REC to a retirement subaccount of the utility within WREGIS using the following values in the certificate transfer:

(i) Retirement type: Used by the account holder for a state-regulated renewable portfolio standard/provincial utility portfolio standard;

(ii) State/province: Washington; and

(iii) Compliance year: Applicable target year.

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

**WAC 194-37-130 Documentation of incremental hydropower. (1) Projects owned by qualifying utilities.** Each utility using electricity produced as a result of a hydropower efficiency improvement, as defined in RCW 19.285-030 (12)(b), to meet a renewable energy target must provide documentation that:

(a) The hydroelectric generation project is owned by a qualifying utility and is located in the Pacific Northwest;

(b) The hydropower efficiency improvement was completed after March 31, 1999; and

(c) The additional generation does not result in new water diversions or impoundments.

(2) **Federal projects.** Each utility using electricity produced as a result of a hydropower efficiency improvement, as defined in RCW 19.285.030 (12)(g), to meet a renewable energy target must provide documentation that:

(a) The output of the hydroelectric generation project is marketed by the Bonneville Power Administration;

(b) The utility received the electricity through a transaction with the Bonneville Power Administration that conveyed both the electricity and the nonpower attributes of that electricity;

(c) The hydropower efficiency improvement was completed after March 31, 1999; and

(d) The additional generation does not result in new water diversions or impoundments.

(3) If the amount of electricity generated as a result of the hydropower efficiency improvement is directly measurable, the utility must use the measured output of the hydropower efficiency improvement as documentation of the amount of additional generation.

~~((3))~~ (4) If the amount of electricity generated as a result of the hydropower efficiency improvements is not directly measurable, the utility must document the amount of electricity generated as a result of the hydropower efficiency improvement using an engineering analysis comparing the output in megawatt-hours of the hydroelectric generation project with the efficiency improvement to the output in

megawatt-hours of the hydroelectric generation project without the efficiency improvement. Multiple efficiency improvements to a single hydroelectric generation project may be combined for purposes of the engineering analysis.

(b) The engineering analysis required by (a) of this subsection must be performed using an engineering model of the hydroelectric generation project that quantifies the relationship of stream flows, reservoir elevation, and other relevant factors to the electric output of the generating facility. The engineering model must accurately reflect the physical characteristics and operating requirements of the hydroelectric generation project during the target year and must accurately estimate the electric generation of the hydroelectric generation project without and with the hydropower efficiency improvement.

(c) A utility using the engineering analysis method to determine incremental generation must adopt and consistently apply in each target year one of the following methods:

(i) **Method one - Actual incremental generation.** A utility using this method must prepare an analysis using actual stream flows and the engineering model described in (b) of this subsection during each target year to determine incremental generation in the target year. A utility using this method must perform an updated calculation each year to determine the incremental generation amount for that target year.

(ii) **Method two - Percentage generation.**

(A) A utility using method two must prepare an analysis establishing the expected amount of incremental generation based on stream flows available to the hydroelectric generation project, adjusted for any known and measurable changes to stream flows due to environmental regulations or other factors, during a historical study period.

(B) The historical study period used in method two must be reasonably representative of the stream flows that would have been available to the hydroelectric project over the period of time for which stream flow records are readily available. A historical study period meets the requirements of this subsection if it includes the most recent readily available stream flow records and consists of a consecutive record of stream flow records at least five years in length.

(C) The amount of incremental generation using method two is calculated by multiplying the actual generation in megawatt-hours in the target year by a percentage amount equal to the difference between the calculated average generation over the historical study period with the hydropower efficiency improvement and the calculated average generation over the historical study period without the hydropower efficiency improvement, divided by the calculated average generation over the historical study period without the hydropower efficiency improvement.

(iii) **Method three - Fixed amount of generation.**

(A) A utility using method three must prepare an analysis establishing the expected amount of incremental generation based on stream flows available to the hydroelectric generation project, adjusted for any known and measurable changes to stream flows due to environmental regulations or other factors during a historical study period.

(B) The historical study period used in method three must be reasonably representative of the stream flows that

would have been available to the hydroelectric project over the period of time for which stream flow records are readily available. A historical study period meets the requirements of this subsection if it includes the most recent readily available stream flow records and consists of a consecutive record of stream flow records at least ten years in length.

(C) The amount of incremental generation using method three is calculated as an amount in megawatt-hours equal to the difference between the calculated average generation over the historical study period with the hydropower efficiency improvement and the calculated average generation over the historical study period without the hydropower efficiency improvement. The amount must be adjusted in each target year for any reduction in availability of the hydroelectric generation project's generating capacity during the target year that is not accounted for in the analysis used to calculate the incremental generation amount.

~~((4))~~ (5) The requirements of this section are in addition to the documentation requirements specified in WAC 194-37-120(1).

## Chapter 194-40 WAC

### CLEAN ENERGY TRANSFORMATION ACT

#### NEW SECTION

**WAC 194-40-010 Purpose and scope.** The purpose of this chapter is to implement the requirements of chapter 19.405 RCW, Clean Energy Transformation Act, and chapter 19.280 RCW.

#### NEW SECTION

**WAC 194-40-020 Applicability.** Unless specifically provided otherwise, the provisions of this chapter apply to consumer-owned electric utilities that provide electrical service to retail customers in the state of Washington.

#### NEW SECTION

**WAC 194-40-100 Social cost of greenhouse gas emissions.** (1) The social cost of greenhouse gas emissions to be included by utilities in resource planning, evaluation, and selection, in compliance with RCW 19.280.030(3), is equal to the cost per metric ton of carbon dioxide equivalent emissions, using the 2.5 percent discount rate, listed in table 2, technical support document: Technical update of the social cost of carbon for regulatory impact analysis under Executive Order No. 12866, published by the interagency working group on social cost of greenhouse gases of the United States government, August 2016, referred to in this rule as the "technical support document."

(2) The social cost values for intermediate years are calculated by linear interpolation and provided in Appendix A of the technical support document. Social cost values for years after 2050 must be determined by applying an escalation factor of 1.3 percent, consistent with Table 3 of the technical support document. Social cost values must be adjusted for inflation, using the implicit price deflator for gross domestic product published by the United States Department

of Commerce, from the 2007 dollars to the base year used for other cost and benefit values in the utility's analysis.

(3) As a convenience and illustration, the cost values established in subsection (1) of this section and adjusted as provided for in subsection (2) of this section for inflation to 2018 dollars are restated here:

Year in Which Emissions Occur or Are Avoided	Social Cost of Carbon Dioxide (in 2007 dollars per metric ton)	Social Cost of Carbon Dioxide (in 2018 dollars per metric ton)
2010	\$50	\$60
2015	\$56	\$67
2020	\$62	\$74
2025	\$68	\$81
2030	\$73	\$87
2035	\$78	\$93
2040	\$84	\$100
2045	\$89	\$106
2050	\$95	\$113

(4) The social cost values established in this rule are minimum values. A utility may apply a greater value if it has a reasonable basis to do so.

**WSR 20-02-091**

**PERMANENT RULES**

**DEPARTMENT OF ECOLOGY**

[Order 19-02—Filed December 30, 2019, 11:54 a.m., effective January 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of ecology (ecology) is adopting amendments to multiple sections of chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. This rule making amends the following sections:

- The numeric criteria for total dissolved gas in the Snake and Columbia rivers:
  - WAC 173-201A-200 (1)(f)(ii).
- Specific sections of the rule to meet legal obligations in a 2018 stipulated order of dismissal (see discussion below):
  - WAC 173-201A-200 (1)(c)(ii)(B).
  - WAC 173-201A-210 (1)(c)(ii)(B).
  - WAC 173-201A-240(5) Table 240 footnote dd.
- The descriptions of marine water aquatic life use designations:
  - WAC 173-201A-210 (1)(a).
  - WAC 173-201A-610 Table 610.

Citation of Rules Affected by this Order: Amending WAC 173-201A-200 (1)(f)(ii), 173-201A-200 (1)(c)(ii)(B), 173-201A-210 (1)(a), 173-201A-210 (1)(c)(ii)(B), 173-201A-240(5), and 173-201A-610.

Statutory Authority for Adoption: RCW 90.48.035 provides clear and direct authority to ecology to revise the sur-

face water quality standards (SWQS). Additionally, 40 C.F.R. 131.20 requires states and tribes with Federal Clean Water Act authority to periodically review and update the SWQS.

Other Authority: 40 C.F.R. 131.20 requires states and tribes (with primacy for clean water actions) to periodically review and update the water quality standards.

Adopted under notice filed as WSR 19-16-063 on July 30, 2019.

Changes Other than Editing from Proposed to Adopted Version: There are some differences between the proposed rule filed on July 30, 2019, and the adopted rule filed on December 30, 2019. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute. The following content describes the changes and ecology's reasons for making them.

*Change to WAC 173-201A-200 (1)(c)(ii):*

We edited to retain the intent of the section as it applies to individual point source activities in response to public comment.

**Proposed Rule Language:**

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), ~~((the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:~~

~~(A))) incremental temperature increases resulting from individual point source activities must not, at any time, exceed 28/(T+7) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge)((~~and~~~~

**Final Rule Language:**

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), ~~((the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:~~

~~(A))) incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed 28/(T+7) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge)((~~and~~~~

*Change to WAC 173-201A-200 (1)(f)(ii):*

We made edits to the proposed rule language in response to public comments.

**Proposed Rule Language:**

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams ~~((when consistent with a department approved gas abatement plan. This plan must be accompanied by fisheries management and physical and biological monitoring plans))~~ spilling for anadromous juvenile fish passage as of the 2020 spill season.

**Final Rule Language:**

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams that ((when consistent with a department approved gas abatement plan. This plan must be accompanied by fisheries management and physical and biological monitoring plans)) ~~spilling for anadromous juvenile fish passage~~ as of the 2020 spill season.

*Change to WAC 173-201A-200 (1)(f)(ii)(B):*

We made edits to the proposed rule language in response to public comments.

**Proposed Rule Language:**

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to a maximum TDG saturation level of one hundred twenty-five percent calculated as an average of the two highest hourly TDG measures in a calendar day. This TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

**Final Rule Language:**

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to the following levels as measured at the tailrace fixed site monitoring location:

- A maximum TDG saturation level of one hundred twenty-five percent calculated as an average of the ~~two~~ twelve highest hourly TDG measures in a calendar day, and;
- At the tailrace fixed site monitoring locations. A maximum TDG saturation level of one hundred twenty-six percent calculated as an average of any two consecutive hourly TDG measures.

These TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

*Change to WAC 173-201A-200 (1)(f)(ii)(B)(I):*

We made edits to the proposed rule language in response to public comments.

**Proposed Rule Language:**

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria applied at dams operated by the U.S. Army Corps of Engineers must be in accordance with legally valid Endangered Species Act consultation documents on Columbia River system operations, including operations for fish passage.

**Final Rule Language:**

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria applied at hydro-power dams operated by the U.S. Army Corps of Engineers shall be applied in accordance with legally valid Endangered Species Act consultation documents associated with spill operations on the Snake and Columbia Rivers system operations, including operations for fish passage. The Endangered Species Act consultation documents are those by which dams may legally operate during the time that the adjusted criteria in (f)(ii)(B) of this subsection are in use.

*Change to WAC 173-201A-200 (1)(f)(ii)(B)(II):*

We made edits to the proposed rule language in response to public comments.

**Proposed Rule Language:**

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

**Final Rule Language:**

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions throughout the spring spill season. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

*Change to WAC 173-201A-200 (1)(f)(ii)(B)(III):*

We made edits to the proposed rule language in response to public comments.

**Proposed Rule Language:**

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of fifty fish required weekly) or nonsalmonids (with a minimum sample size of fifty fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of fifteen percent;

or

- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than twenty-five percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection.

**Final Rule Language:**

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of fifty fish required weekly) or nonsalmonids (with a minimum sample size of fifty fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of fifteen percent;

or

- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than twenty-five percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection. Gas bubble trauma monitoring data shall be excluded from comparison to biological thresholds when higher than normal river flow contributes to excess spill above the ability to meet subsection (f)(ii)(B). This monitoring data exclusion shall apply for one full calendar day after reduced river flow allows attainment of subsection (f)(ii)(B).

*Change to WAC 173-201A-210 (1)(c)(ii):*

We edited to retain the intent of the section as it applies to individual point source activities, in response to public comment.

**Proposed Rule Language:**

(ii) When the natural condition of the water is cooler than the criteria in Table 210 (1)(c), ~~((the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:~~

~~(A)) incremental temperature increases resulting from individual point source activities must not, at any time, exceed  $28/(T+7)$  as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge)(~~;~~ and~~

**Final Rule Language:**

~~(ii) When the natural condition of the water is cooler than the criteria in Table 210 (1)(c), ((the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:~~

~~(A)) incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed  $28/(T+7)$  as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge)(~~;~~ and~~

A final cost-benefit analysis is available by contacting Susan Braley, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6414, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email [swqs@ecy.wa.gov](mailto:swqs@ecy.wa.gov), website <https://fortress.wa.gov/ecy/publications/SummaryPages/1910049.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 6, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 30, 2019.

Maia D. Bellon  
Director

AMENDATORY SECTION (Amending WSR 19-04-007, filed 1/23/19, effective 2/23/19)

**WAC 173-201A-200 Fresh water designated uses and criteria.** The following uses are designated for protection in fresh surface waters of the state. Use designations for water bodies are listed in WAC 173-201A-600 and 173-201A-602.

(1) **Aquatic life uses.** Aquatic life uses are designated based on the presence of, or the intent to provide protection for, the key uses identified in (a) of this subsection. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below.

(a) The categories for aquatic life uses are:

(i) **Char spawning and rearing.** The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and migration of native char; and spawning, rearing, and migration by other salmonid species.

(ii) **Core summer salmonid habitat.** The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.

(iii) **Salmonid spawning, rearing, and migration.** The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

(iv) **Salmonid rearing and migration only.** The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).

(v) **Non-anadromous interior redband trout.** For the protection of waters where the only trout species is a non-anadromous form of self-reproducing interior redband trout (*O. mykiss*), and other associated aquatic life.

(vi) **Indigenous warm water species.** For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redband shiner, chiselmouth, sucker, and northern pikeminnow.

(b) **General criteria.** General criteria that apply to all aquatic life fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, water temperature is measured by the 7-day average of the daily maximum temperatures (7-DADMax). Table 200 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 200 (1)(c)  
Aquatic Life Temperature Criteria in Fresh Water**

Category	Highest 7-DADMax
Char Spawning and Rearing*	12°C (53.6°F)
Core Summer Salmonid Habitat*	16°C (60.8°F)
Salmonid Spawning, Rearing, and Migration*	17.5°C (63.5°F)
Salmonid Rearing and Migration Only	17.5°C (63.5°F)
Non-anadromous Interior Red-band Trout	18°C (64.4°F)
Indigenous Warm Water Species	20°C (68°F)

\*Note: Some streams have a more stringent temperature criterion that is applied seasonally to further protect salmonid spawning and egg incubation. See (c)(B)(iv) of this subsection.

(i) When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F).

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), ~~((the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:~~

~~(A)) incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed 28/(T+7) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge)(+ and~~

~~(B) Incremental temperature increases resulting from the combined effect of all nonpoint source activities in the water body must not, at any time, exceed 2.8°C (5.04°F)).~~

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every ten years on average.

(iv) Spawning and incubation protection. The department has identified waterbodies, or portions thereof, which require special protection for spawning and incubation in ecology publication 06-10-038 (also available on ecology's website at [www.ecology.wa.gov](http://www.ecology.wa.gov)). This publication indicates where and when the following criteria are to be applied to protect the reproduction of native char, salmon, and trout:

- Maximum 7-DADMax temperatures of 9°C (48.2°F) at the initiation of spawning and at fry emergence for char; and
- Maximum 7-DADMax temperatures of 13°C (55.4°F) at the initiation of spawning for salmon and at fry emergence for salmon and trout.

The two criteria above are protective of incubation as long as human actions do not significantly disrupt the normal patterns of fall cooling and spring warming that provide significantly colder temperatures over the majority of the incubation period.

(v) For lakes, human actions considered cumulatively may not increase the 7-DADMax temperature more than 0.3°C (0.54°F) above natural conditions.

(vi) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; and

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(vii) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this section or WAC 173-201A-600 through 173-201A-602:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-day maximum (1-DMax) temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(viii) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** The D.O. criteria are measured in milligrams per liter (mg/L). Table 200 (1)(d) lists the 1-day minimum D.O. for each of the aquatic life use categories.

**Table 200 (1)(d)  
Aquatic Life Dissolved Oxygen Criteria in Fresh Water**

Category	Lowest 1-Day Minimum
Char Spawning and Rearing	9.5 mg/L
Core Summer Salmonid Habitat	9.5 mg/L
Salmonid Spawning, Rearing, and Migration	8.0 mg/L
Salmonid Rearing and Migration Only	6.5 mg/L

Category	Lowest 1-Day Minimum
Non-anadromous Interior Red-band Trout	8.0 mg/L
Indigenous Warm Water Species	6.5 mg/L

(i) When a water body's D.O. is lower than the criteria in Table 200 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the D.O. of that water body to decrease more than 0.2 mg/L.

(ii) For lakes, human actions considered cumulatively may not decrease the dissolved oxygen concentration more than 0.2 mg/L below natural conditions.

(iii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every ten years on average.

(iv) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; and

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 200 (1)(e) lists the maximum turbidity criteria for each of the aquatic life use categories.

**Table 200 (1)(e)**

**Aquatic Life Turbidity Criteria in Fresh Water**

Category	NTUs
Char Spawning and Rearing	Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 5 NTU over background when the background is 50 NTU or less; or</li> <li>• A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.
Salmonid Rearing and Migration <b>Only</b>	Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 10 NTU over background when the background is 50 NTU or less; or</li> <li>• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>

Category	NTUs
Non-anadromous Interior Redband Trout	Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 5 NTU over background when the background is 50 NTU or less; or</li> <li>• A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>
Indigenous Warm Water Species	Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 10 NTU over background when the background is 50 NTU or less; or</li> <li>• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>

(i) The turbidity criteria established under WAC 173-201A-200 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(A) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.

(B) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.

(C) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.

(D) For projects working within or along lakes, ponds, wetlands, or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

(f) **Aquatic life total dissolved gas (TDG) criteria.** TDG is measured in percent saturation. Table 200 (1)(f) lists the maximum TDG criteria for each of the aquatic life use categories.



**Table 200 (1)(f)**

**Aquatic Life Total Dissolved Gas Criteria in Fresh Water**

Category	Percent Saturation
Char Spawning and Rearing	Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.
Salmonid Rearing and Migration <b>Only</b>	Same as above.
Non-anadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, ten-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams ~~((when consistent with a department approved gas abatement plan. This plan must be accompanied by fisheries management and physical and biological monitoring plans))~~ that spill for anadromous juvenile fish as of the 2020 spill season. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

~~((★)) (A) TDG must not exceed:~~

- ~~• An average of one hundred fifteen percent as measured in the forebays of the next downstream dams and must not exceed an average of one hundred twenty percent as measured in the tailraces of each dam (these averages are ((measured)) calculated as an average of the twelve highest ((consecutive)) hourly readings in ((any one)) a calendar day, relative to atmospheric pressure); and~~

- ~~• A maximum TDG ((one hour average)) saturation level of one hundred twenty-five percent ((must not be exceeded)) calculated as an average of the two highest hourly TDG measures in a calendar day during spillage for fish passage.~~

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to the following levels as measured at the tailrace fixed site monitoring location:

- A maximum TDG saturation level of one hundred twenty-five percent calculated as an average of the twelve highest hourly TDG measures in a calendar day; and

- A maximum TDG saturation level of one hundred twenty-six percent calculated as an average of any two consecutive hourly TDG measures.

These TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria at hydropower dams shall be applied in accordance with Endangered Species Act consultation documents associated with spill operations on the Snake and Columbia rivers, including operations for fish passage. The Endangered Species Act consultation documents are those by which dams may legally operate during the time that the adjusted criteria in (f)(ii)(B) of this subsection are in use.

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions throughout the spring spill season. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of fifty fish required weekly) or nonsalmonids (with a minimum sample size of fifty fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of fifteen percent;

or

- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than twenty-five percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection. Gas bubble trauma monitoring data shall be excluded from comparison to biological thresholds when higher than normal river flow contributes to excess spill above the ability to meet (f)(ii)(B) of this subsection. This monitoring data exclusion shall apply for one full calendar day after reduced river flow allows attainment of (f)(ii)(B) of this subsection.

(g) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 200 (1)(g) lists the pH levels for each of the aquatic life use categories.

**Table 200 (1)(g)**

**Aquatic Life pH Criteria in Fresh Water**

Use Category	pH Units
Char Spawning and Rearing	pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	pH shall be within the range of 6.5 to 8.5 with a human-caused variation within the above range of less than 0.5 units.

Use Category	pH Units
Salmonid Rearing and Migration <b>Only</b>	Same as above.
Non-anadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(2) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to fresh water recreational uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 200 (2)(b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on *Escherichia coli* (*E. coli*) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

**Table 200 (2)(b)**

**Primary Contact Recreation Bacteria Criteria in Fresh Water**

Bacterial Indicator	Criteria
<i>E. coli</i>	<i>E. coli</i> organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained within the averaging period exceeding 320 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained within an averaging period exceeding 200 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criteria. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be thirty days or less.

(B) Ambient water quality samples: When averaging bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be ninety days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(3) **Water supply uses.** The water supply uses are domestic, agricultural, industrial, and stock watering.

**General criteria.** General criteria that apply to the water supply uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

(4) **Miscellaneous uses.** The miscellaneous fresh water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

**General criteria.** General criteria that apply to miscellaneous fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

**AMENDATORY SECTION** (Amending WSR 19-04-007, filed 1/23/19, effective 2/23/19)

**WAC 173-201A-210 Marine water designated uses and criteria.** The following uses are designated for protection in marine surface waters of the state of Washington. Use designations for specific water bodies are listed in WAC 173-201A-612.

(1) **Aquatic life uses.** Aquatic life uses are designated using the following general categories. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state.

(a) **The categories for aquatic life uses are:**

(i) Extraordinary quality. Water quality of this use class shall markedly and uniformly exceed the requirements for all uses including, but not limited to, salmonid ((and)) migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(ii) **Excellent quality.** Water quality of this use class shall meet or exceed the requirements for all uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iii) **Good quality.** Water quality of this use class shall meet or exceed the requirements for most uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iv) **Fair quality.** Water quality of this use class shall meet or exceed the requirements for selected and essential uses including, but not limited to, salmonid and other fish migration.

(b) **General criteria.** General criteria that apply to aquatic life marine water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, temperature is measured as a 1-day maximum temperature (1-DMax). Table 210 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 210 (1)(c)**

**Aquatic Life Temperature Criteria in Marine Water**

Category	Highest 1-DMax
<i>Extraordinary quality</i>	13°C (55.4°F)
<i>Excellent quality</i>	16°C (60.8°F)
<i>Good quality</i>	19°C (66.2°F)
<i>Fair quality</i>	22°C (71.6°F)

(i) When a water body's temperature is warmer than the criteria in Table 210 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F).

(ii) When the natural condition of the water is cooler than the criteria in Table 210 (1)(c), ~~((the allowable rate of warming up to, but not exceeding, the numeric criteria from human actions is restricted as follows:~~

~~(A)) incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed 12/(T-2) as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge)(; and~~

~~(B) Incremental temperature increases resulting from the combined effect of all nonpoint source activities in the water body must not, at any time, exceed 2.8°C (5.04°F)).~~

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every ten years on average.

(iv) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(v) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this subsection or WAC 173-201A-612:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-DMax temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(vi) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** Except where noted, D.O. concentrations are measured as a 1-day minimum in milligrams per liter. Table 210 (1)(d) lists the D.O. criteria for each of the aquatic life use categories.

**Table 210 (1)(d)**

**Aquatic Life Dissolved Oxygen Criteria in Marine Water**

Category	Lowest 1-Day Minimum
<i>Extraordinary quality</i>	7.0 mg/L
<i>Excellent quality</i>	6.0 mg/L
<i>Good quality</i>	5.0 mg/L
<i>Fair quality</i>	4.0 mg/L

(i) When a water body's D.O. is lower than the criteria in Table 210 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the D.O. of that water body to decrease more than 0.2 mg/L.

(ii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every ten years on average.

(iii) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typi-

cally means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 210 (1)(e) lists the one-day maximum turbidity allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(e)  
Aquatic Life Turbidity Criteria in Marine Water**

Category	NTUs
<i>Extraordinary quality</i>	Turbidity must not exceed: <ul style="list-style-type: none"> <li>• 5 NTU over background when the background is 50 NTU or less; or</li> <li>• A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>
<i>Excellent quality</i>	Same as above.
<i>Good quality</i>	Turbidity must not exceed: <ul style="list-style-type: none"> <li>• 10 NTU over background when the background is 50 NTU or less; or</li> <li>• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>
<i>Fair quality</i>	Same as above.

(i) The turbidity criteria established under WAC 173-201A-210 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. For estuaries or marine waters, the point of compliance for a temporary area of mixing shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

(f) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 210 (1)(f) lists the pH levels allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(f)  
Aquatic Life pH Criteria in Marine Water**

Use Category	pH Units
<i>Extraordinary quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.2 units.
<i>Excellent quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
<i>Good quality</i>	Same as above.
<i>Fair quality</i>	pH must be within the range of 6.5 to 9.0 with a human-caused variation within the above range of less than 0.5 units.

(2) **Shellfish harvesting.**

(a) General criteria. General criteria that apply to shellfish harvesting uses for marine water are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Shellfish harvesting bacteria criteria.** Fecal coliform organism levels are used to protect shellfish harvesting. Criteria are expressed as colony forming units (CFU) or most probable number (MPN). Fecal coliform must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, and not have more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 43 CFU or MPN per 100 mL.

(i) Shellfish growing areas approved for unconditional harvest by the state department of health are fully supporting the shellfish harvest goals of this chapter, even when comparison with the criteria contained in this chapter suggest otherwise.

(ii) When averaging bacteria sample data for comparison to the geometric mean criteria, it is preferable to average by season and include five or more data collection events within each period. Averaging of data collected beyond a thirty-day period, or beyond a specific discharge event under investigation, is not permitted when such averaging would skew the data set so as to mask noncompliance periods. The period of averaging should not exceed twelve months, and should have sample collection dates well distributed throughout the reporting period.

(iii) When determining compliance with the bacteria criteria in or around small sensitive areas, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce

sample variability and to create a single representative data point.

(iv) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(v) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.

(3) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to water contact uses for marine water are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 210 (3)(b) lists the bacteria criteria to protect water contact recreation in marine waters. These criteria are based on enterococci and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform levels to determine compliance will expire December 31, 2020.

**Table 210 (3)(b)**

**Primary Contact Recreation Bacteria Criteria in Marine Water**

Bacterial Indicator	Criteria
Enterococci	Enterococci organism levels within an averaging period must not exceed a geometric mean value of 30 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample values exist) obtained within the averaging period exceeding 110 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained within an averaging period exceeding 43 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criterion. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean

criteria, or for determining permit compliance, the averaging period shall be thirty days or less.

(B) Ambient water quality samples: When averaging ambient bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be ninety days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(4) **Miscellaneous uses.** The miscellaneous marine water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

**General criteria.** General criteria that apply in miscellaneous marine water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

AMENDATORY SECTION (Amending WSR 16-16-095, filed 8/1/16, effective 9/1/16)

**WAC 173-201A-240 Toxic substances.** (1) Toxic substances shall not be introduced above natural background levels in waters of the state which have the potential either singularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department.

(2) The department shall employ or require chemical testing, acute and chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section and to ensure that aquatic communities and the existing and designated uses of waters are being fully protected.

(3) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (5) of this section.

(4) Concentrations of toxic, and other substances with toxic propensities not listed in Table 240 of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate.

(5) The following criteria, found in Table 240, shall be applied to all surface waters of the state of Washington. Values are µg/L for all substances except ammonia and chloride which are mg/L, and asbestos which is million fibers/L. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.

(a) **Aquatic life protection.** The department may revise the criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this

chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act.

(b) **Human health protection.** The following provisions apply to the human health criteria in Table 240. All waters shall maintain a level of water quality when entering downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state. The human health criteria in the tables were calculated using a fish consumption rate of 175 g/day. Criteria for carcinogenic substances were calculated using a cancer risk level equal to one-in-one-million, or as otherwise specified in this chapter. The human health criteria calculations and variables include chronic durations of exposure up to seventy years. All human health criteria for metals are for total metal concentrations, unless otherwise noted. Dischargers have the obligation to reduce toxics in discharges through the use of AKART.

**Table 240  
Toxics Substances Criteria**

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
<b>Metals:</b>								
Antimony	7440360	Metals, cyanide, and total phenols	-	-	-	-	12	180
Arsenic	7440382	Metals, cyanide, and total phenols	360.0 (c,dd)	190.0 (d,dd)	69.0 (c,ll,dd)	36.0 (d,cc,ll,dd)	10 (A)	10 (A)
Asbestos	1332214	Toxic pollutants and hazardous substances	-	-	-	-	7,000,000 fibers/L (C)	-
Beryllium	7440417	Metals, cyanide, and total phenols	-	-	-	-	-	-
Cadmium	7440439	Metals, cyanide, and total phenols	(i,c,dd)	(j,d,dd)	42.0 (c,dd)	9.3 (d,dd)	-	-
Chromium (III)	16065831	Metals, cyanide, and total phenols	(m,c,gg)	(n,d,gg)	-	-	-	-
Chromium (VI)	18540299	Metals, cyanide, and total phenols	15.0 (c,l,ii,dd)	10.0 (d,jj,dd)	1,100.0 (c,l,ll,dd)	50.0 (d,ll,dd)	-	-
Copper	7440508	Metals, cyanide, and total phenols	(o,c,dd)	(p,d,dd)	4.8 (c,ll,dd)	3.1 (d,ll,dd)	1,300 (C)	-
Lead	7439921	Metals, cyanide, and total phenols	(q,c,dd)	(r,d,dd)	210.0 (c,ll,dd)	8.1 (d,ll,dd)	-	-
Mercury	7439976	Metals, cyanide, and total phenols	2.1 (c,kk,dd)	0.012 (d,ff,s)	1.8 (c,ll,dd)	0.025 (d,ff,s)	(G)	(G)
Methylmercury	22967926	Nonconventional	-	-	-	-	-	-
Nickel	7440020	Metals, cyanide, and total phenols	(t,c,dd)	(u,d,dd)	74.0 (c,ll,dd)	8.2 (d,ll,dd)	150	190
Selenium	7782492	Metals, cyanide, and total phenols	20.0 (c,ff)	5.0 (d,ff)	290 (c,ll,dd)	71.0 (d,x,ll,dd)	120	480
Silver	7440224	Metals, cyanide, and total phenols	(y,a,dd)	-	1.9 (a,ll,dd)	-	-	-
Thallium	7440280	Metals, cyanide, and total phenols	-	-	-	-	0.24	0.27
Zinc	7440666	Metals, cyanide, and total phenols	(aa,c,dd)	(bb,d,dd)	90.0 (c,ll,dd)	81.0 (d,ll,dd)	2,300	2,900

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
<b>Other chemicals:</b>								
1,1,1-Trichloroethane	71556	Volatile	-	-	-	-	47,000	160,000
1,1,2,2-Tetrachloroethane	79345	Volatile	-	-	-	-	0.12 (B)	0.46 (B)
1,1,2-Trichloroethane	79005	Volatile	-	-	-	-	0.44 (B)	1.8 (B)
1,1-Dichloroethane	75343	Volatile	-	-	-	-	-	-
1,1-Dichloroethylene	75354	Volatile	-	-	-	-	1200	4100
1,2,4-Trichlorobenzene	120821	Base/neutral compounds	-	-	-	-	0.12 (B)	0.14 (B)
1,2-Dichlorobenzene	95501	Volatile	-	-	-	-	2000	2500
1,2-Dichloroethane	107062	Volatile	-	-	-	-	9.3 (B)	120 (B)
1,2-Dichloropropane	78875	Volatile	-	-	-	-	0.71 (B)	3.1 (B)
1,3-Dichloropropene	542756	Volatile	-	-	-	-	0.24 (B)	2 (B)
1,2-Diphenylhydrazine	122667	Base/neutral compounds	-	-	-	-	0.015 (B)	0.023 (B)
1,2-Trans-Dichloroethylene	156605	Volatile	-	-	-	-	600	5,800
1,3-Dichlorobenzene	541731	Volatile	-	-	-	-	13	16
1,4-Dichlorobenzene	106467	Volatile	-	-	-	-	460	580
2,3,7,8-TCDD (Dioxin)	1746016	Dioxin	-	-	-	-	0.000000064	0.000000064
2,4,6-Trichlorophenol	88062	Acid compounds	-	-	-	-	0.25 (B)	0.28 (B)
2,4-Dichlorophenol	120832	Acid compounds	-	-	-	-	25	34
2,4-Dimethylphenol	105679	Acid compounds	-	-	-	-	85	97
2,4-Dinitrophenol	51285	Acid compounds	-	-	-	-	60	610
2,4-Dinitrotoluene	121142	Base/neutral compounds	-	-	-	-	0.039 (B)	0.18 (B)
2,6-Dinitrotoluene	606202	Base/neutral compounds	-	-	-	-	-	-
2-Chloroethyvinyl Ether	110758	Volatile	-	-	-	-	-	-
2-Chloronaphthalene	91587	Base/neutral compounds	-	-	-	-	170	180
2-Chlorophenol	95578	Acid compounds	-	-	-	-	15	17
2-Methyl-4,6-Dinitrophenol (4,6-dinitro-o-cresol)	534521	Acid compounds	-	-	-	-	7.1	25
2-Nitrophenol	88755	Acid compounds	-	-	-	-	-	-
3,3'-Dichlorobenzidine	91941	Base/neutral compounds	-	-	-	-	0.0031 (B)	0.0033 (B)
3-Methyl-4-Chlorophenol (parachlorometa cresol)	59507	Acid compounds	-	-	-	-	36	36
4,4'-DDD	72548	Pesticides/PCBs	-	-	-	-	0.000036 (B)	0.000036 (B)
4,4'-DDE	72559	Pesticides/PCBs	-	-	-	-	0.000051 (B)	0.000051 (B)
4,4'-DDT	50293	Pesticides/PCBs	-	-	-	-	0.000025 (B)	0.000025 (B)
4,4'-DDT (and metabolites)		Pesticides/PCBs	1.1 (a)	0.001 (b)	0.13 (a)	0.001 (b)	-	-
4-Bromophenyl Phenyl Ether	101553	Base/neutral compounds	-	-	-	-	-	-

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
4-Chorophenyl Phenyl Ether	7005723	Base/neutral compounds	-	-	-	-	-	-
4-Nitrophenol	100027	Acid compounds	-	-	-	-	-	-
Acenaphthene	83329	Base/neutral compounds	-	-	-	-	110	110
Acenaphthylene	208968	Base/neutral compounds	-	-	-	-	-	-
Acrolein	107028	Volatile	-	-	-	-	1.0	1.1
Acrylonitrile	107131	Volatile	-	-	-	-	0.019 (B)	0.028 (B)
Aldrin	309002	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000057 (B)	0.0000058 (B)
alpha-BHC	319846	Pesticides/PCBs	-	-	-	-	0.0005 (B)	0.00056 (B)
alpha-Endosulfan	959988	Pesticides/PCBs	-	-	-	-	9.7	10
Anthracene	120127	Base/neutral compounds	-	-	-	-	3,100	4,600
Benzene	71432	Volatile	-	-	-	-	0.44 (B)	1.6 (B)
Benzidine	92875	Base/neutral compounds	-	-	-	-	0.00002 (B)	0.000023 (B)
Benzo(a) Anthracene	56553	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Benzo(a) Pyrene	50328	Base/neutral compounds	-	-	-	-	0.0014 (B)	0.0021 (B)
Benzo(b) Fluoranthene	205992	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Benzo(ghi) Perylene	191242	Base/neutral compounds	-	-	-	-	-	-
Benzo(k) Fluoranthene	207089	Base/neutral compounds	-	-	-	-	0.014 (B)	0.21 (B)
beta-BHC	319857	Pesticides/PCBs	-	-	-	-	0.0018 (B)	0.002 (B)
beta-Endosulfan	33213659	Pesticides/PCBs	-	-	-	-	9.7	10
Bis(2-Chloroethoxy) Methane	111911	Base/neutral compounds	-	-	-	-	-	-
Bis(2-Chloroethyl) Ether	111444	Base/neutral compounds	-	-	-	-	0.02 (B)	0.06 (B)
Bis(2-Chloroisopropyl) Ether	39638329	Base/neutral compounds	-	-	-	-	-	-
Bis(2-Ethylhexyl) Phthalate	117817	Base/neutral compounds	-	-	-	-	0.23 (B)	0.25 (B)
Bromoform	75252	Volatile	-	-	-	-	5.8 (B)	27 (B)
Butylbenzyl Phthalate	85687	Base/neutral compounds	-	-	-	-	0.56 (B)	0.58 (B)
Carbon Tetrachloride	56235	Volatile	-	-	-	-	0.2 (B)	0.35 (B)
Chlordane	57749	Pesticides/PCBs	2.4 (a)	0.0043 (b)	0.09 (a)	0.004 (b)	0.000093 (B)	0.000093 (B)
Chlorobenzene	108907	Volatile	-	-	-	-	380	890
Chlorodibromomethane	124481	Volatile	-	-	-	-	0.65 (B)	3 (B)
Chloroethane	75003	Volatile	-	-	-	-	-	-



Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Chloroform	67663	Volatile	-	-	-	-	260	1200
Chrysene	218019	Base/neutral compounds	-	-	-	-	1.4 (B)	2.1 (B)
Cyanide	57125	Metals, cyanide, and total phenols	22.0 (c,ee)	5.2 (d,ee)	1.0 (c,mm,ee)	(d,mm,ee)	19 (D)	270 (D)
delta-BHC	319868	Pesticides/PCBs	-	-	-	-	-	-
Dibenzo(a,h) Anthracene	53703	Base/neutral compounds	-	-	-	-	0.0014 (B)	0.0021 (B)
Dichlorobromomethane	75274	Volatile	-	-	-	-	0.77 (B)	3.6 (B)
Dieldrin	60571	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000061 (B)	0.0000061 (B)
Diethyl Phthalate	84662	Base/neutral compounds	-	-	-	-	4,200	5,000
Dimethyl Phthalate	131113	Base/neutral compounds	-	-	-	-	92,000	130,000
Di-n-Butyl Phthalate	84742	Base/neutral compounds	-	-	-	-	450	510
Di-n-Octyl Phthalate	117840	Base/neutral compounds	-	-	-	-	-	-
Endosulfan		Pesticides/PCBs	0.22 (a)	0.056 (b)	0.034 (a)	0.0087 (b)	-	-
Endosulfan Sulfate	1031078	Pesticides/PCBs	-	-	-	-	9.7	10
Endrin	72208	Pesticides/PCBs	0.18 (a)	0.0023 (b)	0.037 (a)	0.0023 (b)	0.034	0.035
Endrin Aldehyde	7421934	Pesticides/PCBs	-	-	-	-	0.034	0.035
Ethylbenzene	100414	Volatile	-	-	-	-	200	270
Fluoranthene	206440	Base/neutral compounds	-	-	-	-	16	16
Fluorene	86737	Base/neutral compounds	-	-	-	-	420	610
Hexachlorocyclohexane (gamma-BHC; Lindane)	58899	Pesticides/PCBs	2.0 (a)	0.08 (b)	0.16 (a)	-	15	17
Heptachlor	76448	Pesticides/PCBs	0.52 (a)	0.0038 (b)	0.053 (a)	0.0036 (b)	0.0000099 (B)	0.00001 (B)
Heptachlor Epoxide	1024573	Pesticides/PCBs	-	-	-	-	0.0000074 (B)	0.0000074 (B)
Hexachlorobenzene	118741	Base/neutral compounds	-	-	-	-	0.000051 (B)	0.000052 (B)
Hexachlorobutadiene	87683	Base/neutral compounds	-	-	-	-	0.69 (B)	4.1 (B)
Hexachlorocyclopentadiene	77474	Base/neutral compounds	-	-	-	-	150	630
Hexachloroethane	67721	Base/neutral compounds	-	-	-	-	0.11 (B)	0.13 (B)
Indeno(1,2,3-cd) Pyrene	193395	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Isophorone	78591	Base/neutral compounds	-	-	-	-	27 (B)	110 (B)
Methyl Bromide	74839	Volatile	-	-	-	-	520	2,400
Methyl Chloride	74873	Volatile	-	-	-	-	-	-
Methylene Chloride	75092	Volatile	-	-	-	-	16 (B)	250 (B)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Napthalene	91203	Base/neutral compounds	-	-	-	-	-	-
Nitrobenzene	98953	Base/neutral compounds	-	-	-	-	55	320
N-Nitrosodimethylamine	62759	Base/neutral compounds	-	-	-	-	0.00065 (B)	0.34 (B)
N-Nitrosodi-n-Propylamine	621647	Base/neutral compounds	-	-	-	-	0.0044 (B)	0.058 (B)
N-Nitrosodiphenylamine	86306	Base/neutral compounds	-	-	-	-	0.62 (B)	0.69 (B)
Pentachlorophenol (PCP)	87865	Acid compounds	(w,c)	(v,d)	13.0 (c)	7.9 (d)	0.046 (B)	0.1 (B)
Phenanthrene	85018	Base/neutral compounds	-	-	-	-	-	-
Phenol	108952	Acid compounds	-	-	-	-	18,000	200,000
Polychlorinated Biphenyls (PCBs)		Pesticides/PCBs	2.0 (b)	0.014 (b)	10.0 (b)	0.030 (b)	0.00017 (E)	0.00017 (E)
Pyrene	129000	Base/neutral compounds	-	-	-	-	310	460
Tetrachloroethylene	127184	Volatile	-	-	-	-	4.9 (B)	7.1 (B)
Toluene	108883	Volatile	-	-	-	-	180	410
Toxaphene	8001352	Pesticides/PCBs	0.73 (c,z)	0.0002 (d)	0.21 (c,z)	0.0002 (d)	0.000032 (B)	0.000032 (B)
Trichloroethylene	79016	Volatile	-	-	-	-	0.38 (B)	0.86 (B)
Vinyl Chloride	75014	Volatile	-	-	-	-	0.02 (B, F)	0.26 (B, F)
Ammonia (hh)		Nonconventional	(f,c)	(g,d)	0.233 (h,c)	0.035 (h,d)	-	-
Chloride (dissolved) (k)		Nonconventional	860.0 (h,c)	230.0 (h,d)	-	-	-	-
Chlorine (total residual)		Nonconventional	19.0 (c)	11.0 (d)	13.0 (c)	7.5 (d)	-	-
Chlorpyrifos		Toxic pollutants and hazardous substances	0.083 (c)	0.041 (d)	0.011 (c)	0.0056 (d)	-	-
Parathion		Toxic pollutants and hazardous substances	0.065 (c)	0.013 (d)	-	-	-	-

Footnotes for aquatic life criteria in Table 240:

- a. An instantaneous concentration not to be exceeded at any time.
- b. A 24-hour average not to be exceeded.
- c. A 1-hour average concentration not to be exceeded more than once every three years on the average.
- d. A 4-day average concentration not to be exceeded more than once every three years on the average.
- e. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.
- f. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

$$\text{For salmonids present: } \frac{0.275}{1 + 10^{7.204-pH}} + \frac{39.0}{1 + 10^{pH-7.204}}$$

$$\text{For salmonids absent: } \frac{0.411}{1 + 10^{7.204-pH}} + \frac{58.4}{1 + 10^{pH-7.204}}$$

- g. Shall not exceed the numerical concentration calculated as follows:  
 Unionized ammonia concentration for waters where salmonid habitat is an existing or designated use:

0.80 ÷ (FT)(FPH)(RATIO)

where: RATIO = 13.5; 7.7 ≤ pH ≤ 9

RATIO = (20.25 × 10<sup>(7.7-pH)</sup>) ÷ (1 + 10<sup>(7.4-pH)</sup>); 6.5 ≤ pH ≤ 7.7

FT = 1.4; 15 ≤ T ≤ 30

FT = 10<sup>[0.03(20-T)]</sup>; 0 ≤ T ≤ 15

FPH = 1; 8 ≤ pH ≤ 9

FPH = (1 + 10<sup>(7.4-pH)</sup>) ÷ 1.25; 6.5 ≤ pH ≤ 8.0

Total ammonia concentrations for waters where salmonid habitat is not an existing or designated use and other fish early life stages are absent:

$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times (1.45 \times 10^{0.028(25-A)})$$

where: A = the greater of either T (temperature in degrees Celsius) or 7.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

Total ammonia concentration for waters where salmonid habitat is not an existing or designated use and other fish early life stages are present:

$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times B$$

where: B = the lower of either 2.85, or 1.45 × 10<sup>0.028 × (25-T)</sup>. T = temperature in degrees Celsius.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

- h. Measured in milligrams per liter rather than micrograms per liter.
- i. ≤ (0.944)(e<sup>(1.128[ln(hardness)]-3.828)</sup>) at hardness = 100. Conversion factor (CF) of 0.944 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.136672 - [(ln hardness)(0.041838)].
- j. ≤ (0.909)(e<sup>(0.7852[ln(hardness)]-3.490)</sup>) at hardness = 100. Conversion factor (CF) of 0.909 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.101672 - [(ln hardness)(0.041838)].
- k. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.
- l. Salinity dependent effects. At low salinity the 1-hour average may not be sufficiently protective.
- m. ≤ (0.316)(e<sup>(0.8190[ln(hardness)] + 3.688)</sup>)
- n. ≤ (0.860)(e<sup>(0.8190[ln(hardness)] + 1.561)</sup>)
- o. ≤ (0.960)(e<sup>(0.9422[ln(hardness)] - 1.464)</sup>)
- p. ≤ (0.960)(e<sup>(0.8545[ln(hardness)] - 1.465)</sup>)
- q. ≤ (0.791)(e<sup>(1.273[ln(hardness)] - 1.460)</sup>) at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- r. ≤ (0.791)(e<sup>(1.273[ln(hardness)] - 4.705)</sup>) at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- s. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.
- t. ≤ (0.998)(e<sup>(0.8460[ln(hardness)] + 3.3612)</sup>)
- u. ≤ (0.997)(e<sup>(0.8460[ln(hardness)] + 1.1645)</sup>)
- v. ≤ e<sup>[1.005(pH) - 5.290]</sup>

- w. ≤ e<sup>[1.005(pH) - 4.830]</sup>
- x. The status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 ug/l in salt water.
- y. ≤ (0.85)(e<sup>(1.72[ln(hardness)] - 6.52)</sup>)
- z. Channel Catfish may be more acutely sensitive.
- aa. ≤ (0.978)(e<sup>(0.8473[ln(hardness)] + 0.8604)</sup>)
- bb. ≤ (0.986)(e<sup>(0.8473[ln(hardness)] + 0.7614)</sup>)
- cc. Nonlethal effects (growth, C-14 uptake, and chlorophyll production) to diatoms (*Thalassiosira aestivalis* and *Skeletonema costatum*) which are common to Washington's waters have been noted at levels below the established criteria. The importance of these effects to the diatom populations and the aquatic system is sufficiently in question to persuade the state to adopt the USEPA National Criteria value (36 µg/L) as the state threshold criteria, however, wherever practical the ambient concentrations should not be allowed to exceed a chronic marine concentration of 21 µg/L.
- dd. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back-calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. The adjusted site specific criteria are not in effect until they have been incorporated into this chapter and approved by EPA. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has

- developed supplemental guidance for conducting water effect ratio studies.
- ee. The criteria for cyanide is based on the weak acid dissociable method in the 19th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote dd, above).
- ff. These criteria are based on the total-recoverable fraction of the metal.
- gg. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total-recoverable chromium.
- hh. The listed fresh water criteria are based on un-ionized or total ammonia concentrations, while those for marine water are based on un-ionized ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA440/5-88-004, April 1989.
- ii. The conversion factor used to calculate the dissolved metal concentration was 0.982.
- jj. The conversion factor used to calculate the dissolved metal concentration was 0.962.
- kk. The conversion factor used to calculate the dissolved metal concentration was 0.85.
- ll. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

mm. The cyanide criteria are: 2.8µg/l chronic and 9.1µg/l acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.

Footnotes for human health criteria in Table 240:

- A. This criterion for total arsenic is the maximum contaminant level (MCL) developed under the Safe Drinking Water Act. The MCL for total arsenic is applied to surface waters where consumption of organisms-only and where consumption of water + organisms reflect the designated uses. When the department determines that a direct or indirect industrial discharge to surface waters designated for domestic water supply may be adding arsenic to its wastewater, the department will require the discharger to develop and implement a pollution prevention plan to reduce arsenic through the use of AKART. Industrial wastewater discharges to a privately or publicly owned wastewater treatment facility are considered indirect discharges.
- B. This criterion was calculated based on an additional lifetime cancer risk of one-in-one-million (1 x 10<sup>-6</sup> risk level).

- C. This criterion is based on a regulatory level developed under the Safe Drinking Water Act.
- D. This recommended water quality criterion is expressed as total cyanide, even though the integrated risk information system RfD used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no "bioavailability" to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g., Fe<sub>4</sub>[Fe(CN)<sub>6</sub>]<sub>3</sub>), this criterion may be overly conservative.
- E. This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses). The PCBs criteria were calculated using a chemical-specific risk level of 4 x 10<sup>-5</sup>. Because that calculation resulted in a higher (less protective) concentration than the current criterion concentration (40 C.F.R. 131.36) the state made a chemical-specific decision to stay at the current criterion concentration.
- F. This criterion was derived using the cancer slope factor of 1.4 (linearized multistage model with a twofold increase to 1.4 per mg/kg-day to account for continuous lifetime exposure from birth).
- G. The human health criteria for mercury are contained in 40 C.F.R. 131.36.

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

**AMENDATORY SECTION** (Amending WSR 19-04-007, filed 1/23/19, effective 2/23/19)

**WAC 173-201A-610 Use designations—Marine waters.** All marine surface waters have been assigned specific uses for protection under Table 612.

**Table 610 (Key to Table 612)**

Abbreviation	General Description
<b>Aquatic Life Uses:</b>	(see WAC 173-201A-210(1))
Extraordinary Quality	Extraordinary quality. <u>Water quality of this use class shall markedly and uniformly exceed the requirements for all uses including, but not limited to, salmonid ((and)) migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.</u>

Abbreviation	General Description
Excellent <u>Quality</u>	Excellent quality. <u>Water quality of this use class shall meet or exceed the requirements for all uses including, but not limited to, salmonid ((and)) migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.</u>
Good <u>Quality</u>	Good quality. <u>Water quality of this use class shall meet or exceed the requirements for most uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.</u>
Fair <u>Quality</u>	Fair quality. <u>Water quality of this use class shall meet or exceed the requirements for selected and essential uses including, but not limited to, salmonid and other fish migration.</u>
<b>Shellfish Harvesting:</b>	(see WAC 173-201A-210(2))
Shellfish Harvest	Shellfish (clam, oyster, and mussel) harvesting.
<b>Recreational Uses:</b>	(see WAC 173-201A-210(3))
Primary Contact	Primary contact recreation.
<b>Miscellaneous Uses:</b>	(see WAC 173-201A-210(4))
Wildlife Habitat	Wildlife habitat.
Harvesting	Salmonid and other fish harvesting, and crustacean and other shellfish (crabs, shrimp, scallops, etc.) harvesting.
Com./Navig.	Commerce and navigation.
Boating	Boating.

Abbreviation	General Description
Aesthetics	Aesthetic values.

**WSR 20-02-100**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Filed December 31, 2019, 11:05 a.m., effective January 31, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This amendment removes unnecessary definitions, shortens definitions for terms defined elsewhere, and uses the terms "preliminary finding" and "final notice," consistent with all types of program integrity (PI) activities.

WAC 182-502A-0401 provides detail about PI activity methods and specifies that the agency may request and evaluate records or other information. This rule also sets out requirements for the electronic or facsimile submission of records and states that the agency destroys hard copies submitted without prior approval. The rule provides that entities must not adjust or rebill a claim subject to a PI activity until the activity and all appeals are exhausted. Subsection (8) requires that entities allow the agency access to its premises and provide requested records.

WAC 182-502A-0801 clarifies that the dispute resolution process is informal.

WAC 182-502A-0901 uses the term administrative hearing, consistent with chapter 182-526 WAC, and clarifies that there is no hearing right for a denied claim payment.

WAC 182-502A-1001 clarifies that the agency must publish metrics for contractors' audits, and it may publish metrics for the agency's own PI activities.

WAC 182-502A-1101 is a new section added for managed care organizations (MCOs).

- These rules require MCOs to: Enforce all PI contract terms and regulations; conduct and enforce PI activities; and establish an appeals process for subcontractors and providers to contest overpayments.
- This rule also states that subcontractors and providers do not have the right to an administrative hearing on the results of the appeals process.
- Overpayment assessments that are not appealed must be recovered within sixty days of: (1) The overpayment being identified and assessed; or (2) the completion of the appeals process regarding a disputed overpayment assessment.
- MCOs must report to the agency overpayments and related appeals and results.
- The agency may identify MCO overpayments to subcontractors and providers and may sanction an MCO or assess liquidated damages for MCO provider fraud, waste, and abuse, or as outlined in the parties' contract.

Citation of Rules Affected by this Order: New WAC 182-502A-1101; and amending WAC 182-502A-0101, 182-502A-0201, 182-502A-0301, 182-502A-0401, 182-502A-0501, 182-502A-0601, 182-502A-0701, 182-502A-0801, 182-502A-0901, 182-502A-1001, and 182-502A-1101.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: C.F.R. Sections 438.608 through 438.610.

Adopted under notice filed as WSR 19-23-096 on November 20, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 11, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 11, Repealed 0.

Date Adopted: December 31, 2019.

Wendy Barcus  
Rules Coordinator

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

**WAC 182-502A-0101** (~~(Program integrity)~~) **Purpose.** (1) Program integrity means a system of reasonable and consistent oversight of the medicaid program.

(2) The medicaid agency conducts program integrity activities to ((identify and prevent or recover)) detect and prevent potential fraud, waste, and abuse. These activities include identifying improper ((agency)) payments and recovering overpayments.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

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

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

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

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

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

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

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

~~((Contractor is any person contracted by the agency to oversee how health benefits are provided or to administer~~

~~health benefits to clients on the agency's behalf. A contractor includes, but is not limited to:~~

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

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

~~• A managed care organization (MCO) as defined in WAC 182-538-050; or~~

~~• An accountable community of health.))~~

**Credible allegation of fraud** ~~((means the agency has investigated an allegation of fraud and concluded that the existence of fraud is more probable than not))~~ - See 42 C.F.R. 455.2.

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

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

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

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

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

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

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

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

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

~~• Adverse determinations;~~

~~• Identified improper payments;~~

~~• Cost avoidance;~~

~~• Payments; and~~

~~• Recoveries.))~~

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

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

~~((Payee includes providers who are reimbursed by agency contracted managed care organizations.~~

**Person** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, public corporation, or any other legal or commercial entity.

**Program integrity activities** means those activities conducted by the agency or the agency's designees to determine compliance with applicable laws, rules, regulations, and agreements.))

**Program integrity compliance plan** means a document issued by the agency outlining the importance of ethical behavior on the part of the agency's contracted entities, as well as identified monitoring, auditing, and educational obligations an entity must comply with to remain an agency-contracted entity.

**Record** means any document or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the entity into a reasonably usable form. This includes documentation relating to claims, encounters, and payments.

**Relevant** - See Federal Rule of Evidence 401.

**Risk assessment** means to identify potential risk of fraud, waste and abuse, and improper payments within all Washington apple health programs.

**Sustained high level of payment error** means the net payment error rate is equal to or exceeds five percent for the audit period.

**Universe** means a defined population of claims or encounters or both.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

**WAC 182-502A-0301 ((~~Program integrity~~)) Authority to conduct program integrity activities.** The medicaid agency ((~~may~~)) conducts program integrity activities ((~~and designate agents to do so on its behalf~~)) on all Title XIX, Title XXI, and state-only-funded expenditures. See 42 C.F.R. 2.54, 431, 433, 438, 447, 455, 456, 457, 495, and 1001; 45 C.F.R. 92; 42 U.S.C. 1396a; and chapters 41.05, 41.05A, and 74.09 RCW.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

**WAC 182-502A-0401 Program integrity activities.** ((~~(1) Form~~)) The medicaid agency verifies entities' compliance with applicable laws, rules, regulations, and agreements through program integrity activities ((include:

- (a) Conducting audits;
- (b) Conducting reviews;
- (c) Conducting investigations;
- ~~(d))~~.

(1) **Methods.** Program integrity activity methods include, but are not limited to:

(a) Data mining to identify possible fraud, waste, and abuse (FWA) for further examination;

(b) Audits and reviews to determine compliance with federal, state, and agency rules and regulations, or to identify FWA;

(c) Investigations of suspected fraud and abuse;

(d) Algorithms to identify payment, program, and system irregularities leading to improper payments;

(e) On-site reviews and inspections of an entity's premises to ensure compliance with federal, state, and agency rules and regulations;

(f) Referral of enforcement actions against entities that have committed fraud or abuse to law enforcement agencies, or licensing agencies, or both;

(g) Technical assistance and education to prevent and identify potential FWA;

(h) Outreach to and education for entities and client communities, including how to report suspected fraud, explaining federal, state, and agency rules and requirements, conducting entity self-audits and implementing compliance programs; and

(i) Initiating and reviewing entity self-audits under WAC 182-502A-0501(;

(e) Applying algorithms to claim or encounter data;

(f) Conducting on-site inspections of entity locations (see subsection (4) of this section); and

(g) Verifying entity compliance with applicable laws, rules, regulations, and agreements)).

(2) **Location.** Program integrity activities ((~~may~~)) occur(;

(a) On the premises of the medicaid agency;

(b) On the premises of the entity)) at the agency, an entity's premises, or at both locations.

(3) **Timing.** The agency may ((~~commence~~)) begin program integrity activities concerning any current or former agency-contracted entity or that entity's agent ((~~thereof~~)) at any time up to six years after the date of service.

(4) **Notice.**

(a) The agency provides ((~~at~~)) thirty-calendar-days' notice to entities ((~~prior to~~)) before an on-site visit, except in those instances identified in (c) of this subsection.

(b) Hospitals are entitled to notice as described in RCW 70.41.045(4).

(c) The agency is not required to give notice of an on-site visit if evidence exists of danger to public health and safety or fraudulent activities.

(5) **Scope.** The agency determines the scope of a program integrity activity.

(6) **Selecting information to evaluate.**

(a) The agency may evaluate any records or other information relevant to validating that the ((~~payee~~)) entity received only those funds to which it is legally entitled. ((~~In this chapter, "relevant" has a meaning identical to Federal Rule of Evidence 401.~~))

(b) The agency may select information to evaluate by:

(i) Conducting a risk assessment of claim or encounter data;

(ii) Applying algorithms;

(iii) Data mining;

(iv) Claim-by-claim review;

(v) Encounter-by-encounter review;

(vi) Stratified random sampling;

(vii) Nonstratified random sampling; or  
 (viii) Applying any other method, or combination of methods, designed to identify relevant information.

**(7) Collecting records and other information to evaluate.** ~~((The entity must submit a copy of all records requested by the agency.))~~

(a) ~~((The))~~ After the agency serves notice, an entity must submit ~~((requested))~~ a copy of all records and other information requested to the agency ~~((within))~~ by the ~~((time frame))~~ date stated in the request.

(b) The entity must submit records electronically or by facsimile and must follow the instructions for records submission included in the agency's notice, unless the agency gives the entity permission to submit a hard copy of the records.

(c) If sent electronically, records must be:

(i) Copied to secured media (e.g., CD or DVD) and sent to the address stated in the notice; or

(ii) Uploaded to the agency's secure file transfer protocol (SFTP) site.

(d) If an entity submits hard copy records without prior approval, the agency destroys the records and requires the entity to resubmit them in an electronic format.

(e) If an entity fails to timely comply with the request, the agency may:

(i) Deny the entity's claim under a prepay review process;

(ii) Issue a ~~((draft audit report or))~~ preliminary ~~((review notice))~~ finding; or

(iii) Issue a final ~~((audit report or))~~ notice ~~((of improper payment.~~

~~((e))~~ An entity that fails to timely comply with a request under (a) of this subsection has no right to contest at an administrative hearing an agency action taken under (b)(i) of this subsection.

~~((d))~~ The entity must submit records electronically, or by facsimile, unless the agency has given the entity written permission to submit the records in hard copy.

~~((e))~~.

~~((f))~~ Once a program integrity activity ~~((has commenced))~~ begins, the entity must retain all original records and supportive materials until the program integrity activity is completed and all issues resolved, even if the retention period for those records and materials extends beyond the period otherwise required by law.

~~((g))~~ (g) Unless instructed to do so by the agency, the entity must not adjust or rebill a claim or encounter that is within the scope of a program integrity activity until that activity ends and any resulting appeals are exhausted.

**(8) Cooperation with on-site visits, audits, and investigations.** For an on-site visit, audit, or investigation, the entity must allow the agency access to its premises and provide any records or other information requested while on-site.

**(9) Evaluating information.**

(a) The agency may evaluate relevant information by applying any method or combination of methods reasonably calculated to determine whether an entity has complied with an applicable law, regulation, or agreement.

(b) A health care provider's bill for services, appointment books, accounting records, or other similar documents alone

do not qualify as appropriate documentation of services rendered.

(c) The agency provides the entity a description of the method or combination of methods used by the agency ~~((under subsection (6) of this section))~~ to select information to evaluate.

~~((9))~~ **(10) Nonbilled services.** Nonbilled services include any item, drug, code, or payment group that a provider does not submit on the provider's claim to the agency or contractor. When calculating improper payments, the agency does not include nonbilled services in its calculations.

~~((10))~~ **(11) Paid-at-zero services.** The agency considers paid-at-zero services or supplies only when conducting program integrity activities involving payment groups or encounters.

~~((11))~~ **(12) Conducting on-site audits.** The agency may conduct on-site audits at any entity location.

(a) During an on-site audit, the agency may create a copy of an entity's records that are potentially relevant to the audit.

(b) Failure to grant the agency access to the entity's records or premises constitutes failure to comply with a program integrity activity.

~~((12))~~ **(13) Conducting interviews.** The agency may interview any person it reasonably believes has relevant information ~~((under subsection (6) of this section))~~ regarding a program integrity activity. Interviews may consist of one or more sessions.

~~((13))~~ **(14) Costs.** The agency does not reimburse the costs an entity incurs complying with program integrity activities.

~~((14))~~ **(15) Conducting ~~((site))~~ on-site visits.** The agency may conduct on-site inspections of any entity location to determine whether the entity is complying with all applicable laws, rules, regulations, and agreements. ~~((See subsection (4) of this section.))~~

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

**WAC 182-502A-0501 ~~((Program integrity))~~ Entity self-audits.** (1) The medicaid agency may require an entity to self-audit.

(a) The agency ~~((will))~~ gives written notice of the instruction to self-audit.

(b) The entity must acknowledge receipt of the notice within thirty calendar days of receiving it.

(c) The entity must comply with all terms included in the notice; failure to timely comply with the notice constitutes failure to comply with a program integrity activity.

(d) The agency ~~((will))~~ does not require an entity to self-audit any services or encounters that are included in an active state or federal program integrity activity, rate adjustment, cost settlement, or other payment adjustment.

(e) The agency ~~((will))~~ reviews the self-audit and states in writing whether it accepts or rejects the results of the self-audit. If the agency rejects the results it may:

(i) Instruct the entity to repeat the self-audit; or

(ii) Audit the entity.

(2) ~~((An entity may initiate a self-audit at any time to verify payments made by the agency. When the entity's self-~~



~~audit and identifies an overpayment~~) When an entity self-discloses overpayments, it must:

(a) Submit to the agency written notice of the self-audit and identify each claim included in the self-audit.

(b) Report and repay the overpayment to the agency within sixty calendar days of identifying the overpayment, unless the overpayment is ~~((one of the following))~~:

(i) Included in an active state or federal program integrity activity~~((:)); or~~

(ii) Related to a state-initiated rate adjustment, cost settlement, or other payment adjustment.

(c) The entity's overpayment report must include:

(i) The reason for the overpayment;

(ii) How the entity calculated the overpayment; and

(iii) A list of claims associated with the overpayment.

(d) The agency ~~((will))~~ reviews the self-audit and states in writing whether it accepts or rejects the methodology and findings. If the agency rejects the findings it may:

(i) Instruct the entity to repeat the self-audit; or

(ii) Audit the entity.

(e) The agency ~~((will))~~ does not accept any identified overpayment as full or final repayment before the completion of its review of the entity's self-audit findings.

(3) The entity's dispute and appeal rights under this section are identical to its rights during an audit conducted by the office of program integrity.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

**WAC 182-502A-0601 ~~((Program integrity))~~**

**Extrapolation.** (1) To determine an improper payment from a sample, the medicaid agency may extrapolate to the universe from which the sample was drawn:

(a) If the audit identifies a sustained high level of payment error involving the provider; or

(b) When the agency has documented educational intervention to the provider and the education has failed to correct the provider's level of payment error.

(2) If during the course of the audit, an entity adjusts or rebills a claim or encounter that is part of the audit sample or universe, the original claim or encounter amount remains in the audit sample or universe.

(3) When the agency uses the results of an audit sample to extrapolate the amount to be recovered, the agency provides the entity with the following information:

(a) The sample size.

(b) The method used to select the sample.

(c) The universe from which the sample was drawn.

(d) Any formulas or calculations used to determine the amount of the improper payment.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

**WAC 182-502A-0701 ~~((Program integrity activity))~~**

**Agency outcomes.** (1) Following the medicaid agency's evaluation of an entity's records including, but not limited to, claims, encounter data, or payments, the agency may do any combination of the following:

(a) Deny a claim or claim line.

(b) ~~((Adjust or))~~ Recover an improperly paid claim.

(c) Instruct the entity to submit:

(i) Additional documentation~~((:)); or~~

(ii) A ~~((claim adjustment or a))~~ new claim. ~~((The entity must submit a claim adjustment or a new claim within sixty calendar days from the date of the agency's instruction or))~~ If the entity fails to submit a new claim within sixty calendar days, the agency ~~((will deny the claim adjustment or))~~ denies the new claim~~((An entity has no right to an adjudicative hearing for denial under this subsection))~~ as untimely.

(d) Request a refund of an improper payment to the agency by check.

(e) Refer an overpayment to the office of financial recovery for collection.

(f) Issue a ~~((draft audit report or preliminary review notice that lists))~~ preliminary finding~~((s and alleged improper payments))~~, which the entity may dispute under WAC 182-502A-0801.

(i) If an entity agrees with the preliminary ~~((findings and alleged improper payments))~~ finding before the deadline ~~((noted))~~ stated in the ~~((report or))~~ notice, the entity must notify the agency in writing. The agency then issues a final ~~((audit report or))~~ notice ~~((of improper payment))~~.

(ii) If an entity does not respond by the agency's deadline ~~((noted in the report or notice, the agency issues a final audit report or notice of improper payment, unless the agency extends the deadline))~~, the agency issues a final notice.

(g) Issue ~~((a final audit report,))~~ an overpayment notice~~((:))~~ or final notice ~~((of improper payment))~~, which the entity may appeal under WAC 182-502A-0901.

(i) The final ~~((audit report, overpayment notice, or))~~ notice ~~((of improper payment))~~ includes:

(A) The asserted overpayment or improper payment amount;

(B) The reason for an adverse determination;

(C) The specific criteria and citation of legal authority used to make the adverse determination;

(D) An explanation of the entity's appeal rights;

(E) The appropriate procedure to submit a claims adjustment, if applicable; and

(F) One or more of the following:

(I) Directives;

(II) Educational intervention; or

(III) A program integrity compliance plan.

(ii) Upon request, the agency ~~((will))~~ allows an entity with an adverse determination the option of repaying the amount owed according to a negotiated repayment plan of up to twelve months. Interest may be calculated and charged on the remaining balance each month.

(h) Recover interest under RCW 41.05A.220.

(i) Impose civil penalties under RCW 74.09.210.

(j) Refer the entity to appropriate licensing authorities for disciplinary action.

(k) Refer the entity to the agency's medical dental advisory committee for review and potential termination of the contract or core provider agreement.

(l) Determine it has sufficient evidence to make a credible allegation of fraud. The agency ~~((will))~~ then:

(i) Refers the case to the medicaid fraud control ~~((unit))~~ division and any other appropriate prosecuting authority for further action; and

(ii) Suspend~~s~~ some or all Washington apple health payments to the entity unless the agency determines there is good cause not to suspend payments under 42 C.F.R. 455.23.

(2) The agency may assess an overpayment and terminate the core provider agreement if an entity fails to retain adequate documentation for services billed to the agency.

(3) At any time during a program integrity activity, the agency may issue a final ~~((audit report or a))~~ notice ~~((of improper payment))~~ if the entity:

- (a) Stops doing business with the agency;
- (b) Transfers control of the business;
- (c) Makes a suspicious asset transfer;
- (d) Files for bankruptcy; or
- (e) Fails to comply with program integrity activities.

(4) The entity must repay any overpayment identified by the agency within sixty calendar days of being notified of the overpayment, except when a repayment plan is negotiated with the agency under subsection (1)(g)(ii) of this section.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

**WAC 182-502A-0801 ~~((Program integrity))~~ Dispute resolution process.** (1) An entity may informally dispute a ~~((draft audit report or))~~ preliminary ~~((review notice))~~ finding. The medicaid agency must receive any request for dispute resolution within thirty calendar days of the date the entity received the ~~((draft audit report or))~~ preliminary ~~((review notice))~~ finding. The request for dispute resolution must be in writing and include the following:

(a) The supporting evidence for each disputed ~~((adverse determination))~~ preliminary finding; and

(b) The relief sought for each disputed ~~((adverse determination))~~ preliminary finding.

(2) The dispute may include a request for a dispute resolution conference (DRC).

(a) If the agency grants the entity's request for a DRC, the DRC ~~((must))~~ occurs within sixty calendar days of the date the entity received the agency's written acceptance of the request for a DRC.

(b) At least five business days before the DRC, the entity must notify the agency of who will attend the DRC on the entity's behalf.

(3) Following the timely submission of a written request for dispute resolution under subsection (1) of this section and completion of any DRC, the agency ~~((will address))~~ addresses in writing each written ~~((dispute))~~ disputed preliminary finding raised by the entity.

(4) The agency may terminate the dispute resolution process and issue a final ~~((audit report or))~~ notice ~~((of improper payment))~~ if the entity fails to ~~((submit a timely dispute or))~~ comply with the requirements ~~((under subsection (1)))~~ of this section.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

**WAC 182-502A-0901 ~~((Program integrity activity—Adjudicative proceedings))~~ Administrative hearing (formal appeal) right.** (1) ~~((If an entity objects to any report or notice assessing an overpayment, the entity may request an adjudicative proceeding by following the procedure set out in RCW 41.05A.170.~~

~~((2))~~ An entity has a right to an administrative hearing (formal appeal), and any resulting appeals process under RCW 41.05A.170 and chapter 182-526 WAC, if the agency assesses an overpayment against the entity.

~~((2))~~ An entity does not have an administrative hearing right for the denial of payment of a claim.

~~((3))~~ At the ~~((adjudicative proceeding))~~ administrative hearing and on appeal, the entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

~~((3))~~ The ~~((adjudicative proceeding))~~ administrative hearing process is governed by chapter 34.05 RCW and chapter 182-526 WAC.

~~((4))~~ The medicaid agency ~~((will))~~ does not recoup overpayments until a decision in the ~~((adjudicative proceeding))~~ administrative hearing is issued and all appeals, if any, have been exhausted.

~~((5))~~ Interest on overpayments continues to accrue, but it is not collected until a decision in the ~~((adjudicative proceeding))~~ administrative hearing is issued and all appeals, if any, have been exhausted. See RCW 74.09.220.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

**WAC 182-502A-1001 ~~((Program integrity activity—))~~ Metrics.** ~~((Under RCW 74.09.195 (2)(b), the medicaid agency will, on an annual basis:~~

~~((1) Compile metrics of program integrity activities conducted by the agency and its entities; and~~

~~((2) Publish the metrics on the agency's web site.))~~ (1) The medicaid agency annually, compiles and publishes metrics for any contractor that conducts audits on the agency's behalf under RCW 74.09.195 (2)(b).

(2) The agency may publish metrics of the program integrity activities it conducts. Metrics include, but are not limited to:

- (a) Adverse determinations;
- (b) Identified improper payments;
- (c) Cost avoidance;
- (d) Payments; and
- (e) Recoveries.

## NEW SECTION

**WAC 182-502A-1101 Managed care organizations.** This section applies to entities that contract with the medicaid agency to provide services in exchange for a capitated rate.

(1) Managed care organizations (MCOs) must comply with and enforce all applicable program integrity:

- (a) Federal and state laws and regulations;
- (b) Terms of their contracts with the agency; and

(c) Terms of their contracts with subcontractors and providers.

(2) MCOs must:

(a) Adopt and enforce program integrity policies and procedures that guide the contractor's officers, employees, agents, and subcontractors;

(b) Include and enforce federal and state program integrity requirements in their subcontracts and in their provider application, credentialing, and recredentialing processes;

(c) Adopt and implement methods for detecting and preventing fraud, waste, and abuse to ensure payments to subcontractors and providers are proper and comply with medicare regulations and billing instructions;

(d) Perform ongoing analyses of their authorization, utilization, claims, providers' billing patterns, and encounter data to detect improper payments;

(e) Conduct reviews, audits, and investigations of subcontractors and providers;

(f) Report to the agency any:

(i) Fraud, waste, or abuse; and

(ii) Overpayments and recoveries.

(g) Recover overpayments to any subcontractor or provider; and

(h) Refer any suspected or potential fraud to the agency and to the medicaid fraud control division or other law enforcement agency.

(3) MCOs must establish an appeals process, similar to the dispute resolution process in WAC 182-502A-801, for their subcontractors or providers to contest an assessment of an overpayment by a managed care entity.

(4) MCOs' subcontractors or providers do not have a right to an administrative hearing under chapter 34.05 RCW or chapter 182-526 WAC to contest the results of the appeals process. The MCO will provide notice and will state in the notice that there is no right to an administrative hearing.

(5) Overpayment assessments by an MCO to its subcontractor or provider that are not appealed or that are upheld after appeal must be recovered from its subcontractors or providers within:

(a) Sixty calendar days of the overpayment being identified and assessed against the subcontractor or provider; or

(b) Sixty calendar days of completion of an appeals process for the subcontractor or provider who disputes the overpayment assessment.

(6) An MCO must report to the agency:

(a) Identification of an overpayment assessed against a subcontractor or provider.

(b) Notification of a subcontractor's or provider's appeal of an overpayment assessment.

(c) Results of an appeal of an overpayment assessment from the subcontractor or provider.

(d) Recovery of the identified overpayment assessed or settlement information as a result of the appeal.

(7) The agency may sanction an MCO or assess liquidated damages when:

(a) The agency identifies fraud, waste, or abuse by an MCO provider;

(b) The MCO fails to report MCO provider overpayments; or

(c) Other situations arise as identified in the contract.

## WSR 20-02-101

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 31, 2019, 11:19 a.m., effective February 1, 2020]

Effective Date of Rule: February 1, 2020.

Purpose: The department is amending WAC 388-826-0075 and 388-826-0095; repealing WAC 388-826-0090; and creating new WAC 388-826-0096, 388-826-0097, and 388-826-0098. The amendments are necessary to do the following: Align the calculation of client participation for voluntary placement services (VPS) clients with that of other waiver participants; clarify parent and guardian responsibilities; and require clients receiving VPS in child foster homes to establish a basic expense agreement.

Citation of Rules Affected by this Order: New WAC 388-826-0096, 388-826-0097 and 388-826-0098; repealing WAC 388-826-0090; and amending WAC 388-826-0075 and 388-826-0095.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 74.13.350.

Adopted under notice filed as WSR 19-21-115 on October 18, 2019.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-826-0097 was revised to address stakeholder concerns by making the following changes to the proposed text:

**WAC 388-826-0097 What expenses must a parent pay for while their child while receiving receives voluntary placement services?** A parent ~~or legal guardian~~ remains financially responsible for all expenses for their minor child that are not included in voluntary placement services.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 2, Repealed 1.

Date Adopted: December 31, 2019.

Cheryl Strange  
Secretary

AMENDATORY SECTION (Amending WSR 18-23-004, filed 11/7/18, effective 12/8/18)

**WAC 388-826-0075 What are a parent or legal guardian's responsibilities when ~~(their)~~ a child is receiving voluntary placement services?** (1) When a client is receiving voluntary placement services, the client's parent or legal guardian must:

- ~~((1))~~ (a) Maintain weekly contact with the child;
- ~~((2))~~ (b) Comply with the voluntary placement agreement;
- ~~((3) Help)~~ (c) Apply for all income and benefits available to the child (~~from the Social Security Administration~~); and
- ~~((4))~~ (d) Participate in:
  - ~~((a))~~ (i) The shared parenting plan;
  - ~~((b))~~ (ii) Team meetings; and
  - ~~((c))~~ (iii) The DDA annual assessment, including the person-centered service plan.

(2) When the child receives social security income, the child's parent or legal guardian must establish a representative payee to manage the child's income and comply with the client responsibility and basic expenses required in this chapter.

(3) Nonpayment of a child's client responsibility or basic expenses may jeopardize the child's placement with a provider.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0095 ~~((Who pays for a child's care when a child is in out of home))~~ What must a client pay toward the cost of voluntary placement services in a licensed staffed residential home, a children's SOLA, or a group care facility?** ~~((State funds, federal funds and the child's SSI, that is used for basic maintenance support the cost of the child's care while the child is in licensed out-of-home placement. The parent is encouraged to continue to support their child with typical activities, e.g., presents, clothing, special items, special outings. Licensed providers who care for the child in a licensed setting will be paid directly through a contract with DDD and according to an established rate structure, established within DDD.))~~

(1) To receive voluntary placement services in a licensed staffed residential home, a children's SOLA, or a group care facility for medically fragile children, a client may be required to pay client responsibility as required under this section.

(2) The department determines the amount of client responsibility and room and board a client must pay under:

(a) WAC 182-515-1510 if the client is enrolled on a DDA home and community-based (HCB) waiver under chapter 388-845 WAC; or

(b) WAC 182-513-1235 if the client is enrolled in roads to community living under chapter 388-106 WAC.

#### NEW SECTION

**WAC 388-826-0096 What must a client pay toward the cost of voluntary placement services in a child foster home?** (1) To receive voluntary placement services in a child foster home, a client must pay the provider a fixed monthly

amount referred to as basic expenses, which must be outlined in a basic expense agreement.

(2) The written basic-expense agreement must include:

(a) Monthly amounts for rent, utilities, and food costs; and

(b) The day of the month the payment is due to the provider.

(3) The total monthly obligation in the basic-expense agreement must not exceed the client's available income minus the personal needs allowance under WAC 182-513-1105(5).

(4) Before the client moves into the child foster home, the basic-expense agreement must be:

(a) Signed by the client or the client's legal representative;

(b) Signed by the provider; and

(c) Sent to DDA.

(5) Changes to the basic-expense agreement must be reviewed by DDA before implementation.

#### NEW SECTION

**WAC 388-826-0097 What expenses must a parent pay for while their child receives voluntary placement services?** A parent remains financially responsible for all expenses for their minor child that are not included in voluntary placement services.

#### NEW SECTION

**WAC 388-826-0098 What does the department pay toward voluntary placement services?** (1) For a client residing in a licensed staffed residential home, a children's state-operated living alternative (SOLA), or a group care facility, the department pays the cost of the voluntary placement services minus the amount of client responsibility under WAC 388-826-0095.

(2) For a client residing in a child foster home, the department pays the cost of the voluntary placement services minus basic expenses under WAC 388-826-0096.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-826-0090 What does a parent do with the child's Social Security benefits when the parent's child lives outside the parent's home?

#### **WSR 20-02-104**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 31, 2019, 11:30 a.m., effective January 31, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules needed updating to meet the national building code standards for licensed healthcare facilities of this type. With a moratorium on rule development, the department of social and health services has not been able to keep the rules up to date in concert with the changes in building codes, energy efficiency standards, and the structural enhancements associated with this facility type across the nation. The regulatory amendments encompass the technological advances in building design, and the healthcare industry. This has a positive impact on the developers, architects, facility owners, and residents in new and currently licensed facilities to meet licensing requirements and building code requirements with updated safety standards.

Citation of Rules Affected by this Order: New WAC 388-78A-2361, 388-78A-2371, 388-78A-2381, 388-78A-2703, 388-78A-2821, 388-78A-2851, 388-78A-2852, 388-78A-2853 and 388-78A-3011; repealing WAC 388-78A-2820, 388-78A-2890, 388-78A-2910, 388-78A-3020, 388-78A-3070, 388-78A-3080, 388-78A-3110 and 388-78A-3120; and amending WAC 388-78A-2380, 388-78A-2680, 388-78A-2690, 388-78A-2700, 388-78A-2800, 388-78A-2810, 388-78A-2830, 388-78A-2850, 388-78A-2860, 388-78A-2870, 388-78A-2880, 388-78A-2900, 388-78A-2920, 388-78A-2930, 388-78A-2950, 388-78A-2960, 388-78A-2980, 388-78A-2990, 388-78A-3000, 388-78A-3010, 388-78A-3030, 388-78A-3040, 388-78A-3050, and 388-78A-3090.

Statutory Authority for Adoption: Chapter 18.20, 74.39A RCW.

Other Authority: None.

Adopted under notice filed as WSR 19-14-100 on July 2, 2019.

Changes Other than Editing from Proposed to Adopted Version: Minor edits to section WAC 388-78A-2381 to clarify references to subsections; correction of misspelled word in WAC 388-78A-2851 from "healing" to "heating"; correction of grammar to WAC 388-78A-2930; correction of word in WAC 388-78A-2371(4) from "rules" to "laws"; correction of grammar to WAC 388-78A-2852 [(1)](e) by removing "satisfaction."

A final cost-benefit analysis is available by contacting Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2591, email Jeanette.Childress@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 24, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 24, Repealed 8.

Date Adopted: December 31, 2019.

Cheryl Strange  
Secretary

**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 20-03 issue of the Register.

**WSR 20-02-114**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 2, 2020, 9:54 a.m., effective April 1, 2020]

Effective Date of Rule: April 1, 2020.

Purpose: The pension discount rate (PDR) is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. The purpose of this rule making is to lower the PDR for annual investment returns for the reserve funds for self-insured employers.

This rule making reduces the self-insured pension discount rate from 6.0 percent to 5.9 percent.

Citation of Rules Affected by this Order: Amending WAC 296-14-8810.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Adopted under notice filed as WSR 19-21-150 on October 22, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 2, 2020.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 19-01-096, filed 12/18/18, effective 4/1/19)

**WAC 296-14-8810 Pension tables, pension discount rate and mortality tables.** (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;
- (iii) A pension discount rate of 4.5 percent for state fund pensions;
- (iv) A pension discount rate of ~~((6-0))~~ 5.9 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

#### WSR 20-02-116

##### PERMANENT RULES

#### DEPARTMENT OF HEALTH

[Filed January 2, 2020, 8:32 a.m., effective January 2, 2020]

Effective Date of Rule: January 2, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Changes to the definition in RCW 71.24.025 (26)(c) of "licensed or certified behavioral health agency" becomes effective January 1, 2020, which allows the department of health (department) to issue a license to a tribe when the tribe attests to meeting state minimum standards for a licensed or certified behavioral health agency. In order to comply with the requirements of RCW 43.70.250, the department must "set [the] fee[s] for each program at a sufficient level to defray the costs of administering that program...." It is therefore necessary for the department to establish this fee in order to support the administrative work involved in receiving and recording these tribal attestations. The department is required to set in rule all fees associated with licensing according to RCW 43.70.250 (2) and (3). The department participated in two consultations and workgroups with the American Indian Health Commission and tribes to discuss the attestation process, including the fee. This rule-making action puts into rule the decisions made at the consultation regarding the fee. Because January 1, 2020, is a state holiday the rule will be effective the next business day, January 2, 2020, so the department may have the ability to produce a license for these attestations.

Purpose: WAC 246-341-0367 Agency licensure and certification—Fee requirements for tribal attestations, the department is adopting a new rule to establish fees necessary for the department to receive and process an attestation that a tribal behavioral health agency meets state minimum standards for a licensed or certified behavioral health agency.

Citation of Rules Affected by this Order: New WAC 246-341-0367.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.280, and 71.24.037.

Other Authority: RCW 71.24.025 as amended by E2SSB 5432 (chapter 325, Laws of 2019).

Adopted under notice filed as WSR 19-22-077 on November 5, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: December 26, 2019 [January 2, 2020].

John Wiesman, DrPH, MPH  
Secretary

#### NEW SECTION

**WAC 246-341-0367 Agency licensure and certification—Fee requirements for tribal attestations.** (1) A tribe may attest that its behavioral health agency meets state minimum standards for a licensed or certified behavioral health agency, as described by the definition of "licensed or certified behavioral health agency" in RCW 71.24.025 (26)(c).

(2) A tribe that is pursuing attestation with the department must submit a two hundred sixty-one dollar administrative processing fee to the department for any new or renewed attestation.