WSR 20-16-094
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed July 30, 2020, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-10-051.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-0010 What definitions apply to this chapter?, 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services?, 388-106-0075 How is my need for personal care services assessed in CARE?, 388-106-0090 How does the CARE tool measure cognitive performance?, 388-106-0095 How does the CARE tool measure clinical complexity?, 388-106-0100 How does the CARE tool measure mood and behaviors?, and 388-106-0130 How does the department determine the number of hours I may receive for in-home care?

Hearing Location(s): On September 22, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than September 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 22, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has been working to modernize the comprehensive assessment and reporting evaluation (CARE) assessment tool and is amending theserules to be consistent with updates that have been made to the CARE tool.

There have been no changes that affect how the department determines eligibility or benefit level using the CARE tool.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rachelle Ames, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2353.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii), rules of DSHS relating only to client medical or financial eligibility.

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

Is exempt under RCW 19.85.025(4), because the rules do not affect small businesses.

Explanation of exemptions: The rules affect services to clients based on the client's ability to perform certain tasks.

July 29, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-16-004, filed 7/19/18, effective 8/19/18)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you made yourself understood to those closest to you in the last seven days before the assessment; expressed or communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of an alternative communication method:

((~~(a)~~)) (1) Understood: You expressed ideas clearly;

((~~(b)~~)) (2) Usually understood: You had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;

((~~(c)~~)) (3) Sometimes understood: You had limited ability, but were able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

((~~(d)~~)) (4) Rarely/never understood: At best, understanding was limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

((~~(e)~~)) (5) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Activities of daily living (ADL)" means the following:

((~~(a)~~)) (1) Bathing: How you took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.

((~~(b)~~)) (2) Bed mobility: How you moved to and from a lying position turned side to side, and positioned your body while in bed, in a recliner, or other type of furniture you slept in.

((~~(c)~~)) (3) Dressing: How you put on, fastened, and took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.

((~~(d)~~)) (4) Eating: How you ate and drank, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set up help you received, e.g. bringing food to you or cutting it up in smaller pieces.

((~~(e)~~)) (5) Locomotion in room and immediate living environment: How you moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you were once in your wheelchair.

((~~(f)~~)) (6) Locomotion outside room: How you moved to and returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you moved to and returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, or when accessing your community.

((~~(g)~~)) (7) Walk in room, hallway and rest of immediate living environment: How you walked between locations in your room and immediate living environment.

((~~(h)~~)) (8) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter medications, or herbal supplements.

((~~(i)~~)) (9) Toilet use: How you eliminated or toileted, used a commode, bedpan, or urinal, transferred on/off toilet, cleansed, changed pads, managed ostomy or catheter, and adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy or catheter bag. This type of set up assistance is considered under the definition of support provided.

((~~(j)~~)) (10) Transfer: How you moved between surfaces, e.g., to/from bed, chair, wheelchair, standing position. Transfer does not include how you moved to/from the bath, toilet, or got in((~~/~~)) and out of a vehicle.

((~~(k)~~)) (11) Personal hygiene: How you ((~~maintain~~)) maintained personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing((~~/~~)) and drying face, hands (including nail care), and perineum, including menses care. Personal hygiene does not include hygiene tasks completed in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a printed record of information that the department entered into the CARE assessment describing the assistance you may need.

"Assessment or reassessment" means an inventory and evaluation of strengths and limitations based on an in-person interview in your own home or another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

"Assistance available" means the amount of assistance that will be available for a task if status is coded:

((~~(a)~~)) (1) Partially met due to availability of other informal support; or

((~~(b)~~)) (2) Shared benefit. The department determines the amount of the assistance available using one of four categories:

((~~(i)~~)) (a) Less than one-fourth of the time;

((~~(ii)~~)) (b) One-fourth to one-half of the time;

((~~(iii)~~)) (c) Over one-half of the time to three-fourths of the time; or

((~~(iv)~~)) (d) Over three-fourths but not all of the time.

"Assistance with body care" means you received or need assistance with:

((~~(a)~~)) (1) Application of ointment or lotions;

((~~(b)~~)) (2) Trimming of toenails;

((~~(c)~~)) (3) Dry bandage changes; or

((~~(d)~~)) (4) Passive range of motion treatment.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.

"Body care" means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

((~~(a)~~)) (1) Foot care if you are diabetic or have poor circulation; or

((~~(b)~~)) (2) Changing bandages or dressings when sterile procedures are required.

"Bowel program" means a regular, ongoing program, other than oral medications, that must include interventions such as rectal stimulation using the finger, over-the-counter suppositories, or enemas to facilitate evacuation of your bowels. Regimens only promoting bowel regularity, including oral medications or supplements, nutrition, hydration, or positioning are not considered in this definition.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than eighteen years of age.

"Health action plan" means an individual plan, which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current behavior" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

((~~(a)~~)) (1) Whether the behavior is easily altered or not easily altered; and

((~~(b)~~)) (2) The frequency of the behavior.

"((~~Decision making~~)) Decisions" means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks of ((~~activities of~~)) daily living in the last seven days before the assessment. The department codes your ability to make decisions as one of the following:

((~~(a)~~)) (1) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values((~~.~~));

((~~(b)~~)) (2) Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations((~~.~~));

((~~(c)~~)) (3) Poor decisions; unaware of consequences: Your decisions were poor and you required reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly((~~.~~));

((~~(d)~~)) (4) No or few decisions: Decision making was severely impaired; you never/rarely made decisions((~~.~~)); or

((~~(e)~~)) (5) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and long-term support administration, developmental disabilities administration, or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

((~~(a)~~)) (1) No difficulty in performing the IADL;

((~~(b)~~)) (2) Some difficulty in performing the IADL (e.g., you need some help, are very slow, or fatigue easily); or

((~~(c)~~)) (3) Great difficulty in performing the IADL (e.g., little or no involvement in the IADL is possible).

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self-performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"Home health agency" means a licensed:

((~~(a)~~)) (1) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

((~~(b)~~)) (2) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

((~~(i)~~)) (a) Private duty nursing; or

((~~(ii)~~)) (b) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 182-509-0001.

"Individual provider" under RCW 74.39A.240 means a person contracted with the department to provide personal care or respite services.

"Informal support" means:

((~~(a)~~)) (1) Assistance that will be provided without home and community based services funding. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs. The department will not consider an individual provider to be a source of informal support unless the individual provider is also a family member or a household member who had a relationship with the client that existed before the individual provider entered into a contract with the department;

((~~(b)~~)) (2) Adult day health is coded in the assessment as a source of informal support, regardless of funding source;

((~~(c)~~)) (3) Informal support does not include shared benefit or age appropriate functioning.

"Institution" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community in thirty days prior to the assessment and includes the following:

((~~(a)~~)) (1) Meal preparation: How meals were prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

((~~(b)~~)) (2) Ordinary housework: How ordinary work around the house was performed (e.g., doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

((~~(c)~~)) (3) Essential shopping: How shopping was completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

((~~(d)~~)) (4) Wood supply: How wood or pellets were supplied (e.g., splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the only source of fuel for heating and/or cooking.

((~~(e)~~)) (5) Travel to medical services: How you traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment. This travel includes driving vehicle yourself or traveling as a passenger in a car, bus, or taxi.

((~~(f)~~)) (6) Managing finances: How bills were paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

((~~(g)~~)) (7) Telephone use: How telephone calls were made or received on your behalf (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the department and identified in WAC 388-106-0015.

"MAGI" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"Medicaid" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFC DS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

((~~(a)~~)) (1) The design, delivery and evaluation of services and supports;

((~~(b)~~)) (2) Exercising control of decisions and resources, and making their own decisions about health and well-being;

((~~(c)~~)) (3) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

((~~(e)~~)) (4) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

((~~(a)~~)) (1) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

((~~(b)~~)) (2) In a building that you own;

((~~(c)~~)) (3) In a relative's established residence; or

((~~(d)~~)) (4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past behavior" means the behavior ((~~occurred from eight days to five years of~~)) did not occur in the last seven days, but did occur more than seven days from the assessment date. For behaviors indicated as past, the department ((~~determines~~)) documents the month and year the behavior last occurred and whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

((~~(a)~~)) (1) Having a signed department contract to provide long-term care client services; and

((~~(b)~~)) (2) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self-performance for ADLs" means a code based on what you actually did for yourself and how much help you received in the last seven days before your assessment, not what you might be capable of doing. ((~~Self-performance for ADLs is based on your level of performance that occurred three or more times in the seven-day period. Scoring~~)) Coding of self-performance for ADLs does not include ((~~physical assistance that occurred less than three times in the seven day look-back period, or~~)) set-up help. The self-performance codes are "independent," "supervision," "limited assistance," "extensive assistance," "total dependence," and "did not occur." CARE assigns self-performance codes to each ADL as described in this rule.

(1) Based on information provided during your assessment, the CARE tool assigns a self-performance code to each ADL. When you received the same type of help (e.g. oversight, nonweight bearing, or weight bearing help) with an

ADL at least three times, CARE assigns the self-performance code associated with the most dependent type of help you received at least three times. Your self performance code level is scored as:

(a) ((~~Independent, if you received no help or oversight, or if you needed help or oversight only once or twice;~~

~~(b)~~)) "Supervision," if you received oversight (monitoring or standby), encouragement, or cueing ((~~three or more times~~));

((~~(c)~~)) (b) "Limited assistance," if you were highly involved in the ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs ((~~on three or more occasions.~~));

((~~(d)~~)) (c) "Extensive assistance," if you performed part of the ADL, but ((~~on three or more occasions,~~)) you ((~~needed~~)) received weight bearing ((~~support~~)) help or you ((~~received full performance of~~)) did not participate in a subtask of the ADL, but ((~~not all, of the ADL.~~)) did participate in other subtasks of the ADL;

((~~(e)~~)) (d) "Total dependence," if you did not participate at all in the completion of the ADL. Every time the ADL was completed during the entire seven-day period, you received ((~~full caregiver performance every time the ADL and all subtasks are completed during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL~~)) complete assistance by others; or

(e) "Independent," if you received:

(i) No help, including oversight, encouragement or cueing;

(ii) If you had help including oversight, encouragement or cueing only once or twice in the seven-day period; or

(f) ((~~ADL~~)) "Did not occur," if you or others did not perform ((~~an~~)) the ADL over the last seven days before your assessment. This means the activity did not happen. For example, for "walk in room" to have a code of "did not occur" that would mean that in the last seven days before your assessment you did not walk even one time. The ADL may not have occurred because:

(i) You were not able (e.g., ((~~walking~~)) you cannot walk, ((~~if~~)) because you are paralyzed);

(ii) No provider was available to ((~~assist~~)) help; or

(iii) You declined ((~~assistance~~)) help with the task.

(2) When you received help with the ADL at least three times, but not three times of the same type of help, the CARE tool determines a self-performance code by:

(a) Selecting the three instances where you received the most help; and

(b) Assigning a self-performance code based on the least dependent type of help of those three instances.

(3) CARE assigns a self-performance code of:

(a) "Supervision," if oversight, encouragement, or cueing was the least dependent type of help you received of the three instances; or

(b) "Limited assistance," if nonweight bearing help or guided maneuvering of your limbs was the least dependent type of help you received out of the three instances.

(c) CARE will not assign self-performance codes of "extensive assistance" or "total dependence" if you did not receive the same type of help at least three times in the last seven days before the assessment.

(d) For example, if you received oversight help twice, nonweight bearing help twice, and weight-bearing help twice, CARE:

(i) Selects two instances of weight bearing help and one instance of nonweight bearing help because these were the three instances where you received the most help; and

(ii) Assigns a self-performance code of "limited assistance" because nonweight bearing help was the least dependent type of help you received out of the three instances where you received the most help.

"Self-administration of medication" means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

((~~(a)~~)) (1) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

((~~(b)~~)) (2) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

((~~(c)~~)) (3) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

((~~(d)~~)) (4) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Self-performance for bathing" means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven day look back period, or set-up help. Your self-performance level is scored as:

((~~(a)~~)) (1) Independent, if you received no help or oversight to complete the ADL of bathing.

((~~(b)~~)) (2) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

((~~(c)~~)) (3) Physical help transfer only, if in order to bathe you had help to transfer only.

((~~(d)~~)) (4) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

((~~(e)~~)) (5) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical non-participation by you in all aspects of bathing; or the ADL:

((~~(f)~~)) (6) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

((~~(i)~~)) (a) You were not able (e.g., you may be paralyzed);

((~~(ii)~~)) (b) No provider was available to assist; or

((~~(iii)~~)) (c) You declined because you chose not to perform the ADL.

"Self-performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing or how well you performed the ADL. Scoring is based on the level of performance that occurred at least one time in the thirty-day period. Your self-performance is scored as:

((~~(a)~~)) (1) Independent, if you received no help, set-up help, or supervision;

((~~(b)~~)) (2) Assistance, if you received any help with the task, including cueing or monitoring in the last thirty days;

((~~(c)~~)) (3) Total assistance, if you are a child and needed the ADL fully performed by others and you are functioning outside of typical developmental milestones; or

((~~(d)~~)) (4) ADL did not occur, if you or others did not perform the ADL in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care tasks, the list of formal and informal providers and what tasks they will provide, a ((~~provider~~)) preferred schedule if identified by the client, identified referrals((~~/information~~)), and dates and agreement to the outlined services.

"Shared benefit" means:

((~~(a)~~)) (1) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

((~~(b)~~)) (2) Two or more clients in a multiclient household benefit from the same IADL task(s) being performed.

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance:

((~~(a)~~)) (1) That will be provided by informal supports; ((~~or~~))

((~~(b)~~)) (2) That will be provided by a care provider who may share in the benefit of an IADL task being performed for a client or for two or more clients in a multiclient household; or

((~~(c)~~)) (3) That will be provided to a child primarily due to his or her age.

The department determines the status of each ADL or IADL and codes the status as follows:

((~~(a)~~)) (1) Met, which means the ADL or IADL will be fully provided by an informal support;

((~~(b)~~)) (2) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

((~~(c)~~)) (3) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

((~~(d)~~)) (4) Shared benefit, which means:

((~~(i)~~)) (a) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or

((~~(ii)~~)) (b) Two or more clients in a multiclient household will benefit from the same IADL task(s) being performed.

((~~(e)~~)) (5) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

((~~(f)~~)) (6) Client declines, which means you will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

((~~(a)~~)) (1) No set-up or physical help provided by others;

((~~(b)~~)) (2) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

((~~(c)~~)) (3) One-person physical assist provided;

((~~(d)~~)) (4) Two- or more person physical assist provided; or

((~~(e)~~)) (5) ADL did not occur during entire seven-day period.

"Task" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"Turning and repositioning program" is a consistent and organized method in which your caregiver must position and realign your body to prevent or treat skin breakdown. This program is needed because you are physically unable to reposition yourself without assistance, while sitting or lying down.

"You/your" means the client.

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

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services? (1) You may be eligible to receive services in a licensed assisted living facility that has ((~~a~~)) DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC")," which is defined in WAC 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in CFC, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance scale score of 3 or ((~~above~~)) more; and any one or more of the following:

(i) An unmet need for assistance with ((~~supervision, limited, extensive or total dependence with~~)) the activity of daily living (ADL) of eating((~~/drinking~~)) as defined in WAC 388-106-0010;

(ii) Inappropriate toileting((~~/~~))menses activities;

(iii) Rummages/takes ((~~others~~)) belongings of others;

(iv) ((~~Up~~)) Disrupts household at night when others are sleeping and requires intervention(s);

(v) Wanders/exit seeking;

(vi) Wanders/not exit seeking;

(vii) ((~~Has~~)) Left home and gotten lost;

(viii) Inappropriate spitting;

(ix) ((~~Disrobes in public~~)) Inappropriate nakedness;

(x) Eats non((-))edible substances/objects (Pica)(persistent for at least a month);

(xi) Sexual acting out;

(xii) Delusions;

(xiii) Hallucinations;

(xiv) Assaultive (not during personal care);

(xv) Breaks, throws items;

(xvi) Combative during personal care;

(xvii) Easily irritable/agitated requiring intervention;

(xviii) Obsessive regarding own health((~~/~~)) or body functions;

(xix) Repetitive movement/pacing;

(xx) Unrealistic fears or suspicions;

(xxi) Nonhealth related repetitive anxious complaints/questions;

(xxii) Resistive to care with words/gestures (does not include informed choice);

(xxiii) Verbally abusive;

(xxiv) Yelling/screaming;

(xxv) Inappropriate verbal noises; or

(xxvi) Accuses others of stealing.

AMENDATORY SECTION (Amending WSR 12-14-064, filed 6/29/12, effective 7/30/12)

WAC 388-106-0075 How is my need for personal care services assessed in CARE? The department gathers information from you, your caregivers, family members, and other sources to assess your abilities ((~~to~~)) and how you perform personal care tasks. The department will also consider developmental milestones for children as defined in WAC 388-106-0130 when individually assessing your abilities and ((~~needs~~)) need for assistance. The department will assess your ability to perform:

(1) Activities of daily living (ADL) using self-performance, support provided, status, and assistance available, as defined in WAC 388-106-0010. Also, the department determines your need for "assistance with body care" and "assistance with medication management," as defined in WAC 388-106-0010; and

(2) Instrumental activities of daily living (IADL) using self-performance ((~~difficulty~~)), status, and assistance available, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0090 How does the CARE tool measure cognitive performance? (1) The CARE tool uses a tool called the cognitive performance scale (CPS) to evaluate your cognitive impairment. The CPS results in a score that ranges from zero (intact) to six (very severe impairment). Your CPS score is based on information given at your assessment and documented in the CARE tool:

(a) Whether you are comatose.

(b) Your ability to make decisions, as defined in WAC 388-106-0010 "((~~Decision making~~)) Decisions."

(c) Your ability to make yourself understood, as defined in WAC 388-106-0010 "Ability to make self understood."

(d) Whether you have short-term memory problem (e.g. can you remember recent events?) ((~~or whether you have delayed recall~~)) as determined by the following:

(i) Information given at your assessment and documented in the CARE tool showed there is evidence that you have short-term memory loss; or

(ii) You could not recall at least one of the three words you were asked to recall during the mini mental status exam completed during your assessment using the CARE tool; and

(e) Whether you score as total dependence for self-performance in eating, as defined in WAC 388-106-0010 "Self-performance of ADLs."

(2) You will receive a CPS score of:

(a) **Zero** when you do not have problems with decision-making ability, making yourself understood, or recent memory.

(b) **One** when you meet one of the following:

(i) ((~~Your decision-making ability is~~)) Decisions are scored as ((~~modified independence~~)) difficulty in new situations or ((~~moderately impaired~~)) poor decisions/unaware of consequences as defined in WAC 388-106-0010;

(ii) Your ability to make yourself understood is scored as usually, sometimes, or rarely/never understood as defined in WAC 388-106-0010; or

(iii) You have a ((~~recent~~)) short-term memory problem.

(c) **Two** when you meet two of the following:

(i) ((~~Your decision-making ability is~~)) Decisions are scored as ((~~modified independence~~)) difficulty in new situations or ((~~moderately impaired~~)) poor decisions/unaware of consequences as defined in WAC 388-106-0010;

(ii) Your ability to make yourself understood is scored as usually, sometimes, or rarely/never understood; and/or

(iii) You have a short-term memory problem or delayed recall.

(d) **Three** when you meet at least two of the criteria listed in subsection (2)(b) of this section and one of the following applies:

(i) ((~~Your decision making is moderately impaired~~)) Decisions are scored as poor decisions/unaware of consequences as defined in WAC 388-106-0010; or

(ii) Your ability to make yourself understood is scored as sometimes or rarely/never understood as defined in WAC 388-106-0010.

(e) **Four** when both of the following criteria applies:

(i) ((~~Your decision making is moderately impaired~~)) Decisions are scored as poor decisions/unaware of consequences as defined in WAC 388-106-0010; and

(ii) ((~~Your ability to make yourself understood is~~)) Decisions are scored as sometimes or rarely/never understood as defined in WAC 388-106-0010.

(f) **Five** ((~~when your ability to make~~)) Decisions ((~~is~~)) are scored as ((~~severely impaired~~)) no/few decisions as defined in WAC 388-106-0010.

(g) **Six** when one of the following applies:

(i) ((~~Your ability to make decisions is severely impaired~~)) Decisions are scored as no/few decisions and you require total dependence in eating as defined in WAC 388-106-0010; or

(ii) You are comatose.

AMENDATORY SECTION (Amending WSR 07-10-024, filed 4/23/07, effective 6/1/07)

WAC 388-106-0095 How does the CARE tool measure clinical complexity? The CARE tool places you in the clinically complex classification group only when you have one or more of the following criteria and corresponding ADL scores:

Condition	AND an ADL score of
ALS (Lou Gehrig's Disease)	>14
Aphasia (expressive ((~~and/or~~)), receptive, or both)	>=2
Cerebral Palsy	>14
Diabetes Mellitus (insulin dependent)	>14
Diabetes Mellitus (noninsulin dependent)	>14
Emphysema & shortness of breath (at rest or exertion) or dizziness/vertigo	>10
COPD & shortness of breath (at rest or exertion) or dizziness/vertigo	>10
Explicit terminal prognosis	>14
Hemiplegia	>14
Multiple Sclerosis	>14
Parkinson Disease	>14
Pathological bone fracture	>14
Quadriplegia	>14
Rheumatoid Arthritis	>14
You have one or more of the following skin problems: ■ Current pressure ((~~ulcers~~)) injuries, with areas of persistent skin redness; ■ Current pressure ((~~ulcers~~)) injuries with partial loss of skin layers; ■ Current pressure ((~~ulcers~~)) injuries, with a full thickness lost; ■ Skin desensitized to pain/pressure; ■ Open lesions (not cuts, rashes); ((~~and/or~~)) or ■ Stasis ulcers. AND You ((~~require~~)) received one of the following types of ((~~assistance~~)) skin care or treatment: ■ ((~~Ulcer~~)) Pressure injury care; ■ Pressure relieving device; ■ Turning/((~~reposition~~))repositioning program as defined in WAC 388-106-0010; ■ Application of dressing; or ■ Wound/skin care treatment.	>=2
You have a burn(s) and you ((~~need~~)) received one of the following: ■ Application of dressing; or ■ Wound/skin care	>=2
You have one or more of the following problems: ■ You are frequently incontinent daily with some control present (bladder); ■ You are incontinent all or most of the time multiple times per day having no control (bladder); ■ You are frequently incontinent three to four times per week (bowel); or ■ You are incontinent all or most of the time four or more times per week (bowel). AND One of the following applies: ■ The status of your individual management of bowel bladder supplies is "Uses, ((~~has leakage, needs assistance~~)) needs skin cleansing assistance"; ■ The status of your individual management of bowel bladder supplies is "Does not use, has leakage onto skin"; or ■ You use "Any scheduled toileting plan."	>10
You have a current swallowing problem, and you are not independent in eating.	>10
You have edema.	>14
You have pain daily.	>14
You need and ((~~receive~~)) received a bowel program as defined in WAC 388-106-0010.	>10
You need dialysis.	>10
You require IV nutritional support or tube feedings; and Your total calories received per IV or tube was at least 25%; and Your fluid intake is greater than 2 cups.	>=2
You need hospice care.	>14
You need injections.	>14
You need intravenous medications.	>10

Condition	AND an ADL score of
You need management of IV lines.	>10
You need ostomy care.	>=2
You need oxygen therapy.	>10
You need radiation.	>10
You need and ((~~receive~~)) received passive range of motion.	>10
You need and ((~~receive~~)) received walking training.	>10
You need suction treatment.	>=2
You need tracheostomy care.	>10
You need a ventilator/respirator	>10
You are <18 and you have pain related to your disability and you complain of pain or show evidence of pain daily. (If you are under eighteen and do not have pain related to your disability, you may be placed in the clinically complex classification based on other factors above.)	>14
Key: < means less than. > means greater than. >= means greater than or equal to.	

AMENDATORY SECTION (Amending WSR 08-10-022, filed 4/25/08, effective 5/26/08)

WAC 388-106-0100 How does the CARE tool measure mood and behaviors? (1) When you do not meet the criteria for the clinically complex classification group, or the criteria for exceptional care, or for in-home only have a cognitive performance scale score of five or six, then the mood and behavior criteria listed in subsections (3) and (4) below determines your classification group. If you are eligible for more than one "B" group classification based on the two methodologies, CARE will place you in the highest group for which you qualify.

(2) For each behavior that was assessed and documented in the CARE tool ((~~has documented~~)), the department will determine a status as "current behavior" or "past behavior" as defined in WAC 388-106-0010.

(3) CARE places you in the mood and behavior classification group only if you have one or more of the behavior/moods that also meets the listed status, frequency, and alterability as identified in the following chart:

Behavior/Mood	AND Status, Frequency & Alterability
Assaultive (not during personal care)	Current behavior
Combative during personal care	Current behavior
Combative during personal care	((~~In~~)) Past ((~~and~~)) behavior, addressed with current interventions
Many incidences of uncontrollable crying tearfulness	Current behavior, frequency 4 or more days per week
Delusions	((~~In~~)) Past behavior, addressed with current interventions
Depression score of 14 or greater	N/A
((~~Disrobes in public~~)) Inappropriate nakedness	Current behavior and not easily altered
Easily irritable/agitated requiring intervention(s)	Current behavior and not easily altered
Eats nonedible substances/objects (Pica)(persistent for at least a month)	Current behavior
Eats nonedible substances/objects (Pica)(persistent for at least a month)	((~~In~~)) Past behavior, addressed with current interventions
Hallucinations	Current behavior
Hiding items	((~~In~~)) Past behavior, addressed with current interventions
Hoarding((~~/collecting~~))	((~~In~~)) Past behavior, addressed with current interventions
Mental health therapy/program	((~~Need~~)) Needs
Nonhealth related repetitive anxious complaints/questions	Current behavior, daily
Nonhealth related repetitive complaints/questions	((~~In~~)) Past behavior, addressed with current interventions
Repetitive movement/pacing, hand wringing, fidgeting	Current behavior, daily
Resistive to care with words/gestures (does not include informed choice)	Current behavior
Resistive to care with words/gestures (does not include informed choice)	((~~In~~)) Past behavior, addressed with current interventions
Sexual acting out	Current behavior
Sexual acting out	((~~In~~)) Past behavior, addressed with current interventions
Inappropriate spitting	Current behavior and not easily altered
Inappropriate spitting	((~~In~~)) Past behavior, addressed with current interventions
Breaks/throws items	Current behavior
Unsafe smoking	Current behavior and not easily altered
((~~Up~~)) Disturbs household at night when others are sleeping and requires intervention	Current behavior
Wanders exit seeking	Current behavior
Wanders exit seeking	((~~In~~)) Past behavior, addressed with current interventions
Wanders not exit seeking	Current behavior
Wanders not exit seeking	((~~In~~)) Past behavior, addressed with current interventions
Yelling/screaming	Current behavior, frequency 4 or more days per week

or

(4) CARE places you in the mood and behavior classification group if you have a behavior point score greater than 1, your CPS score (as defined in WAC 388-106-0090) is greater than 2, and your ADL score (as defined in WAC 388-106-0105) is greater than 1.

Status	Intervention	Frequency	Weight
Past	No intervention	N/A	0
Past	With intervention	N/A	0.25
Current	N/A	1-3 days((~~/~~)) per wk	0.5
Current	N/A	4-6 days((~~/~~)) per wk	0.75
Current	N/A	Daily	1

Each current behavior (as shown in the table below) has a value from .5 to 6 depending on the severity and alterability. Each status combination (shown in the table above) has a weight from 0 to 1. Behavior points are determined by multiplying the value of each current behavior (from the list below) by the weight of the status combination (above). Behavior points for past behaviors will be determined by multiplying the easily altered value of the behavior from the table below by the appropriate weight from the table above (0 or .25).

The list of behaviors below is divided into categories. Each category has a point limit of how many points can be counted toward the total behavior point score as detailed below. The total behavior point score is determined by totaling the weight-adjusted values for each category below.

Behavior	Value	
	Easily Altered/Past	Not Easily Altered
1. Many incidences of uncontrollable crying ((~~and~~)), tearfulness	.5	1
2. Easily irritable/agitated	.5	1
3. Obsessive ((~~about~~)) regarding own health or body functions	.5	1
4. Repetitive physical movement/pacing, hand wringing, fidgeting	.5	1
5. Hiding items	.5	1
6. Hoarding((~~/Collecting~~))	.5	1
7. Inappropriate verbal noise	.5	1
8. Wanders, not exit seeking	.5	1
Maximum total points after adjusting for status for behaviors 1-8 = 2		
9. Repetitive anxious complaints/questions	1	2
10. ((~~Rummaging through or~~)) Rummages/takes ((~~others~~)) belongings of others	1	2
11. Verbally abusive	1	2
12. Yelling((~~/~~)) or screaming	1	2
13. Inappropriate spitting	1	2
14. Unrealistic fears and suspicions	1	2
15. Accuses others of stealing	1	2
Maximum total points after adjusting for status for behaviors 9-15 = 3		
16. Resistive to care with words/gestures	2	3
17. ((~~Up~~)) Disturbs household at night when others are sleeping, requires intervention	2	3
18. Unsafe cooking	2	3
19. Inappropriate toileting/menses activity	2	3
20. Unsafe smoking	2	3
21. Left home and ((~~became~~)) gotten lost	2	3
22. ((~~Disrobes in public~~)) Inappropriate nakedness	2	3
Maximum total points after adjusting for status for behaviors 16-22 = 4		
23. ((~~Injures self~~)) Intentional self-injury	4	5
24. Wanders/Exit seeking	4	5
25. Sexual acting out	4	5
26. Intimidating/threatening (no physical contact)	4	5
27. Assaultive (not during personal care)	4	5
28. Breaks, throws items	4	5
Maximum total points after adjusting for status for behaviors 23-28 = 10		
29. Deliberate fire setting behaviors	5	6
30. Combative during care	5	6
31. Eats nonedible substances/objects (Pica)(persistent for at least a month)	5	6
32. ((~~Seeks vulnerable partners~~)) Deliberate sexual violence	5	6
Maximum total points after adjusting for status for behaviors 29-32 = 12		

AMENDATORY SECTION (Amending WSR 15-20-054, filed 9/30/15, effective 10/31/15)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), and other paid services that meet some of an individual's need for personal care services:

(a) The CARE tool determines the adjustment for informal supports, shared benefit, and age appropriate functioning. A numeric value is assigned to the status ((~~and/or~~)) and assistance available coding for ADLs and IADLs based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

Meds	Status	Assistance available	Numeric value
Medication management The rules to the right apply for all self-performance codes except independent which is not counted as a qualifying ADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Unscheduled ADLs	Status	Assistance available	Value
Bed mobility, transfer, walk in room, eating, toilet use The rules to the right apply for all self-performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Scheduled ADLs	Status	Assistance Available	Value
Dressing, personal hygiene, bathing The rules to the right apply for all self-performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent which are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.75
		1/4 to 1/2 time	.55
		1/2 to 3/4 time	.35
		>3/4 time	.15

IADLs	Status	Assistance Available	Value
Meal preparation, Ordinary housework, Essential shopping The rules to the right apply for all self-performance codes except independent is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met or Shared benefit	<1/4 time	.3
		1/4 to 1/2 time	.2
		1/2 to 3/4 time	.1
		>3/4 time	.05

IADLs	Status	Assistance available	Value
Travel to medical The rules to the right apply for all self-performance codes except independent which is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Key: > means greater than; < means less than

(b) To determine the amount adjusted for informal support, shared benefit and/or age appropriate functioning, the numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

(3) Effective July 1, 2012, after adjustments are made to your base hours, as described in subsection (2), the department may add on hours based on off-site laundry, living more than forty-five minutes from essential services, and wood supply, as follows:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. The status used for the rules to the right is for housekeeping.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met or Shared benefit:	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

Condition	Status	Assistance Available	Add On Hours
Client is >45 minutes from essential services (which means ((~~he/she~~)) client lives more than 45 minutes one-way from a full-service market). The status used for the rules to the right is essential shopping.	Unmet	N/A	5
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met or Shared benefit	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	3
		>3/4 time	2
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met or Shared benefit	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

(4) In the case of New Freedom consumer directed services (NFCDS), the department determines the monthly budget available as described in WAC 388-106-1445.

(5) The result of adjustments under subsections (2) and (3) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(6) If you are eligible, your hours may be used to authorize the following services:

(a) Personal care services from a home care agency provider ((~~and/or~~)), an individual provider, or both.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) ((~~A home health aide (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300.~~

~~(e)~~)) A private duty nurse (PDN) if you are eligible per WAC 388-106-1010 or 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

((~~(f)~~)) (e) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible parents or other responsible adults who provide informal support for the child's ADLs, IADLs and other needs. The department will not provide services or supports that are within the range of activities that a legally responsible parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self-performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department will code status as other than age appropriate for an ADL, despite your self-performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency ((~~and/or~~)) or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	**Self-Performance**	**Developmental Age Range**
Medication management	Independent self-directed assistance required	Child under 18 years of age
	Must be administered	Child under 12 years of age
Locomotion in room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 13 months of age
Locomotion outside room	Independent Supervision	Child under 6 years of age
	Limited Extensive	Child under 4 years of age

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	**Self-Performance**	**Developmental Age Range**
	Total	Child under 25 months of age
Walk in room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 19 months of age
Bed mobility	Independent Supervision Limited	Child under 37 months of age
	Extensive	Child under 25 months of age
	Total	Child under 19 months of age
Transfers	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 19 months of age
Toilet use	Independent Supervision Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age
Eating	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 13 months of age
Bathing	Independent Supervision	Child under 12 years of age
	Physical help/transfer only	Child under 5 years of age
	Physical help/part of bathing	Child under 6 years of age
	Total	Child under 37 months of age
Dressing	Independent Supervision	Child under 12 years of age
	Limited	Child under 8 years of age
	Extensive	Child under 7 years of age
	Total	Child under 25 months of age
Personal hygiene	Independent Supervision	Child under 12 years of age
	Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency ((~~and/or~~)) or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department will code status as other than described in subpart (h) for an IADL.

(h)

Developmental Milestones for Instrumental Activities of Daily Living		
IADL	**Self-Performance**	**Developmental Age Range**
Finances Telephone Wood supply	Independent Supervision Limited Extensive Total	Child under 18
Transportation	Independent Supervision Limited Extensive	Child under 18
	Total	Child under 16
Essential Shopping Housework Meal ((~~Prep~~)) preparation	Independent Supervision Limited Extensive	Child under 18
	Total	Child under 12

(i) The department presumes that children have legally responsible parents or other responsible adults who provide support for comprehension, decision-making, memory and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (k) unless the circumstances in subpart (j) below apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision making, memory, and continence issues is substantially greater than is typical for a person of your age, the department will code status as other than described in subpart (k) below.

(k)

Additional Developmental Milestones coding within CARE			
Name of CARE panel	**Question in CARE Panel**	**Developmental Milestone coding selection**	**Developmental Age Range**
((~~Speech/Hearing:~~)) Comprehension	((~~"By others client is"~~)) "Choose the selection that best describes the client's ability to be understood by those closest to them, using any means of communication."	Child under 3	Child under 3

Additional Developmental Milestones coding within CARE			
Name of CARE panel	**Question in CARE Panel**	**Developmental Milestone coding selection**	**Developmental Age Range**
Psych Social: MMSE	"Can the MMSE be administered to the client?"	= No	Child under 18
Psych Social: Memory/ Short Term	"((~~Recent~~)) Is there evidence of short-term memory loss?"	Child under 12	Child under 12
Psych Social: Memory/ Long Term	"Is there evidence of long-term memory loss (six months through their lifetime)?"	Child under 12	Child under 12
Psych Social: Depression	"((~~Interview~~)) Depression PHQ-2 or PHQ-9"	Unable to obtain	Child under 12
Psych Social: ((~~Decision Making~~)) Decisions	"((~~Rate~~)) How the client ((~~makes decision~~)) made decisions related to tasks of daily living in the last seven days."	Child under 12	Child under 12
Bladder/Bowel:	"Bladder/bowel control" is which of the following:		
	Continent, Usually Continent Occasionally, Incontinent	Age appropriate	Child under 12
	Frequently Incontinent	Age appropriate	Child under 9
	Incontinent all or most of the time	Age appropriate	Child under 6
Bladder/Bowel:	"Appliance and programs"	Potty training	Child under 4

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide informal support to them.

(a) The department will code status for an ADL or IADL as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) When you are living with your legally responsible parent(s), the department will presume that you have informal supports available to assist you with your ADL and IADLs over three-fourths but not all the time. Legally responsible parents include natural parents, step parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and which prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you. You may rebut the department's presumption by providing specific information during your assessment to indicate why you do not have informal supports available at least three-fourths of time to assist you with a particular ADL or IADL.

WSR 20-17-003
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY

[Filed August 5, 2020, 1:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-107.

Title of Rule and Other Identifying Information: WAC 172-144-140 Collection of outstanding financial obligations.

Hearing Location(s): On September 22, 2020, at 10:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Due to COVID-19, this hearing will also be held via Zoom video conferencing.

Date of Intended Adoption: October 9, 2020.

Submit Written Comments to: Joseph Fuxa, Eastern Washington University, Main Campus, 526 5th Street, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-5874, by September 22, 2020.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 509-359-2874, email jfuxa@ewu.edu, by September 22, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates are needed to comply with a new state law, 2SHB 2513, higher education debt collection.

Reasons Supporting Proposal: Modifications are required to comply with a new state law, 2SHB 2513, higher education debt collection.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 211A Tawnaka [Tawanka] Hall, 509-359-7496; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.[0]5.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(iii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

August 5, 2020
Joseph Fuxa
Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 15-24-047, filed 11/23/15, effective 12/24/15)

WAC 172-144-140 Collection of outstanding financial obligations. After making a final determination regarding a person/entity's outstanding financial obligation, if the debtor fails to pay the debt within the time specified by the university, the university may pursue any lawful means to collect the debt. This includes, but is not limited to:

(1) Registration/Transcripts: The university may withhold admission or registration privileges, or conferring of degrees((~~, and the issuance of academic transcripts~~)) for a person who has an outstanding financial obligation to the university, even if the debt has been assigned to another agency, entity, or department. The university will only withhold registration privileges for debts related to tuition, fees, room and board fees, or financial aid funds owed. In accordance with RCW 28B.10.293, prior to any academic term where registration privileges are withheld, the university will provide the student with information about:

(a) The amount of debt owed by the student to the university;

(b) Information on payment of the debt, including who to contact to set up a payment plan; and

(c) Any consequences that will result from nonpayment of the debt.

(2) Collections: If the debt remains unpaid for more than 30 days after notice of the university's final determination, the university may assign the debt to a collection agency in accordance with RCW 19.16.050. If the debt is assigned to a collection agency, the debtor is responsible for all collection fees, which may be based on a percentage up to fifty percent of the unpaid charges, and all costs and expenses, including attorneys' fees related to collection of the unpaid debt.

(3) Civil Action: The university may initiate a civil action against the debtor to recover the debt.

(4) Travel Costs: Financial obligations which result from travel advances or travel-related expenditures will be addressed and collected consistent with the office of financial management's policies.

(5) Other: The university may pursue any other lawful means of recovering the outstanding financial obligation.

WSR 20-17-004
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY
[Filed August 5, 2020, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-01-092.

Title of Rule and Other Identifying Information: WAC 172-90-160 Academic integrity board review process.

Hearing Location(s): On September 22, 2020, at 10:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Due to COVID-19, this hearing will also be held via Zoom video conferencing.

Date of Intended Adoption: October 9, 2020.

Submit Written Comments to: Joseph Fuxa, Eastern Washington University, Main Campus, 526 5th Street, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by September 22, 2020.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 509-359-2874, email jfuxa@ewu.edu, by September 22, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates are needed to change the decision-maker for academic integrity board appeals.

Reasons Supporting Proposal: Modifications are needed due to changes in employee positions.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 211A Tawnaka [Tawanka] Hall, 509-359-7496; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.[0]5.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(iii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

August 5, 2020.
Joseph Fuxa
Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-160 Academic integrity board review process. (1) **Initiation:** The AIB review process will be initiated when:

(a) The instructor or student requests AIB review;

(b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or

(c) The AVP determines that the AIB review process is appropriate to the circumstances.

(2) **Scheduling:** Within five instruction days of determining that an AIB review is in order, the AVP shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The AVP will notify the student, instructor, and AIB chair. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in this notification. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) The date/time of the AIB review;

(c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;

(d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);

(e) A description of the specific rules governing the AIB review process;

(f) A description of the university's academic integrity rules and processes; and

(g) Contact information for the AVP's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the AVP to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must prepare a written statement and submit the statement to the AVP's office within three instruction days after receiving the AIB review notice. The student may include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. Unless already provided, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation to the AVP's office.

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within three instructional days, the AVP will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The AVP will coordinate sanctioning with the instructor and/or the AIB as needed. If a recommended sanction requires higher level authority to impose, the AIB will proceed with a hearing.

(6) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. Neither the student nor the instructor is permitted to attend the AIB review. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

(7) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. If the board decides to pursue sanctions that include suspension or expulsion, the board shall initiate an AIB hearing per WAC 172-90-170.

(8) **Conclusion:** The board should conclude its review and issue a decision within thirty days after the violation was initially reported. The AVP shall notify the student and instructor of the board's decisions, along with the right to request reconsideration.

(9) **Requests for review:** Either the student or the instructor may request reconsideration by the ((~~AVP~~)) provost or designee by submitting a request in writing to the ((~~AVP~~)) provost or designee within twenty-one days after the board issues its written decision. The ((~~AVP~~)) provost or designee shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the board, the ((~~AVP~~)) provost or designee shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the ((~~AVP's~~)) provost or designee decision and notice that judicial review may be available. All decisions of the ((~~AVP~~)) provost or designee are final and no appeals within the university are permitted. Judicial review may be available under chapter 34.05 RCW.

WSR 20-17-034
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2020-05—Filed August 10, 2020, 8:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-032.

Title of Rule and Other Identifying Information: Updating the actuarial opinion and memorandum regulation.

Hearing Location(s): On October 5, 2020, at 10:00 a.m., at the Office of the Insurance Commissioner (OIC), 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501.

Remote access information for public testimony will be made available at the webpage linked here: https://www.insurance.wa.gov/actuarial-opinion-and-memorandum-regulation-r-2020-05.

Date of Intended Adoption: October 6, 2020.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 4, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 284-07-310 to WAC 284-07-400 is the actuarial opinion and memorandum.

Chapter 48.74 RCW, Standard valuation law, makes the NAIC Valuation Manual effective January 1, 2017, as defined in 48.74.015(11). The NAIC Valuation Manual that was effective January 1, 2017 has been updated by the NAIC for 2018 and 2019.

This rule making will update the above WAC with chapter 48.74 RCW and NAIC Valuation Manual.

Reasons Supporting Proposal: The commissioner is proposing amending the actuarial opinion and memorandum regulation to more clearly align with chapter 48.74 RCW and industry standards to assist industry's compliance.

Statutory Authority for Adoption: RCW 48.02.060, 48.74.025, 48.74.028, 48.74.100, 48.36A.250, 48.36A.260.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7042; Implementation and Enforcement: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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

A cost-benefit analysis is not required under RCW 34.05.328. In accordance with RCW 34.05.328 (5)(b)(iii), which states that rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule, are exempt from preparing a cost-benefit analysis (CBA) by the agency proposing the regulation. The proposed rule implements generally established industry standards as defined by the NAIC Valuation Manual that is updated from time to time. This rule making aligns WAC 284-07-310 through 284-07-400 with chapter 48.74 RCW and NAIC Valuation Manual. OIC determines that the proposed legislation is exempt from preparing a CBA.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: This rule making offers no substantial changes, but simply aligns with the industry standard that is the NAIC Valuation Manual, that is required by chapter 48.75 RCW. The NAIC Valuation Manual is used by fifty-one insurance jurisdictions, which is all fifty states plus Washington D.C.

August 10, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 08-01-077, filed 12/17/07, effective 1/17/08)

WAC 284-07-310 Purpose. The purpose of this regulation, WAC 284-07-310 through and including WAC 284-07-400, called the actuarial opinion and memorandum regulation, is to prescribe:

(1) Guidelines and standards for statements of actuarial opinion submitted in accordance with the requirements of chapter 48.74 RCW ((~~48.74.025~~)), RCW 48.36A.250, 48.36A.260, and for supporting memoranda;

(2) Rules applicable to the appointment of an appointed actuary; and

(3) Guidelines and standards relating to "adequacy of reserves."

AMENDATORY SECTION (Amending WSR 08-01-077, filed 12/17/07, effective 1/17/08)

WAC 284-07-330 Scope. (1) This regulation applies to all life insurance companies and fraternal benefit societies doing business in this state, to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or disability insurance business in this state; and to all disability insurers that file annual statements on the life and accident and health blank. This regulation requires the appointed actuary to use his or her professional judgment in performing the required asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. The commissioner may specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's opinion, such specifications are necessary.

(2) This regulation applies to all annual statements filed with the commissioner on and after December 31, ((~~2007~~)) 2020.

AMENDATORY SECTION (Amending WSR 08-01-077, filed 12/17/07, effective 1/17/08)

WAC 284-07-350 General requirements. The statement of ((~~opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis~~)) an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with WAC 284-07-380, ((~~and~~)) must be included with an annual statement. A memorandum in support thereof in accordance with WAC 284-07-390, ((~~are~~)) is required to be available by May 1st each year. The statement of opinion on the adequacy of the reserves and related actuarial items must comply with the requirements of the *Valuation Manual*, as revised from time to time by the National Association of Insurance Commissioners, and as defined in RCW 48.74.015.

Statement of actuarial opinion:

(1) "Qualified actuary" means an individual who:

(a) Is a member in good standing of the American Academy of Actuaries; and

(b) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements or equivalent standards acceptable to the commissioner; and

(c) Is familiar with the valuation requirements applicable to life and health insurance companies; and

(d) Has not been found by the commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice to have:

(i) Violated any provision of, or any obligation imposed by, Title 48 RCW or other law or any applicable regulation or order of the commissioner in the course of his or her dealings as a qualified actuary;

(ii) Been found guilty of fraudulent or dishonest practices;

(iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(iv) Submitted to the commissioner during the past five years, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this regulation or standards set by the Actuarial Standards Board; or

(v) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(e) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under (d) of this subsection.

(f) The commissioner may accept equivalent qualifications in place of those in (a) and (b) of this subsection if the individual has otherwise demonstrated his or her actuarial competence to the satisfaction of the commissioner, and meets the qualifications in (c), (d), and (e) of this subsection.

(2) "Appointed actuary" means a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this regulation; either directly by, or by the authority of, the board of directors through an executive officer of the company.

(a) The company shall give the commissioner ((~~timely~~)) written notice no more than five business days of the following: The name, title (and, in the case of a consulting actuary, the name of the firm), and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary.

(b) The company must state in its notice that the appointed actuary meets the requirements set forth in subsection (1) of this section.

(c) After the company furnishes the notice, no further notice is required with respect to this person, except the following, if applicable:

(i) The company must give the commissioner timely written notice if the actuary ceases to be appointed or retained as an appointed actuary; and

(ii) The company must give the commissioner timely written notice if the actuary fails to meet the requirements set forth in subsection (2) of this section.

(d) ((~~If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice must include that information and give the reasons for replacement.~~)) If an actuary who was the appointed actuary for the immediately preceding filed actuarial opinion is replaced by an action of the board of directors, the insurer shall within five business days notify the insurance department of the state of domicile of this event. The insurer shall also furnish the domiciliary commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding such event there were any material disagreements with the former appointed actuary regarding the content of the opinion. The disagreements required to be reported in response to this paragraph include both those resolved to the former actuary's satisfaction and those not resolved to the former actuary's satisfaction. The insurer shall also in writing request such former actuary to furnish a letter addressed to the insurer stating whether the actuary agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he/she does not agree. Additionally, the insurer shall furnish such responsive letter from the former actuary to the domiciliary commissioner together with its own.

(3) Standards for asset adequacy analysis: Unless the commissioner approves equivalents in advance, the asset adequacy analysis required by this regulation:

(a) Must conform to the standards of practice as ((~~promulgated~~)) revised from time to time by the Actuarial Standards Board and to any additional standards under this regulation, and must form the basis of the statement of actuarial opinion in accordance with this regulation; and

(b) Must be based on methods of analysis that are deemed appropriate for such purposes by the Actuarial Standards Board.

(4) Liabilities to be covered:

(a) As required by RCW 48.74.025, the statement of actuarial opinion applies to all in force business on the statement date regardless of when or where issued, including reserves of Exhibits 5, 6, and 7, and claim liabilities in Exhibit 8, Part 1 and equivalent items in the separate account statement or statements.

(b) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company calculated in accordance with methods set forth in RCW 48.74.040, 48.74.070, 48.74.080, and 48.74.090, the company must establish the appropriate additional reserve.

(c) Additional reserves established under (b) of this subsection and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of these reserves will not be deemed an adoption of a lower standard of valuation.

AMENDATORY SECTION (Amending WSR 08-01-077, filed 12/17/07, effective 1/17/08)

WAC 284-07-380 Statement of actuarial opinion based on an asset adequacy analysis. ((~~(1) General description:~~)) The statement of actuarial opinion must ((~~include the following:~~

~~(a) A paragraph identifying the appointed actuary and his or her qualifications (see subsection (2)(a) of this section);~~

~~(b) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, (see subsection (2)(b) of this section) and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;~~

~~(c) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see subsection (2)(c) of this section), supported by a statement of each expert relied on in the form prescribed by subsection (5) of this section; and~~

~~(d) An opinion paragraph expressing the appointed actuary's opinion concerning the adequacy of the supporting assets to mature the liabilities (see subsection (2)(f) of this section).~~

~~(e) One or more of the following paragraphs will be needed in individual company cases, as follows:~~

~~(i) If the appointed actuary considers it necessary to state a qualification of his or her opinion;~~

~~(ii) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;~~

~~(iii) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;~~

~~(iv) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or~~

~~(v) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.~~

~~(2) Recommended language: The following paragraphs must be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances shall be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary must clearly express his or her professional judgment. In any event, the opinion must include all pertinent aspects of the language provided in this section.~~

~~(a) The opening paragraph must generally state the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.~~

~~(i) For a company actuary, the opening paragraph of the actuarial opinion must read substantially as follows:~~

> ~~"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of that company to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and disability insurance companies."~~

~~(ii) For a consulting actuary, the opening paragraph must contain a statement substantially similar to the following:~~

> ~~"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and disability insurance companies."~~

~~(b) The scope paragraph must include a statement substantially similar to the following:~~

> ~~"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20[ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.~~

	~~Asset Adequacy Tested Amounts~~					~~Reserves and Liabilities~~
	~~Statement Item~~	~~Formula Reserves (1)~~	~~Additional Actuarial Reserves (a) (2)~~	~~Analysis Method (b)~~	~~Other Amount (3)~~	~~Total Amount (1) + (2) + (3) (4)~~
~~**Exhibit 5**~~						
~~A~~	~~Life Insurance~~					
~~B~~	~~Annuities~~					
~~C~~	~~Supplementary Contracts With Life Contingencies~~					
~~D~~	~~Accidental Death Benefit~~					
~~E~~	~~Disability - Active~~					
~~F~~	~~Disability - Disabled~~					
~~G~~	~~Miscellaneous~~					
	~~Total (Exhibit 5 Item 1, Page 3)~~					
~~**Exhibit 6**~~						
~~A~~	~~Active Life Reserve~~					
~~B~~	~~Claim Reserve~~					
	~~Total (Exhibit 6 Item 2, Page 3)~~					
~~**Exhibit 7**~~						
	~~Premiums and Other Deposit Funds (Column 6, Line 14)~~					
	~~Guaranteed Interest Contracts (Column 2, Line 14)~~					
	~~Annuities Certain (Column 3, Line 14)~~					
	~~Supplemental Contracts (Column 4, Line 14)~~					
	~~Dividend Accumulations or Refunds (Column 5, Line 14)~~					
	~~Total (Exhibit 7, Item 3, Page 3)~~					
~~**Exhibit 8 Part 1**~~						
~~1~~	~~Life (Page 3, Line 4.1)~~					
~~2~~	~~Health (Page 3, Line 4.2)~~					
	~~Total Exhibit 8, Part 1~~					
	~~Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1 and 2)~~					
~~**TOTAL RESERVES**~~						

~~IMR (General Account, Page 3, Line 9.4)~~	
~~IMR (Separate Accounts, Page 3, Line 3)~~	
~~AVR (Page 3, Line 24.1)~~	~~(c)~~

~~Net Deferred and Uncollected Premium~~	

~~Notes to table of reserves and related actuarial items:~~

~~Page and line numbers refer to the 2005 blank. Corresponding entries from blanks from later years are to be substituted as appropriate.~~

~~(a) The additional actuarial reserves are the reserves established under WAC 284-07-350 (5)(b).~~

~~(b) The appointed actuary must state the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in WAC 284-07-350(4), by means of symbols which shall be defined in footnotes to the table.~~

~~(c) Allocated amount of Asset Valuation Reserve (AVR)."~~

~~(c) If the appointed actuary has relied on other experts to develop any portion of the analysis, the reliance paragraph must include a statement substantially similar to the following:~~

~~"I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios, or certain critical aspects of the analysis performed in conjunction with forming my opinion] as certified in the attached statement. I have reviewed the information relied upon for reasonableness."~~

~~A statement of reliance on other experts must be accompanied by a statement by each expert in the form prescribed by subsection (5) of this section.~~

~~(d) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph must also include substantially the following statement:~~

~~"My examination included a review of the actuarial assumptions, actuarial methods, the underlying basic asset and liability records, and other tests of the actuarial calculations I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement."~~

~~(e) If the appointed actuary has not examined the underlying records, but has relied upon listings or summaries of policies in force, or asset records, or both prepared by the company, the reliance paragraph must include a statement substantially similar to the following:~~

~~"In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects my examination included review of the actuarial assumptions and actuarial methods used and tests of the actuarial calculations I considered necessary."~~

~~The paragraph must be accompanied by a signed statement by each person relied upon based on the form set forth in subsection (5) of this section.~~

~~(f) The opinion paragraph must include a statement substantially similar to the following:~~

~~"In my opinion the reserves and related actuarial values concerning the statement items identified above:~~

~~(i) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;~~

~~(ii) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;~~

~~(iii) Meet the requirements of the insurance laws and regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;~~

~~(iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);~~

~~(v) Include provision for all actuarial reserves and related statement items which ought to be established.~~

~~The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on the assets, and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.~~

~~The actuarial methods, considerations, and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.~~

~~This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.~~

~~or~~

~~The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)~~

~~The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.~~

~~Signature of Appointed Actuary~~

~~Address of Appointed Actuary~~

~~Telephone Number of Appointed Actuary~~

~~Date"~~

~~(3) Assumptions for new issues: The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section.~~

~~(4) Adverse opinions: If the appointed actuary is unable to form an opinion, then he or she must refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she must issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for the adverse opinion. This statement must follow the scope paragraph and precede the opinion paragraph.~~

~~(5) Reliance on data furnished by other persons: If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or if the actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion must include the names of the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies must provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness of the items, as applicable. This certification must include the signature, title, company's legal name, address and telephone number of the person providing the certification, and the date on which it is signed. This certification must include the reporting date, the name of the appointed actuary, and must be attached to the opinion, in a form substantially similar to the following:~~

> ~~"I [name of officer], [title], of [name of company], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 20[ ], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~Signature of the Officer of the Company~~

~~Address of the Officer of the Company~~

~~Telephone Number of the Officer of the Company~~

~~Date"~~))

comply with VM-30 of the *Valuation Manual*, as revised from time to time by the National Association of Insurance Commissioners, and as defined in RCW 48.74.015.

AMENDATORY SECTION (Amending WSR 08-01-077, filed 12/17/07, effective 1/17/08)

WAC 284-07-390 Description of actuarial memorandum including an asset adequacy analysis and regulatory asset adequacy issues summary. (1)((~~(a)~~)) In accordance with RCW 48.74.025, the appointed actuary must prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves. The memorandum must comply with VM-30 of the *Valuation Manual*, as revised from time to time by the National Association of Insurance Commissioners, and as defined in RCW 48.74.015. The memorandum must be made available for examination by the commissioner upon his or her request but ((~~will be returned to the company after the examination and~~)) will not be considered a record of the commissioner or subject to automatic filing with the commissioner.

((~~(b) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of WAC 284-07-350(2), with respect to the areas covered in such memoranda, and must include a statement to that effect in their memoranda.~~

~~(c) If the commissioner requests a memorandum and an adequate memorandum is not provided within ten days after the request, or, if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the commissioner may designate a qualified actuary to review the opinion and prepare the supporting memorandum required for review. All reasonable and necessary expenses of the independent review must be paid by the company but all expenses related to the review will be directed and controlled by the commissioner.~~

~~(d)(i) The reviewing actuary must have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary must be retained by the commissioner. Information provided by the company to the reviewing actuary and included in the work papers will be considered material provided by the company to the commissioner and will be kept confidential to the same extent as prescribed by law with respect to other material provided by the company to the commissioner.~~

~~(ii) The reviewing actuary must not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the company for the current year or any one of the preceding three years.~~

~~(e)~~)) (2) In accordance with RCW 48.74.025, the appointed actuary must prepare a regulatory asset adequacy issues summary according to the requirements set forth in ((~~subsection (3) of this section~~)) VM-30 of the *Valuation Manual*, as revised from time to time by the National Association of Insurance Commissioners, and as defined in RCW

48.74.015. The regulatory asset adequacy issues summary must be submitted no later than ((~~March 15~~)) April 1st of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. Except for a domestic life insurance company, the regulatory asset adequacy issues summary must be submitted only upon request of the commissioner. The regulatory asset adequacy issues summary has the standing of a memorandum in support of the actuarial opinion, and will be kept confidential to the extent and under the conditions provided for in RCW 48.74.025(4).

((~~(2) When an actuarial opinion is provided, the memorandum must demonstrate that the analysis has been completed in accordance with the standards for asset adequacy set forth in WAC 284-07-350(4) and any additional standards required by the commissioner. The memorandum must include the following:~~

~~(a) For reserves:~~

~~(i) Product descriptions including market description, underwriting and other aspects of a risk profile, and the specific risks the appointed actuary deems significant;~~

~~(ii) Sources of liabilities in force;~~

~~(iii) Reserve methods and bases;~~

~~(iv) Investment reserves;~~

~~(v) Reinsurance arrangements;~~

~~(vi) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;~~

~~(vii) Documentation of assumptions, including comparisons with experience, to test reserves for the following:~~

~~(A) Lapse rates, both base and excess;~~

~~(B) Interest crediting rate strategy;~~

~~(C) Mortality;~~

~~(D) Policyholder dividend strategy;~~

~~(E) Competitor or market interest rate;~~

~~(F) Annuitization rates;~~

~~(G) Commissions and expenses; and~~

~~(H) Morbidity.~~

~~The documentation of the assumptions must allow an actuary reviewing the actuarial memorandum to form a conclusion regarding the reasonableness of the assumptions.~~

~~(b) For assets:~~

~~(i) Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;~~

~~(ii) Investment and disinvestment assumptions;~~

~~(iii) Sources of asset data;~~

~~(iv) Asset valuation bases;~~

~~(v) Documentation of assumptions made for:~~

~~(A) Default costs;~~

~~(B) Bond call function;~~

~~(C) Mortgage prepayment function;~~

~~(D) Determining market value for assets sold due to disinvestment strategy; and~~

~~(E) Determining yield on assets acquired through the investment strategy.~~

~~The documentation of the assumptions must allow an actuary reviewing the actuarial memorandum to form a conclusion regarding the reasonableness of the assumptions.~~

~~(c) Analysis basis:~~

~~(i) Methodology;~~

~~(ii) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;~~

~~(iii) Rationale for degree of rigor in analyzing different blocks of business, including the level of "materiality" that was used in determining how rigorously to analyze different blocks of business;~~

~~(iv) Criteria for determining asset adequacy, including the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions, as specified in relevant actuarial standards of practice;~~

~~(v) Consideration of the impact of federal income taxes; and~~

~~(vi) The method of treating reinsurance in the asset adequacy analysis.~~

~~(d) Sensitivity testing: Impact of changes in assumptions used in asset adequacy analysis, based on sensitivity tests performed.~~

~~(e) Material changes: Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis.~~

~~(f) Results:~~

~~(i) Schedules under each required scenario showing the cash flows by each of the major items of income, benefits, and expenses, statutory gains or losses, and statutory balance sheet, as modeled, for each year in the projection period; and~~

~~(ii) Summary of results.~~

~~(g) Conclusion(s).~~

~~(3) The regulatory asset adequacy issues summary must contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and must be signed and dated by the appointed actuary providing the actuarial opinion. The regulatory asset adequacy issues summary must include all of the following:~~

~~(a) Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing performed relative to those scenarios.~~

~~(i) If certain tests produce negative ending surplus in the aggregate, the actuary must describe those tests and state the amount of additional reserve as of the valuation date that, if held, would eliminate the negative aggregate surplus values.~~

~~(ii) The actuary must determine ending surplus values by either:~~

~~(A) Extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial; or~~

~~(B) Adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.~~

~~(b) An explanation of the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different from the assumptions used in the previous asset adequacy analysis.~~

~~(c) A description of the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion.~~

~~(d) Comments on any interim results that may be of significant concern to the appointed actuary.~~

~~(e) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested.~~

~~(f) A paragraph explaining whether the actuary is satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.~~

~~(4) The memorandum must include a statement substantially similar to the following:~~

~~"Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."~~))

AMENDATORY SECTION (Amending WSR 95-02-036, filed 12/30/94, effective 1/30/95)

WAC 284-07-400 Additional considerations for analysis. (1) ((~~Aggregation: For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with WAC 284-07-380, reserves and assets may be aggregated by either of the following methods:~~

~~(a) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.~~

~~(b) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated:~~

~~(i) Are developed using consistent economic scenarios; or~~

~~(ii) Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.~~

~~(c) In the event of any aggregation, the actuary must disclose that in his or her opinion such reserves were aggregated on the basis of method (a), (b)(i), or (b)(ii) of this subsection, whichever is applicable, and describe the aggregation in the supporting memorandum.~~

~~(2) Selection of assets for analysis: The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in subsection (3) of this section. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.~~

~~(3) Use of assets supporting the interest maintenance reserve and the asset valuation reserve:~~

~~(i) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.~~

~~(ii) The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum.~~

~~(iii) The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.~~

~~(4) Required interest scenarios:~~

~~(a) For the purpose of performing the asset adequacy analysis required by this regulation, the qualified actuary shall follow standards adopted by the Actuarial Standards Board or equivalent standards approved in advance by the commissioner. In the analysis, the appointed actuary shall consider the effect of at least the following interest rate scenarios:~~

~~(i) Level with no deviation;~~

~~(ii) Uniformly increasing over ten years at a half percent per year and then level;~~

~~(iii) Uniformly increasing at one percent per year over five years and then uniformly decreasing at one percent per year to the original level at the end of ten years and then level;~~

~~(iv) An immediate increase of three percent and then level;~~

~~(v) Uniformly decreasing over ten years at a half percent per year and then level;~~

~~(vi) Uniformly decreasing at one percent per year over five years and then uniformly increasing at one percent per year to the original level at the end of ten years and then level; and~~

~~(vii) An immediate decrease of three percent and then level.~~

~~(b) For all scenarios used, projected interest rates for a five-year treasury note need not be reduced beyond the point where the five-year treasury note yield would be at fifty percent of its initial level.~~

~~(c) The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as treasury~~

~~yields, of assets of the appropriate length on a date close to the valuation date.~~

~~(d) The method used to determine the beginning yield curve and associated interest rates shall be specifically defined. The beginning yield curve and associated interest rates shall be consistent for all interest rate scenarios.~~

~~(5)~~)) Any additional consideration for analysis must be compiled in accordance with VM-30 of the *Valuation Manual*, as revised from time to time by the National Association of Insurance Commissioners, and as defined in RCW 48.74.015.

(2) Documentation: The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions, and the results obtained.

WSR 20-17-036
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed August 10, 2020, 8:26 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-817-010, 246-817-110, 246-817-135, 246-817-190, 246-817-195, 246-817-200, 246-817-205, and 246-817-220, repeal of AIDS education and training requirements from registration, certification, and licensure rules. ESHB 1551 (chapter 76, Laws of 2020) repealed AIDS education and training requirements for health professionals obtaining registration, certification, and licensure. The dental quality assurance commission is proposing to repeal eight requirements under chapter 246-817 WAC that reference or require AIDS education and training for registration, certification, or license.

Hearing Location(s): On October 23, 2020, at 8:35 a.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the dental quality assurance commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead.

To access the meeting: Please join meeting from your computer, tablet, or smartphone.

Please register for dental quality assurance commission on October 23, 2020, 8:30 a.m. PDT at https://attendee.gotowebinar.com/register/8090024445858444816.

Date of Intended Adoption: October 23, 2020.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, by October 9, 2020.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, dental@doh.wa.gov, by October 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments will repeal requirements and make other housekeeping changes in each rule requiring AIDS education and training, this includes: WAC 246-817-010, definitions of "Acquired immunodeficiency syndrome" and "Office on AIDS," 246-817-110(6), dental licensure—Initial eligibility and application requirements, 246-817-135(6), dental licensure without examination—Eligibility and application requirements, 246-817-190(3), dental assistant registration, 246-817-195(6), licensure requirements for expanded function dental auxiliaries (EFDAs), 246-817-200(4), licensure without examination for expanded function dental auxiliary (EFDA), 246-817-205 (3)(e), dental anesthesia assistant certification requirements, and 246-817-220 (4)(h), inactive license.

Reasons Supporting Proposal: ESHB 1551 repealed RCW 70.24.270 Health professionals—Rules for AIDS education and training.

As a result of ESHB 1551, the department of health will repeal chapter 246-12 WAC, Part 8 - AIDS prevention and information education requirements. The dental quality assurance commission (dental commission) proposes to repeal requirements in eight rules that require AIDS prevention and information education. These requirements detail the definitions, acceptable training and education, and documentation requirements for health professionals and employees concerning AIDS profession-specific rules including the number of hours of training required. The dental commission is proposing to no longer require AIDS education, training, or documentation in rule in support of legislation and reducing stigma towards people living with HIV/AIDS (PLWH).

When Washington adopted statues concerning AIDS, very little was known about the disease compared to today. Now, AIDS is so treatable and preventable, Governor Inslee issued a proclamation in 2014 supporting End AIDS Washington; a statewide initiative to reduce new HIV cases by fifty percent by the end of 2020. Part of this effort includes reducing stigma, which includes updating state law. ESHB 1551 repeals statues concerning AIDS education and training for emergency medical personnel, health professionals, and health care facility employees helps reduce stigma towards PLWH by not singling out AIDS as an exceptional disease that requires specific training and education separate from other health conditions.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: ESHB 1551 repeal of RCW 70.24.270.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementing, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute. ESHB 1551 repealed RCW 70.24.270, the statutory authority for requiring AIDS education and training.

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

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

August 10, 2020
Aaron Stevens, DMD, Chairperson
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 08-23-019, filed 11/6/08, effective 12/7/08)

WAC 246-817-010 Definitions. The following general terms are defined within the context used in this chapter.

((~~**"Acquired immunodeficiency syndrome"** or **"AIDS"** means the clinical syndrome of HIV-related illness as defined by the board of health by rule.~~))

"Clinics" are locations situated away from the School of Dentistry on the University of Washington campus, as recommended by the dean in writing and approved by the DQAC.

"CITA" means Council of Interstate Testing Agencies, a regional dental testing agency that provides clinical dental testing services.

"CRDTS" means Central Regional Dental Testing Services, a regional testing agency that provides clinical dental testing services.

"Department" means the department of health.

"DQAC" means the dental quality assurance commission as established by RCW 18.32.0351.

"Facility" is defined as the building housing the School of Dentistry on the University of Washington campus, and other buildings, designated by the dean of the dental school and approved by the DQAC.

"NERB" means the Northeast Regional Board, a regional testing agency that provides clinical dental testing services.

((~~**"Office on AIDS"** means that section within the department of health or any successor department with jurisdiction over public health matters as defined in chapter 70.24 RCW.~~))

"Secretary" means the secretary of the department of health or the secretary's designee.

"SRTA" means the Southern Regional Testing Agency, a regional testing agency that provides clinical dental testing services.

"WREB" means the Western Regional Examining Board, a national testing agency that provides clinical dental testing services.

AMENDATORY SECTION (Amending WSR 19-15-094, filed 7/22/19, effective 8/22/19)

WAC 246-817-110 Dental licensure—Initial eligibility and application requirements. To be eligible for Washington state dental licensure, the applicant must provide:

(1) A completed application and fee. The applicant must submit a signed application and required fee as defined in WAC 246-817-990;

(2) Proof of graduation from a dental school approved by the DQAC:

(a) DQAC recognizes only those applicants who are students or graduates of dental schools in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation of the American Dental Association. The applicant must have received, or will receive, a Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD) degree from that school;

(b) Other dental schools which apply for DQAC approval and which meet these adopted standards to the DQAC's satisfaction may be approved, but it is the responsibility of a school to apply for approval and of a student to ascertain whether or not a school has been approved;

(3) Proof of successful completion of the Integrated National Board Dental Examination, Parts I and II of the National Board Dental Examination, or the Canadian National Dental Examining Board Examination. An original scorecard or a certified copy of the scorecard shall be accepted. Exception: Dentists who obtained initial licensure in a state prior to that state's requirement for successful completion of the national boards, may be licensed in Washington, provided that the applicant provide proof that their original state of licensure did not require passage of the national boards at the time they were initially licensed. Applicants need to meet all other requirements for licensure;

(4) Proof of graduation from an approved dental school. The only acceptable proof is an official, posted transcript sent directly from such school, or in the case of recent graduates, a verified list of graduating students submitted directly from the dean of the dental school. Graduates of nonaccredited dental schools must also meet the requirements outlined in WAC 246-817-160;

(5) A complete listing of professional education and experience including college or university (predental), and a complete chronology of practice history from the date of dental school graduation to present, whether or not engaged in activities related to dentistry;

(6) ((~~Proof of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(7)~~)) Proof of malpractice insurance if available, including dates of coverage and any claims history;

((~~(8)~~)) <u>(7)</u> Written certification of any licenses held, submitted directly from another licensing entity, and including license number, issue date, expiration date and whether applicant has been the subject of final or pending disciplinary action;

((~~(9)~~)) <u>(8)</u> Proof of successful completion of:

(a) An approved practical/clinical examination under WAC 246-817-120; or

(b) A qualifying residency program under RCW 18.32.-040 (3)(c);

((~~(10)~~)) (9) Proof of successful completion of an approved written jurisprudence examination;

((~~(11)~~)) (10) A recent 2" x 2" photograph, signed, dated, and attached to the application;

((~~(12)~~)) (11) Authorization for background inquiries to other sources may be conducted as determined by the DQAC((~~,~~)) including, but not limited to, the national practitioner data bank and drug enforcement agency. Applicants are responsible for any fees incurred in obtaining verification of requirements;

((~~(13)~~)) (12) Any other information for each license type as determined by the DQAC.

AMENDATORY SECTION (Amending WSR 16-16-039, filed 7/26/16, effective 8/26/16)

WAC 246-817-135 Dental licensure without examination—Eligibility and application requirements. For individuals holding a dentist credential in another U.S. state or territory, to be eligible for Washington state dental license without examination, the applicant must provide:

(1) A completed application on forms provided by the secretary;

(2) Applicable fees under WAC 246-817-990;

(3) A verification by a U.S. state or territory board of dentistry (or equivalent authority) of an active credential to practice dentistry, without restrictions, and whether the applicant has been the subject of final or pending disciplinary action;

(4) Proof of graduation from an approved dental school under WAC 246-817-110 (2)(a):

(a) The only acceptable proof is an official, posted transcript sent directly from such school;

(b) Graduates of nonapproved dental schools must meet the requirements under RCW 18.32.215 (1)(b).

(5) Proof that the applicant is currently engaged in the practice of dentistry:

(a) Dentists serving in the United States federal services as described in RCW 18.32.030(2) must provide documentation from their commanding officer regarding length of service, duties and responsibilities, and any adverse actions or restrictions;

(b) Dentists employed by a dental school approved under WAC 246-817-110 (2)(a) must provide documentation from the dean or appropriate administrator of the institution regarding the length and terms of employment, duties and responsibilities, and any adverse actions or restrictions;

(c) Dentists in a dental residency program must provide documentation from the director or appropriate administrator of the residency program regarding length of residency, duties and responsibilities, and any adverse actions or restrictions; or

(d) Dentists practicing dentistry for a minimum of twenty hours per week for the four consecutive years preceding application, in another U.S. state or territory must provide:

(i) Address of practice location(s);

(ii) Length of time at the location(s);

(iii) A letter from all malpractice insurance carrier(s) defining years when insured and any claims history;

(iv) Federal or state tax numbers; and

(v) DEA numbers if any.

(6) ((~~Proof of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8;~~

~~(7)~~)) Proof of successful completion of a commission approved written jurisprudence examination;

((~~(8)~~)) (7) A recent 2" x 2" photograph, signed, dated, and attached to the application; and

((~~(9)~~)) (8) Authorization for background inquiries to other sources may include, but are not limited to, the national practitioner data bank and drug enforcement agency.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-190 Dental assistant registration. To be eligible for registration as a dental assistant you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-99005; and

(3) ((~~Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and~~

~~(4)~~)) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-195 Licensure requirements for expanded function dental auxiliaries (EFDAs). To be eligible for licensure as an EFDA in Washington an applicant must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-99005;

(3) Provide evidence of:

(a) Completion of a dental assisting education program accredited by the Commission on Dental Accreditation (CODA); or

(b) Obtain the Dental Assisting National Board (DANB) certified dental assistant credential, earned through pathway II, which includes:

(i) A minimum of three thousand five hundred hours of experience as a dental assistant within a continuous twenty-four through forty-eight month period;

(ii) Employer-verified knowledge in areas as specified by DANB;

(iii) Passage of DANB certified dental assistant examination; and

(iv) An additional dental assisting review course, which may be provided online, in person or through self-study; or

(c) A Washington limited license to practice dental hygiene; or

(d) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school.

(4) Except for applicants qualified under subsection (3)(d) of this section, provide evidence of completing an EFDA education program approved by the commission where training includes:

(a) In a didactic, clinical and laboratory model to the clinically competent level required for close supervision:

(i) In placing and finishing composite restorations on a typodont and on clinical patients; and

(ii) In placing and finishing amalgam restorations on a typodont and on clinical patients; and

(iii) In taking final impressions on a typodont; and

(b) In a didactic, clinical and laboratory model to the clinically competent level required for general supervision:

(i) In performing coronal polish, fluoride treatment, and sealants on a typodont and on clinical patients; and

(ii) In providing patient oral health instructions; and

(iii) In placing, exposing, processing, and mounting dental radiographs; and

(c) The basic curriculum shall require didactic, laboratory, and clinical competency for the following:

(i) Tooth morphology and anatomy;

(ii) Health and safety (current knowledge in dental materials, infection control, ergonomics, mercury safety, handling);

(iii) Placement and completion of an acceptable quality reproduction of restored tooth surfaces—Laboratory and clinic only;

(iv) Radiographs (covered in path II)—Laboratory and clinic only;

(v) Ethics and professional knowledge of law as it pertains to dentistry, dental hygiene, dental assisting, and EFDA;

(vi) Current practices in infection control;

(vii) Health history alerts;

(viii) Final impression;

(ix) Matrix and wedge;

(x) Rubber dam;

(xi) Acid etch and bonding;

(xii) Occlusion and bite registration;

(xiii) Temporary restorations;

(xiv) Dental emergencies;

(xv) Risk management and charting;

(xvi) Intra-oral anatomy;

(xvii) Pharmacology; and

(xviii) Bases, cements, liners and sealers.

(5) Except for applicants qualified under subsection (3)(d) of this section, attain a passing score on:

(a) A written restorations examination approved by the commission; and

(b) A clinical restorations examination approved by the commission.

(6) ((~~Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8.~~

~~(7)~~)) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-200 Licensure without examination for expanded function dental auxiliary (EFDA). To be eligible for a license as an EFDA without examination you must:

(1) Provide a completed application on forms provided by the secretary;

(2) Pay applicable fees as defined in WAC 246-817-990;

(3) Provide evidence of:

(a) A current license in another state with substantially equivalent licensing standards as determined by the commission; or

(b) A Washington full dental hygiene license and completion of a course in taking final impressions affiliated with or provided by a CODA accredited dental assisting program, dental hygiene school or dental school((~~.~~)); and

(4) ((~~Provide evidence of completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC Part 8; and~~

~~(5)~~)) Provide any other information determined by the secretary.

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-205 Dental anesthesia assistant certification requirements. An applicant for certification as a dental anesthesia assistant must submit to the department:

(1) A completed application on forms provided by the secretary;

(2) Applicable fees as defined in WAC 246-817-99005;

(3) Evidence of:

(a) Completion of a commission approved dental anesthesia assistant education and training. Approved education and training includes:

(i) Completion of the "Dental Anesthesia Assistant National Certification Examination (DAANCE)" or predecessor program, provided by the American Association of Oral and Maxillofacial Surgeons (AAOMS); or

(ii) Completion of the "Oral and Maxillofacial Surgery Assistants Course" course provided by the California Association of Oral and Maxillofacial Surgeons (CALAOMS); or

(iii) Completion of substantially equivalent education and training approved by the commission.

(b) Completion of training in intravenous access or phlebotomy. Training must include:

(i) Eight hours of didactic training that must include:

(A) Intravenous access;

(B) Anatomy;

(C) Technique;

(D) Risks and complications; and

(ii) Hands on experience starting and maintaining intravenous lines with at least ten successful intravenous starts on a human or simulator/manikin; or

(iii) Completion of substantially equivalent education and training approved by the commission;

(c) A current and valid certification for health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(d) A valid Washington state general anesthesia permit of the oral and maxillofacial surgeon or dental anesthesiologist where the dental anesthesia assistant will be performing his or her services((~~;~~

~~(e) Completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8~~)); and

(4) Any other information determined by the commission.

AMENDATORY SECTION (Amending WSR 18-01-106, filed 12/19/17, effective 1/19/18)

WAC 246-817-220 Inactive license. (1) A dentist may obtain an inactive license by meeting the requirements of WAC 246-12-090 and RCW 18.32.185.

(2) An inactive license must be renewed every year on or before the practitioner's birthday according to WAC 246-12-100 and 246-817-990.

(3) If a license is inactive for three years or less, to return to active status a dentist must meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(4) If a license is inactive for more than three years, and the dentist has been actively practicing in another United States jurisdiction, to return to active status the dentist must:

(a) Provide certification of an active dentist license, submitted directly from another licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;

(b) Provide verification of active practice in another United States jurisdiction within the last three years; and

(c) Meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(5) If a license is inactive for more than three years, and the dentist has not been actively practicing in another United States jurisdiction, to return to active status the dentist must provide:

(a) A written request to change licensure status;

(b) The applicable fees according to WAC 246-817-990;

(c) Proof of successful completion of:

(i) An approved practical/practice examination under WAC 246-817-120; or

(ii) A qualifying residency program under RCW 18.32.040 (3)(c);

(d) Written certification of all dental or health care licenses held, submitted directly from the licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;

(e) Written declaration that continuing education and competency requirements for the two most recent years have been met according to WAC 246-817-440;

(f) Proof of successful completion of an approved written jurisprudence examination within the past year; and

(g) Proof of malpractice insurance if available, including dates of coverage and any claims history((~~; and~~

~~(h) Proof of AIDS education according to WAC 246-817-110, if not previously provided~~)).

WSR 20-17-041
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed August 10, 2020, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-085.

Title of Rule and Other Identifying Information: WAC 182-531-1550 Sterilization physician-related services.

Hearing Location(s): On September 22, 2020, at 10:00 a.m.

In light of the current public health emergency and the Governor's Safe Start plan, it is unknown whether, by the date of this public hearing, restrictions on meeting in public places will be eased. Therefore, this hearing is being held virtually only. This will not be an in-person hearing and there is not a physical location available.

To attend, you must register **prior** to the public hearing (September 22, 2020, 10:00 a.m. Pacific Time) at https://attendee.gotowebinar.com/register/3519612995422083086, Webinar ID 725-281-419.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than September 23, 2020.

Submit Written Comments to: Health Care Authority (HCA) Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by September 22, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by September 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-531-1550 to remove subsection (5), which describes the circumstances under which the agency waives the thirty day consent waiting period for sterilization.

Reasons Supporting Proposal: The agency has determined this rule amendment is necessary to align with federal rule, specifically 42 C.F.R. 50.203(d) and 50.204 (7)(e)(1).

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Melissa Kundur, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-5297.

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

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

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

August 10, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-06-034, filed 2/27/20, effective 3/29/20)

WAC 182-531-1550 Sterilization physician-related services. (1) For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing.

Hysterectomy results in sterilization and is not covered by the medicaid agency solely for that purpose. (See WAC 182-531-0150 and 182-531-0200 for more information about hysterectomies.)

STERILIZATION

(2) The agency covers sterilization when all of the following apply:

(a) The client is at least eighteen years of age at the time an agency-approved consent form is signed;

(b) The client is a mentally competent individual;

(c) The client participates in a medical assistance program (see WAC 182-501-0060);

(d) The client has voluntarily given informed consent; and

(e) The date the client signed a sterilization consent is at least thirty days and not more than one hundred eighty days before the date of the sterilization procedure.

(3) Any medicaid provider who is licensed to do sterilizations within their scope of practice may provide vasectomies and tubal sterilizations to any medicaid client.

(4) The agency requires at least a seventy-two hour waiting period rather than the usual thirty-day waiting period for sterilization in either of the following circumstances:

(a) At the time of a premature delivery when the client gave consent at least thirty days before the expected date of delivery. (The expected date of delivery must be documented on the consent form.)

(b) For emergency abdominal surgery. (The nature of the emergency must be described on the consent form.)

(5) ((~~The agency waives the thirty-day consent waiting period for sterilization when the client requests that sterilization be performed at the time of delivery and completes a sterilization consent form. One of the following circumstances must apply:~~

~~(a) The client became eligible for medical assistance during the last month of pregnancy;~~

~~(b) The client did not obtain medical care until the last month of pregnancy; or~~

~~(c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.~~

~~(6)~~)) The agency does not accept informed consent obtained when the client is:

(a) In labor or childbirth;

(b) In the process of seeking to obtain or obtaining an abortion; or

(c) Under the influence of alcohol or other substances, including pain medications for labor and delivery, that affects the client's state of awareness.

((~~(7)~~)) (6) The agency has certain consent requirements that the provider must meet before the agency reimburses sterilization of an institutionalized client or a client with mental incompetence. The agency requires both of the following:

(a) A court order, which includes both a statement that the client is to be sterilized, and the name of the client's legal guardian who will be giving consent for the sterilization; and

(b) A sterilization consent form signed by the legal guardian, sent to the agency at least thirty days before the procedure.

((~~(8)~~)) (7) The agency reimburses epidural anesthesia in excess of the six-hour limit for deliveries if sterilization procedures are performed in conjunction with or immediately following a delivery.

(a) For reimbursement, anesthesia time for sterilization is added to the time for the delivery when the two procedures are performed during the same operative session.

(b) If the sterilization and delivery are performed during different operative sessions, the anesthesia time is calculated separately.

((~~(9)~~)) (8) The agency reimburses all attending providers for the sterilization procedure only when the provider submits an agency-approved and complete consent form with the claim for reimbursement.

(a) The physician must complete and sign the physician statement on the consent form within thirty days of the sterilization procedure.

(b) The agency reimburses attending providers after the procedure is completed.

WSR 20-17-049
PROPOSED RULES
BUILDING CODE COUNCIL
[Filed August 11, 2020, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-080.

Title of Rule and Other Identifying Information: Chapter 51-56 WAC, Adoption and amendment of the 2018 Uniform Plumbing Code.

Hearing Location(s): On October 9, 2020, at 10:00 a.m., at the Department of Enterprise Services, Presentation Room (1213), 1500 Jefferson Street, Olympia, WA 98504.

Date of Intended Adoption: November 6, 2020.

Submit Written Comments to: Diane Glenn, 1500 Jefferson Street S.E., Olympia, WA 98504, email SBCC@des.wa.gov, by October 16, 2020.

Assistance for Persons with Disabilities: Contact Shannon Pitts, phone 360-407-9255, email Shannon.pitts@des.wa.gov, by October 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules adopt the 2018 edition of the Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, with state amendments to incorporate proposed changes as adopted by the Washington state building code council (SBCC). The rules will provide increased clarity and life safety measures for building construction in Washington state.

SUMMARY OF PROPOSED CHANGES:

2018 UPC
Amendments to WAC 51-56*

	WAC	Section	Changes in 2018	Discussion
1	51-56-400	407.2	Water consumption (faucets)	Legislative modification
2	51-56-400	407.2.1	Maximum water flow	Legislative modification
3	51-56-400	407.2.1.1	Residential lavatory faucets	Legislative modification
4	51-56-400	407.2.1.2	Lavatory faucets in common and public use areas	Legislative modification
5	51-56-400	407.2.2	Metering faucets	Legislative modification
6	51-56-400	408.2	Water consumption (showerheads)	Legislative modification
7	51-56-400	408.2.1	Multiple showerheads serving one shower	Legislative modification
8	51-56-400	408.2.5	Tub spout diverters and showerhead tub spout diverter combinations	Legislative modification
9	51-56-400	411.2	Water consumption (water closets)	Legislative modification
10	51-56-400	411.2.1	Dual flush water closets	Legislative modification
11	51-56-400	411.2.2	Performance	Legislative modification
12	51-56-400	411.2.3	Flushometer valve activated water closets	Legislative modification
13	51-56-400	412.1	Application	Legislative modification
14	51-56-400	420.2.1	Kitchen faucets	Legislative modification
15	51-56-400	420.3	Pre-rinse spray valve	Legislative modification
16	51-56-400	423.0	Landscape irrigation	Legislative modification
17	51-56-400	423.1	Sprinkler body	Legislative modification
18	51-56-500	501.1.2	Consumer electric storage water heater requirements	Legislative modification
19	51-56-500	501.1.3	Mini-tank electric water heaters	Legislative modification

*Note: Those not listed on the table above remain as adopted in 2015.

Reasons Supporting Proposal: RCW 19.27.031 and 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: RCW 19.27.031, 19.27.074.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; Enforcement: Local jurisdictions having authority.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

There are costs imposed by the proposed rules but the costs do not fall disproportionately on small businesses. These rules will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rules do not affect employment, reporting or record keeping.

Small Business Economic Impact Statement
(RCW 19.85.040)

Description: SBCC is filing a proposed rule to adopt the updated 2018 edition of Uniform Plumbing Code (UPC) (chapter 51-56 WAC). Since 1985 the state building code council has been responsible to update to new editions of the building code per RCW 19.27.074. The UPC is updated every three years by the International Association of Plumbing and Mechanical Officials (IAPMO). The code development process conducted by the model code organization is open to all interest groups within the design and construction industry and from governmental organizations. See the IAPMO website for more information about the model code development process.

The administrative compliance requirements are under the authority of the local government. RCW 19.27.050. Compliance activities including permit issuance, plan review and approval, and inspections occur at the local level. Requirements for construction document submittal and other reporting requirements are determined by the local jurisdiction and are consistent with previously established policies. The proposed amendments to chapter 51-56 WAC include specific technical requirements for building construction to be consistent with national standards.

Professional Services: Washington has had a statewide building code in effect since 1974. The local enforcement authority having jurisdiction administers the codes through the building and/or fire departments. Administrative procedures for state building code compliance are established and will not be changed by the adoption of the update to the current building codes. Small businesses will employ the same types of professional services for the design and construction of buildings and systems to comply with the state building code.

The proposed rule updates the state building code and does not require additional equipment, supplies, labor or other services. Services needed to comply with the building code are existing within the construction industry as required by the local authority having jurisdiction.

Costs of Compliance for Businesses: The cost of compliance incurred by Washington businesses includes training and educational materials. The UPC 2018 model codes cost $125 + tax shipping and handling. This publication is also available on the IAPMO website. The IAPMO offers training for continuing education credits to architects, engineers and building inspectors.

The plumbing code technical advisory group (TAG) determined there is a cost for compliance on businesses for the following proposed state amendments.

1. Table 504.1 note 2: This revision will assure [ensure] that the water heater will be able to provide the system with hot water when needed - the nonstorage water heater cannot act as a restriction to flow during peak load operation per UPC section 610.2. There is a minor economic impact - tankless water heater will have to be rated for higher flow to meet this requirement.
2. Sections 407.2, 408.2, 411.2, 412, 420, 423, 501.1.3 [501.1.2], 501.1.3. These changes are in response to SSHB [2SHB] 1444 legislation from the 2019 legislative session. The changes update appliance standards. The change will increase construction costs but reduce energy consumption. Because these requirements are established by statute, a cost analysis [is] not required here.

Loss of Sales or Revenue: The proposed rules make the state code for building construction consistent with national standards. Businesses with new products or updated test or design standards are recognized in the updated building code.

The update will result in some cost outlay for some small businesses for specific building projects, for a transition period. Other small businesses would see an increase in revenue. The amendments to the plumbing code affect over twenty-five thousand (in 2012) small businesses in the state, where construction activity occurs. The primary intent of the amendments is to improve the safety features in buildings and provide consistency and fairness across the state, for a predictable business environment. The amendments should result in enhanced safety and value in buildings.

Cost of Compliance for Small Businesses: (Determine whether the proposed rule will have a disproportionate cost impact on small businesses, compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses.)

The majority of businesses affected by the updates to the plumbing code are small businesses; over ninety-five percent of those listed in the construction and related industries have under fifty employees. The costs per employee are comparable between the largest businesses and the majority of small businesses. The cost to comply with the updated codes is not a disproportionate impact on small business.

Reducing the Costs of the Rule on Small Businesses: The SBCC conducted a detailed review process, including participation at the national code development hearings, to document significant economic impacts of the proposed code amendments.

Small Businesses Involved in the Development of the Rule: For the UPC, the SBCC conducted five open public meetings of the building code technical advisory group, available via telephone conference bridge and over the internet, and allowed comment on every item on every agenda. For the UPC, the SBCC appointed ten representatives of all segments of the business and construction community to serve on the technical advisory groups.

List of Industries: Below is a list of industries required to comply with the building code:

North American Industry Classification System (NAICS) Code	NAICS Code Definition	Number of Establishments in Washington State	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Avg Annual Payroll	0.3% of Avg Annual Revenue
236115	New single-family housing construction (except for-sale builders)	1261	$186,272,000	---	$147,718	---	$1,477	---
236116	New multifamily housing construction (except for-sale builders)	45	$54,622,000	---	$1,213,822	---	$12,138	---

North American Industry Classification System (NAICS) Code	NAICS Code Definition	Number of Establishments in Washington State	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Avg Annual Payroll	0.3% of Avg Annual Revenue
236118	Residential remodelers	2777	$318,180,000	$1,536,217,000	$114,577	$553,193	$1,146	$1,660
236210	Industrial building construction	53 (s)	$99,790,000	---	---	---	---	---
236220	Commercial and institutional building construction	862	$772,473,000	$6,925,925,000	$896,140	$8,034,716	$8,961	$24,104
238110	Poured concrete foundation and structure contractors	511	$144,643,000	$479,256,000	$283,059	$937,879	$2,831	$2,814
238120	Structural steel and precast concrete contractors	68	$93,454,000	$336,100,000	$1,374,324	$4,942,647	$13,743	$14,828
238130	Framing contractors	417	$79,196,000	$279,226,000	$189,918	$669,607	$1,899	$2,009
238140	Masonry contractors	293	$74,067,000	$215,274,000	$252,788	$734,724	$2,528	$2,204
238150	Glass and glazing contractors	141	$67,626,000	$237,985,000	$479,617	$1,687,837	$4,796	$5,064
238160	Roofing contractors	537	$179,942,000	$660,911,000	$335,088	$1,230,747	$3,351	$3,692
238170	Siding contractors	327	$58,557,000	$286,471,000	$179,073	$876,058	$1,791	$2,628
238190	Other foundation, structure, and building exterior contractors	113	$37,585,000	$123,771,000	$332,611	$1,095,319	$3,326	$3,286
238210	Electrical contractors and other wiring installation contractors	1847	$940,854,000	$3,026,762,000	$509,396	$1,638,745	$5,094	$4,916
238220	Plumbing, heating, and air-conditioning contractors	1664	$959,976,000	$3,169,548,000	$576,909	$1,904,776	$5,769	$5,714
238290	Other building equipment contractors	81	$117,696,000	---	$1,453,037	---	$14,530	---
238310	Drywall and insulation contractors	653	$282,929,000	$723,945,000	$433,276	$1,108,644	$4,333	$3,325
238990	All other specialty trade contractors	547	$182,710,000	$573,308,000	$334,022	$1,048,095	$3,340	$3,144
321213	Engineered wood member (except truss) manufacturing	11	$14,216,000	$79,051,000	$1,292,364	$7,186,455	$12,924	$21,559
321214	Truss manufacturing	22	---	---	---	---	---	---
321219	Reconstituted wood product manufacturing	3	---	---	---	---	---	---
321911	Wood window and door manufacturing	39	$37,814,000	$145,137,000	$969,590	$3,721,462	$9,696	$11,164
321992	Prefabricated wood building manufacturing	18	$6,891,000	---	$382,833	---	$382,833	---
327310	Cement manufacturing	7	---	---	---	---	---	---
327320	Ready-mix concrete manufacturing	93	$74,457,000	---	$800,613	---	$8,006	---
327331	Concrete block and brick manufacturing	18	$11,218,000	---	$623,222	---	$6,232	---

North American Industry Classification System (NAICS) Code	NAICS Code Definition	Number of Establishments in Washington State	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Avg Annual Payroll	0.3% of Avg Annual Revenue
332311	Prefabricated metal building and component manufacturing	9	$3,564,000	---	$396,000	---	$3,960	---
332312	Fabricated structural metal manufacturing	94	$125,755,000	---	$1,337,819	---	$13,378	---
332321	Metal window and door manufacturing	16	$23,776,000	---	$1,486,000	---	$14,860	---
332322	Sheet metal work manufacturing	122	$122,956,000	$573,443,000	$1,007,836	$4,700,352	$10,078	$14,101
335121	Residential electric lighting fixture manufacturing	9	---	---	---	---	---	---
335122	Commercial, industrial, and institutional electric lighting fixture manufacturing	8	$2,625,000	---	$328,125	---	$3,281	---
335129	Other lighting equipment manufacturing	4	---	---	---	---	---	---
423720	Plumbing and heating equipment and supplies (hydronics) merchant wholesalers	168	$82,225,000	$897,748,000	$489,435	$5,343,738	$4,894	$16,031
541310	Architectural services	635	$326,798,000	$921,033,000	$514,643	$1,450,446	$5,146	$4,351
541330	Engineering services	1599	$1,758,825,000	$3,946,553,000	$1,099,953	$2,468,138	$11,000	$7,404
541350	Building inspection services	154	$9,724,000	$28,297,000	$63,143	$183,747	$631	$551
561621	Security systems services (except locksmiths)	109	$86,072,000	$233,388,000	$789,651	$2,141,174	$7,897	$6,424

Note: Data is blank in some fields to protect data source.
Data Source: Economic Census of the United States.

Estimate of the Number of Jobs That Will Be Created or Lost: The adoption of the latest code edition is not expected to significantly impact the number of jobs in the construction industry. These rules are likely to be job neutral overall, i.e., they will not result in any job gains or losses. The scheduled effective date of the new edition is July 1, 2020. Building permits issued prior to that date will be vested under the 2015 building code. Permits issued for projects under the 2018 code edition will generally start with the 2021 construction season.

A copy of the statement may be obtained by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

August 10, 2020
Diane Glenn
Council Chair

Chapter 51-56 WAC

STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((~~2015~~)) <u>2018</u> EDITION OF THE UNIFORM PLUMBING CODE

<u>AMENDATORY SECTION</u> (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

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~~	~~2.2 gpm/9.5 lpm~~
~~Kitchen faucets~~	~~2.2 gpm/9.5 lpm~~
~~Replacement aerators~~	~~2.2 gpm/9.5 lpm~~
~~Public lavatory faucets other than metering~~	~~0.5 gpm/1.9 lpm~~))

flow rate of faucets shall comply with Section 407.2.1 through 407.2.2.

407.2.1 Maximum Flow Rate. The maximum flow rate for public lavatory faucets shall not exceed 0.5 gpm at 60 psi (1.9 L/m at 414 kPa).

407.2.1.1 Residential Lavatory Faucets. The maximum flow rate of residential lavatory faucets shall not exceed 1.2 gallons (4.54 L) per minute at 60 psi. The minimum flow rate of residential lavatory faucets shall not be less than 0.8 gallons (3.03 L) per minute at 20 psi.

407.2.1.2 Lavatory Faucets in Common and Public Use Areas. The maximum flow rate of lavatory faucets, installed in common and public use areas (outside of dwellings or sleeping units) in residential buildings, shall not exceed 0.5 gallons (1.89 L) per minute at 60 psi.

407.2.2 Metering Faucets. Metered faucets shall deliver a maximum of 0.25 gallons (1.0 L) per metering cycle in accordance with ASME A112.18.1/CSA B125.1.

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.~~)) meet the maximum flow rate of 1.8 gallons (6.81 L) per minute measured at 80 psi. Showerheads shall be certified to the performance criteria of the U.S. EPA WaterSense Specification for Showerheads.

EXCEPTION: Emergency use showers shall be exempt from the maximum water usage rates.

408.2.1 Multiple Showerheads Serving One Shower. When a shower is served by more than one showerhead, including handheld showerheads, the combined flow rate of all showerheads and/or other shower outlets controlled by a single valve shall not exceed 1.8 gallons (6.81 L) per minute at 80 psi, or the shower shall be designed to allow only one shower outlet to be in operation at a time.

408.2.5 Tub Spout Diverters and Showerhead Tub Spout Diverter Combinations. The tested leakage rate of tub spout diverters shall be not greater than 0.01 gallons per minute when new and no greater than 0.05 gallons per minute after 15,000 test cycles. Showerhead tub spout diverter combinations: Showerhead tub spout diverter combinations shall meet both the standard for showerheads and the standard for tub spout diverters.

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^2) 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.~~))

The effective flush volume of all water closets shall not exceed 1.28 gallons (4.8 L) per flush when tested in accordance with ASME A112.19.2/CSA B45.1.

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.

411.2.1 Dual Flush Water Closets. Dual flush water closets shall comply with ASME A112.19.14. The effective flush volume for dual flush water closets shall be defined as the composite, average flush volume of two reduced flushes and one full flush.

411.2.2 Performance. Water closets installed shall meet or exceed the minimum performance criteria developed for certification of high-efficiency toilets under the WaterSense program sponsored by the U.S. Environmental Protection Agency (EPA).

411.2.3 Flushometer Valve Activated Water Closets. Flushometer valve activated water closets shall have a maximum flush volume of 1.6 gallons (6.0 Lpf) of water per flush in accordance with ASME A112.19.2/CSA B45.1.

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~~)) consumption not to exceed 0.125 gallons (0.47 L) per flush. Other urinals shall have an average water consumption not to exceed 0.5 gallons (1.89 L) per flush.

414.3 Drainage Connection. Domestic dishwashing machines shall discharge indirectly through an air gap fitting in accordance with Section 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.

420.2.1 Kitchen Faucets. Kitchen faucets shall have a maximum flow rate of not more than 1.8 gallons (6.81 L) per minute at 60 psi. Kitchen faucets may temporarily increase the flow above the maximum rate, but not to exceed 2.2 gallons (8.3 L) per minute at 60 psi, and must default to a maximum flow rate of 1.8 gallons (6.81 L) per minute at 60 psi.

EXCEPTION: Where faucets meeting the maximum flow rate of 1.8 gpm (6.81 L) are unavailable, aerators or other means may be used to achieve reduction.

420.3 Prerinse Spray Valve. Commercial food service prerinse spray valves shall have a maximum flow rate of 1.6 gallons per minute (gpm) at 60 pounds-force per square inch (psi) (6.0 L/m at 414 kPa) in accordance with ASME A112.18.1/CSA B125.1 and shall be equipped with an integral automatic shutoff.

422.0 Minimum Number of Required Fixtures. For minimum number of plumbing fixtures required, see Building Code Chapter 29 and Table 2902.1.

423.0 Landscape Irrigation.

423.1 Spray Sprinkler Body. Spray sprinkler bodies must include an integral pressure regulator and must meet the water efficiency and performance criteria and other requirements of environmental protection agency water sense program product specification for spray sprinkler bodies.

EXCEPTION: Spray sprinkler bodies specifically excluded from the scope of the environmental protection agency water sense program product specification for spray sprinkler bodies.

Sections 422.1 through 422.5 and Table 422.1 are not adopted.

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

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)[1,3]

Number of Bathrooms	**1 to 1.5**			**2 to 2.5**				**3 to 3.5**			
Number of Bedrooms	1	2	3	2	3	4	5	3	4	5	6
First Hour Rating[2], Gallons	38	49	49	49	62	62	74	62	74	74	74

Notes: [1]The first hour rating is found on the "Energy Guide" label.

[2]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.

[3]For replacement water heaters, see Section 102.4.

<u>**501.1.2 Consumer Electric Storage Water Heater Requirements.** Consumer electric storage water heaters must have a modular demand response communications port compliant with the March 2018 version of the ANSI/CTA-2045-A communication interface standard, or equivalent and the March 2018 version of the ANSI/CTA-2045-A application layer requirements. The interface standard and application layer requirements required in this subsection are the versions established in March 16 2018.</u>

EXCEPTION: <u>Water heaters manufactured prior to January 1, 2021.</u>

<u>**501.1.3 Mini-tank Electric Water Heaters.** The standby energy consumption of hot water dispensers and mini-tank electric water heaters manufactured on or after January 1, 2010, shall be not greater than 35 watts. Mini-tank electric water heaters shall be tested in accordance with the method specified in the California Code of 39 Regulations, Title 20, section 1604 in effect as of July 26, 2009.</u>

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.

WSR 20-17-110
PROPOSED RULES
BATES TECHNICAL COLLEGE

[Filed August 17, 2020, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-059.

Title of Rule and Other Identifying Information: Amending chapter 495A-122 WAC, Withholding services for outstanding debts to update and align with current regulations.

Hearing Location(s): On September 30, 2020, at 2:30 - 3:30 p.m., Zoom virtual public hearing https://batestech.zoom.us/j/92511411488.

Date of Intended Adoption: October 30, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, AND to email due to COVID-19 working remotely, email jehernandez@batestech.edu, by September 23, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, email jehernandez@batestech.edu, by September 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending to update and align with current regulations.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140.

Statute Being Implemented: Chapters 28B.10, 28B.15, 28B.92, 43.01 RCW.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, jehernandez@batestech.edu; Implementation and Enforcement: Office of the President, Bates Technical College, kbryson@batestech.edu.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

August 17, 2020
Dr. Jean Hernandez
Special Assistant to the President

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-122-010 Policy. If any person, including any ((~~faculty, staff~~)) employee, student, or former student, is indebted to the institution for an outstanding overdue debt, the college need not provide any further services of any kind to ((~~such~~)) that individual, including but not limited to transmitting files, records, ((~~transcripts~~)) or other services ((~~which~~)) that have been requested by such person. Transcripts cannot be withheld due to debt owed.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-122-020 Notification. (1) Upon receiving a request for services ((~~where there is~~)) from a person who owes an outstanding debt ((~~due~~)) to the college ((~~from the requesting person~~)), the college shall notify the person by registered mail that the services will not be provided since there is an outstanding debt due. The person shall be told that until the debt is satisfied, requested services will not be provided.

(2) The letter of notification shall also state that the person has a right to a brief adjudicative proceeding before a person ((~~designated~~)) appointed by the college president ((~~of the college~~)) or designee. The proceeding must be requested within twenty days ((~~of~~)) from the date ((~~of mailing~~)) the college's notification of refusal to provide services was mailed.

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-122-030 Procedure for brief adjudicative proceeding. Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the college available for review and shall hold an informal hearing concerning whether the individual in fact owes any outstanding debts to the college.

(1) The hearing must be conducted within ten days of the request for a hearing.

(2) After the informal hearing, a decision ((~~shall~~)) will be rendered by the president's designee indicating whether in fact the college is correct in withholding services for the outstanding debt. ((~~If~~))

(3) If the individual involved owes the outstanding debt ((~~is owed by the individual involved~~)), no further services shall be provided until the debt has been paid in full to the college.

(4) If the individual involved does not owe a debt to the college, then the services requested by this individual will be provided by the college.

(5) Notification of this decision ((~~shall~~)) will be sent by registered mail to the individual within five days after the hearing.

(6) This hearing shall constitute a brief adjudicative proceeding established by the Administrative Procedure Act at RCW 34.05.482 through 34.05.494.

WSR 20-17-121
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed August 18, 2020, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-05-091 published February 19, 2020.

Title of Rule and Other Identifying Information: Grievance requirements for long-term care ombudsman program.

Hearing Location(s): On October 14, 2020, at 1 p.m. Virtual, Zoom. Zoom meeting link [contact agency for link], Meeting ID: 976 7309 0136, password: 638745, phone-in: 253-215-8782.

Date of Intended Adoption: November 4, 2020.

Submit Written Comments to: Devin Proctor, P.O. Box 4252, email Devin.Proctor@commerce.wa.gov, fax 360-586-8440, submit comments online, by October 17, 2020.

Assistance for Persons with Disabilities: Contact Devin Proctor, phone 360-725-2999, fax 360-586-8440, email Devin.Proctor@commerce.wa.gov, by September 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Align the state rules with the federal C.F.R., to include an opportunity for reconsideration of any decision of the state long-term care ombudsman to grant, refuse, suspend, or remove the designation and certification of an individual long-term care ombudsman.

Reasons Supporting Proposal: This rule making will align state rules with federal requirements under 45 C.F.R. 1324.11 (e)(7).

Statutory Authority for Adoption: Chapter 43.190 RCW.

Statute Being Implemented: Long-term care ombuds program.

Rule is necessary because of federal law, [none supplied by agency.]

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Christina Gagnon, 1011 Plum Street S.E., Olympia, WA 98504, 360-725-3131.

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

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal: Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No impact to businesses.

August 18, 2020
Dave Pringle
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-09-060, filed 4/17/00, effective 5/18/00)

WAC 365-18-060 Duties—State ombudsman. The state long-term care ombudsman shall assure performance of the following duties:

(1) Identify, investigate, and resolve complaints that:

(a) Relate to actions, inactions, or decisions that may adversely affect the health, safety, welfare, or rights of residents;

(b) Are made by:

(i) A resident, a resident's relatives, friends, or associates;

(ii) Providers, or representatives of providers, of long-term care or health care services;

(iii) Public agencies;

(iv) Health and social service agencies; or

(v) Guardians, representative payees, holders of powers of attorney, or other resident representatives;

(2) In coordination with the appropriate state or local government agencies, develop referral procedures for all long-term care ombudsmen to refer complaints when necessary to any appropriate state or local government agency; such referral procedures must conform to the appropriate state law for referring reports of potential abuse, neglect, exploitation or abandonment and shall contain wherever possible the information specified in the appropriate state reporting laws and shall not abridge the confidentiality requirements of this chapter;

(3) Offer and provide services to assist residents and their representatives in protecting the health, safety, welfare, and rights of the residents;

(4) Inform the residents, their representatives and others about resident rights and about the means of obtaining needed services, and work with the department of social and health services and long-term care facility administrators to assure that notices containing the name, address, and telephone number of the appropriate long-term care ombudsman are posted prominently in every long-term care facility;

(5) Ensure that residents and their representatives have regular and timely access to the services provided through the ombudsman program, and ensure that the residents and complainants receive timely responses from representatives of the ombudsman program. Provision shall be made by facilities and the ombudsman to secure privacy for the purpose of the ombudsman carrying out his or her duties, including, but not limited to, building relationships with and providing information to residents;

(6) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(7)(a) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to long-term care facilities and services in the state;

(b) Recommend changes in laws, regulations, policies, and actions that will further promote the interests, well-being and rights of residents;

(c) Provide such information as the state office determines to be necessary to public and private agencies, legislators, and other persons, regarding:

(i) The problems and concerns of individuals residing in long-term care facilities; and

(ii) Recommendations related to these problems and concerns; and

(d) Facilitate public comment on laws, regulations, policies, and actions related to residents of long-term care facilities and the ombudsman program;

(8)(a) Establish procedures for the training and supervision of prospective regional long-term care ombudsmen, regional long-term care staff ombudsmen, and certified volunteer ombudsmen, and ensure that all ombudsmen are educated in the fields of long-term care and advocacy, including, but not limited to, conflict resolution, laws that govern long-term care resident populations, and issues in long-term care facilities pertaining to residents with mental illness, dementia, developmental and physical disabilities, and substance abuse problems;

(b) Monitor and provide administrative and policy direction and technical assistance to the regional long-term care ombudsmen; and

(c) Coordinate the activities of long-term care ombudsmen throughout the state;

(9)(a) Promote the development of citizen groups to participate in the ombudsman program; and

(b) Provide support for the development of resident councils and family councils to protect the interests, well-being and rights of residents;

(10) Assure that representative stakeholder advisory councils are established and maintained for the state and regional ombudsman programs. All councils should include representation from a broad spectrum of interests served by the program, including, but not limited to, mental illness, dementia, and developmental and physical disabilities. All vacancies to councils should be filled where possible within six months of the vacancy;

(11) Coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness including making appropriate referrals, and with legal services funded under Title III of the Older Americans Act, through the development of memoranda of understanding and other means;

(12) Establish a grievance procedure for the purpose of providing an appeal process for the receipt and review of grievances regarding any individual dissatisfied with the determinations or actions of any ombudsman. Such process shall include an opportunity for reconsideration of any decision of the state long-term care ombudsman to grant, refuse, suspend, or remove the designation and certification of an individual long-term care ombudsman or a regional long-term care ombudsman program. Notwithstanding the grievance process, the state long-term care ombudsman shall make the final determination to grant, refuse, suspend, or remove the designation and certification of an individual long-term care ombudsman or a regional long-term care ombudsman program. The highest level of appeal shall be the contractor and the contractor's governing board. The grievance procedure is not intended to supplant any contracting or subcontracting agency's internally established grievance procedure for grievance disputes not related to ombudsman duties;

(13) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems;

(14) Prepare an annual report:

(a) Describing the activities carried out by the ombudsman program in the prior year;

(b) Evaluating the problems experienced by, and the complaints made by, or on behalf of, residents;

(c) Containing recommendations for:

(i) Improving quality of the care and life of the residents; and

(ii) Protecting the health, safety, welfare, and rights of the residents;

(d)(i) Analyzing the success and needs of the ombudsman program, including the success or gaps in providing services to residents of long-term care facilities; and

(ii) Identifying barriers that prevent the optimal operation of the ombudsman program;

(e) Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers; and

(f) Make available to the federal Commissioner on Aging, the governor, the Washington state legislature, the department of social and health services, the department of health, the department of community, trade, and economic development, and other appropriate governmental entities and interested members of the public, the annual report described in this subsection;

(15) The state long-term care ombudsman may subcontract for long-term care ombudsman services, including regional long-term care ombudsman services, throughout the state. The state long-term care ombudsman has the authority to designate and certify regional long-term care ombudsmen. The state long-term care ombudsman has the authority to revoke, when good cause is shown, the subcontract or the designation and certification of the individual regional long-term care ombudsman;

(16) The state long-term care ombudsman has the authority to designate qualified individuals as certified volunteer long-term care ombudsmen representing the ombudsman program. Such individuals shall receive a certificate and picture identification card from the state office signed by the state long-term care ombudsman. The state long-term care ombudsman has the authority to revoke, when good cause is shown, this certification.

(17) Nothing in this chapter shall be construed to empower the state long-term care ombudsman or any other long-term care ombudsman with statutory or regulatory licensing or sanctioning authority.

WSR 20-17-122
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed August 18, 2020, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-056.

Title of Rule and Other Identifying Information: WAC 182-538-060 Managed care choice and assignment and 182-538-067 qualifications to become a managed care organization in integrated managed care.

Hearing Location(s): On September 22, 2020, at 10:00 a.m.

In light of the current public health emergency and the Governor's Safe Start plan, it is unknown whether, by the date of this public hearing, restrictions on meeting in public places will be eased. Therefore, this hearing is being held virtually only. This will not be an in-person hearing and there is not a physical location available.

To attend, you must register **prior** to the public hearing (September 22, 2020, 10:00 a.m. Pacific Time) at https://attendee.gotowebinar.com/register/3519612995422083086.

Webinar ID 725-281-419.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than September 23, 2020.

Submit Written Comments to: Health Care Authority (HCA) Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by September 22, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by September 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-538-060 and 182-538-067 to help ensure (1) the viability of apple health integrated managed care (IMC) plans; (2) adequate performance by the IMC plans; (3) sufficient access to care for medicaid clients in IMC; and (4) the continued availability of an adequate network of physical and behavioral health providers in IMC plans. HCA is amending WAC 182-538-060 to limit the auto-assignments of medicaid clients to IMC plans. In particular, HCA will prevent auto-assignments of new clients to any plan that has a statewide market share of greater than forty percent in Apple Health IMC. This rule does not affect voluntary plan choices by clients, the family connect policy, or the plan reconnect policy. HCA is amending WAC 182-538-067 to clarify when the agency will adjust the number of its IMC plans, either overall or on a region-to-region basis. In determining whether to make any such adjustment, HCA will consider statutory requirements as well as enrollment needs, the performance of the plans with respect to behavioral health integration, and the promotion of access to care for behavioral health services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Alice Lind, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-2053.

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

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

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

August 18, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-060 Managed care choice and assignment. (1) The medicaid agency requires a client to enroll in integrated managed care (IMC) when that client:

(a) Is eligible for one of the Washington apple health programs for which enrollment is mandatory;

(b) Resides in an area where enrollment is mandatory; and

(c) Is not exempt from IMC enrollment and the agency has not ended the client's managed care enrollment, consistent with WAC 182-538-130.

(2) American Indian and Alaska native (AI/AN) clients and their descendants may choose one of the following:

(a) Enrollment with a managed care organization (MCO) available in their regional service area;

(b) Enrollment with a PCCM provider through a tribal clinic or urban Indian center available in their area; or

(c) The agency's fee-for-service system for physical health or behavioral health or both.

(3) To enroll with an MCO or PCCM provider, a client may:

(a) Enroll online via the Washington Healthplanfinder at https://www.wahealthplanfinder.org;

(b) Call the agency's toll-free enrollment line at 800-562-3022; or

(c) Go to the ProviderOne client portal at https://www.waproviderone.org/client and follow the instructions.

(4) An enrollee in IMC must enroll with an MCO available in the regional service area where the enrollee resides.

(5) All family members will be enrolled with the same MCO, except family members of an enrollee placed in the patient review and coordination (PRC) program under WAC 182-501-0135 need not enroll in the same MCO as the family member placed in the PRC program.

(6) An enrollee may be placed into the PRC program by the MCO or the agency. An enrollee placed in the PRC program must follow the enrollment requirements of the program as stated in WAC 182-501-0135.

(7) When a client requests enrollment with an MCO or PCCM provider, the agency enrolls a client effective the earliest possible date given the requirements of the agency's enrollment system.

(8) The agency assigns a client who does not choose an MCO or PCCM provider as follows:

(a) If the client was enrolled with an MCO or PCCM provider within the previous six months, the client is reenrolled with the same MCO or PCCM provider;

(b) If (a) of this subsection does not apply and the client has a family member enrolled with an MCO, the client is enrolled with that MCO;

(c) The client is reenrolled within the previous six months with their prior MCO plan if:

(i) The agency identifies the prior MCO and the program is available; and

(ii) The client does not have a family member enrolled with an agency-contracted MCO or PCCM provider.

(d) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent; or

(e) If the client cannot be assigned according to (a), (b), (c), or (d) of this subsection, the agency ((~~assigns the client according to agency policy~~)):

(i) Assigns the client according to agency policy, or this rule, or both;

(ii) Does not assign clients to any MCO that has a total statewide market share of forty percent or more of clients who are enrolled in apple health IMC. On a quarterly basis, the agency reviews enrollment data to determine each MCO's statewide market share in apple health IMC;

(iii) Applies performance measures associated with increasing or reducing assignment consistent with this rule and agency policy or its contracts with MCOs.

(f) If the client cannot be assigned according to (a) or (b) of this subsection, the agency assigns the client as follows:

(i) If a client who is not AI/AN does not choose an MCO, the agency assigns the client to an MCO available in the area where the client resides. The MCO is responsible for primary care provider (PCP) choice and assignment.

(ii) For clients who are newly eligible or who have had a break in eligibility of more than six months, the agency sends a written notice to each household of one or more clients who are assigned to an MCO. The assigned client has ten calendar days to contact the agency to change the MCO assignment before enrollment is effective. The notice includes:

(A) The agency's toll-free number;

(B) The toll-free number and name of the MCO to which each client has been assigned;

(C) The effective date of enrollment; and

(D) The date by which the client must respond in order to change the assignment.

(9) An MCO enrollee's selection of a PCP or assignment to a PCP occurs as follows:

(a) An MCO enrollee may choose:

(i) A PCP or clinic that is in the enrollee's MCO and accepting new enrollees; or

(ii) A different PCP or clinic participating with the enrollee's MCO for different family members.

(b) The MCO assigns a PCP or clinic that meets the access standards set forth in the relevant managed care contract if the enrollee does not choose a PCP or clinic.

(c) An MCO enrollee may change PCPs or clinics in an MCO for any reason, with the change becoming effective no later than the beginning of the month following the enrollee's request.

(d) An MCO enrollee may file a grievance with the MCO if the MCO does not approve an enrollee's request to change PCPs or clinics.

(e) MCO enrollees required to participate in the agency's PRC program may be limited in their right to change PCPs (see WAC 182-501-0135).

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-067 Qualifications to become a managed care organization (MCO) in integrated managed care. (1) To provide physical or behavioral health services under the apple health IMC ((~~medicaid~~)) contract, a managed care organization (MCO) must:

(a) ((~~An MCO must~~)) Contract with the agency((~~.~~)); and

(b) ((~~MCO must also~~)) Contract with an agency-contracted behavioral health administrative service organization (BH-ASO) that maintains an adequate provider network to deliver services to clients in IMC regional service areas.

(2) ((~~A managed care organization (~~)) An MCO((~~)~~)) must meet the following qualifications to be eligible to contract with the ((~~medicaid~~)) agency:

(a) Have a certificate of registration from the Washington state office of the insurance commissioner (OIC) that allows the MCO to provide health care services under a risk-based contract;

(b) Accept the terms and conditions of the agency's managed care contract;

(c) ((~~Be able to~~)) Meet the network and quality standards established by the agency; and

(d) Pass a readiness review, including an on-site visit conducted by the agency.

(3) ((~~At its discretion, the agency awards a contract to an MCO through a competitive process or an application process available to all qualified providers.~~)) (a) The agency may from time to time conduct a procurement for new apple health MCOs or to reduce or expand the use of existing apple health MCOs.

(b) The agency may conduct a procurement when the agency determines in its sole discretion there is a need to:

(i) Expand or reduce current MCO contracts;

(ii) Enhance current MCO provider networks; or

(iii) Establish new contracts for integrated managed care in one or more regional services areas; or

(iv) Adjust the program to ensure adherence to state and federal law.

(c) In accordance with RCW 74.09.522 and 74.09.871, the agency will give significant weight to the following factors in any procurement process:

(i) Demonstrated commitment to, and experience in, serving low-income populations;

(ii) Demonstrated commitment to, and experience in, serving persons who have mental illness, substance use disorders, or co-occurring disorders;

(iii) Demonstrated commitment to, and experience with, partnerships with county and municipal criminal justice systems, housing services, and other critical support services necessary to achieve the outcomes established in RCW 70.320.020, 71.24.435, and 71.36.025;

(iv) Recognition that meeting enrollees' physical and behavioral health care needs is a shared responsibility of contracted behavioral health administrative services organizations, MCOs, service providers, the state, and communities;

(v) Consideration of past and current performance and participation in other state or federal behavioral health programs as a contractor;

(vi) Quality of services provided to enrollees under previous contracts with the state of Washington or other states;

(vii) Accessibility, including appropriate utilization, of services offered to enrollees;

(viii) Demonstrated capability to perform contracted services, including the ability to supply an adequate provider network; and

(ix) The ability to meet any other requirements established by the agency.

(d) The agency may define and consider additional factors as part of any procurement including, but not limited to:

(i) Timely processing of, and payments to, providers in the MCO networks, including reconciliation of outstanding payments; and

(ii) The optimal number of MCOs per regional services area, based on population and in the manner that the agency determines most beneficial for the program, clients, and providers.

(4) The agency reserves the right not to contract with any otherwise qualified MCO.

WSR 20-17-129
PROPOSED RULES
DEPARTMENT OF COMMERCE

[Filed August 18, 2020, 2:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-038.

Title of Rule and Other Identifying Information: Establishing chapter 194-50 WAC to implement the clean commercial building standard of RCW 19.27A.210.

Hearing Location(s): On September 22, [2020], at 8:30 a.m., Zoom meeting.

This hearing will be virtual only. Please check the commerce buildings webpage for meeting information https://www.commerce.wa.gov/growing-the-economy/energy/buildings/.

Date of Intended Adoption: September 29, [2020].

Submit Written Comments to: Emily Salzberg, P.O. Box 42525, Olympia, WA 98504, email buildings@commerce.wa.gov, by September 22, [2020].

Assistance for Persons with Disabilities: Contact Austin Scharff, phone 360-764-9632, email buildings@commerce.wa.gov, by September 18, [2020].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 19.27A.210 directs commerce to adopt rules to establish a state energy performance standard for commercial buildings over 50,000 square feet. It requires commerce to establish reporting, enforcement, administrative appeal process, and other rules necessary to implement the standard. Owners of covered commercial buildings will be required to comply with the standard, which represents a cost-effective strategy to reduce greenhouse gas emissions from the building sector.

Reasons Supporting Proposal: RCW 19.27A.210 directs commerce to adopt rules to establish a state energy performance standard for commercial buildings over 50,000 square feet. The standard offers the opportunity to reduce greenhouse gas emissions, lower energy consumption, and avoid energy costs, and provides a technology-neutral, building-specific approach to greenhouse gas emissions reductions with a long-term planning horizon. Energy use intensity targets (EUIts) will be set to achieve greenhouse gas reductions without major changes to the state's building stock.

Statutory Authority for Adoption: RCW 19.27A.210.

Statute Being Implemented: RCW 19.27A.210.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Chuck Murray, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-725-3113.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of commerce is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

CHAPTER 194-50 WAC

A rule concerning Washington's
Clean Commercial Building Standard
August 19, 2020

SECTON [SECTION] 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

1.1 Chapter 285, Laws of 2019: The Washington state legislature directed the Washington state department of commerce (commerce) to establish an energy performance standard for commercial buildings larger than 50,000 square feet. In doing so, the legislature instructed commerce to "maximize reductions of greenhouse gas emissions from the building sector."

The legislature directed commerce to use the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 100-2018 as the basis for the standard. The legislature required commerce to develop state specific building energy use intensity targets and methods of conditional compliance that include an energy management plan, operations and maintenance program, energy efficiency audits, and investment in energy efficiency measures designed to meet the targets.

The legislature required that the conditional compliance method ensure that covered commercial buildings that do not meet the specified energy use intensity targets (EUIts) are taking action to achieve reduction in energy use, including investment criteria for conditional compliance that ensure that energy efficiency measures identified by energy audits are implemented to achieve a covered commercial building's EUIt.

The legislature stipulated that the investment criteria require a building owner adopt an implementation plan to meet the target or implement an optimized bundle of energy efficiency measures (EEMs) that provide maximum energy savings without resulting in a savings-to-investment ratio of less than 1.0, except as exempted under RCW 19.27A.210 (2)(d)(ii).

The legislature stated that the implementation plans must be based on an investment grade energy audit and a life cycle cost analysis that accounts for the period during which a bundle of measures will provide savings. Furthermore, the legislature requires that a building owner's costs for implementing energy efficiency measures reflect net cost, excluding any cost covered by utility or government grants.

The legislature also established mandatory reporting and documentation requirements for building owners (RCW 19.27A.210(7)), and administrative penalties for failure to submit documentation demonstrating compliance (RCW 19.27A.210(10)).

Finally, the legislature requires commerce to adopt rules as necessary to implement the statute (RCW 19.27[A].210(12)), including but not limited to:

(a) Rules necessary to ensure timely, accurate, and complete reporting of building energy performance for all covered commercial buildings;

(b) Rules necessary to enforce the standard established under this section; and

(c) Rules that provide a mechanism for appeal of any administrative penalty imposed by the department under this section.

Mandatory compliance begins 2026-2028. An early adopter incentive program starts July 1, 2021. Rules around the incentive program are not included in this rule making.

1.2 The Regulatory Fairness Act: The Regulatory Fairness Act (RFA), chapter 19.85 RCW, directs commerce to determine if its rules would have a disproportionate compliance cost burden on small business, and if legal and feasible, to reduce this disproportionate impact.

This statement focuses on rules that are not exempt from RFA requirements.

1.3 Likely impact of the proposed rules: The legislature calls for commerce to establish state specific building EUIts that are no greater than average EUI and to maximize reductions of greenhouse gas emissions from the building sector. The legislature authorizes commerce to implement lower EUIts for more recently built buildings based on the state energy code in place when the buildings were constructed.

Commerce proposes a EUIt 15 percent below the average EUI per building type. For buildings over 200 EUI points, commerce proposes they only reduce their EUIs by 30 points rather than by 15 percent.

Commerce proposes an additional 15 percent reduction for newer covered buildings, e.g. buildings built to the 2015 Washington state energy code. We propose owners of these buildings recommission their buildings rather than undergo a level 2 audit.

These proposed rules would result in more building owners being required to either audit or recommission their buildings and could require more building owners to implement cost-effective EEMs.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes: The law applies to commercial buildings greater than 50,000 square feet in floor area. There are some exceptions for factory or agricultural buildings; however, manufacturing and agricultural businesses may also own large buildings in other building classifications. Multiple building owners may own a commercial building; this provides access to ownership for many business types. Some large buildings owned and managed with few employees by assigning many of the required businesses activities to third party contractors, making it possible that many businesses holding large real estate are small businesses.

Commerce could not identify any data sources that provide comprehensive building ownership classifications by building activity type and size because such a data source does not exist. As directed by RCW 19.27A.210(3), commerce must create a database of covered buildings and building owners required to comply, to complete building owner notification by July 1, 2021, as directed by RCW 19.27A.210 (4).

Commerce acknowledges that the proposed rules could affect all NAICS codes. However, commerce also recognizes that many NAICS codes may not be impacted. Commerce assumes the proposed rules affect all NAICS codes.

SECTION 3: **Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs:** We compiled cost data for auditing and existing building recommissioning by reviewing literature published by the United State Department of Energy (DOE) and the national energy laboratories.[1] Because the data originates from studies compiled ten or more years ago, we adjusted costs using an inflation adjustment factor recommended by the Washington state office of financial management.[2]

1 DOE published a series of Advanced Energy Retrofit Guide Practical Ways to Improve Energy Performance in 2011 and 2012. These studies compiled and published the data. https://www.energy.gov/eere/buildings/advanced-energy-retrofit-guides.

2 OFM Inflation https://www.ofm.wa.gov/washington-data-research/economy-and-labor-force/inflation.

3.1 Audit cost: The scope of energy audits is defined in ASHRAE Standard 211.[3] Level 1 audits are sometimes known as a "walkthrough audit," and provide a relatively simple assessment of the opportunities for improvement. Level 2 audits require in-depth detail defining each existing system's energy use and opportunities for improvement based on engineering estimates. Level 3 audits, frequently called "investment grade audits," include detailed system energy metering and cost estimates for the installation of energy conservation measures based on cost estimates from contractors.

3 ANSI/ASHRAE/ACCA Standard 211-2018, Standard for Commercial Building Energy Audits.

The standard, as proposed, would require a level 2 audit, with some added level 3 economic analysis. This is a least cost approach to gaining many of the benefits of the level 3 audit, without the cost of specific end use monitoring. Most audit and economic evaluation costs would be attributable to a level 2 audit cost estimate.

For commercial building energy audits, cost provided by DOE studies offer a range, low to high, for each audit level. The narratives describe a few factors that impact cost of audits and explain the range. Simple, single system audits cost less. Comprehensive audits cost more. Costs are reported as cost per square foot. Costs are much higher per square foot for small buildings than large buildings. One study notes costs for buildings less than 50,000 square feet may be four times more than the costs for buildings over 250,000 square feet. DOE studies also emphasize the importance of competitive bidding as a way to reduce cost. The proposed rules would apply to buildings greater than 50,000 square feet. The proposed rules would require a level 2 audit and a comprehensive life-cycle cost analysis equivalent to a level 3 audit.

8 Table 1: Estimated costs for audits as provided by DOE Reports

Audit Cost	2020 Cost/Square Foot	
	Low	High
Level 1	$0.024	$0.071
Level 2	$0.060	$0.179
Level 3	$0.119	$0.595

3.2 Cost of installation of efficiency measures: Commerce has not compiled cost of installing efficiency measures. As required by statute, commerce has proposed rules that do not require capital investments in efficiency projects that are not cost effective to the building owner. A wide range of costs is allowed to be included in this analysis. This would require upfront investments, but with a payback to the building owner over the life of the energy efficiency measures. As well as the energy cost savings provided by the upgrade, most building upgrades result in added value to the asset.

3.3 Cost for recommissioning: The standard as proposed by commerce includes requirements specifically for newer buildings. Buildings constructed to the 2015 Washington state building code or later would be required to meet lower energy utilization targets than all other buildings due to the improved energy performance of buildings built to contemporary energy codes. To accommodate the needs of these specific buildings, rather than auditing and implementing efficiency measures, newer buildings would be required to implement a recommissioning process. Recommissioning is less expensive than level 2 audits and capital investments. Recommissioning would be a better option for most newer buildings. Newer buildings that do not meet the EUIts set for all other buildings would be required to comply with the general compliance requirements of the standard.

It is important to note that the state energy code required all buildings of this vintage to be commissioned as part of the construction process. The standard as proposed by commerce adopts the code requirements, and would require recommissioning. Each building's existing process documentation created during construction would be used to guide the recommissioning process. This should reduce overall cost. Keep in mind, these costs include actions that would be required to reduce energy use, and would not require additional capital investments. Below are the costs summarized in a report published by Lawrence Berkeley Laboratory.[4] The existing building cost noted would apply to the proposed requirements.

4 Evan Mills, Ph.D. Building Commissioning A Golden Opportunity for Reducing Energy Costs and Greenhouse Gas Emissions Lawrence Berkeley National Laboratory July 21, 2009.

The median normalized cost to deliver commissioning was $0.30/ft2 ($0.35/ft2 2020$) for existing buildings and $1.16/ft2 (1.37/ft2 2020$) for new construction (or 0.4% of the overall construction cost). The commissioning projects for which data are available revealed over 10,000 energy-related problems, resulting in sixteen percent median *whole-building* energy savings in existing buildings and thirteen percent in new construction, with payback time of 1.1 years and 4.2 years, respectively.

SECTION 4: **Analyze and determine whether the proposed rule may impose more than minor costs on busi-**

nesses. Determine whether the proposed rule may have a disproportionate impact on small businesses.

Section 4.1 Minor cost threshold: Commerce cannot confirm whether the proposed rules would impose more than minor costs on businesses, because we do not have data to determine whether or not these costs are larger than the minor cost at a more detailed level (for example, 4-digit NAICS level). We also do not have data to identify the number and proportion or ratio of businesses in these sectors that own a building greater than 50,000 square feet, the size of those buildings, and the costs of implementing EEMs. Therefore, the department assumes these rules will impose more than minor costs.

Section 4.2 Disproportionate impact on small businesses: There is insufficient data to estimate the cost difference between large and small businesses, and determine if the proposed rules would have a disproportionate impact on small businesses. As required by RCW 19.85.030, in the absence of data, we identified cost-mitigation measures, where legal and feasible, as described in Section 5.

SECTION 5: **If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the impacts cannot be reduced provide a clear explanation of why:** Commerce reviewed the list of methods for reducing the impact on small businesses under RCW 19.85.030 and is taking the following steps to reduce the costs of the rules on small businesses.

5.1 Reducing, modifying, or eliminating substantive regulatory requirements

5.1.1 Target setting: Over eight months and five EUIt specific rule-making workshops, commerce worked with consultants and stakeholders to establish the EUIt for many building use types. Commerce consultants, SBW and the 2050 Institute, developed regional EUI means by building type using the national 2012 Commercial Energy Consumption Survey (CBECS) and the 2009, 2014, and 2019 Commercial Building Stock Assessment (CBSA). Because some of these data sets are roughly a decade old, the consultants used peer-reviewed science and recent localized data to inform recommendations. Commerce also reviewed recent evaluations of Washington state energy code to understand recent trends in energy use in more recently constructed buildings. Stakeholders were consulted at rule-making workshops and stakeholder feedback was solicited and reviewed following each workshop.

The consultant's memo on target recommendations states that "in combination with the Standard 100 requirements for an energy management plan and O&M reviews, tuning, and basic upgrades such as LED lighting, existing buildings on average can achieve 25-to-35 percent reduction in overall energy use without major changes to obsolete HVAC systems."

Based on the consultant's memo and stakeholder feedback, commerce proposed a EUIt that is 15 percent less than the average EUI per building type. Some stakeholders argued that this was too lenient of a target and that commerce should set the targets within the range suggested by the consultants. Others argued that this was too stringent and commerce should set the targets at the average EUI per building type. We do not believe setting the targets closer to the average EUI per building type would be in line with the legislature's direction to "maximize greenhouse gas reductions." We also want to be mindful not to set the targets too stringent. Lower targets mean somewhat more efficient buildings will be required to perform energy audits and implementation activities with less potential for identifying efficiency measures with cost-effective savings. Commerce proposes in rule EUIt of 15 percent less than the average EUI per building type.

5.1.2 Buildings with EUIs greater than 200: Commerce allows building types with EUIs greater than 200, such as hospitals, to reduce their EUI by 30 points from the mean EUI per building type, rather than by the more stringent 15 percent target. This reflects the fact that very high EUI buildings likely have more process loads in the total, and are subsequently less able to reduce loads through traditional building efficiency improvements. The difference between the flat 30-point reduction and the 15 percent reduction in a building's EUI reflects the cost savings to the building owner.

5.1.3 Target setting for newer buildings: The legislature authorizes commerce to implement lower EUIts for more recently built buildings based on the state energy code in place when the buildings were constructed. Based on Washington state energy code progress to date in addition to the high savings potential for HVAC systems incorporated in the 2015 and 2018 code cycles and the availability of custom and whole building utility new construction programs, our consultants suggested setting the targets between twenty-five to forty percent less than the average EUIs.

Following the consultant's analysis and stakeholder consultation, commerce proposed setting a target fifteen percent below the EUI for all other covered buildings per building type. This is thirty percent less than the statistical average for all vintage buildings developed by the consultant. Some stakeholders argued this was too lenient. Others argued that it was not stringent enough. Commerce has decided to stick with its proposed target. At thirty percent less than the statistical average, it captures the majority of the savings anticipated by codes. We also did not choose lower targets, to ensure the recommissioning requirements developed for newer buildings would result in cost-effective work.

5.1.4 Recommissioning rather than a level 2 audit for newer buildings: More recently constructed buildings that do not meet this target would be required to recommission their buildings. As discussed in Section 3.3, this is a cheaper and more efficacious way of reducing energy use in these buildings than a level 2 audit.

5.1.5 Conditional compliance: As directed by statute, commerce proposes rules for a conditional compliance method for building owners who fail to meet their building's EUIt. Under this conditional compliance method, owners would be required to implement an optimized bundle of EEMs that provides maximum energy savings without resulting in a savings-to-investment ratio less than 1.0. They would not be required to meet the target. They would not be penalized for not meeting the target. They would only need to undergo an audit and implement cost-effective energy efficiency measures to be in compliance with the law, thereby reducing the costs associated with meeting targets for small business owners.

5.1.6 Level 2 audits rather than level 3 audits: Commerce proposes by rule level 2 rather than level 3 energy audit requirements. Commerce aligned audit reporting with the energy audit reporting tool provided by DOE. Commerce is choosing to do this so covered entities can use the tool at no charge. We will meet the legislative intent for an investment grade audit by providing a tool that calculates the discounted savings to investment ratio at no cost to participants.

5.1.7 Financial hardship exemptions: Finally, it is worth noting that the law provides a number of financial hardship exemptions for building owners (RCW 19.27A.10 (7)(c)(vi)).

5.2 Simplifying, reducing, or eliminating recordkeeping and reporting requirements: Commerce proposes the adoption of Energy Star Portfolio Manager for reporting energy consumption, energy conversion factors, and energy accounting. This proposal aligns with RCW 19.27A.190. These proposed rules would provide owners a tool to assist them in the management and documentation of requirements, which would likely save them time and money. Portfolio Manager is a tool supported by the Environmental Protection Agency and is free for use by the public.

5.3 Reducing the frequency of inspections: Commerce proposes alternative O&M program implementation options, as deemed equivalent by commerce, such as those offered by the City of Seattle and Bonneville Power Administration. This proposal would reduce administrative burdens.

5.4 Delaying compliance timetables: The law provides long regulatory time horizon of more than five years prior to mandatory compliance. Building owners will be able to mitigate regulatory costs by starting ahead of the compliance deadline.

5.5 Reducing or modifying fine schedules for noncompliance: Commerce proposes in its rules a seven-day grace period to correct administrative or documentation errors before issuing fines. Commerce proposes to limit the maximum daily penalties to the cumulative value of one year, rather than continuing to assess fines after one year as allowed by the law.

5.6 Addressing unique building characteristics: Commerce created energy utilization targets for 111 unique commercial building occupancies compared to the 49 included in Standard 100. Commerce allows more flexibility in defining mixed use buildings, creating opportunities to only audit part of a building, rather than the entire building. Commerce created unique building definitions for data centers and urgent care health facilities to align with unique operating criteria of these spaces.

5.7 Any other mitigation techniques suggested by small businesses or small business advocates: Commerce developed the above mitigation in consultation with stakeholders representing over 120 organizations during 15 workshops in eight months.

After reviewing comments submitted for its final rule-making comment period, which ended on July 23, commerce is unaware of any outstanding requests by small businesses or small business advocates that have not been submitted through the comment periods.

SECTION 6: **Describe how small businesses were involved in the development of the proposed rule:** On October 21, 2019, commerce communications sent a press release on the kick-off of the rule-making process to an estimated twenty-six thousand subscribers. Since kick-off, commence [commerce] has involved small businesses, building owners, utility companies, and other stakeholders in the development of rules. Their involvement was a vital part of our rule-making process. Commerce attempted to establish clear, concise and consistent communication with stakeholders. Commerce created a webpage, sent weekly bulletins, maintained a dedicated inbox, set formal comment periods, and hosted fifteen rule-making workshops. The webpage included links to the state law, schedules for rule-making workshops, instructions on how to sign-up for the weekly bulletin, and access to other relevant information.

Commerce hosted fifteen workshops that ran from 1.5-3 hours via Webex or in person. These workshops allowed commerce to meet stakeholders in person and created an open and collaborative dialogue between commerce and stakeholders, ensuring stronger standard and administrative procedures consistent with current regional practices and procedures. The workshops covered modifications to ASHRAE Standard 100, 2018, administrative procedures, and technical rules developed by commerce to support and conform to RCW 19.27A.210.

Each workshop included discussion and input on topics including training and technical assistance needs, equitable access to incentive dollars and strategies for reducing administrative cost of compliance. For the final workshop, commerce communication sent out another press release inviting the public to review the final draft of the proposed rules.

After each workshop, commerce requested formal comments. Comment periods were formally open for two weeks after each workshop; although, comments were accepted regardless [of] submission date. Stakeholder comments were submitted through the dedicated inbox and later published and made public on the buildings webpage.

Commerce and consultants presented the energy use means by building type and a range of scenarios for target setting. Commerce evaluated and requested input on the range of options for target setting including setting the targets at the mean EUI by building type and reductions from mean EUI including five percent, ten percent, fifteen percent and twenty-five percent. Commerce solicited input in EUI targets by building type during two subsequent comment periods. After considering stakeholder input, commerce decided on its proposed targets.

Table 2: Public events

Date(s)	Activity How were small businesses notified and involved in the development of the proposed rule? (News release, public meeting, survey etc.)
Weekly	Newsletter with link to webpage, updates, and schedules for workshops
07/28/2020	EFX20 Summer Webinar Series: Clean Buildings Presentation
07/09/2020	Virtual-only workshop: Workshop on stakeholder comments
07/19/2020	Virtual presentation for the WA Office of Superintendent of Public Instruction, Technical Advisory Committee Work Session
06/18/2020	Virtual-only workshop: Targets, normalization, and new construction
06/10/2020	Virtual-only workshop: Additional administrative procedures
05/27/2020	Virtual-only workshop: ASHRAE Standard 100, section 4, administrative procedures workshop
05/21/2020	Virtual-only workshop: Methodology for Developing Regionally-Adjusted EUI Targets
04/15/2020	Virtual-only workshop: ASHRAE Standard 100, sections 7, 8, and 9 virtual-only workshop
03/21/2020	Presentation at the AIA Summit on Clean Buildings
03/04/2020	Virtual-only workshop: Utility Incentives Webinar
02/26/2020	In-person workshop: ASHRAE Standard 100, sections 5 and 6
01/30/2020	In-person workshop: ASHRAE Standard 100, sections 1, 2, and 3
12/19/2020	In-person workshop: EUI Target Setting and Conditional Compliance Investment Criteria Continued
12/04/2020	In-person workshop: Audits and Implementation of Standard 100, sections 8 and 9
11/18/2019	In-person workshop: Building Types, Bench-marking, and Standard 100, sections 5 and 7
11/08/2019	In-person workshop: Clean Buildings Rule-making Kickoff
10/30/2019	Virtual-only workshop: Introduction to the Clean Buildings Standard Pre-Rulemaking

Below is a list of identified representatives that attended these webinars, as well as participants in smaller meetings with commerce.

Table 3: Event Attendees by Affiliation

ArchEcology LLC AIA Washington Council Association of Washington Business Avista Utilitites ATS Automation Arup Bonneville Power Administration Building Owners & Managers Association Benton PUD BCRA Design Bellevue College Building Codes Division - Oregon Brewer Public Affairs City of Seattle City of Seattle Office of Sustainability and Environment Cascade Energy Inc. Cascade Natural Gas City of Richland Clark Public Utilities Cowlitz PUD	Gordon Thomas Honeywell Gov't Affairs Green Energy Management, Inc. Hogan Lovells Hargis Engineers Hermanson Health Care without Harm I4 Utility Grid Issaquah School District 411 Kaiser Permanente Kelso School District Klickitat Valley Health Lewellen Associates LLC PSR Mechanical Mithun MEETS Coalition MacDonald Miller McKinstry NW Energy Coalition National Propane Gas Association Northwest Energy Efficiency Alliance

Columbia Electric Supply CedarStack Coffman Engineers City of Issaquah Cadmus Group Chelan County PUD DB Engineering DC Engineering Emerald Cities Collaborative Ecotope EY Ernst & Young LLP The Evergreen State College Empower Dataworks Emerald Cities Collaborative Fred Hutch Cancer Research Center	NW Energy Coalition NW GeoSolar, Inc. NW Natural Notkin Mechanical Engineers Office of Superintendent of Public Instruction O'Brien360 Putnam Price Group Puget Sound Energy Providence Health & Services PUD No. 1 of Clallam County Providence St. Joseph Health Pacific Power RE Tech PSR Mechanical OSPI Rushing Co
Resource Synergy Resource Refocus LLC Rock Ventures RE Tech Advisors, Inc. Seattle City Lights Snohomish PUD Seattle Public Schools Smart Buildings Center Stillwater Energy Seattle Children's Museum Stantec SBW Consulting, Inc. Solar Installers of Washington Tacoma Power University of Washington, Integrated Design Lab UMC, Inc. US EPA Vulcan Real Estate Washington State University WA Healthcare Climate Alliance Western Washington University WSDA Washington State Department of Transportation	Washington State Hospital Association Willdan Group Washington Utilities & Transportation Commission Washington State Housing Finance Commission Washington Environmental Council Whidbey Health Washington REALTORS Washington Office of Superintendent of Public Instruction ZGF Architects 2050 Partners 43rd District Democrats Environmental Caucus

SECTION 7: **Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule:** As noted in the preceding sections, the exact cost of compliance is not certain. Therefore, because of the lack of data, commerce cannot estimate the number of jobs that could be created or lost. However, the proposed rules, exempt and not exempt from RFA, would have the potential to create job gains for small businesses and large businesses.

During the initial stages of compliance, many building owners would perform a level 2 energy audit, while new building owners would demonstrate compliance by recommissioning their buildings. Energy audits and recommissioning would not only help meet our climate planning goals but also accelerate economic growth due to demand for services, products, and skilled technicians, creating an estimated five to fifteen jobs per $1 million invested.[5]

5 National Action Plan for Energy Efficiency. Rapid Deployment Energy Efficiency Toolkit: Planning & Implementation Guides. (2009). Prepared by P. Lemoine, T. Huebner, D. Pickles, B. Prindle, and N. Buehler of ICF International. www.epa.gov/cleanenergy/documents/suca/rdee_toolkit.pdf.

Energy audits require professionals such as engineers, architects, or other certified energy professionals. Building owners of buildings larger than 50,000 square feet, may decide to hire an energy manager or operations and maintenance staff full-time or invest in the education of existing staff. Implementing the proposed rules over time will require trades such as general contractors, carpenters, electricians, HVAC specialists, lighting designers, thermal envelope technicians, and any other specialized trades to install EEM. All building owners that comply with the law will support the contracting businesses as [a] whole.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting Annalyn Bergin, Washington State Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501, phone 360-584-6905, email buildings@commerce.wa.gov.

August 18, 2020
Dave Pringle
Rules Coordinator

Chapter 194-50 WAC

WASHINGTON STATE DEPARTMENT OF COMMERCE ADOPTION AND AMENDMENT OF ASHRAE STANDARD 100, 2018

NEW SECTION

WAC 194-50-001 Foreword. ***Foreword not adopted.***

Foreword to Washington State Amendments to ASHRAE Standard 100.

Standard 100 (##WAC) is adopted by the Washington state department of commerce pursuant to RCW 19.27A.200, 19.27A.210, and 19.27A.220. This standard has been adopted by reference and modified to implement the requirements covered commercial buildings as directed by the Washington state legislature. The legislature delegated the responsibility of adoption and amendment of this standard to the Washington state department of commerce.

The Washington state administrative requirements for this standard are included in Normative Annex Z. For building owners that must comply with this standard, reading Normative Annex Z first allows the owner to put the rest of the standard in context. Multiple compliance options are available and should be reviewed prior to beginning implementation of this standard.

NEW SECTION

WAC 194-50-010 ASHRAE Standard 100, 2018—Section 1—Purpose.

1.1 This standard provides criteria that will result in reduced energy consumption through improved energy efficiency and performance in existing *buildings*. In adopting this standard by rule, Washington state department of commerce shall seek to maximize reductions of greenhouse gas emissions from the building sector.

NEW SECTION

WAC 194-50-020 ASHRAE Standard 100, 2018—Section 2—Scope. This standard is mandatory for all *covered commercial buildings* located in the state of Washington. This standard is also applied as a voluntary standard for applicable to a multifamily residential buildings seeking early adopter incentives consistent with RCW 19.27A.220.

NEW SECTION

WAC 194-50-030 ASHRAE Standard 100, 2018—Section 3—Definitions.

3.1 General

Agricultural structure**:** A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products, and is not a place used by the public or a place of human habitation or employment where agricultural products are processed, treated, or packaged.

Applicable building codes**:** The Washington state building codes as adopted by the Washington state building code council, and as modified by local government amendments.

Authority having jurisdiction (AHJ)**:** Washington state department of commerce.

Building owner**:** An individual or entity possessing title to a building.

Baseline energy use intensity**:** A building's weather normalized energy use intensity measured for twelve consecutive months within two years prior to making an application for an incentive under RCW 19.27A.220

Campus**:** A campus is a collection of buildings and served by a campus district heating, cooling, water reuse and/or power system owned by the same building owner.

Campus district heating and/or cooling system**:** Is a district heating and/or cooling system that serves a campus and is owned by the building owner.

Certified commissioning professional**:** A person who is certified by an ANSI/ISO/IEC 17024:2012 accredited organization to lead, plan, coordinate, and manage commissioning teams and implement the commissioning process and with experience commissioning at least two projects of similar size and of similar equipment to the current project, and at least one in the last three years. This experience includes the writing and execution of verification checks and functional test plans.

Complex**:** A group of *buildings* interconnected by conditioned spaces on contiguous property.

Conditional compliance**:** A temporary compliance method used by building owners that demonstrate the owner has implemented energy use reduction strategies required by the standard, but has not demonstrated full compliance with the energy use intensity target.

Conditioned space**:** An area, room or space that is enclosed within the building's thermal envelope and is directly heated or cooled or is indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling. (also see, semi-heated space).

Covered commercial building**:** A building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds fifty thousand gross square feet, excluding the parking garage area.

Discounted payback**:** The time when the accumulated savings achieved by an investment, discounted by the appropriate discount rate, equals the initial cost of the investment.

***District heating and/or cooling system*:** Is a system that provides heating or cooling to multiple buildings through a distributed system providing steam, hot water or cool water to buildings.

***Energy use intensity (EUI)*:** A measurement that normalizes a building's site energy use relative to its size. A building's energy use intensity is calculated by dividing the total net energy consumed in one year by the gross floor area of the building, excluding the parking garage. "Energy use intensity" is reported as a value of a thousand British thermal units per square foot per year.

***Energy target (EUI_t)*:** Not adopted.

***Energy use intensity target (EUI_t)*:** The net energy use intensity of a covered commercial building that has been established for the purposes of complying with the standard.

***Gross floor area*:** The total number of square feet measured between the exterior surfaces of the enclosing fixed walls of a building, including all supporting functions such as offices, lobbies, restrooms, equipment, storage areas, mechanical rooms, break rooms, crawl spaces and elevator shafts. Gross floor area does not include outside bays or docks.

***Gross floor area for residential buildings*:** Not adopted.

***Gross floor area for nonresidential buildings*:** Not adopted.

***More recently built buildings*:** Are buildings or additions greater than fifty thousand square feet in conditioned floor area permitted for construction based on the application permit date of July 1, 2016, or later. For example, buildings permitted to the 2015 edition of the Washington State Building Code, chapter 51-50 WAC.

***Qualified commissioning authority*:** Not adopted.

***Qualified energy auditor*:** A person acting as the auditor of record having training, expertise and three years professional experience in building energy auditing and any one of the following:

(a) A licensed professional architect or engineer.

(b) An *energy auditor*/assessor/analyst certified by ASH RAE or the Association of Energy Engineers (AEE) for all *building* types.

***Qualified person*:** A person having training, expertise and three years professional experience in *building* energy-use analysis and any of the following:

(a) A licensed professional architect or engineer in the jurisdiction where the project is located;

(b) A person with Building Operator Certification (BOC) Level II by the Northwest Energy Efficiency Council;

(c) A *certified commissioning professional*;

(d) A *qualified energy auditor*;

(e) A certified energy manager (CEM) in current standing, certified by the Association of Energy Engineers (AEE).

***Recommissioning*:** An application of the commission process requirements to a project that has been delivered using the commissioning process.

***Residential building*:** Not adopted.

***Savings-to-investment ratio*:** The ratio of the total present value savings to the total present value costs of a bundle of an energy or water conservation measure estimated over the projected useful life of each measure. The numerator of the ratio is the present value of net savings in energy or water and nonfuel or nonwater operation and maintenance costs attributable to the proposed energy or water conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy or water conservation measure.

***Semi-heated space*:** An enclosed space within a building, including adjacent connected spaces separated by an uninsulated component (e.g., basements, utility rooms, garages, corridors) which:

(a) Is heated but not cooled, and has a maximum installed heating system output capacity of 3.4 Btu/(h-ft^2) but not greater than 8 Btu/(h-ft^2);

(b) Is not a walk-in or warehouse cooler or freezer space.

***Service life*:** See *useful life*.

***Simple payback (years)*:** The estimated initial cost of an EEM divided by the estimated annual cost savings of the measure expressed in years. The cost savings may include energy cost savings and incremental routine operations and maintenance costs or savings.

***State equipment standards*:** Appliance and equipment standards listed in chapter 19.260 RCW, Energy efficiency.

***Useful life*:** Useful life is the expected remaining service life of building systems or equipment. Used interchangeably with *service life*.

***Weather normalized*:** A method for modifying the measured building energy use in a specific weather year to energy use under normal weather conditions.

***Weather normalized energy utilization index (WNEUI)*:** Means a measurement that normalizes a building's site energy use relative to its size based on the buildings weather normalized site energy use. A building's energy use intensity is calculated by dividing the total net weather normalized energy consumed in one year by the gross floor area of the building, excluding the parking garage. Weather normalized energy use intensity is reported as a value of a thousand British thermal units per square foot per year.

3.2 Abbreviations and acronyms

AEE Association of Energy Engineers.

AHJ authority having jurisdiction.

DDC direct digital control.

EEM energy efficiency measure.

EM energy manager.

EUI energy-use intensity.

IRR internal rate of return.

O&M operations and maintenance.

WNEUI *Weather normalized* energy utilization index.

NEW SECTION

WAC 194-50-040 ASHRAE Standard 100, 2018—Section 4—Compliance.

4.1.1.1 A *building* or *complex* of *buildings* whose majority of gross floor area has activities in Table 7-1 shall comply with the requirements of Sections 4.2 and 4.3.

4.1.1.2 The *qualified person* determining compliance shall:

1. Determine whether or not the *building* seeking compliance has an *energy use intensity target (EUI_t)* according to Section 7;

2. Establish the *energy use intensity target (EUI_t)* according to Section 7;

3. Submit forms as specified in Normative Annex Z to the AHJ.

4.1.2 Residential Building - Not adopted.

4.1.3 Buildings with residential and nonresidential activities - Not adopted

4.3.2 Buildings with energy targets. Buildings with energy targets must meet all the criteria for developing an energy target in Section 7.2 Determining energy use intensity target (EUI_t) and provide energy use data as specified by Section 5.2 Building energy monitoring. All other buildings shall comply with Section 4.3.3, Buildings without energy targets.

4.3.2.2 Building does not meet the energy use intensity target (EUI_t). A qualified energy auditor shall complete an energy audit according to Section 8, and EEMs that will reduce energy use to meet the energy target shall be implemented according to Section 9. Upon completion of the implementation of all required EEMs, a building shall be granted conditional compliance.

Exceptions to 4.3.2.2:

1. *More recently built buildings*: For buildings that exceed the target developed in accordance with Section 7.2.1.1, but do not exceed the target developed in accordance with Section 7.2.1, the owner may demonstrate compliance by recommissioning the building using the existing-building commissioning process as described in ASHRAE Guideline 0.2-2015 Commissioning Process for Existing Systems and Assemblies and ASHRAE Guideline 1.2-2018 Technical Requirements for the Commissioning Process for Existing HVAC&R Systems and Assemblies. The commissioning process and the following:

a. A certified commissioning professional shall implement the building commissioning process specified by the most recent edition of the Washington state energy code. The energy code commissioning process shall be modified by the certified commissioning professional for recommissioning purposes.

b. Washington state energy code (WSEC) exceptions based on mechanical system or service water heating capacity shall not be applied when developing the scope for commissioning. For example, the 2018 WSEC, Section C408.1 General, exceptions 1 and 2 or the exception to Section C408.2.

c. All deficiencies found during the commissioning process shall be resolved including corrections and retesting.

d. Building owners may omit capital expenditures identified by the commissioning process that are not cost effective, as documented using the procedures in Normative Annex X.

2. No individual requirement need be met that would compromise the historical integrity of a building or part of a building designated by a government body for long-term preservation in its existing state, such as historical monuments. Documentation of historic significance must be provide to the AHJ by submitting Form G in accordance with Normative Annex Z.

4.3.2.3 Verification of compliance. Within fifteen months after the completion of Section 4.3.2.2, the weather normalized *EUI* shall be recalculated by the *energy manager* (*EM*) from twelve consecutive months of measured energy use, and Form A shall be resubmitted to the *AHJ*. If the *building*'s post implementation measured *EUI* is less than or equal to the *energy target*, the *building* complies with the standard. If the *building*'s post implementation measured *EUI* is greater than the *energy target*, the *building* does not comply with the standard and the *conditional compliance* is suspended until either.

a. Additional EEMs have been implemented that reduce the subsequently measured EUI to below the energy target and a new Form A is submitted to the AHJ; or

b. The AHJ revokes conditional compliance.

4.3.3 Buildings without energy targets.

Exception to 4.3.3.2: No individual requirement need be met that would compromise the historical integrity of a *building* or part of a *building* designated by a government body for long-term preservation in its existing state, such as historical monuments. Documentation of historic significance must be provide to the AHJ by submitting Form G in accordance with Normative Annex Z.

4.4.1 Administrative requirements. Building owners shall demonstrate compliance with the standard by following the administrative requirements in Normative Annex Z, including:

Normative Annex Z, Washington state reporting requirements.

Building owner notifications by the AHJ and building owner response.

Z1 Notification to building owners of covered commercial buildings by the AHJ

Z2 Building owner response to notifications

Washington state reporting requirements for building owners.

Z3 General Compliance

Z4 Documentation of compliance with the standard

Z5 Violations, assessment of administrative penalties, mitigation and review of penalty decisions

Z6 Compliance Forms

Z7 Section 7 tables as modified by Washington state.

4.4.2 Alternative energy targets (EUI_t) - Not adopted.

NEW SECTION

WAC 194-50-050 ASHRAE Standard 100, 2018—Section 5—Energy.

Exception to 5.1.1 - Not adopted.

5.1.2.1 Energy accounting in accordance with Section 5.2.

5.1.2.2 In the initial year of compliance, the building's weather normalized energy use intensity (WNEUI) and energy-use intensity (EUI).

5.1.2.3 Annual updates of the net energy use, WNEUI and EUI.

5.1.2.4 Annual comparison of the net WNEUI and EUI to the energy target.

5.1.2.5 Documentation of original, current, and changes in number of occupants, weekly operating hours, or time of day scheduled for occupancy, production rates, and energy using equipment that would have caused change in the measured WNEUI and EUI.

5.1.2.14 Operations and Maintenance Plan including:

1. An operations and maintenance (O&M) program as defined in Section 6.

2. An O&M implementation plan as specified in Normative Annex L.

3. Implementation documentation as specified in L2.2.5 Documentation.

5.2.1 Provide measured *net energy* consumption data for each *building*, including all forms of imported and exported energy from at least twelve consecutive months of data monitored in a period not to exceed two years prior to the reporting deadline specified in Normative Annex Z. The *net energy* concept is illustrated in Figure 5-1 and Table 5-1 and is calculated in accordance with Section 5.2.4 as follows:

$$\textit{Net energy use} = (1a + 1b + 1c + 1d) - (3a + 3b + 3c + 3d + 3e)$$

where 1a, 1b, 1c, and 1d are metered energy supplies that are used in the *building* (this includes bulk energy sources), and 3a, 3b, 3c, 3d, and 3e are metered energy excesses that are supplied to another *building,* vehicle or grid as useful energy.

5.2.2 Energy-use data for each type of energy imported into and exported from the building shall be collected from utility or energy delivery bills (that must include the quantity of energy or fuel delivered) or by monitoring local energy meters (either utility or owner-provided meters). Owner provided energy meters shall meet the metering accuracy, tolerances and testing requirements of Title 480 WAC.

5.2.3 Energy conversion factors. The site energy content of different forms of purchased energy shall be converted from the purchased unit to the standard site energy unit using the conversation factors incorporated in Energy Star portfolio manager.

5.2.4 The energy accounting system shall be Energy Star Portfolio Manager as specified in Normative Annex Z.

5.2.4.1 - Not adopted.

5.2.4.2 - Not adopted.

5.2.4.3 - Not adopted.

5.2.4.4 - Not adopted.

Table 5-2a Site Energy Conversion Factors - Table not adopted.

Table 5-2b Primary Energy Conversion Factors - Table not adopted.

NEW SECTION

WAC 194-50-060 ASHRAE Standard 100, 2018—Section 6—Maintenance and operation.

6.3 Operation and maintenance (O&M) Implementation. The O&M program shall be implemented in accordance with Normative Annex L.

Exception to 6.3: O&M programs developed and implemented by the building's serving utility or local government and approved as equivalent or more stringent by the *AHJ* may be used as an alternate to this requirement. Where local government programs are more stringent, local government programs shall be selected over utility programs.

6.6.1 When HVAC, domestic hot-water heating, or refrigeration equipment or appliances are replaced, the replacement equipment shall meet the most stringent energy efficiency requirements in the federal equipment standards, state equipment standards, and the applicable building code.

Exception to 6.6.1 - Not adopted.

6.6.2.1 When lighting equipment is replaced, the replacement equipment shall meet the most stringent energy efficiency requirements in the federal equipment standards, state equipment standards and in the applicable building code. Implementation of more efficient equipment shall be evaluated and included as specified for the capital management plan, Section 5.1.2.10.

NEW SECTION

WAC 194-50-070 ASHRAE Standard 100, 2018—Section 7—Energy-use analysis and target requirements.

7.1.1 Building type. Buildings are divided into types or activities as shown in Table 7-1 Normative Annex Z. Building type definitions are based on Energy Star portfolio manager, unless modified by the notes to Table 7-1.

7.1.2 Energy targets - Energy targets for each building type are listed in Table 7.2a, Normative Annex Z.

7.2.1 The *qualified person* shall determine the *energy use intensity target* (EUI_t) according to Section 7.2.2 for single-type/activity *buildings* and Section 7.2.3 for mixed-use *buildings*, and shall complete Form B.

7.1.3 Building operating shifts normalization factors - Building operating shifts normalization factors for each building type are listed in Table 7-3, Normative Annex Z.

Exception to 7.2.1: EUI_t programs developed and implemented by the building's local government and approved as equivalent or more stringent by the AHJ may be used as an alternate to this requirement.

7.2.1.1 Additional target for more recently built buildings: In addition to the requirements of section 7.2.1, more recently built buildings shall create a second EUI_t that is 15% less than the target developed for compliance with section 7.2.1. This shall be the building EUI_t and shall be included on Form B.

7.2.2 *Energy targets* for *buildings* with a single activity shall be calculated as follows:

$$(EUI_t) = S \times (EUI_t 1)$$

where (EUI_{t1}) is the *building* activity *energy target* value in Table 7-2a for the appropriate *building* activities/types and climate, and S is the *building* operating shifts normalization factor in Table 7-3.

Exceptions to 7.2.3: The *energy use intensity target* (EUI_t) of a building may be modified using the following exceptions. None of these exceptions may be used to change the total gross floor area as it applies to Normative Annex Z, Reporting schedule.

1. Spaces where more than 75% of the gross floor area has a single *building* activity listed in Table 7-1 shall be reported as a single-use *building* or as a multiuse *building* in accordance with either Section 7.2.2 or Section 7.2.3.

2. Spaces less than 10% of the gross floor area with *building* activity listed in Table 7-1 can combine their floor area with the floor area within the *building* that has a similar *building* activity and similar EUI_t as determined by the *qualified person*.

3. Spaces in *buildings* with multiple activities that are not listed in Table 7-1 and have a total combined area $\Sigma A_{nontarget}$ comprising less than 10% of the *building* gross floor area $^{A}{}_{gross}$ can be excluded from *building energy target* calculations if the energy use of such space is metered separately and the nontarget spaces comply with Sections 4.1 and 4.2. The *energy target* for the remaining part of the *building* shall be calculated after deducting the unlisted *building* type floor area from the *building* gross floor area $(^{A}{}_{gross}-\Sigma A_{nontarget})$. Nontarget spaces shall be limited to the floor area occupied by the nontarget activity and shall not include supporting spaces such as corridors, common areas or other space types listed in Table 7-1.

4. Spaces in *buildings* with multiple activities that are not listed in Table 7-1 and have a total combined area $\Sigma A_{nontarget}$ comprising less than 50% of the *building* gross floor area $^{A}{}_{gross}$ can be excluded from *building energy target* calculations if the energy use of such space is metered separately and the nontarget spaces comply with Sections 4.1, 4.2, 4.3.1, and 4.3.3. The *energy target* for the remaining part of the *building* shall be calculated after deducting the unlisted *building* type floor area from the *building* gross floor area $(^{A}{}_{gross}-\Sigma A_{nontarget})$. Nontarget spaces shall be limited to the floor area occupied by the nontarget activity and shall not include supporting spaces such as corridors, common areas or other activity types listed in Table 7-1.

Exemption to Section 7.2.4 Vacant buildings. If the building did not have physical occupancy by owner or tenant for at least fifty percent of the conditioned floor area throughout the consecutive twelve month period prior to the building compliance date, the building owner may apply for an exemption as specified in Normative Annex Z.

7.2.4.1 The energy target for vacant spaces shall be based on its prevacancy activity if the intended use of the building will be unchanged.

7.2.4.2 If the total floor area of a nonheated, noncooled, and nonilluminated vacant part of a building is smaller than 30% of the gross floor area, then it shall be excluded from the gross floor area, and the energy target shall be determined based on the remainder of the building as described in Section 7.2.3. This allowance may not be used to change the total gross floor area as it applies to Normative Annex Z 3.1, Reporting schedule.

7.2.4.3 If the vacant part of a *building* is heated and/or cooled and the *building* energy-use data for twelve consecutive month period when the *building* was occupied within two years prior to the compliance date is not available, compliance of this part of the *building* will be determined after it becomes occupied and energy-use data become available for 12 consecutive months.

Table 7-1 Commercial and Residential Building Types/Activities

Table 7-1 adopted as modified and published in Section Z7

Table 7-2a Building Activity Site Energy Targets (EUI_t1) (I-P Units)

Table 7-2a adopted as modified and published in Section Z7

Table 7-2a Building Activity Site Energy Targets (EUI_t1) (SI Units) - Not adopted

Table 7-2b Building Activity Source Energy Targets (EUI_t1) (I-P Units) - Not adopted

Table 7-2b Building Activity Source Energy Targets (EUI_t1) (SI Units) - Not adopted

Table 7-2c Building Activity Electricity Site Energy Use Targets (ELUIt1) (I-P Units) - Not adopted

Table 7-2c Building Activity Electricity Site Energy Use Targets (ELUIt1) (SI Units) - Not adopted

Table 7-2d Building Activity Fossil Fuel Site Energy Use Targets (FEUIt1) (I-P Units) - Not adopted

Table 7-2d Building Activity Fossil Fuel Site Energy Use Targets (FEUIt1) (SI Units) - Not adopted

Table 7-3 Building Operating Shifts Normalization Factor

Table 7-3 adopted as modified and published in Section Z7.

NEW SECTION

WAC 194-50-080 ASHRAE Standard 100, 2018—Section 8—Audits.

8.1 The *qualified energy auditor* shall complete Form D and submit to the *authority having jurisdiction* (*AHJ*). If an energy audit is required within this section, a copy of the audit summary results shall be included in the compliance documentation in a format specified in Normative Annex Z. Compliance with this standard shall be achieved by adopting *energy efficiency measures* (*EEMs*) that collectively will reduce annual *building* energy use.

8.2 Energy audit requirements for buildings without energy targets.

8.2.1 Overall process. An energy audit shall be conducted for all *buildings* not having an *energy target*. The energy audit and the associated energy audit report shall be completed by a *qualified energy auditor* practicing within their field of competency. The energy audit shall be a Level 2 audit (as defined in Section 8.4.2).

Exception to 8.2.1: Buildings that have completed an energy audit within the previous three years may use the results of the previous audit, provided that the scope of the energy audit meets the requirements of this section and that there have been minimal changes to the systems within the audit scope. The energy audit must be evaluated consistent with the investment criteria in Normative Annex X.

8.2.2 The scope of the energy audit shall include the following required end uses as applicable to the *building*:

- Envelope
- Lighting
- Cooling
- Heating
- Ventilation and exhaust systems
- Air distribution systems
- Heating, chilled, condenser, and domestic water systems
- Refrigeration except for food processing refrigeration
- Power generation equipment
- Uninterruptible power supplies and power distribution units
- People-moving systems
- The scope of the energy audit may include *campus district heating and/or cooling systems* when the *campus district heating and/or cooling system* serves the building being audited.

8.3.2 Buildings that do not meet their energy targets overall process. An energy audit shall be conducted, and an associated energy audit report shall be provided, for all *buildings* that do not meet their *energy target*. The energy audit shall be completed by a *qualified energy auditor* practicing within their field of competency. The energy audit shall be at an audit level specified by the *qualified energy auditor* to be sufficient to identify and evaluate the *EEMs* that, if implemented, would result in the *building* meeting its *energy target*. The *qualified energy auditor* may refer to the list of potential *EEMs* in Informative Annex E.

After the completion of the audit and the selection of *EEMs* to be implemented, the applicant must calculate an adjusted *energy-use intensity* (*EUI*) for the *building* based on the estimated energy savings from the selected *EEMs* and the historical energy use of the *building*. This adjusted *EUI* is then compared to the *energy target* for the *building*. If the adjusted *EUI* is less than the *energy target*, the applicant shall proceed with implementation as specified in Section 9. If the adjusted *EUI* is greater than the *energy target*, a more rigorous energy audit investigation is required to identify additional *EEMs*. This process is repeated until the *building's* adjusted *EUI* is less than its *energy target*.

Calculation of the adjusted *EUI* is shown in the following equation:

$$EUI_{adj} = (\text{Energy}_{hist} - \text{Energy}_{saved})/\text{GFA}$$

Where:

Energy_{hist}	=	Historical annual energy use, kBtu
Energy_{saved}	=	Estimated annual energy savings, kBtu
GFA	=	Gross floor area, ft^2

Following the completion of an energy audit that has identified *EEMs* sufficient to meet the *building's energy target*, the applicant shall implement those *EEMs* per the requirements of Section 9.

8.4.1 Level 1 Audit. Buildings shall perform a Level 1 audit (walk-through analysis) as defined in ANSI/ASHRAE/ACCA Standard 211-2018 Standard for Commercial Building Energy Audits, Section 5.3[12].

8.4.2 Level 2 Audit. *Buildings* shall perform a Level 2 Audit (energy survey and engineering analysis) as defined in *ANSI/ASHRAE/ACCA Standard 211-2018 Standard for Commercial Building Energy Audits*, Section 5.4[12].

8.5.1 Audit results. The energy audit report shall define the actions necessary for the *building owner* to achieve the energy and cost savings that are recommended in the report.

Energy audit results shall be presented in a summary table that includes, at a minimum, an estimate of each of the following:

- A list of recommended *EEMs* that, if implemented, will either meet the *energy target* for the *building* if it has a target or, if it does not have an *energy target*, will meet the economic criteria set by the standard in Section 9.
- The estimated energy savings and peak demand savings associated with each recommended *EEM*, expressed in the cost units used on the *building owner's* energy bills, and the units used for comparison with the *energy target*.
- The estimated (modeled) *energy cost* savings associated with each recommended *EEM*.
- The estimated cost of implementation for each recommended *EEM*. The costs of implementation shall include the required monitoring of energy savings per the requirements of Section 9.

The economic evaluation of measures are required by Normative Annex X.

8.5.2 Interactive effects. Energy savings analysis shall include interactive effects of all selected EEMs. When considering multiple EEMs with interactive effects, the order of analysis shall start with load reduction measures and proceed through distribution systems and associated equipment efficiencies and then plant and heat-rejection systems. Any interactive effects on equipment sizing and part load performance of equipment shall be accounted for due to reduced loads on subsequent systems.

8.5.4.1 Nonfederal facilities. The minimum financial criteria required for reporting is specified in Normative Annex X.

8.5.4.2 U.S. Federal Facilities - Not adopted.

8.5.5 End-use analysis. The energy audit shall include an end-use analysis that compares the estimated energy use of the facility after implementation of all selected *EEMs* to historical utility consumption. The intent of this requirement is to ensure that estimates of the base-case end-use energy estimates and potential energy-savings estimates in the energy audit report are reasonable.

8.5.5.2 Requirements for Level 2 Audits. The *energy auditor* is required to estimate the energy use of all end uses that individually comprise more than 5% of total historical *building* energy use. The energy estimates for these end uses shall be summed and compared to historical energy consumption for the facility. The sum of the base-case end-use energy estimates must be between 90% and 100% of the historical energy use at the site.

This comparison shall be conducted separately for each fuel type, such as electricity, natural gas, or fuel oil, for which *EEMs* are identified. On-site energy sources such as solar, photovoltaic, geothermal, and wind shall be included.

Correction for historical weather for the base year versus average weather used in *baseline* estimates may be used.

The same energy-use estimates that comprise the end-use analysis shall also be used as the basis for energy savings calculations. The *qualified energy auditor* shall verify that each *EEM* savings estimate is reasonable in comparison to the historical energy consumption of that end use based on energy consumption survey data or experience with similar sites.

The *qualified energy auditor* shall verify that the combined savings from multiple *EEMs* shall take into account *interactive effects* among measures.

Miscellaneous plug loads may be estimated on average equipment power density and *building* area. (See Form D in Normative Annex Z.)

<u>NEW SECTION</u>

WAC 194-50-090 ASHRAE Standard 100, 2018—Section 9—Requirements.

9.1.1 Requirements. *Buildings* that have an *energy target* shall comply with the requirements of Section 9.1.1.1. *Buildings* that do not have an *energy target* shall comply with the requirements of Section 9.1.1.2. All *buildings* shall implement an energy management plan as described in Section 5. The energy management plan shall be integrated into the *building's capital management plan* as described in Section 5. The energy management plan shall include the elements listed in Section 5.

9.1.1.1 Buildings with energy targets. For buildings having energy targets, energy efficiency measures (EEMs) identified from the energy audit shall be implemented in order to meet the building's energy target. Develop a written plan for maintaining the building's energy-use intensity (EUI) at or below the energy target.

Exceptions to Section 9.1.1.1:

1. Buildings may demonstrate compliance by implementing all of the EEM's that achieve the investment criteria in Normative Annex X.
2. Implementation of *EEMs* to *campus district heating and/or cooling system(s)* in lieu of *EEMs* implemented directly to campus *buildings* is acceptable provided the energy audit demonstrates the energy savings from the *campus district heating and/or cooling system EEMs* will be greater than the *EEMs* identified for the buildings. Energy savings shall be measured as a reduction in Btu per year.

9.1.1.2 Buildings without energy targets. *Buildings* that do not have an *energy target* shall implement all of the *EEMs* that achieve the investment criteria in Normative Annex X.

Exception to 9.1.1.2: Implementation of *EEMs* to *campus district heating and/or cooling system(s)* in lieu of *EEMs* implemented directly to campus buildings is acceptable provided the energy audit demonstrates the energy savings from the *campus district heating and/or cooling system EEMs* will be greater than the *EEMs* identified for the buildings. Energy savings shall be measured as a reduction in Btu per year.

9.1.1.2.1 - Not adopted.

9.1.1.2.2 - Not adopted.

9.1.2.1 Training of Building Staff. An ongoing written training plan shall be implemented. *Building* occupants and staff shall be trained, at a minimum, as established by the operations and maintenance (O&M) program defined in Section 6.

9.1.2.3 Implementation and commissioning of EEMs. *EEMs* shall be implemented and commissioned in accordance with the Washington State Energy Code. The *qualified energy auditor* or *qualified person* shall review the commissioning report and certify that the *EEMs* are functioning as intended.

***Informative Note*:** For guidance on commissioning protocols, refer to ASHRAE Guideline 0, *The Commissioning Process*, and ASHRAE Guideline 1.1, *HVAC&R Technical Requirements for the Commissioning Process*.

9.1.2.4 Energy efficiency sequencing. Implementation of *EEMs* shall be prioritized to take advantage of the life cycle of *building* systems and to minimize the disruption of *building* occupants. Delayed implementation shall be evaluated using the methodology included in Normative Appendix X and reported in the energy management plan.

9.2.2 Verification of implemented EEMs for Buildings without Energy Targets. Upon implementation of *EEMs*, the affected end-use systems shall be monitored for one year to verify *EEM* energy savings. The *qualified energy auditor* or *qualified person* shall review the results of the *EEM* energy monitoring and certify that the energy savings of the package of *EEMs* meets or exceeds 75% of the energy savings projected in the energy audit as required. For *buildings* unable to meet the requirements of Section 5.2 Building energy monitoring, the *qualified energy auditor* or *qualified person* shall provide verification using the methods of the *International Performance Measurement & Verification Protocol*[11] options A through D.

9.3 Compliance. The *qualified person* shall complete the compliance documentation as required in Normative Annex Z.

ASHRAE Standard 100, 2018—Section 10 - Not adopted.

NEW SECTION

WAC 194-50-110 ASHRAE Standard 100, 2018—Section 11—References.

1. ASHRAE. 2010. *Performance Measurement Protocols for Commercial Buildings*. Atlanta: ASHRAE.

2. ASHAE. 2013. ANSI/ASHRAE/IES Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings*. Atlanta: ASHRAE.

3. ASHRAE. 2007. ANSI/ASHRAE Standard 90.2, *Energy-Efficient Design of Low-Rise Residential Buildings*. Atlanta: ASHRAE.

4. IES. 2011. *Lighting Handbook*, 10th Edition. New York: Illuminating Engineering Society.

5. ASHRAE. 2011. *Procedures for Commercial Building Energy Audits*, 2nd Edition. Atlanta: ASHRAE.

6. ACCA. 2007. ANSI/ACCA Standard 4, *Maintenance of Residential HVAC Systems*. Arlington, VA: Air Conditioning Contractors of America.

7. AHRI. 2009. AHRI Guideline X, *Induced Draft Furnace Heat Exchanger Inspection*. Arlington, VA: Air Conditioning, Heating and Refrigeration Institute.

8. ASHRAE. 2013. ANSI/ASHRAE Standard 55, *Thermal Environmental Conditions for Human Occupancy*. Atlanta: ASHRAE.

9. ASHRAE. 2013. ANSI/ASHRAE Standard 62.1, *Ventilation for Acceptable Indoor Air Quality*. Atlanta: ASH RAE.

10. IEA. 2009. IEA ECBCS Annex 46: Energy Process Assessment Protocol. International Energy Agency, Paris, France.

11. International Performance Measurement & Verification Protocol Concepts and Options for Determining Energy and Water Savings Volume I Revised March 2002 DOE/GO-102002-1554. International Performance Measurement & Verification Protocol Committee. www.ipmvp.org

12. *ANSI/ASHRAE/ACCA Standard 211-2018 Standard for Commercial Building Energy Audits*, Section 5.3.

13. ASHRAE Guideline 0.2-2015 Commissioning Process for Existing Systems and Assemblies.

14. ASHRAE Guideline 1.2-2018 Technical Requirements for the Commissioning Process for Existing HVAC&R Systems and Assemblies.

Normative Annex A - Not adopted.

Informative Annex B - Not adopted.

NEW SECTION

WAC 194-50-120 Normative Annex C Forms. For Washington State Compliance Normative Annex C forms adopted as modified and published in Normative Annex Z, Section Z7

Informative Annex F Standard 100 Compliance Flow Chart - Not adopted.

NEW SECTION

WAC 194-50-130 Normative Annex L—Operations and maintenance implementation.

L2 Operations and maintenance program.

Each *building* system shall have an O&M program that, at a minimum, preserves the condition of the system and its elements in a manner that enables the system to provide the intended thermal and visual comfort, energy efficiency, and helps to achieve the intended indoor environmental quality required for the *building*.

At a minimum, the O&M program shall contain an inventory of equipment, systems and controls to be inspected and maintained and a maintenance plan describing the goals, objectives, and execution of the systems maintenance program.

L2.2.3 Inspection and maintenance tasks. Inspection and maintenance tasks for inventoried equipment, systems and controls shall be established. Inspection shall include the physical assessment of system components and may include measurement of operating parameters and data provided by sensors or a *building* management system (BMS). Maintenance tasks shall include adjustment, service, or replacement of inventoried equipment and systems. Control systems settings including, but not limited to, set points, schedules and sequence of operations shall be inspected and maintained.

L2.2.4 Inspection and maintenance task frequencies. Frequency of inspection and maintenance tasks for inventoried equipment, systems and controls shall be established. If unacceptable condition indicators or unacceptable performance is found during two successive inspections, the owner or owner's designated representative shall investigate and analyze possible causes. At a minimum, the following possible causes shall be investigated:

• *Poor field practices.* Review inspection documentation and/or technician execution to ensure maintenance tasks are performed correctly.

• *Insufficient time budgeted for tasks.* Review time budgeted to the technician to ensure that reasonable time has been given to perform the tasks.

• *Component repairs noted/pending/not made.* Inspect documentation to determine that repair or component replacement has been undertaken.

• *Design issues.* Determine whether underlying design issues are causing successive failures

• *Obsolete equipment or components.* Determine whether the equipment or component has been in service beyond its useful life.

• *Conditions outside of the building system causing failure.* Investigate whether water leaks, vandalism, a problem in the *building* envelope, a problem with the power supplied to the *building*, or some other external factor is causing the problem.

Based on the analysis, the inspection frequency or the maintenance task shall be modified to resolve the deficiency.

If acceptable condition indicators or acceptable performance is found during three successive inspections, the inspection frequency for that task may be reduced from the existing frequency. The reduced frequency shall be based on the specific findings and shall be documented.

Frequency may be adjusted for climate related or operational reasons. Each adjusted frequency shall be documented, including the reason for the adjustment.

***Informative Note*:** Examples include the following:

• **Cooling tower shutdown during the winter.** Inspection and maintenance may be suspended during the shutdown period.

• **A new chiller is installed and the old chiller is retained as a backup.** Inspection and maintenance of the backup unit may be adjusted to reflect fewer operating hours.

• **A new lighting fixture and lamp is installed with a much longer life expectancy.** Inspection and *lamp* replacement frequency may be extended to reflect the new device.

L2.2.5 Documentation. A minimum inspection and maintenance documentation package shall consist of the following items:

1. Listings of *building* systems and system components with associated performance criteria pertinent to the facility

2. Inspection and maintenance tasks and the method of tracking (automated or manual).

3. Identify building systems or components operating beyond their useful life.

4. Sufficient record detail and verification (written or electronic) to demonstrate implementation of the maintenance plan.

The inspection and maintenance document directory shall provide easy access and be well organized and clearly identified. Emergency information shall be immediately available and shall include emergency staff and/or agency notification procedures.

Informative Annex M Guidance on Building Type Definitions - Not adopted.

Informative Annex N Addenda Description Information - Not adopted.

NEW SECTION

WAC 194-50-140 Normative Annex X—Investment criteria. X1 Demonstrating compliance with the investment criteria. Buildings seeking compliance using the exception to Section 9.1.1.1 or 9.1.1.2 shall demonstrate compliance with the financial investment criteria of this annex. The investment criteria shall be documented using level 2 energy audit and by performing the life cycle cost analysis (LCCA) as per X2.2.

X1.1 General guidance on cost and benefits for the base case and alternative case.

The life cycle cost analysis is a process which compares the base case of the existing building to the alternative case that implements EEMs proposed by the energy audit. Total life cycle cost of each case are produced by the analysis, but the resulting cost and benefits of interest are the incremental life cycle cost difference between each case. Measures and bundles of measures demonstrating positive life cycle cost compared to the base case are to be implemented in accordance with chapter 9.

The base case will include all cost for energy, operations and maintenance and other related cost scheduled in the analysis period. This may include replacement of existing equipment upon failure with code compliant equipment. All these cost are captured in the base case.

The alternate case captures all cost and benefits associated with implementing additional efficiency features. All cost and all benefits of implementing EEMs required by Section 9 should be captured by the analysis. All documented cost may be considered.

Extended implementation periods are allowed by this standard. This allows more EEM to be considered at time of failure resulting in much of the cost of implementation being attributed to the base case. This requires including the implementation timing of the measure in the extended compliance period. Ultimately this reduces cost of the alternative case and will likely make EEM that are not cost effective as an early replacement cost effective as a replacement upgrade.

X2 Energy audits and investment criteria pathway.

X2.1 Buildings qualifying under the investment criteria must complete a LCCA and implement an optimized bundle of energy efficiency measures that provide maximum energy savings without resulting in a savings-to-investment ratio of less than one.

Exception: Building owners may demonstrate compliance with this section by completing the Level 2 energy audit and implementing all EEMs determined to have a simple payback that is less than the EEMs expected useful life.

X2.2 The procedures for developing the investment criteria shall be based on ANSI/ASHRAE/ACCA Standard 211 Section 5.5.2 and Section 5.5.3 Life-Cycle Cost Analysis (LCCA) as modified by section X2. The LCCA shall also follow, and consider the findings of, the Level 2 Audit as defined by ANSI/ASHRAE/ACCA Standard 211 Section 5.4.

X2.3 Investment criteria chronological process.

X2.3.1 Level 2 audit. Evaluate a comprehensive list of individual EEMs using simple payback as a screening criteria. Individual EEMs determined to have a simple payback that is less than the EEMs useful life may be excluded from further consideration.

X2.3.2 Life cycle cost assessment. Identify an optimized bundle of EEMs that provides maximum energy savings without resulting in a savings-to-investment ratio of less than one. The optimized bundle of measures shall be implemented based on the schedule established within the energy management plan.

X2.3.2.1 Life cycle cost assessment on individual measures. Individual measures that do not meet the life cycle cost test may be excluded from the implementation plan if they are not integral to the implementation of other cost effective measures in the bundle.

X2.3.2.2 Phased implementation. The LCCA and energy management plan may include phased implementation such that the building owner is not required to replace a system or equipment before the end of the system or equipment's useful life.

X3 Included LCCA costs and savings.

X3.1 The costs and savings to be included within the life cycle cost analysis shall be based on ANSI/ASHRAE/ACCA Standard 211 Sections 5.4.8.1, 5.5.2 and 5.5.3 as modified by the following:

X3.1.1 Cost for implementation of EEM, as required by Section 9.

Estimate EEM Costs (based on Standard 211 Sections 5.4.8).

Estimate the total expected cost of implementation for each practical measure. Cost estimates shall include the following factors, as applicable:

1. Material costs
2. Labor costs, contracted or executed by employees
3. Design fees
4. Construction management, contracted or executed by employees
5. Site-specific installation factors
6. Permits
7. Temporary services
8. Testing, adjusting, and balancing
9. Utility service upgrades
10. Verification, as required in Section 9.2.2 only
11. Commissioning
12. Taxes
13. Profit
14. Any additional adjustments that significantly impact the cost estimate of the EEM.

Informative Note: Multiple measures affecting the same building systems or end uses may be combined and their costs estimated as a group. Combining costs may improve the cost effectiveness of combined measures.

Hazardous material abatement (based on standard 211, 5.4.8.2). Estimation of hazardous material abatement costs is not required. If the possible presence of hazardous materials is apparent at the site, either through observation or as reported by others, the possible presence of the hazardous material shall be included in the report (see Standard 211 Section 6.2.5) as potentially affecting health and safety and installation costs.

Cost and cost savings of recommended EEMs (based on standard 211 Section 5.5.2).

Estimate the initial and recurring costs, energy cost savings, and nonenergy cost savings of each measure and each integrated group of measures. Cost estimates shall either be:

1. Obtained from a vendor at the quoted price; or
2. Based on quotations of similar projects within the last year; or
3. Based on labor cost estimates for employee labor.

Life-cycle cost analysis (LCCA) (based on standard 211 section 5.5.2). LCCA 7,8,9,10 of each recommended EEM shall be conducted for a time frame that spans, at a minimum, the life of the measure with the longest service useful life and shall include the following:

1. Initial costs (per Standard 211 Section 5.4.8.1);
2. Financing costs;
3. Annual energy costs;
4. Escalation rates as published by the AHJ citing the source within the energy audit report;
5. Discount rates as published by the AHJ citing the source within the energy audit report;
6. Tax credits and deductions;
7. Cash incentives, grants, and rebates;
8. Expected periodic replacements;
9. Estimated recurring nonenergy costs (maintenance, etc.), of each measure or set of measures. Such costs include annual maintenance and service labor costs, routine replacement of worn parts, or annual warranty fees from manufacturers;
10. Contingency funds not to exceed 5% of estimated EEM implementation cost; and
11. Water & sewer savings from EEM. EEMs that provide water and/or wastewater savings shall include the operations and maintenance savings resulting from implementation of the EEM.

X4 Life cycle cost analysis methodology, form and key variables.

X4.1 Life-cycle cost analysis completed for buildings qualifying under the investment Criteria shall follow the *National Institute of Standards and Technology (NIST) Life-Cycle Costing Manual Handbook 135* except as specified in this standard in Table X4.

Table X4 Life Cycle Cost Analysis Variables Independent Of NIST Handbook - 135 Methodology.

Public owner discount rate	A fixed annual rate based on the cost of borrowing through the Washington state treasurer, certificate of participation programs, the local program and the state lease-purchase program.
Private owner discount rate	Shall be the published *Wall Street Journal Prime Rate* for based on the average of the previous twelve months.
Financing	Applicants with documented costs of borrowing assuming one hundred percent of the EEM implementation costs are financed at an actual cost of borrowing and stated terms when the property being improved is listed as loan collateral.
Rate of inflation	A fixed annual rate, as published annually by the Washington state office of financial management.
Fuel escalation rate	Based on the most recent edition of *NIST Handbook - 135 Annual Supplement - Fuel Escalation Rates.*
Study period	Equal to the useful life of the longest-lived EEM within an optimized bundle. (STD 211, 5.5.3)

X4.2 Publication of analysis variables. The AHJ shall update the contents of Table X4 on an annual basis and incorporate the results in updates to the Normative Annex X - Investment Criteria form specified in Normative Annex Z.

NEW SECTION

WAC 194-50-150 Normative Annex Z— Washington state reporting requirements. Z1 Building owner notifications by the AHJ and building owner response.

Z1.1 Notification to building owners of covered commercial buildings by the AHJ. Based on records obtained from each county assessor and other available information sources, the *AHJ* must create a database of *covered commercial buildings* and *building owners* required to comply with the standard established in accordance with this section. The database may include buildings and *building complexes* presumed to meet the definition of *covered commercial building* and *multifamily buildings* greater than 50,000 square feet in floor area.

Z1.1.1 The database will contain information about buildings that may be subject to compliance, their owners, and information about multifamily residential buildings eligible for incentives. The database will also contain information to assist tracking and reporting on building owner compliance, and incentive application and distribution. Commerce will create a method for tracking building owner notification responses. Each building or building complex will be assigned a unique building identifier.

Z1.2 By July 1, 2021, the AHJ must provide the owners of covered commercial buildings with notification of compliance requirements. Notifications will be mailed to the mailing addresses county assessors have on file.

Z1.3 Failure by the *AHJ* to provide the notification in Z1.2 does not release the *building owner* of the legal obligation to comply with this law.

Z1.4 By July 1, 2021, the AHJ must provide notifications to the building owners of multifamily residential building where the floor area exceeds fifty thousand gross square feet, excluding the parking garage area.

Z2 Building owner response to notifications.

Z2.1 Correction of errors. *Building owners* are responsible for reviewing the property and building information provided by the AHJ through notification including, but not limited to, *building* or *building complex* ownership details, *gross floor area*, and other information as identified by the *building owner*.

Z2.1.1 Correction of errors documentation form. Building owners who are notified in error may submit a correction form to the AHJ. The correction form will be used to document gross floor area (conditioned and unconditioned) and/or building type. Building owners that submit the correction form must also submit the documentation required to demonstrate an exception as required in Section Z4.1 prior to the compliance date if applicable.

Washington State Reporting Requirements for Building Owners.

Z3 General Compliance. The building owner of a *covered commercial building* must report compliance with the standard to the AHJ in accordance with the schedule established under Section Z3.1 and every five years thereafter. For each reporting date, the building owner must submit documentation to demonstrate that:

1. The weather normalized energy use intensity of the *covered commercial building* measured in a period not to exceed two years prior to the reporting deadline specified in Normative Annex Z3.1 is less than or equal to the energy use intensity target (buildings that meet their energy targets); or
2. The *covered commercial building* has received conditional compliance from the department based on energy efficiency actions prescribed by the standard; or
3. The *covered commercial building* is exempt from the standard by demonstrating that the building meets one of the criteria for an exemption.

Z3.1 Compliance schedule. The building owner of a covered commercial building must report the building owner's compliance with the standard to the department in accordance with the appropriate initial compliance date as follows and every five years thereafter.

1. For a building with more than two hundred twenty thousand gross square feet, June 1, 2026;

2. For a building with more than ninety thousand gross square feet but less than two hundred twenty thousand and one gross square feet, June 1, 2027; and

3. For a building with more than fifty thousand gross square feet but less than ninety thousand and one square feet, June 1, 2028.

Z3.1.2 Application for conditional compliance. Applications for conditional compliance must be submitted to the AHJ one hundred eighty days prior to the compliance date to receive conditional compliance approval prior to the compliance date.

Z3.1.3 Application for exemption. Building owners submitting an application for exemption as specified in Section Z4.1 must be submitted to the AHJ one hundred eighty days prior to the compliance date to receive exemption approval prior to the compliance date.

Z4 Documentation of compliance with the standard. Documentation of compliance shall be submitted to the AHJ demonstrating the building owner has complied with the standard through submission of documentation in accordance with Section Z4.1, Z4.2, Z4.3, Z4.4 or Z4.5. Additional requirements for continued reporting may be required as specified in Z4.6.

Z4.1 Documentation of compliance through exemption. *Building owners* seeking approval of exemption shall submit to the AHJ the Z6.7 Form H, Application for exemption certificate documenting the following:

1. The building qualifies for one of the following exemptions:

a. Compliance with the exemption must be verified by the owner based on the building as it is to be occupied and operating on the compliance date.

b. Applications for exemptions may be submitted no sooner than 1 year prior to the compliance date and submitted to the AHJ no later than one hundred eighty days prior to the compliance date.

c. Exemptions certificates are only valid for the current compliance review cycle.

2. Covered commercial buildings are not eligible for exemption from the standards unless they meet one of the following criteria:

a. The building did not have a certificate of occupancy or temporary certificate of occupancy for a consecutive twelve months period within two years prior to the compliance date.

b. The building did not have physical occupancy by owner or tenant for at least fifty percent of the *conditioned floor area* throughout the consecutive twelve month period prior to the building compliance date.

c. The sum of the *building's gross floor area* minus *unconditioned* and *semi-conditioned spaces*, as defined in the Washington State Energy Code, is less than fifty thousand square feet;

d. More than 50% of the gross floor area of the building is primarily used for manufacturing or other industrial purposes, as defined under the following use designations of the Washington state edition of the *International Building Code*:

i. Factory group F; or

ii. High hazard group H.

e. The building is an agricultural structure;

f. The building is vacant due to renovation or pending demolition; or

g. The building meets at least one of the following conditions of financial hardship:

i. The building had arrears of property taxes or water or wastewater charges that resulted in the building's inclusion, within the prior two years, on a city's or county's annual tax lien sale list;

ii. The building has a court appointed receiver in control of the asset due to financial distress;

iii. The building is owned by a financial institution through default by a borrower;

iv. The building has been acquired by a deed in lieu of foreclosure within the previous twenty-four months;

v. The building has a senior mortgage subject to a notice of default;

vi. The building owner has an immediate and heavy financial need which cannot be satisfied from other reasonable available resources and which are caused by events that are beyond their control.

h. The building is a *more recently built buildings* that obtained an original occupancy permit no more than three years prior to the initial compliance date specified in Z3.1.

3. After documents have been submitted and reviewed, the AHJ will send notification of approval or denial.

a. If the exemption is approved the AHJ shall notify the applicant stating the application has been approved and update the AHJ records for the building.

b. If the exemption is denied the AHJ shall notify the applicant stating the application has been denied and update the AHJ records for the building.

4. When an application for exemption is denied the building owner must proceed with the process to demonstrate compliance with one of the compliance options in Washington state reporting requirements for building owners, Z4.2-Z4.5.

Z4.2 Buildings that meet the EUI_t. *Building owners* must provide the following documentation to verify that the building *weather normalized* EUI is less than the building EUI_t and that the energy management plan is complete and being implemented.

- Form A
- Form B
- Form C

Z4.3 Buildings that will meet the building investment criteria prior to the compliance date. Building owners must provide the following documentation to verify that the building has implemented all EEMs that meet the cost effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan must be completed and implemented and all EEMs must be installed and commissioned prior to the compliance date.

• Form A

• Form B

• Form C, except buildings unable to meet Section 5.2, Building energy monitoring.

• Energy audit report.

- Level 2 Energy audit

- Normative Annex X - Investment Criteria Form.

Z4.4 Buildings that will meet the EUI_t through conditional compliance. *Building owners* must provide the following documentation to verify that the building *weather normalized* EUI is projected to be less than the building EUI_t at the end of the measurement and verification period and that the energy management plan is complete and being implemented. EEMs required to meet the EUI_t must be installed and commissioned prior to the compliance date. Should the building fail to meet the EUI_t after the measurement and verification requirements required in Section 4.3.3.3, Verification of compliance have been completed, the building shall implement additional EEMs to and demonstrate the building EUI is less than the EUI_t.

• Form A

• Form B

• Form C

• Energy Audit Report

- Level 2 Energy Audit

- Normative Annex X - Investment Criteria Form

• Continued reporting until completion as specified in Section Z4.6.

Z4.5 Buildings that will meet the building investment criteria through conditional compliance. Building owners must provide the following documentation to verify that the building has implemented all EEMs that meet the cost effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan must be completed and implemented and all EEMs must be installed and commissioned prior to the compliance date. Should the building fail to meet the EUI_t after the measurement and verification requirements required in Section 4.3.3.3, Verification of compliance have been completed, the building shall implement additional EEMs to meet the projected target.

• Form A

• Form B

• Form C, except buildings unable to meet Section 5.2 Building Energy Monitoring

• Energy audit report

- Level 2 Energy audit

- Normative Annex X - Investment Criteria Form

• Continued reporting until completion as specified in Section Z4.6.

Z4.5.1 Phased implementation. The building owner may include phased implementation of EEMs such that the *building owner* is not required to replace a system or equipment before the end of the system or equipment's useful life. System or equipment fitting this description shall be included in the energy audit and Normative Annex X - Investment Criteria submission with a schedule for replacement. Phased implementation shall be documented in the *energy management plan* and *capital management plan* required in Section 5.

Z4.6 Continued reporting until completion. Continued reporting is required as specified in Sections Z4.6.1 and Z4.6.2 until completion when: a) measurement and verification extends one year or more beyond the compliance date, or b) implementation is extended phased implementation.

Z4.6.1 Annual reporting. The following up to date reports shall be submitted to the AHJ annually, (date specific).

• Form A

• Form B

• Form C, except buildings unable to meet Section 5.2, Building energy.

Z4.6.2 Completion Reporting. The following up to date reports shall be submitted to the AHJ when all conditions of compliance have been verified and documented:

• Form A

• Form B

• Form C, except buildings unable to meet Section 5.2, Building energy monitoring. Buildings unable to meet Section 5.2 shall include the verification specified in Section 9.2.2 in the building *energy management plan*.

Z5 Violations, assessment of administrative penalties, mitigation and review of penalty decisions.

Z5.1 Authorization. The AHJ is authorized to impose administrative penalties upon building owners for failing to submit documentation demonstrating compliance with the requirements of this standard.

Failure to submit documentation demonstrating compliance by the scheduled reporting date will result in progressive penalties by legal notice.

Z5.2 Notice of violation and opportunity to correct (NOVC) (first notice).

Z5.2.1 The department may issue a NOVC when a building owner has failed to submit documentation that demonstrates compliance with this standard by the scheduled reporting date.

Z5.2.2 A NOVC may be issued for any of the following reasons:

1. Failure to submit a compliance report in the form and manner prescribed by the AHJ;

2. Failure to meet an energy use intensity target or failure to receive conditional compliance approval;

3. Failure to provide accurate reporting consistent with the requirements of the standard; and

4. Failure to provide a valid exemption certificate.

The AHJ will identify in the NOVC which section(s) of law, code, or the standard for which the *building owner* has failed to demonstrate compliance.

Z5.2.3 The NOVC will specify the time by which the building owner must cure the violation by submitting documentation that demonstrates compliance with the identified section(s) of law, code, or the standard. The AHJ will give the building owner at least seven calendar days to submit such documentation.

Z5.2.4 If sufficient documentation is not submitted by the date specified in the NOVC, the AHJ will issue a notice of violation and intent to assess administrative penalties (NOVI) and the *building owner* will be subject to administrative penalties.

Z5.3 Notice of violation and intent to assess administrative penalties (second notice).

Z5.3.1 If a *building owner* fails to respond to a NOVC by submitting documentation demonstrating compliance by the date specified in the NOVC, the AHJ will issue a notice of violation and intent to assess administrative penalties (NO VI).

Z5.3.2 The AHJ will identify in the NOVI which section(s) of law, code, or the standard for which the building owner has failed to demonstrate compliance. The NOVI will also include a description of how the penalties the AHJ intends to assess will be calculated.

Building owners must respond to a NOVI within thirty days by either:

1. Submitting an application for exemption in accordance with Section Z4.1 if applicable;

2. Submitting a noncompliance mitigation plan in accordance with Z5.7;

3. Submitting its intent to pay the penalties by using the form provided by the AHJ; or

4. Submitting a request for an administrative proceeding to challenge or mitigate the penalty.

Z5.3.3 If the *building owner* does not timely request a hearing or submit an application for exemption, the *building owner* waives its right to a hearing and the director or their designee may issue a final order assessing the penalties described in the NOVI. If the *building owner* has submitted a mitigation plan, the final order will only assess penalties from the scheduled compliance date until the date of an approval of compliance or conditional compliance.

Z5.3.4 Building owners who submit an application for exemption that is denied may request a hearing by submitting a request for a hearing within thirty days of issuance of the decision denying its application for exemption. If the building owner does not request a hearing within thirty days, the building owner waives its right to a hearing and the director or their designee may issue a final order assessing the penalties described in the NOVI.

Z5.4 Assessment of administrative penalties.

Z5.4.1 Failure to submit documentation demonstrating compliance with the standard by the date specified in a NOVC will result in the issuance of a NOVI and the assessment of administrative penalties at an amount not to exceed five thousand dollars plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to one dollar per year per gross square foot of floor area.

Z5.4.1.1 Penalties for building owners that submit a noncompliance mitigation plan. For building owners subject to a NOVI who respond within thirty days by submitting a noncompliance mitigation plan (Z5.7), fines shall be assessed on an annual basis or when the building owner achieves compliance or conditional compliance.

a. For applicants that submit a noncompliance mitigation plan and who submit documentation demonstrating completion, daily penalties will be assessed from the scheduled compliance date to the date of approval of compliance or conditional compliance. The penalty will be assessed at an amount not to exceed 30% of five thousand dollars plus a daily amount equal to $0.20 per gross square foot of floor area per year.

b. For applicants that submit a noncompliance mitigation plan but fail to submit documentation demonstrating completion, if the building does not comply with the standard by the next compliance date, the building owner will be assessed the maximum penalty of five thousand dollars plus a daily amount equal to $1.00 per gross square foot of floor area per year not to exceed a value greater than eighteen months of accrued penalty.

The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.

Z5.4.2 When assessed penalties are not paid within one hundred eighty days of the date of a final order assessing penalties, the AHJ may assess further penalties. Total penalties assessed will not exceed five thousand dollars plus a daily amount equal to $1.00 per gross square foot of floor area per year.

Z5.4.3 Interest will accrue on civil penalties pursuant to RCW 43.17.240 if and when the debt becomes past due.

Z5.5 Due date and collection of penalties.

Z5.5.1 Penalties shall become due and payable on the later of:

1. Thirty days after receipt of the final order imposing the penalty; or

2. The date specified in the final order imposing the penalty.

Z5.5.2 If a penalty has not been paid by the due date, the AHJ may assign the debt to a collection agency as authorized by RCW 19.16.500 or take other action to pursue collection as authorized by law. If referred to a collection agency, the AHJ may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.

Z5.5.3 For building owners that are implementing a noncompliance mitigation plan but have not yet complied, the AHJ may assess the accumulated daily fine on June 1st of each year or shortly thereafter.

Z5.6 Payment of administrative penalties.

A check or money order payable in U.S. funds to the Washington state department of commerce can be mailed to:

Washington State Department of Commerce
Re: Clean Buildings Initiative, Energy Division
P.O. Box 42525

Olympia, WA 98504-2525

Z5.7 Noncompliance mitigation plan. Owners of covered commercial buildings that are out of compliance by the scheduled compliance date and have not corrected the violation by the date noted in a NOVC may reduce possible penalties by demonstrating that they are taking action to achieve compliance with the standard. To begin the process of mitigating noncompliance, a building owner must submit to the AHJ the noncompliance mitigation plan form selecting one of the following actions within thirty days of the date of a NOVI to avoid immediate issuance of penalty in accordance with Z5.4.1.

1. Compliance with the standard in accordance with Z4.2.

2. Conditional compliance with the standard in accordance with Z4.4.

3. Conditional compliance with the standard in accordance with Z4.5.

Z5.7.1 Mitigation completion. To demonstrate completion, the building owner shall complete all of the requirements of this standard and submit documentation as required by Section Z4.2, Z4.4 or Z4.5. Upon completion, the AHJ shall issue a final order assessing the reduced penalty as specified by Z5.4.1.1(a).

Z5.8 Administrative hearings.

Z5.8.1 Requesting a hearing. A *building owner* may request an administrative hearing after receiving an NOVI or after the denial of its application for an exemption by submitting a request within thirty days of the date of a NOVI or the denial of a timely application for exemption. All requests must be made in writing and filed at the address specified on the NOVI. For convenience, the AHJ will attach a form titled request for hearing to the NOVI that may be used to request an administrative hearing.

Requests for hearing must be accompanied by the following:

1. Washington State Building ID;

2. Submit Annex Z Forms A, B, and C.

Z5.8.2 Hearing process. The AHJ may refer matters to the office of administrative hearings (OAH). Administrative hearings will be conducted in accordance with chapter 34.05 WAC, Administrative Procedure Act, chapter 10-08 WAC, Model rules of procedure, and the procedural rules adopted in this chapter. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this section, the procedural rules adopted in this section take precedence.

Z5.8.3 Initial orders to become final orders. Initial orders issued by the presiding officer will become final without further agency action unless, within twenty days:

1. The director determines that the initial order should be reviewed; or

2. A party to the proceeding files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

Z5.8.4. Judicial review. A final order entered pursuant to this section is subject to judicial review pursuant to RCW 34.05.510 through 34.05.598.

Z5.8.5 Collected penalties. The AHJ will deposit all penalties collected and received by the department under this section into the low-income weatherization and structural rehabilitation assistance account created in RCW 70.164.030.

Z6 Compliance forms. The following section replace Normative Annex C Forms in Standard 100 and provide additional forms specified by rule Building owners are required to submit the applicable forms and the required supporting information to demonstrate compliance with the standard. These forms replace all referenced forms in this standard. The AHJ will make these forms available in an electronic format for submission to the AHJ.

Z6.1 Compliance with Standard 100 (Form A)

1. Building identification:
a. WA state building ID;
b. County;
c. County parcel number(s);
d. Portfolio manager property ID number;
e. Property name;
f. Parent property name;
g. Address 1 (street);
h. Address 2;
i. City;
j. State; and
k. Postal code.
2. Contact information:
a. *Building owner* name(s);
b. Contact name;
c. Address 1 (street);
d. Address 2;
e. City;
f. State/Province;
g. Country;
h. Postal code;
i. Telephone number;
j. Email address.
3. Qualified person:
a. Qualified person name;
b. Address 1 (street);
c. Address 2;
d. City;
e. State;
f. Postal code;
g. Telephone number;
h. Email address;
i. Licensed, certified (select all that apply);
ii. Licensure or certifying authority;
4. *Energy manager* (if different than the qualified person):
a. Energy manager name;
b. Address 1 (street);
c. Address 2;
d. City;
e. State/Province;
f. Postal code;
g. Country;

h. Telephone number;

i. Email address.

5. This compliance report is for:

a. Building that meets the EUI_t.

b. Building that meets the building investment criteria prior to the compliance date.

c. Building that will meet the EUI_t through conditional compliance.

d. Building that will meet the building investment criteria through conditional compliance.

e. Annual reporting

f. Completion reporting

6. Summary data:

a. Energy utilization index target (EUI_t) (KBtu/ft^2 yr) based on completed Z6.2 Form B.

b. Measured site EUI (kBtu/ft^2) for the compliance year for this building based on Z6.3 Form C.

c. Measured weather normalized site EUI (kBtu/ft^2) for the compliance year based on Z6.3 Form C.

d. List the months/year of the collected data (mm/yyyy - mm/yyyy) for the compliance year for this building from Z6.3 Form C.

e. Buildings unable to comply with Section 5.2, Building energy monitoring and complete Z6.3 Form C shall provide a reason statement.

7. Have the energy management requirements of Section 5 been met? [ ] Yes [ ] No

• Upload energy management plan as specified by the AHJ.

8. Have the operation and maintenance requirements of Section 6 been met? [ ] Yes [ ] No

• Upload operation and maintenance implementation documentation as specified by the AHJ.

9. Date the audit and economic evaluation was completed (N/A if none required).

• Upload audit reports as specified by Z6.4 Form D.

10. Have all EEMs required by Section 8 been implemented? [ ] Yes [ ] No

11. Have the requirements of Section 9 been completed? [ ] Yes [ ] No

12. We state that this building complies with ANSI/ASHRAE/IES Standard 100 as amended by the AHJ to conform with RCW 19.27A.210:

a. Signature of building owner:

• Date:

b. Signature of qualified person:

• Date:

c. Signature of energy manager:

• Date:

d. Signature of authority having jurisdiction:

• Conditional or final compliance

• Date:

Z6.2 Building activity and *energy use intensity target* (*EUI_t*)(Form B). - Complete form provided by the AHJ with the following information:

1. Building identification:

a. Washington state building ID;

b. County;

c. County parcel number(s);

d. Portfolio manager property ID number;

e. Property name;

f. Parent property name;

g. Address 1 (street);

h. Address 2;

i. City;

j. State; and

k. Postal code.

2. List the building location climate zone, 4C or 5B. Determine the climate zone using ASHRAE climate zone as found on the map in Informative Annex G. Buildings located in Climate Zone 6 shall use Climate Zone 5B.

3. The gross floor area in square feet shall be reported as defined in Section 3.

4. If entire building is single activity/type not listed in Table 7-1, it should be listed as "building without target" on Z6.1 form. List "energy target" as "N/A" on Z6.2 Form B and Z6.2 Form B is considered complete.

5. Fill in fraction of gross floor area (A)i for each activity. For single-activity buildings this is 1.0.

6. Fill in the operating shifts normalization factor (S)i from Table 7-3 for each activity that has an area entered from Step 6.

7. Fill in the activity energy target (EUI_t1)i from Table 7-2 (or table from AHJ) for each activity that has an area entered from Step 6.

8. Calculate weighted space EUI target (A × S × EUI_t1)i for each activity that has an area entered from Step 6.

9. Add up fraction of floor area and enter sum in "Total fraction of floor area with target," and add up all weighted space EUI targets and enter sum as the "energy target" on Z6.2 and Z6.1 Forms B and A.

10. If more than 50% of gross floor area has no target, it should be listed as "building without target" on Z6.1 Form A. List "energy target" as "N/A" on Z6.2 Form B.

For single-activity *buildings* this is 1.0.

Z6.3 Energy-Use intensity Calculations (Form C).

Energy Use Intensity Calculations shall be reported via the U.S. EPA's ENERGY STAR Portfolio Manager (www.energystar.gov/benchmark). The *energy manager* is responsible for creating Energy Star portfolio manager record for each building.

Exception to Z6.3: Buildings unable to comply with Section 5.2, Building energy monitoring shall demonstrate compliance through Z4.3 or Z4.5.

The Energy Star portfolio manager building record shall be identical to the building activity/type, fraction floor area, operating shifts (hours of operation) and gross floor area of the building as reported on Form B. All inputs shall be up to date prior to reporting as required in Section Z4 and annually as required in Section 5.1.2.3, Annual updates of the *net energy* use and *EUI*.

Prior to submitting reports run the Energy Star portfolio manager data quality checker and make all corrections required to complete the report.

The energy manager shall use the EPA's Energy Star portfolio manager share properties feature and share the property data with the AHJ by enabling the read only access and exchange data feature.

For each report submitted under Section Z4, the energy manager shall create and submit a report documenting the required data fields listed (below) and other fields deemed necessary by the AHJ for the reporting period. This shall be submitted using the Washington state report specified in Energy Star portfolio manager.

Report fields shall include:

• Portfolio manager property ID;
• Portfolio manager parent property ID;
• Property name;
• Parent property name;
• Address 1;
• Address 2;
• City;
• County;
• State/Province;
• Postal Code;
• Primary property type - Self-selected;
• Primary property type - EPA calculated;
• List of all property use types at property;
• Property GFA - Self-reported (ft^2);
• Property GFA - EPA calculated (buildings and parking) (ft^2);
• Property GFA - EPA calculated (buildings) (ft^2);
• Property GFA - EPA calculated (parking) (ft^2);
• Largest property use type;
• Largest property use type - Gross floor area (ft^2);
• 2nd Largest property use type
• 2nd Largest property use - Gross floor area (ft^2);
• 3rd Largest property use type;
• 3rd Largest property use type - Gross floor area (ft^2);
• Year built;
• Occupancy;
• Property notes;
• Property data administrator;
• Property data administrator - Email;
• Last modified date - Property;
• Last modified date - Electric meters;
• Last modified date - Gas meters;
• Last modified date - Nonelectric nongas energy meters;
• Local standard ID(s) Washington state building standard;
• Data center - Energy estimates applied;
• Electricity use - Grid purchase and generated from on-site renewable systems (kWh);
• Electricity use - Grid purchase (kWh);
• Electricity use - Generated from on-site renewable systems and used on-site (kWh);
• Natural gas use (therms);
• Fuel oil #1 use (kBtu);
• Fuel oil #2 use (kBtu);
• Fuel oil #4 use (kBtu);
• Fuel oil #5 and 6 use (kBtu);
• Diesel #2 use (kBtu);
• Kerosene use (kBtu);
• Propane use (kBtu);
• District steam use (kBtu);
• District hot water use (kBtu);
• District chilled water use (kBtu);
• Coal - Anthracite use (kBtu);
• Coal - Bituminous use (kBtu);
• Coke use (kBtu);
• Wood use (kBtu);
• Other use (kBtu);
• Default values;
• Temporary values;
• Estimated data flag - Electricity (grid purchase);
• Estimated data flag - Natural gas;
• Alert - Data center does not have an IT meter;
• Alert - Gross floor area is 0 ft^2;
• Alert - Property has no uses;
• Data quality checker - Date run;
• Data quality checker run - ?
• Alert - Energy meter has less than 12 full calendar months of data;
• Alert - Energy meter has gaps;
• Alert - Energy meter has overlaps;
• Alert - Energy - No meters selected for metrics;
• Alert - Energy meter has single entry more than sixty-five days;
• Estimated values - Energy;
• Energy Star score;
• National median site energy use (kBtu);
• Site energy use (kBtu);
• Site EUI (kBtu/ft^2);
• Weather normalized site energy use (kBtu);
• Weather normalized site EUI (kBtu/ft^2);
• Weather normalized site electricity (kWh);
• Weather normalized site electricity intensity (kWh/ft^2);
• Weather normalized site natural gas use (therms);
• Weather normalized site natural gas intensity (therms/ft^2) energy current date;
• Electricity use - Generated from on-site renewable systems (kWh);
• Electricity use - Generated from on-site renewable systems and exported (kWh);
• Electricity Use - Grid purchase and generated from on-site renewable systems (kBtu);
• Electricity use - Grid purchase (kBtu);
• Electricity use - Generated from on-site renewable systems and used on site (kBtu);
• Natural gas use (kBtu);
• Percent of total electricity generated from on-site renewable systems;
• Cooling degree days (CDD) (°F);
• Heating degree days (HDD) (°F);
• Weather station name;
• Weather station ID.

Z6.4 End-use analysis requirements. Building owners shall demonstrate compliance with Form D by providing the documentation required by section Z6.4.1.

Z6.4.1 Energy Audit Forms (Form D). The energy audit form shall be provided electronically by completing the energy audit form included in the U.S. Department of Energy, Energy Asset Score Tool, or an equivalent tool provided by the AHJ. This form shall be completed in compliance with the level 2 energy audit, as published in ASHRAE Standard 211, Standard for commercial building energy audits.

Form E - Not adopted.

Z6.5 Annex X, Investment criteria tool (Form F).

Z6.5.1 To demonstrate compliance with the investment criteria of Normative Annex X, building owners shall complete and submit Form F.

Z6.5.2 Form F shall be developed by the AHJ. Form F shall be a life cycle cost evaluation tool compliant the NIST Standard 135 and capable of supporting the evaluation criteria required by Normative Annex X.

Z6.6 Documentation of a building of historic significance (Form G).

Energy efficiency measure exemptions for historic buildings. No individual energy efficiency measure identified by energy efficiency audits need to be implemented if it would compromise the historical integrity of a building or part of a building. Building owners seeking this exception shall provide the following documentation. Certified historic buildings are not exempt from the other requirements of this standard.

Plan for compliance. The owner of a qualifying historic building shall have the plan for compliance evaluated by a qualified historic preservationist, as defined in 36 C.F.R., Part 61, identifying any energy efficiency requirement that may compromise the historic integrity of the building or part of the building. Any element of the plan identified to compromise the historic integrity of the building or part of the building shall be omitted from the compliance plan. Evidence of this evaluation must be submitted to the AHJ for approval.

Documentation of a historic building. Building owners must provide documentation to the AHJ that proves its historic identification or eligibility. Valid documentation from any existing programs listed below is acceptable.

1. Examples of existing programs that verify historic property include:

a. The National Register of Historic Places;

b. The Washington heritage register;

c. Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and

d. Properties which are listed in a local register of historic places; or

2. Other documentation approved by the AHJ.

Z6.7 Application for Exemption Certificate (Form H).

Apply for an exemption certificate by submitting the following documentation to the building owner in the form specified by the AHJ. The application must include:

1. Building identification

a. Washington state building ID;

b. County;

c. County parcel number(s);

d. Portfolio manager property ID number;

e. Property name;

f. Parent property name;

g. Address 1 (street);

h. Address 2;

i. City;

j. State; and

k. Postal code.

2. Contact information:

a. Building owner name(s);

b. Contact name;

c. Address 1 (street);

d. Address 2;

e. City;

f. State/Province;

g. Country;

h. Postal code;

i. Telephone number; and

j. Email address.

3. Building information:

a. Primary building activity from Table 7-1, or a description of the nonlisted building type;

b. Building gross floor area;

c. Building gross conditioned floor area.

4. Reason for exemption: Based on exemptions listed in Section Z4.1(2).

A list all of documents enclosed and any facts in support of this application. Provide at least two of the acceptable documents listed below:

a. Municipal or county records;

b. Documents from a qualified person;

c. Construction permit;

d. Certificate of occupancy or application for certificate of occupancy;

e. Demolition permit;

f. Financial statements such as statement of assets; liabilities, capital, and surplus, statement of revenue and expenses; or statement of case flow;

g. A letter from the building owner stating facts and explaining financial hardships;

h. More recently built buildings that obtained an original occupancy permit no more than three years prior to the compliance date specified in Z3.1; or

i. Approved documents by the AHJ.

5. Signature and statement of *building owner* stating that the authorized representative of the building, affirm and attest to the accuracy, truthfulness and completeness of the statements of material fact provided in this form.

Z7 Section 7—Tables as modified by Washington state.

Table 7-1 Commercial Building Types/Activities

	Building Activity Type[1,2]			
No.	**Portfolio Manager Types**	**Portfolio Manager Sub-Types**	**Sub-Types: Detailed**	**Notes**
1	Banking/financial services	Bank Branch		
2	Banking/financial services	Financial Office		

	Building Activity Type[1,2]			
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
3	Education	Adult Education		
4	Education	College/University		
5	Education	K-12 School	Elementary/middle school	
6	Education	K-12 School	High school	
7	Education	Preschool/Daycare		
8	Education	Vocational School		
9	Education	Other - Education		
10	Entertainment/public assembly	Aquarium		
11	Entertainment/public assembly	Bar/Nightclub		
12	Entertainment/public assembly	Bowling Alley		
13	Entertainment/public assembly	Casino		
14	Entertainment/public assembly	Convention Center		
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		
16	Entertainment/public assembly	Ice/Curling Rink		
17	Entertainment/public assembly	Indoor Arena		
18	Entertainment/public assembly	Movie Theater		
19	Entertainment/public assembly	Museum		
20	Entertainment/public assembly	Performing Arts		
21	Entertainment/public assembly	Race Track		
22	Entertainment/public assembly	Roller Rink		
23	Entertainment/public assembly	Social/Meeting Hall		
24	Entertainment/public assembly	Stadium (Closed)		
25	Entertainment/public assembly	Stadium (Open)		
26	Entertainment/public assembly	Swimming Pool		
27	Entertainment/public assembly	Zoo		
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture	
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library	
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly	
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation	
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting	
33	Entertainment/public assembly	Other - Recreation		
34	Entertainment/public assembly	Other - Stadium		
35	Food sales and service	Bar/Nightclub		
36	Food sales and service	Convenience Store with Gas Station		
37	Food sales and service	Convenience Store without Gas Station		
38	Food sales and service	Fast Food Restaurant		

	Building Activity Type[1,2]			
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
39	Food sales and service	Food Sales	Grocery/food market	
40	Food sales and service	Food Sales	Convenience store with gas	
41	Food sales and service	Food Sales	Convenience store	
42	Food sales and service	Food Sales	Other food sales	
43	Food sales and service	Food Service	Fast food	
44	Food sales and service	Food Service	Restaurant/cafeteria	
45	Food sales and service	Food Service	Other food service	
46	Food sales and service	Restaurant		
47	Food sales and service	Supermarket/Grocery Store		
48	Food sales and service	Wholesale Club/Supercenter		
49	Food sales and service	Other - Restaurant/Bar		
50	Healthcare	Ambulatory Surgical Center		
51	Healthcare	Hospital (General Medical & Surgical)*		
52	Healthcare	Medical Office		3
53	Healthcare	Outpatient Rehabilitation/Physical Therapy		
54	Healthcare	Residential Care Facility		
55	Healthcare	Senior Care Community		
56	Healthcare	Urgent Care/Clinic/Other Outpatient		
57	Healthcare	Other - Specialty Hospital		
58	Lodging/residential	Barracks		
59	Lodging/residential	Hotel	Hotel	
60	Lodging/residential	Hotel	Motel or inn	
61	Lodging/residential	Multifamily Housing		
62	Lodging/residential	Prison/Incarceration		
63	Lodging/residential	Residence Hall/Dormitory		
64	Lodging/residential	Residential Care Facility		
65	Lodging/residential	Senior Care Community		
66	Lodging/residential	Other - Lodging/Residential		
67	Mixed use	Mixed Use Property		4
68	Office	Medical Office		3
69	Office	Office	Admin/professional office	
70	Office	Office	Bank/other financial	
71	Office	Office	Government office	
72	Office	Office	Medical office (diagnostic)	3
73	Office	Office	Other office	
74	Office	Veterinary Office		
75	Office	Other - Office		
76	Public services	Courthouse		
77	Public services	Fire Station		
78	Public services	Library		

	Building Activity Type[1,2]			
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
79	Public services	Mailing Center/Post Office		
80	Public services	Police Station		
81	Public services	Prison/Incarceration		
82	Public services	Social/Meeting Hall		
83	Public services	Transportation Terminal/Station		
84	Public services	Other - Public Service		
85	Religious worship	Worship Facility		
86	Retail	Automobile Dealership		
87	Retail	Convenience Store with Gas Station		
88	Retail	Convenience Store without Gas Station		
89	Retail	Enclosed Mall		5
90	Retail	Lifestyle Center	Enclosed mall	5
91	Retail	Lifestyle Center	Other retail	
92	Retail	Lifestyle Center	Retail store	
93	Retail	Lifestyle Center		4
94	Retail	Retail Store		
95	Retail	Strip Mall		4
96	Retail	Supermarket/Grocery Store		
97	Retail	Wholesale Club/Supercenter		
98	Retail	Other - Retail/Mall	Enclosed mall	5
99	Retail	Other - Retail/Mall		4
100	Technology/science	Data Center		6
101	Technology/science	Laboratory		
102	Technology/science	Other - Technology/Science	Other service	
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	
107	Services	Other - Services		
108	Utility	Energy/Power Station		7
109	Utility	Other - Utility		7
110	Warehouse/storage	Self-Storage Facility		
111	Warehouse/storage	Distribution Center		
112	Warehouse/storage	Nonrefrigerated Warehouse		
113	Warehouse/storage	Refrigerated Warehouse		

Notes: 1. Select the most specific building activity type that applies.

2. For building type definitions see Energy Star portfolio manager definitions except as follows:

- Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. Gross floor area shall only include space within the building including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. Gross floor area shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.
- Urgent care center/clinic/other outpatient office means the buildings used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.

3. All medical offices considered to be diagnostic type.
4. Must use of Section 7.2.3 method for mixed use buildings.
5. Suggest considering use of Section 7.2.3 method for mixed use buildings.
6. This is a building or activity without an energy target. Included to provide definition only.
7. This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.

Table 7-2a Building Activity Site Energy Targets (EUIt1) (I-P Units)

	Building Activity Type[1,2]				Climate Zone 4C	Climate Zone 5B
No.	**Portfolio Manager Types**	**Portfolio Manager Sub-Types**	**Sub-Types: Detailed**	**Notes**	**EUI_t**	**EUI_t**
1	Banking/financial services	Bank Branch			69	71
2	Banking/financial services	Financial Office			69	71
3	Education	Adult Education			49	51
4	Education	College/University			102	102
5	Education	K-12 School	Elementary/middle school		49	50
6	Education	K-12 School	High school		48	49
7	Education	Preschool/Daycare			59	59
8	Education	Vocational School			49	51
9	Education	Other - Education			49	51
10	Entertainment/public assembly	Aquarium			55	59
11	Entertainment/public assembly	Bar/Nightclub			55	59
12	Entertainment/public assembly	Bowling Alley			73	78
13	Entertainment/public assembly	Casino			55	59
14	Entertainment/public assembly	Convention Center			50	52
15	Entertainment/public assembly	Fitness Center/Health Club/Gym			73	78
16	Entertainment/public assembly	Ice/Curling Rink			73	78
17	Entertainment/public assembly	Indoor Arena			67	70
18	Entertainment/public assembly	Movie Theater			67	70
19	Entertainment/public assembly	Museum			67	70

	Building Activity Type[1,2]				Climate Zone 4C	Climate Zone 5B
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	EUI_t	EUI_t
20	Entertainment/public assembly	Performing Arts			55	59
21	Entertainment/public assembly	Race Track			67	70
22	Entertainment/public assembly	Roller Rink			73	78
23	Entertainment/public assembly	Social/Meeting Hall			50	52
24	Entertainment/public assembly	Stadium (Closed)			67	70
25	Entertainment/public assembly	Stadium (Open)			67	70
26	Entertainment/public assembly	Swimming Pool			73	78
27	Entertainment/public assembly	Zoo			55	59
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture		67	70
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library		56	59
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly		55	59
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation		73	78
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting		50	52
33	Entertainment/public assembly	Other - Recreation			73	78
34	Entertainment/public assembly	Other - Stadium			67	70
35	Food sales and service	Bar/Nightclub			361	378
36	Food sales and service	Convenience Store with Gas Station			244	253
37	Food sales and service	Convenience Store without Gas Station			260	269
38	Food sales and service	Fast Food Restaurant			427	454
39	Food sales and service	Food Sales	Grocery/food market		191	198
40	Food sales and service	Food Sales	Convenience store with gas		260	269
41	Food sales and service	Food Sales	Convenience store		244	253
42	Food sales and service	Food Sales	Other food sales		184	189
43	Food sales and service	Food Service	Fast food		427	454
44	Food sales and service	Food Service	Restaurant/cafeteria		361	378
45	Food sales and service	Food Service	Other food service		293	308

	Building Activity Type[1,2]				Climate Zone 4C	Climate Zone 5B
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	EUI_t	EUI_t
46	Food sales and service	Restaurant			361	378
47	Food sales and service	Supermarket/Grocery Store			191	198
48	Food sales and service	Wholesale Club/Super-center			68	75
49	Food sales and service	Other - Restaurant/Bar			361	378
50	Healthcare	Ambulatory Surgical Center			90	96
51	Healthcare	Hospital (General Medical & Surgical)*			215	215
52	Healthcare	Medical Office		3		
53	Healthcare	Outpatient Rehabilitation/Physical Therapy			90	96
54	Healthcare	Residential Care Facility			78	82
55	Healthcare	Senior Care Community			78	82
56	Healthcare	Urgent Care/Clinic/Other Outpatient			90	96
57	Healthcare	Other - Specialty Hospital			196	196
58	Lodging/residential	Barracks			88	90
59	Lodging/residential	Hotel	Hotel		68	72
60	Lodging/residential	Hotel	Motel or inn		74	77
61	Lodging/residential	Multifamily Housing			32	33
62	Lodging/residential	Prison/Incarceration			101	106
63	Lodging/residential	Residence Hall/Dormitory			88	90
64	Lodging/residential	Residential Care Facility			78	82
65	Lodging/residential	Senior Care Community			78	82
66	Lodging/residential	Other - Lodging/Residential			71	74
67	Mixed use	Mixed Use Property		4		
68	Office	Medical Office		3	60	65
69	Office	Office	Admin/professional office		63	66
70	Office	Office	Bank/other financial		69	71
71	Office	Office	Government office		66	69
72	Office	Office	Medical office (diagnostic)	3	60	65
73	Office	Office	Other office		66	68
74	Office	Veterinary Office			90	96
75	Office	Other - Office			66	68
76	Public services	Courthouse			101	106
77	Public services	Fire Station			65	68
78	Public services	Library			56	59

	Building Activity Type[1,2]				Climate Zone 4C	Climate Zone 5B
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	EUI_t	EUI_t
79	Public services	Mailing Center/Post Office			51	54
80	Public services	Police Station			65	68
81	Public services	Prison/Incarceration			101	106
82	Public services	Social/Meeting Hall			50	52
83	Public services	Transportation Terminal/Station			55	59
84	Public services	Other - Public Service			66	69
85	Religious worship	Worship Facility			39	42
86	Retail	Automobile Dealership			59	66
87	Retail	Convenience Store with Gas Station			260	269
88	Retail	Convenience Store without Gas Station			244	253
89	Retail	Enclosed Mall		5	58	64
90	Retail	Lifestyle Center	Enclosed mall	5	58	64
91	Retail	Lifestyle Center	Other retail		55	62
92	Retail	Lifestyle Center	Retail store		68	75
93	Retail	Lifestyle Center		4		
94	Retail	Retail Store			68	75
95	Retail	Strip Mall		4		
96	Retail	Supermarket/Grocery Store			191	198
97	Retail	Wholesale Club/Supercenter			68	75
98	Retail	Other - Retail/Mall	Enclosed mall	5	58	64
99	Retail	Other - Retail/Mall		4		
100	Technology/science	Data Center		6		
101	Technology/science	Laboratory			237	249
102	Technology/science	Other - Technology/Science	Other service		66	69
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)			66	69
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop		36	39
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop		60	64
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance		41	44
107	Services	Other - Services			66	69
108	Utility	Energy/Power Station		7		
109	Utility	Other - Utility		7		

	Building Activity Type[1,2]				Climate Zone 4C	Climate Zone 5B
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	EUI_t	EUI_t
110	Warehouse/storage	Self-Storage Facility			36	44
111	Warehouse/storage	Distribution Center			36	44
112	Warehouse/storage	Nonrefrigerated Ware-house			36	44
113	Warehouse/storage	Refrigerated Warehouse			121	126

Notes: 1. Select the most specific building activity type that applies.

2. For building type definitions see Energy Star portfolio manager definitions except as follows:

• Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. Gross floor area shall only include space within the building including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. Gross floor area shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.

• Urgent care center/clinic/other outpatient office means the buildings used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.

3. All medical offices considered to be diagnostic type.

4. Must use of Section 7.2.3 method for mixed use buildings.

5. Suggest considering use of Section 7.2.3 method for mixed use buildings.

6. This is a building or activity without an energy target. Included to provide definition only.

7. This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.

Table 7-3 Building Operating Shifts Normalization Factor

	Building Activity Type[1,2]				Weekly Hours[1,2]		
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	50 or less	51 to 167	168
1	Banking/financial ser-vices	Bank Branch		3	0.8	1.0	1.5
2	Banking/financial ser-vices	Financial Office		3	0.8	1.0	1.5
3	Education	Adult Education		4	0.9	1.1	1.9
4	Education	College/University		4	0.9	1.1	1.9
5	Education	K-12 School	Elementary/middle school	4	0.9	1.1	1.9
6	Education	K-12 School	High school	4	0.9	1.1	1.9
7	Education	Preschool/Daycare		4	0.9	1.1	1.9
8	Education	Vocational School		4	0.9	1.1	1.9
9	Education	Other - Education		4	0.9	1.1	1.9
10	Entertainment/public assembly	Aquarium		4	0.6	1.1	1.6
11	Entertainment/public assembly	Bar/Nightclub		4	0.6	1.1	1.6
12	Entertainment/public assembly	Bowling Alley		4	0.6	1.1	1.6
13	Entertainment/public assembly	Casino		4	0.6	1.1	1.6

	Building Activity Type[1,2]				Weekly Hours[1,2]		
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	50 or less	51 to 167	168
14	Entertainment/public assembly	Convention Center		4	0.6	1.1	1.6
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		4	0.6	1.1	1.6
16	Entertainment/public assembly	Ice/Curling Rink		4	0.6	1.1	1.6
17	Entertainment/public assembly	Indoor Arena		4	0.6	1.1	1.6
18	Entertainment/public assembly	Movie Theater		4	0.6	1.1	1.6
19	Entertainment/public assembly	Museum		4	0.6	1.1	1.6
20	Entertainment/public assembly	Performing Arts		4	0.6	1.1	1.6
21	Entertainment/public assembly	Race Track		4	0.6	1.1	1.6
22	Entertainment/public assembly	Roller Rink		4	0.6	1.1	1.6
23	Entertainment/public assembly	Social/Meeting Hall		4	0.6	1.1	1.6
24	Entertainment/public assembly	Stadium (Closed)		4	0.6	1.1	1.6
25	Entertainment/public assembly	Stadium (Open)		4	0.6	1.1	1.6
26	Entertainment/public assembly	Swimming Pool		4	0.6	1.1	1.6
27	Entertainment/public assembly	Zoo		4	0.6	1.1	1.6
28	Entertainment/public assembly	Other - Entertain-ment/Public Assembly	Entertainment/culture	4	0.6	1.1	1.6
29	Entertainment/public assembly	Other - Entertain-ment/Public Assembly	Library	4	0.6	1.1	1.6
30	Entertainment/public assembly	Other - Entertain-ment/Public Assembly	Other public assembly	4	0.6	1.1	1.6
31	Entertainment/public assembly	Other - Entertain-ment/Public Assembly	Recreation	4	0.6	1.1	1.6
32	Entertainment/public assembly	Other - Entertain-ment/Public Assembly	Social/meeting	4	0.6	1.1	1.6
33	Entertainment/public assembly	Other - Recreation		4	0.6	1.1	1.6
34	Entertainment/public assembly	Other - Stadium		4	0.6	1.1	1.6
35	Food sales and service	Bar/Nightclub		4	0.6	1.1	1.5
36	Food sales and service	Convenience Store with Gas Station		4	0.5	0.9	1.3

	Building Activity Type[1,2]				Weekly Hours[1,2]		
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	50 or less	51 to 167	168
37	Food sales and service	Convenience Store without Gas Station		4	0.5	0.9	1.3
38	Food sales and service	Fast Food Restaurant		4	0.6	1.1	1.5
39	Food sales and service	Food Sales	Grocery/food market	4	0.5	0.9	1.3
40	Food sales and service	Food Sales	Convenience store with gas	4	0.5	0.9	1.3
41	Food sales and service	Food Sales	Convenience store	4	0.5	0.9	1.3
42	Food sales and service	Food Sales	Other food sales	4	0.5	0.9	1.3
43	Food sales and service	Food Service	Fast food	4	0.6	1.1	1.5
44	Food sales and service	Food Service	Restaurant/cafeteria	4	0.6	1.1	1.5
45	Food sales and service	Food Service	Other food service	4	0.6	1.1	1.5
46	Food sales and service	Restaurant		4	0.6	1.1	1.5
47	Food sales and service	Supermarket/Grocery Store		4	0.5	0.9	1.3
48	Food sales and service	Wholesale Club/Supercenter		4	0.6	1.0	1.5
49	Food sales and service	Other - Restaurant/Bar		4	0.6	1.1	1.5
50	Healthcare	Ambulatory Surgical Center		4,7	0.8	1.1	1.3
51	Healthcare	Hospital (General Medical & Surgical)*			1.0	1.0	1.0
52	Healthcare	Medical Office		4,7	0.8	1.0	1.5
53	Healthcare	Outpatient Rehabilitation/Physical Therapy		4,7	0.8	1.1	1.3
54	Healthcare	Residential Care Facility			1.0	1.0	1.0
55	Healthcare	Senior Care Community			1.0	1.0	1.0
56	Healthcare	Urgent Care/Clinic/Other Outpatient		4,7	0.8	1.1	1.3
57	Healthcare	Other - Specialty Hospital			1.0	1.0	1.0
58	Lodging/residential	Barracks			1.0	1.0	1.0
59	Lodging/residential	Hotel	Hotel		1.0	1.0	1.0
60	Lodging/residential	Hotel	Motel or inn		1.0	1.0	1.0
61	Lodging/residential	Multifamily Housing			1.0	1.0	1.0
62	Lodging/residential	Prison/Incarceration			1.0	1.0	1.0
63	Lodging/residential	Residence Hall/Dormitory			1.0	1.0	1.0
64	Lodging/residential	Residential Care Facility			1.0	1.0	1.0
65	Lodging/residential	Senior Care Community			1.0	1.0	1.0
66	Lodging/residential	Other - Lodging/Residential			1.0	1.0	1.0
67	Mixed use	Mixed Use Property		6			
68	Office	Medical Office		4,7	0.8	1.1	1.3

	Building Activity Type[1,2]				Weekly Hours[1,2]		
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	50 or less	51 to 167	168
69	Office	Office	Admin/professional office	3	0.8	1.0	1.5
70	Office	Office	Bank/other financial	3	0.8	1.0	1.5
71	Office	Office	Government office	3	0.8	1.0	1.5
72	Office	Office	Medical office (diagnostic)	4	0.8	1.1	1.3
73	Office	Office	Other office	3	0.8	1.0	1.5
74	Office	Veterinary Office		3	0.8	1.1	1.3
75	Office	Other - Office		3	0.8	1.0	1.5
76	Public services	Courthouse		4	0.8	0.8	1.1
77	Public services	Fire Station		3	0.8	0.8	1.1
78	Public services	Library		4	0.6	1.1	1.6
79	Public services	Mailing Center/Post Office		3	0.8	1.2	1.3
80	Public services	Police Station		3	0.8	0.8	1.1
81	Public services	Prison/Incarceration			1.0	1.0	1.0
82	Public services	Social/Meeting Hall		4	0.6	1.1	1.6
83	Public services	Transportation Terminal/Station		4	0.6	1.1	1.6
84	Public services	Other - Public Service		4	0.8	1.2	1.3
85	Religious worship	Worship Facility		5	0.9	1.7	1.7
86	Retail	Automobile Dealership		4	0.6	1.0	1.5
87	Retail	Convenience Store with Gas Station		4	0.5	0.9	1.3
88	Retail	Convenience Store without Gas Station		4	0.5	0.9	1.3
89	Retail	Enclosed Mall		4	0.6	1.0	1.5
90	Retail	Lifestyle Center	Enclosed mall	4	0.6	1.0	1.5
91	Retail	Lifestyle Center	Other retail	4	0.6	1.0	1.5
92	Retail	Lifestyle Center	Retail store	4	0.6	1.0	1.5
93	Retail	Lifestyle Center					
94	Retail	Retail Store		4	0.6	1.0	1.5
95	Retail	Strip Mall					
96	Retail	Supermarket/Grocery Store		4	0.5	0.9	1.3
97	Retail	Wholesale Club/Supercenter		4	0.6	1.0	1.5
98	Retail	Other - Retail/Mall	Enclosed mall	4	0.6	1.0	1.5
99	Retail	Other - Retail/Mall					
100	Technology/science	Data Center					
101	Technology/science	Laboratory		3	1.0	1.0	1.0
102	Technology/science	Other - Technology/Science	Other service	3	0.8	1.2	1.3

	Building Activity Type[1,2]				Weekly Hours[1,2]		
No.	**Portfolio Manager Types**	**Portfolio Manager Sub-Types**	**Sub-Types: Detailed**	**Notes**	**50 or less**	**51 to 167**	**168**
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		4	0.8	1.2	1.3
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	4	0.8	1.2	1.3
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	4	0.8	1.2	1.3
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	4	0.8	1.2	1.3
107	Services	Other - Services		4	0.8	1.2	1.3
108	Utility	Energy/Power Station					
109	Utility	Other - Utility					
110	Warehouse/storage	Self-Storage Facility		4	0.8	1.0	1.4
111	Warehouse/storage	Distribution Center		3	0.8	1.0	1.4
112	Warehouse/storage	Nonrefrigerated Warehouse		3	0.8	1.0	1.4
113	Warehouse/storage	Refrigerated Warehouse		3,8	1.0	1.0	1.4

Notes: 1. Do not count the hours when the property is occupied only by maintenance, security, the cleaning crew, or other support personnel. Do not count the hours when the property is occupied only by maintenance staff.

2. Working hours are based on the average use over the twelve month period selected to document energy use in form C.

3. The weekly hours are the total number of hours per week where the majority of workers are present. If there are two or more shifts of workers, add the hours. When developing targets using Section 7.2.3 for mixed use buildings, use the hours each separate activity, the hours per week the majority of workers are present.

4. The weekly hours are the hours that be majority of the building is open to serve the public. When developing targets using Section 7.2.3 for mixed use buildings, the hours each separate activity is open to the public.

5. The weekly hours the facility is open for operation, which may include worship services, choir practice, administrative use, committee meetings, classes, or other activities.

6. Must use of Section 7.2.3 method for mixed use buildings.

7. Health care buildings may use other weekly hours if they are required to operate building systems additional hours to protect patient safety. Provide documentation of the requirement in the energy management plan.

8. Refrigerated warehouse greater than 167 hours assumes the workers on shift are loading and/or unloading vehicles.

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 20-17-130
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed August 18, 2020, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-090.

Title of Rule and Other Identifying Information: Updating chapter 194-24 WAC to include standards, testing methods, listing requirements, and marking requirements for air compressors, portable air conditioners, and uninterruptable power supplies; to define distributor, distribute, and manufacturer; to provide for enforcement of violations, assessment of civil penalties, and review of penalty decisions for appliance standards; to modify marking and listing requirements for residential ventilating fans; and to modify the date of manufacture for electric storage water heater requirements.

Hearing Location(s): On September 23, 2020, at 1:00 [p.m.]. Remote testimony will be an option. Hearing information can be found on commerce's appliance webpage: https://www.commerce.wa.gov/growing-the-economy/energy/appliances/.

Date of Intended Adoption: September 30, 2020.

Submit Written Comments to: Sarah Vorpahl, Washington State Department of Commerce, P.O. Box 42525, Olympia, WA 98504, email Appliances@commerce.wa.gov, by September 23[, 2020].

Assistance for Persons with Disabilities: Contact Austin Scharff, phone 360-764-9632, email Austin.scharff@commerce.wa.gov, by September 21[, 2020].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates chapter 194-24 WAC to include standards, testing methods, listing requirements, and marking requirements for three new products: Air compressors, portable air conditioners, and uninterruptible power supplies. The effective dates of the standards are based on the date of manufacture, not the date of sale. Products already in stores or warehouses may be installed after the new standards take effect. The standards apply to manufacturers, distributors, retailers, and installers, rather than to individual consumers.

This proposal also extends the date of manufacture of electric storage water heaters to July 1, 2021, to account for supply-chain disruptions caused by COVID-19. This extension should provide manufacturers time to bring compliant products to market, which is in the public interest by providing more options and competition.

Definitions of "distributor," "distribute," and "manufacturer" are being added to bring greater clarity to the persons and transactions begin [being] regulated under chapter 194-24 WAC.

Reasons Supporting Proposal: The proposed rules implement statutory changes to our existing state standards to maintain consistency with other comparable standards in other states. These standards represent a cost-effective strategy to protect consumers and businesses and strengthen the state's economy. Efficient products save energy and water, reduce long-term operating costs, and cut greenhouse gas emissions. The extension in effective date of water heater requirements is provided to overcome supply-chain disruptions caused by COVID-19.

Statutory Authority for Adoption: RCW 19.260.070, 19.260.040, 19.260.080.

Statute Being Implemented: Chapter 19.260 RCW.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Vorpahl, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-680-6000; Implementation and Enforcement: Washington Department Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of commerce is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

August 18, 2020
Dave Pringle
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-030 Definitions. The definitions in chapter 19.260 RCW apply throughout this chapter.

(1) The following terms have the same meaning as used in the California Rule:

(a) Showerheads;

(b) Tub spout diverters;

(c) Showerhead tub spout diverter combinations;

(d) Lavatory faucets and replacement aerators;

(e) Kitchen faucets and replacement aerators;

(f) Public lavatory faucets and replacement aerators;

(g) Urinals;

(h) Water closets; and

(i) Computers and computer monitors.

(2) "California Rule" means Title 20, Article 4, California Code of Regulations, in effect on January 2019, revised September 2019.

(3) "MAEDbS" means the modernized appliance efficiency database system established pursuant to section 1606(c) of the California Rule and maintained by the California energy commission.

(4) "Distribute" means to import, consign, buy or sell for resale, offer for sale, sell, barter, exchange, install for compensation or otherwise supply a product subject to the standards in this chapter or chapter 19.260 RCW.

(5) "Distributor" means a person who distributes.

(6) "Manufacturer" has the same meaning as used in the California Rule.

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-070 ((~~Penalties for noncompliance.~~)) Violations, assessment of civil penalties, and review of penalty decisions. ((~~In applying the penalty provision in~~

~~RCW 19.260.070(6), the department may consider each unit of a noncompliant product to be a separate violation.~~)) (1) First violations (notice of violation): When the department has determined that a manufacturer or distributor has violated chapter 19.260 RCW or this chapter, the director or their designee will issue a warning in the form of a notice of violation (NOV) for the first violation. The NOV will specify the time by which the manufacturer or distributor must cure the violation. If compliance is not achieved by the date established in the NOV, the department may consider the manufacturer's or distributor's continued noncompliance to constitute a subsequent violation.

(2) Repeat violations (notice of repeat violation and intent to assess penalties): If the department determines that the person receiving the NOV has committed a subsequent violation of chapter 19.260 RCW, the director or their designee may issue a notice of repeat violation and intent to assess penalties (NOI). The NOI informs the manufacturer or distributor of the portions of chapter 19.260 RCW and this chapter that have been violated and will include a description of how penalties will be calculated. A manufacturer or distributor receiving an NOI has twenty-five days from the date notice is given to request an administrative hearing by following the process specified on the NOI. If the request for hearing is not timely filed with the department, the manufacturer or distributor waives its right to a hearing and the director or their designee may issue a final order assessing penalties described in the NOI.

(3) Penalty assessment: Repeat violations are subject to a civil penalty of not more than two hundred fifty dollars a day, and the department may consider each unit of a noncompliant product to be a separate violation.

(4) Unpaid penalties: Interest will accrue on civil penalties pursuant to RCW 43.17.240 if and when the debt becomes past due. If a penalty has not been paid by the due date, the department may assign the debt to a collection agency as authorized by RCW 19.16.500 or take other action to pursue collection as authorized by law. If referred to a collection agency, the department may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.

(5) Administrative hearings: After receiving a timely request for an administrative hearing, the department may refer the matter to the office of administrative hearings (OAH). Administrative hearings will be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, the model rules of procedure, chapter 10-08 WAC, and the procedural rules adopted in this section. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this section, the procedural rules adopted in this section take precedence.

(6) Initial orders to become final orders. Initial orders issued by the presiding officer will become final without further agency action unless, within twenty days:

(a) The director determines that the initial order should be reviewed; or

(b) A party to the proceeding files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(7) Reply to a petition for review. If a timely petition for review of an initial order is filed, other parties to the proceeding may file a reply to the petition for review. The reply shall be filed with the office where the petition for review was filed within twenty days of the date of service of the petition and copies shall be served upon all other parties or their representatives at the time the reply is filed.

(8) Agency review of an initial order. If the director determines the initial order should be reviewed or a petition for administrative review has been timely filed, the director may do one or more of the following: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director or their designee shall issue a final order that can affirm, modify, or reverse the initial order. The final order will be served on all parties.

(9) Judicial review: A final order entered pursuant to this section is subject to judicial review pursuant to RCW 34.05.510 through 34.05.598.

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-150 Residential ventilating fans. (1) **Scope.** This rule applies to new residential ventilating fans manufactured on or after January 1, 2021.

(2) **Standard.** Residential ventilating fans must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

(3) **Testing.** Residential ventilating fans must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

(4) **Listing.** ((~~Each manufacturer must cause to be listed each residential ventilating fan, by model number, in the ENERGY STAR® product database.~~)) There is no listing requirement for this product.

(5) **Marking.** ((~~Every unit of every residential ventilating fan must have an ENERGY STAR® label.~~)) There is no marking requirement for this product.

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

WAC 194-24-180 Electric storage water heaters. (1) **Scope.** This rule applies to new electric storage water heaters manufactured on or after ((~~January~~)) July 1, 2021. The effective date of the rule is suspended until January 1, 2022, for electric storage water heaters other than heat pump type water heaters.

(2) **Standard.** Electric storage water heaters must have a modular demand response communications port compliant with:

(a) The March 2018 version of the ANSI/CTA-2045-A communication interface standard, or a standard determined by the department to be equivalent; and

(b) The March 2018 version of the ANSI/CTA-2045-A application layer requirements.

The interface standard and application layer requirements required in this subsection are the versions established in March 2018.

(3) Upon written request by a manufacturer, the department will determine whether an alternative communications port and communication interface standard are equivalent for the purposes of subsection (2) of this section.

(a) Any requested alternative must use a standard that is open and widely available and must provide the demand response functions provided using the standards identified in subsection (2) of this section.

(b) A request for designation of a standard must provide technical documentation demonstrating that the standard satisfies the requirements in (a) of this subsection and must describe any industry or stakeholder process used in developing the standard. The department will provide reasonable opportunity for input by utilities, manufacturers, technical experts and other interested stakeholders prior to determining whether the proposed standard is equivalent. The department will make available on a publicly accessible website any standard that it determines to be equivalent.

(4) **Testing.** There is no test method required for this product.

(5) **Listing.** There is no listing requirement for this product.

(6) **Marking.** Every unit of every electric storage water heater must have a label or marking indicating compliance with the standard in this section. The format and content of the label or marking must be approved in advance by the department.

NEW SECTION

WAC 194-24-185 Air compressors. (1) **Scope.** This rule applies to new air compressors manufactured on or after January 1, 2022, through January 9, 2025.

(2) **Standard.** Air compressors that meet the twelve criteria listed on page 350 to 351 of the "energy conservation standards for air compressors" final rule issued by the United States Department of Energy on December 5, 2016, must meet the requirements in Table 1 on page 352 in accordance with the instructions on page 353.

(3) **Testing.** Air compressors must meet the test criteria as measured in accordance with the "uniform test method for certain air compressors" under 10 C.F.R. Part 431 (Appendix A to Subpart T) as in effect on July 3, 2017.

(4) **Listing.** Each manufacturer must cause to be listed each air compressor, by model number, in MAEDbS.

(5) **Marking.** Every unit of every air compressor must comply with the requirements of Section 1607 of the California Rule.

NEW SECTION

WAC 194-24-190 Portable air conditioners. (1) **Scope.** This rule applies to new portable air conditioners manufactured on or after February 1, 2022, through January 9, 2025.

(2) **Standard.** Portable air conditioners must have a combined energy efficiency ratio that is greater than or equal to:

$$1.04 \times \frac{SACC}{(3.7117 \times \mathrm{SACC}^{0.6384})}$$

where "SACC" is seasonally adjusted cooling capacity in British thermal unit/hour (Btu/hr).

(3) **Testing.** Portable air conditioners must meet the testing criteria as measured in accordance with the test methods prescribed in 10 C.F.R. Section 430.23 (Appendix CC to Subpart B of Part 430) in effect as of January 3, 2017, as updated by the correction notice at 84 Fed. Reg. 5346 (February 21, 2019).

(4) **Listing.** Each manufacturer must cause to be listed each portable air conditioner, by model number, in MAEDbS.

(5) **Marking.** Every unit of every portable air conditioner must comply with the requirements of Section 1607 of the California Rule.

NEW SECTION

WAC 194-24-195 Uninterruptible power supplies. (1) **Scope.** This rule applies to new uninterruptible power supplies manufactured on or after January 1, 2021, through January 9, 2022.

(2) **Standard.** Uninterruptible power supplies that utilize a NEMA 1-15P or 5-15P input plug and have an AC output must have an average load adjusted efficiency that meets or exceeds the values shown on page 193 of the prepublication final rule "Energy Conservation Program: Energy Conservation Standards for Uninterruptible Power Supplies" issued by the United States Department of Energy on December 28, 2016.

(3) **Testing.** Uninterruptible power supplies must meet the testing criteria as measured in accordance with the test methods prescribed in Appendix Y to Subpart B of Part 430 of Title 10 of the Code of Federal Regulations "Uniform Test Method for Measuring the Energy Consumption of Battery Chargers" in effect as of January 11, 2017.

(4) **Listing.** There is no listing requirement for this product.

(5) **Marking.** There is no marking requirement for this product.

WSR 20-17-131
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 18, 2020, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-085.

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetology—Barber—Manicurist—Esthetician rules.

Hearing Location(s): On October 6, 2020, at 10:00 a.m., telephonic public rules hearing.

Call-in Number: 1-360-407-3815; Conference ID Number: 8750340.

Date of Intended Adoption: October 7, 2020.

Submit Written Comments to: Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, email csap@dol.wa.gov, fax 360-664-2550, by October 5, 2020.

Assistance for Persons with Disabilities: Contact cosmetology program, phone 360-664-6651, fax 360-664-2550, TTY 711, email csap@dol.wa.gov, by October 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In March of 2020, Governor Jay Inslee issued the Stay Home, Stay Healthy Proclamation to help limit the spread of COVID-19. As part of this response, cosmetology schools were unable to operate due to WAC 308-20-010 Definitions, which limited the definition of "online training" to theoretical instruction not to exceed twenty-five percent of the approved course study.

In order to enable schools to continue to conduct business during the Stay Home, Stay Healthy Proclamation, the department of licensing (DOL) filed emergency rules with the Washington state code reviser that allowed schools to offer one hundred percent of theoretical instruction online. Since filing these rules, DOL has recognized the benefit of the additional online instruction for cosmetology schools and students, which has the potential to increase access and reduce overall costs for schools and students. However, in considering permanent adoption of these rules, DOL has determined necessary revisions to minimize inequity between accredited and unaccredited cosmetology schools, and allow for greater flexibility for schools in determining which approved course study activities are offered online.

DOL is now proposing permanent rules that will allow for cosmetology schools to offer fifty percent of their entire approved course of study online. The new rules remove from the definition of online, the words "This training is limited to theory only;" therefore allowing cosmetology schools to determine the best content to be offered online and in person.

Reasons Supporting Proposal: Removing the word "theory" from chapter 308-20 WAC broadens the scope of training that can be provided. Changing the amount of online education from twenty-five to fifty percent provides flexibility and meets requirements for accredited schools.

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.023.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, 360-664-6651.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, phone 360-664-6651, fax 360-664-2550, TTY 711, email plssunit@dol.wa.gov.

The department is exempt under RCW 34.05.328 and this rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis.

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

Cost Analysis
Increasing Online Training for Cosmetology Schools
June 9, 2020

Impacts: While the proposed rules provide cosmetology schools with greater flexibility in course offerings, there should not be an associated cost that is imposed with these rules. Schools who do not see a benefit in decreasing expenditures or increasing revenue are not required to offer courses online. The proposed rules are intended to offer greater flexibility to schools and students and are not intended to place a burden on businesses.

Minor Cost Threshold: This proposed change to rule should not impose a burden on cosmetology schools. The proposed change should provide greater flexibility to schools wishing to offer up to fifty percent of their approved course of study online.

Analyze Cost of Compliance: In order to comply with the proposed rule change, cosmetology schools are not required to adjust their current practices. If wishing to begin or increase course offerings online, schools can maintain current practices for documentation and communication with DOL.

A copy of the detailed cost calculations may be obtained by contacting Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, phone 360-664-6651, fax 360-664-2550, TTY 711, email csap@dol.wa.gov.

August 18, 2020
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-19-049, filed 9/12/17, effective 10/13/17)

WAC 308-20-010 Definitions. (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the month, year and daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, hair design, esthetics, master esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the Washington state apprenticeship and training council, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, hair designer, barber, manicurist, esthetician, or master esthetician.

(7) "Completion of the apprenticeship training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

(8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

(9) "Online training" means an approved electronic learning environment through a licensed school in which a student is enrolled. ((~~This training is limited to theory only.~~)) Online training may be used for up to ((~~twenty-five~~)) <u>fifty</u> percent of the approved course of study.

(10) "Accreditation" is a status granted to a postsecondary school by one or more of the accrediting organizations recognized and approved by the U.S. Secretary of Education. Accreditation is voluntary and does not imply automatic transfer of credits from one postsecondary school to another.

(11) "Admission requirements" means the specific minimum criteria a school must use when accepting a student into the school.

<u>AMENDATORY SECTION</u> (Amending WSR 16-02-033, filed 12/29/15, effective 1/29/16)

WAC 308-20-090 Student credit for training in a licensed school. (1) A maximum of twenty students per instructor is required within a licensed school.

(2) Only those hours of instruction a student is given under the direction of a licensed instructor of the licensed school in which the student is enrolled and in the courses listed in WAC 308-20-080 and 308-20-105 or hours earned under WAC 308-20-091 shall be credited toward completion of the course of study required in RCW 18.16.100.

(3) When all of a school's requirements have been met by a student and within thirty days of a student leaving a school, the school shall provide to the student a certified copy of the student's final report and refer the student for examination(s) in a manner and format prescribed by the department.

(4) Students may transfer between the schools and apprenticeship salon/shops licensed under chapter 18.16 RCW and may receive credit toward completion of the curriculum in the new school or apprenticeship salon/shop. In order to enroll a transfer student or apprentice, the new school or apprentice salon/shop shall do the following:

(a) Confirm that the student is available for transfer through the student registration process in a manner and format prescribed by the department;

(b) Evaluate the certified final student report provided by the student or apprentice and compare the report with the new school or apprentice salon/shop curriculum requirements; and

(c) The new school or apprentice salon/shop may accept or reject the final student or apprentice report in part or in total from the previous school or salon/shop and shall prepare a monthly report that documents the amount of instructions being accepted.

(5) Both the transferring and receiving school or salon/shop shall maintain student or apprentice records including the transfer record as required in WAC 308-20-040(4).

(6) Licensed instructors must be physically present where the students are training with the exception of approved online ((~~theory~~)) training.

(7) Certified training hours expire three years after the last day of attendance. Any hours earned by a student that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

(8) Documentation providing evidence of experience as a licensed cosmetologist, hair designer, barber, manicurist, esthetician or master esthetician credited towards instructor training shall be included in the student record as required in WAC 308-20-040(4).

<u>AMENDATORY SECTION</u> (Amending WSR 17-19-049, filed 9/12/17, effective 10/13/17)

WAC 308-20-573 School catalog, enrollment agreement/contract and cancellation and refund policy minimum requirements. (1) Each school must publish a catalog that explains its operations and requirements. The catalog must be current, comprehensive, and accurate. The school must provide the following, in some combination of a catalog, brochure, or otherwise written material and disclose that information to each prospective student prior to completing an enrollment agreement. The catalog must include at least the following:

(a) Date of publication;

(b) Names, physical and mailing addresses, and telephone numbers of the school's administrative offices and all supplemental training spaces;

(c) Names and qualifications of faculty. The list must be accurate as of the date of catalog publication. Any changes in faculty must be noted on a catalog correction sheet;

(d) The school calendar, including hours of operation, holidays, courses, or programs as may be appropriate;

(e) Admissions procedures, including policies describing all prerequisites needed by entering students to successfully complete the programs of study in which they are enrolled;

(f) A description of the job placement assistance offered, if any. If no assistance is offered, the school must make that fact known;

(g) The school's policy regarding student conduct, including causes for dismissal and conditions for readmission;

(h) The school's grievance policy. The policy must be preceded by "Nothing in this policy prevents the student from contacting the Department of Licensing at any time with a concern or a complaint.";

(i) The school's policy regarding leave, absences, makeup work (if applicable), and tardiness;

(j) The school's policy regarding standards of progress required for the student;

(k) An accurate description of the school's facilities and equipment available for student use, and the student/teacher ratio;

(l) The total cost of training including registration fee if any, tuition, books, supplies, equipment, and all other charges and expenses necessary;

(m) A description of each program of instruction, including:

(i) Specific program objectives including the job titles for which the program purports to train;

(ii) The number of clock hours of instruction, the method of instruction (e.g., correspondence, classroom, lab, computer assisted), and the average length of time required for successful completion;

(iii) For schools offering online ((~~theory~~)) training, instructional sequences must be described in numbers of lessons.

(n) The scope and sequence of courses or programs required to achieve the educational objective;

(o) A statement indicating the type of educational credential that is awarded upon successful completion;

(p) The school's cancellation and refund policy;

(q) The following statement must appear prominently on either the first or last printed page or inside the front or back cover: "This school is licensed under chapter 18.16 RCW. Inquiries, concerns, or complaints regarding this school can be made to the Department of Licensing, (insert mailing address, email or by telephone).";

(r) The availability of financing, if any; and

(s) Supplements or correction sheets for the catalog and other written materials related to enrollment must be filed with the department prior to being used;

(i) The supplement or correction sheet must include its publication date;

(ii) In the event information on a supplement or correction sheet replaces information contained in the catalog, the insert must identify the information it replaces.

(2) An enrollment agreement/contract is any agreement that creates a binding obligation to purchase a course of instruction from a school. Each school must use an enrollment contract or agreement that includes:

(a) The school's cancellation and refund policy, in accordance with chapter 308-20 WAC.

(b) The following statement: This school is licensed under chapter 18.16 RCW. Inquiries, concerns, or complaints regarding this school can be made to the department of licensing, (insert mailing address, email or by telephone).

(c) Information that will clearly and completely define the terms of the agreement between the student and the school. The enrollment agreement must include at least the following:

(i) The name and address of the school and the student;

(ii) The program or course title as it appears in the school's catalog, date training is to begin, and the number of hours or units of instruction or lessons for which the student is enrolled;

(iii) Language explaining that the agreement will be binding only when it has been signed and dated by the student and an authorized representative of the school prior to the time instruction begins; and

(iv) A statement that any changes in the agreement will not be binding on either party unless such changes have been acknowledged in writing by an authorized representative of the school and by the student or the student's parent or guardian if he/she is a minor.

(d) The school must provide all students with a copy of the signed enrollment agreement, and any other documents related to their enrollment.

(3) The official date of termination or withdrawal of a student shall be determined in the following manner:

(a) The date on which the school recorded the student's last day of attendance;

(b) The date on which the student is terminated for a violation of a published school policy which provides for termination.

(4) Tuition/registration fees may be collected in advance of a student signing an enrollment agreement; however, all moneys paid by the student shall be refunded if the student does not sign an enrollment agreement and does not commence participation in the program.

(a) The school must refund all money paid if the applicant is not accepted. This includes instances where a starting class is canceled by the school;

(b) For discontinued programs: If instruction in any program is discontinued after training has begun or if the school moves from one location to another, it must either:

(i) Provide students pro rata refunds of all tuition and fees paid; or

(ii) If the school plans to discontinue a program, it must notify the department and affected students in advance in writing at a minimum of thirty days notice.

WSR 20-17-132
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed August 18, 2020, 2:55 p.m.]

Supplemental Notice to WSR 20-10-116 and 20-15-068.

Preproposal statement of inquiry was filed as WSR 20-07-046.

Title of Rule and Other Identifying Information: Target practice on Washington department of fish and wildlife (WDFW)—Managed lands, the department has added subsection (9) to include "definitions" to its proposed amendments to WAC 220-500-140 Firearms and target practicing.

Hearing Location(s): On October 23-24, 2020, at 8:00 a.m., webinar and/or conference call.

This meeting will take place by webinar and/or conference call. The public may participate in the meeting. Visit our website at https://wdfw.wa.gov/about/commission/meetings or contact the commission office at 360-902-2267 or commission@dfw.wa.gov for instructions.

Date of Intended Adoption: October 23-24, 2020.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504-3200, email wildthing@dfw.wa.gov, https://wdfw.wa.gov/about/wdfw-lands/public-conduct#firearms, by September 23, 2020.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, TTY 360-902-2207, email dolores.noyes@dfw.wa.gov, by September 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this supplemental notice is to clarify how WDFW intends to define specific terms related to target practice regulations on WDFW-owned or managed lands. Specifically, the proposed revisions define the following terms: Backstop, biodegradable clay target, clay targets, department-designated recreational target shooting area, department-designated trail, and recreational target shooting.

Reasons Supporting Proposal: WDFW owns or manages about one million acres statewide, with thirty-three wildlife areas and nearly five hundred water access areas around the state. These public lands help sustain wildlife habitat and public recreation opportunities, which may include target practice, when compatible with healthy and diverse fish and wildlife populations and in a manner that addresses public safety concerns.

An increase in target shooting on WDFW-managed lands as well as an increase in visitors generally has created several challenges, including wildfires, concerns over public safety and user conflicts, impacts to private property, littering, and damage to wildlife habitat, and differences in rules for state-managed lands has also led to confusion among target shooters about the rules applicable to specific sites. These proposed amendments help address these challenges.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.210, and 77.12.240.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.210, and 77.12.240.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required for this rule making under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4). This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.

Explanation of exemptions: The department is exempt from the requirements of chapter 19.85 RCW because the proposed target practice rules do not regulate small businesses; rather, the proposed rules regulate individual persons who undertake recreational use of department-managed lands. The proposed statewide target practice rules simply govern the time, place and manner for individual persons engaging in target practice activities on WDFW-managed lands.

August 18, 2020
Michele K. Culver
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-500-140 Firearms and target practicing. ((~~(1)(a) It is unlawful to discharge tracer or incendiary ammunition on department lands.~~

~~(b) It is unlawful to discharge firearms in those portions of department lands where or when such discharge is prohibited by department posted notice or from or within five hundred feet of a department designated campground. Violating this subsection is a gross misdemeanor if the violation creates a substantial risk of death or serious physical injury to another person, pursuant to RCW 9A.36.050.~~

~~(c) It is unlawful to fail to remove expended shell casings, ammunition packaging, or other related target debris, excluding clay pigeons, when target practicing on department lands at the conclusion of the target practice session and prior to departure from the area. Failure to remove debris constitutes littering.~~

~~(d) The use of glass, signs, appliances, mattresses, TVs, furniture, and exploding items as targets in target practicing is prohibited.~~

~~(2) The department may designate locations and times for target practicing consistent with resource management or public safety concerns.~~)) (1) The department may designate or restrict locations, times, and manner for recreational target shooting upon department land, consistent with resource management concerns, management agreements or requirements, recreational use compatibility, or public safety concerns.

(2) Persons must not recreationally target shoot on department land except as provided by this section.

(3) Department land is open to recreational target shooting under the conditions set forth in this section, unless closed or otherwise restricted by this section or by any department-posted signage or notice.

(a) Notwithstanding the allowances by this section, recreational target shooting is only permitted where a reasonable person, in consideration of all attendant circumstances, would believe the area between the person and the target, and the area beyond the target, is free of risk to person, animals, or property.

(b) Unless otherwise posted, recreational target shooting is only allowed one-half hour before sunrise to one-half hour after sunset.

(c) Recreational target shooting using:

• Firearms firing single projectile ammunition of .17 caliber or greater or shot equal to or greater than BB; or

• Compressed gas or air guns capable of shooting any projectile at over eight hundred feet per second, is permitted only:

(i) On department-designated recreational target shooting areas and in compliance with posted regulations; or

(ii) In other areas containing an earthen backstop, as defined (reference to definitions), which must be utilized while target shooting. A backstop is not required while using shotguns discharging shot smaller than size BB. Targets must be placed in front of and within eight feet of the backstop, and the person must be shooting at the lower half of the backstop.

(d) Recreational target shooting using:

• Archery equipment, crossbows, air bows; or

• Shotguns discharging shot smaller than size BB, is permitted:

(i) On department-designated recreational target shooting areas and in compliance with posted regulations; or

(ii) In other areas consistent with (a) of this subsection.

(e) Recreational target shooting is specifically prohibited:

(i) On, from, at, along, across, or down:

(A) Any department-designated or department-developed water access site or boat launch, and associated parking area;

(B) Any road as defined in WAC 220-500-020;

(C) Any utility line, utility poles, or light posts;

(D) Any department-designated trail;

(E) Any water body or stream.

(ii) Within five hundred feet of the following (when not utilizing a department-designated recreational target shooting area):

(A) Residences, businesses, and/or other buildings or structures, including port-a-potties, etc.;

(B) Power stations, cell phone towers, utility poles, light posts, wind turbines, or other public utility structures;

(C) Campgrounds;

(D) Viewing platforms or structures;

(iii) In other areas posted by the department as restricted from shooting.

(4) Authorized targets for use on department lands are restricted to items, other than exploding targets, that are commercially manufactured for the specific purpose of target shooting, or similar targets privately manufactured that are consistent with this section, and as further restricted below.

(a) Steel targets that are manufactured for the specific purpose of target shooting are allowed subject to the following restrictions:

(i) When used on a department-designated recreational target shooting area, steel targets that are manufactured for the specific purpose of target shooting are allowed year round.

(ii) When used outside a department-designated recreational target shooting area, steel targets that are manufactured for the specific purpose of target shooting are allowed from October 1 to May 31, unless otherwise posted.

(b) Clay targets, when used, must be biodegradable clay targets.

(c) Items prohibited to be used as targets or to hold or post targets include, but are not limited to:

(i) Buildings;

(ii) Power stations, cell phone towers, utility poles, light posts, wind turbines, or other public utility structures;

(iii) Gates, fence posts or rails;

(iv) Vehicles, or parts thereof;

(v) Machinery, or parts thereof;

(vi) Signs, kiosks, or informational panels of any kind;

(vii) Appliances or electronics;

(viii) Furniture;

(ix) Pallets;

(x) Glass;

(xi) Explosive and incendiary items, including binary exploding targets (i.e., Tannerite);

(xii) Containers of liquids, chemicals, paints, or compressed gas;

(xiii) Standing or moving water;

(xiv) Live or dead trees or other vegetation;

(xv) Animals or animal carcasses.

(5) The discharge of tracer bullets or shells or incendiary ammunition is specifically prohibited on all department lands.

(6) At all times, it is unlawful for a person to discharge a firearm, crossbow, bow, or any other projectile shooting implement on department lands in a reckless or negligent manner. A violation of this subsection may be punishable under RCW 77.15.230, 77.15.460, 9A.36.050, 9A.36.031, 9A.36.021, 9A.32.070, 9A.32.060, or other relevant statute depending on the circumstances of the violation.

(7) It is unlawful for persons recreationally target shooting to fail to remove and transport from department lands for proper disposal all shell casings, shotgun hulls, ammunition packaging, and targets or target debris. Failure to remove any such item is prohibited and constitutes littering.

(8) Persons who recreationally target shoot are responsible for knowing other state, local, or federal laws that may govern their shooting activity, and compliance with this rule does not guarantee compliance with other applicable laws.

(9) **Definitions.**

(a) "Backstop" means an unobstructed earthen mound or bank at least eight feet in height which must stop the progress of and contain all projectiles, fragments, and ricochets in a safe manner.

(b) "Biodegradable clay target" means any clay target labeled by the manufacturer as biodegradable.

(c) "Clay targets," for purposes of this chapter, refers to those targets that are commonly referred to as clay pigeons and often saucer-shaped, which are:

(i) Designed to be thrown by hand or machine, such as in skeet or trap shooting, but may also be used as stationary targets; and

(ii) Designed to be easily and permanently broken by projectiles.

(d) "Department-designated recreational target shooting area" means an area designated and posted by the department for the purpose of recreational target shooting.

(e) "Department-designated trail" means any trail designated and posted by the department.

(f) "Recreational target shooting" is defined for purposes of this chapter as the act of shooting projectiles for practice, sighting in, or other reasons, and involves the discharging of firearms, compressed gas or air guns, air bows, crossbows, or archery equipment. Recreational target shooting does not include the activity of lawful hunting or hunting dog training.

WSR 20-17-135
PROPOSED RULES
OLYMPIC REGION CLEAN AIR AGENCY
[Filed August 18, 2020, 4:01 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency Regulations: Rule 1.11 Federal Regulation Reference Date.

Hearing Location(s): On October 14, 2020, at 10:00 a.m., at the Olympic Region Clean Air Agency (ORCAA), 2940 Limited Lane N.W., Olympia, WA 98502.

Date of Intended Adoption: October 14, 2020.

Submit Written Comments to: Mark Goodin, 2940 Limited Lane N.W., email mark.goodin@orcaa.org, fax 360-491-6308, by October 13, 2020.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610 ext. 111, fax 360-491-6308, email dan.nelson@orcaa.org, by October 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA proposes to update the effective date of the federal regulations that were previously adopted by the agency. Currently, where federal rules are referenced in agency regulations, the effective date of the federal regulations is July 1, 2019. The agency intends to update the effective date annually. This proposal would change the reference date to July 1, 2020.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, 360-539-7610; Implementation and Enforcement: Francea L. McNair, 2940 Limited Lane N.W., Olympia, 360-539-7610.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies per RCW 70.94.141.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70.94.141(1) states: "An air pollution control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

August 18, 2020
Francea L. McNair
Executive Director

AMENDATORY SECTION

Rule 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, ((~~2019~~)) 2020.

WSR 20-17-138
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed August 18, 2020, 4:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-126.

Title of Rule and Other Identifying Information: WAC 458-20-241 Radio and television broadcasting.

Hearing Location(s): On September 22, 2020, at 10:00 a.m., telephone-only. Call-in number to be provided, or contact Jennifer Arnold as provided below.

Due to COVID-19 this meeting will be held telephonically only.

Date of Intended Adoption: September 30, 2020.

Submit Written Comments to: Jennifer Arnold, P.O. Box 47453, Olympia, WA 98504-7453, email JenniferA@dor.wa.gov, fax 360-534-1606, by September 21, 2020.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384, by September 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to update WAC 458-20-241 to reflect the 2019 legislative amendments to RCW 82.04.280 made by chapter 449, Laws of 2019 (HB 2035) and to make technical, nonsubstantive clarifications.

Reasons Supporting Proposal: The proposal is supported by 2019 legislation, which updated the method in which the standard deduction is calculated and updated the signal strength contours. The proposal is also supported by the need for technical changes to improve readability and clarity.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: RCW 82.04.280.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Arnold, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1574; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Arnold, 6400 Linderson Way S.W., Tumwater, WA 98504, phone 360-534-1574, fax 360-534-1606, email JenniferA@dor.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any liability for taxes, reporting requirements, recordkeeping requirements, or compliance requirements not otherwise imposed by statute.

August 18, 2020
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-126, filed 12/19/14, effective 1/19/15)

WAC 458-20-241 Radio and television broadcasting. (1) **Introduction.**

(a) This section provides tax reporting instructions for persons in the radio and television broadcasting industry. It explains the application of business and occupation (B&O) tax, retail sales tax, and use tax to the industry and provides an explanation of the various deductions available.

(b) For a discussion of the tax liabilities of subscriber television services, see WAC 458-20-227.

(c) For a discussion of the taxability of digital products, see WAC 458-20-15503.

(2) **Definitions.** For the purpose of this rule:

(a) "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

(b) "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

(c) "National advertising" means broadcast advertising paid for by sponsors ((~~which~~)) that supply goods or services on a national or international basis.

(d) "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

(e) "Regional advertising" means broadcast advertising paid for by sponsors ((~~which~~)) that supply goods or services on a regional basis over two or more states.

(3) **Business and occupation tax classifications.** Persons in the radio and television broadcasting industry must report business and occupation (B&O) tax based on the B&O classification of their income, as follows:

(a) **Radio and television broadcasting.** ((~~Taxable on~~)) Gross income from the sale of radio or television advertising((~~.~~)) is taxable under the radio and television broadcasting classification, subject to the deduction authorized under RCW 82.04.280 (1)(f)(i) or (ii). (See subsection (4)(b) of this section for more information on the deduction);

(b) **Service and other activities.** ((~~Taxable on~~)) Gross income from personal or professional services((~~, including~~)) not taxed under a different classification, such as gross income from producing and making custom commercials or ((~~special programs~~)) custom-made programing, fees for providing writers, directors, artists, and technicians, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211)((~~.~~)) is taxable under the service and other classification;

(c) **Royalties.** ((~~Taxable on~~)) Gross income from charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material)((~~.~~)) is taxable under the royalties classification;

(d) **Retailing or wholesaling.** ((~~Taxable on gross proceeds of~~)) Gross income from sales of tangible personal property to consumers, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., is taxable under the retailing classification even though the original was not subject to retail sales tax. Gross income from sales of tangible personal property to persons other than consumers is taxable under the wholesaling classification. Gross income from the sale of custom-made programs, commercials, films, etc., is ((~~not~~)) taxable under ((~~this classification. (See subheading **Service and other activities** in (b) of this subsection.)~~)) the service and other activities classification; and

(e) **Manufacturing.** ((~~Taxable on the cost to produce special~~)) The value of programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other broadcasters under a lease or contract granting a mere license to use, is taxable under the manufacturing classification. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) ((~~This~~)) Manufacturing B&O tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming.

(4) **Deductions from gross income from advertising.**

(a) **Agency fees.** It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance is deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(b) **Gross receipts from national, network, and regional advertising.** The ((~~taxpayer~~)) broadcasting station may deduct actual gross receipts from national, network, and regional advertising, as included in the gross amount reported under radio and television broadcasting, either by using the "standard deduction" or by itemization of the individual broadcasting station's actual receipts.

(i) The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, ((~~represents~~)) is a percentage based on the national average ((~~thereof as annually reported by the Federal Communications Commission. The Federal Communications Commission no longer publishes these figures and henceforth the "standard deduction" is not available. Broadcasters may only~~)) of national, network, and regional advertising as reported by the United States Census Bureau's economic census. The standard deduction percentage must be published by the department by rule by September 30, 2020, and by September 30th of every fifth year thereafter. The standard deduction percentage as of September 30, 2020, is sixty-two percent.

(ii) As an alternative to using the standard deduction in (b)(i) of this subsection, a broadcasting station may opt to deduct gross receipts from national, network, and regional advertising on an ((~~actual basis~~)) by itemizing the actual receipts therefrom.

(c) **Allocation of local advertising revenues.** Revenues from local advertising may be allocated to remove from the tax base the gross income from advertising ((~~which~~)) that is intended to reach potential customers of the advertiser who are located outside the state of Washington.

(i) **Presumption.** It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising is subject to tax unless ((~~and until~~)) the taxpayer submits proof to the department ((~~of revenue~~)) that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

((~~(d)~~)) (ii) **Method of allocation.**

(A) When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured by the ((~~100 microvolt signal strength and delivery by wire, if any~~)) .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or sixty dBu signal strength contour for FM radio, the twenty-eight dBu signal strength contour for television channels two through six, the thirty-six dBu signal strength contour for television channels seven through thirteen, and the forty-one dBu signal strength contour for television channels fourteen through sixty-nine with delivery by wire, satellite, or any other means, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

(B) The most current United States and Canadian census figures must be used to determine the in-state and out-of-state audience.

((~~An engineer holding at least a first class operator's license from the Federal Communications Commission or an equivalent license must compute the 100 microvolt contour for the station claiming the exemption. The 100 microvolt contour will be applicable to all broadcasting stations, whether standard (AM), frequency modulation (FM), or television (TV), and the applicable contour will be the daytime ground-wave contour. The computation must be submitted to the department of revenue in map form, showing the scale used in miles, with the contour drawn on the map and the counties or cities within the contour indicated. The map must be certified as being correct by the personal signature of the engineer making the computation. The type of license held by the engineer should be indicated. The map must have attached to it the population covered both within and without the state according to the applicable United States and Canadian census.~~))

(C) In the event that community antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must ((~~also~~)) be ((~~attached to the map~~)) provided to the department upon request. The number of subscribers will be multiplied by a factor of ((~~3~~)) 2.5, representing the average size household ((~~family.~~

~~The foregoing exhibits must be approved by the department before any deduction is allowable~~)).

(D) Upon request by the department, the broadcasting station must submit documentation substantiating the computation of the out-of-state exclusion to the department, as directed.

(5) **Retail sales tax.** ((~~Sales to~~))

(a) Purchases by broadcasters of equipment, supplies and materials for the broadcaster's own use and not for resale are subject to the retail sales tax. This includes ((~~sales~~)) purchases of raw or unprocessed film, magnetic tape, DVDs, and other transcription material.

(b) If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

(c) The broadcaster must collect retail sales tax on sales to consumers of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to retail sales tax.

(6) **Use tax.**

(a) Acquisition or exercise of the right to broadcast material under a right or license granted by lease or contract is not the use of tangible personal property by the broadcaster and the use tax is not applicable.

(b) Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which include((s)), but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of programming when the broadcaster sells merely the right to broadcast such material under a right or license granted by lease or contract.

WSR 20-17-142
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY
[Filed August 19, 2020, 10:49 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): On September 24, 2020, at 8:45 a.m. The public can join the public hearing by calling 877-309-2073 and entering access code 696-873-725.

Date of Intended Adoption: September 24, 2020.

Submit Written Comments to: Robert Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email robs@pscleanair.gov, fax 206-343-7522, by September 23, 2020.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email robs@pscleanair.gov, by September 17, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Section 3.11 -** The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The CPI for the Seattle/Tacoma/Bellevue area increased by 2.04% for the 2019 calendar year, which amounts to an increase of $410.00 in the maximum civil penalty amount. The agency has used the consumer price index for wage earners (CPI-W) in the Puget Sound region for many years to make this inflation-based adjustment because it reflects the data of what happened (i.e. not a forecast) and it represents local economic information.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25 - This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2019. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2020.

Reasons Supporting Proposal: There are no benefits or costs associated with the proposed amendments.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 does not appear to apply to local air agencies.

August 19, 2020
Craig T. Kenworthy
Executive Director

AMENDATORY SECTION

SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed $((~~20,131.00~~)) 20,541.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than $((~~20,131.00~~)) 20,541.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION
SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((~~2019~~)) 2020.

WSR 20-17-144
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed August 19, 2020, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-08-010.

Title of Rule and Other Identifying Information: Chapter 16-462 WAC, Grape planting stock—Registration and certification. As a result of a three year stakeholder driven federally funded grant project and a petition from the Washington winegrowers association, the department is proposing the following amendments:

1. Clarifying the circumstances under which Generation 2 (G2) mother plants which are more than two years old, can continue to be used to propagate Generation 3 (G3) grapevines;

2. Requiring retesting of soil after fumigation to control the presence of nematodes of the genus *Xiphinema*, to prove efficacy of the treatment;

3. Decreasing the number of required inspections of certified grape planting stock (Generation 4 (G4)) from three times per year to only twice per year;

4. Requiring virus sampling and testing for all registered (G2/G3) grapevines on a five-year rotation;

5. Removing the requirement that program participants have to use paper certification tags provided by the department;

6. Removing the requirement that certified grape planting stock (G4) adhere to certain grades and standards specified in WAC 16-462-055 when offered for sale; and

7. Moving the annual application due date for registration and certification from January 1 to January 10.

Hearing Location(s): On September 23, 2020, at 8:30 a.m.

Skype Conference Line. Join by link https://lync.wa.gov/agr.wa.gov/meet/grobinson/77GFSGDC. Join by phone 1-360-407-3816. Conference ID: 86838.

Due to the mandated social distancing requirements in place during the current COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: September 30, 2020.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., September 23, 2020.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by September 15, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In May 2015, the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS) funded a grant, managed by the Washington wine industry foundation, called "Harmonizing Protocols in the Northwest - A Pilot Project Driven by Stakeholders." The grant project utilized grape industry stakeholders to drive development of a harmonized approach to grapevine virus certification, quarantines, and regulatory programs across multiple states. After a draft certification standard was developed, the Washington winegrowers association petitioned the department to modify the rules to adopt these standards. The proposed rule amendment will create a regional approach for grapevine virus certification, as well as harmonize quarantines and regulatory programs for grapevine nursery stock certification in Idaho, Oregon, and Washington. The main anticipated effects from these changes include the retesting of soil for nematodes after fumigation for new G2 planting sites and the sampling and testing of all registered grapevines on a five-year rotation.

Reasons Supporting Proposal: The thriving Washington grape industry has earned a reputation for producing high-quality grapes to make premier wines and juices. Much of this success is due to superior growing conditions and the absence of grape pests that plague other grape growing regions. Of particular concern to Washington grape growers are the leaf roll-associated viruses and red blotch virus, which delay ripening and reduce quality and yields. These viruses can be found in Washington vineyards; therefore, it is important to limit their spread within the state, by planting virus tested certified grape planting stock.

To support and strengthen the state's grape industry, the Washington state department of agriculture (WSDA) has maintained the grape planting stock registration and certification program as an important tool to limit pest introductions and reduce their spread. This program has been revised several times since it was established in 1968, to address new threats and the changing needs of a rapidly evolving grape industry. The program supports the availability of high-quality growing stock free of economically important plant virus diseases. It is intended to produce healthier vineyards and a market premium for growers participating in the grapevine certification program. Healthy plant material is key to cost-effective production of grapes.

Planting stock certification is an effective means of controlling systemic virus diseases and other economically important pests in commercial nursery crops. Because they are long lived, grapevines can accumulate viruses that eventually affect production and quality. Washington commercial grape growers rely on certified planting stock to minimize the effects of these viruses, by starting vineyards with virus-tested stock. Propagation nurseries work closely with the commercial grape industry to provide them with clean planting stock produced using the WSDA grape planting stock registration and certification program.

Statutory Authority for Adoption: RCW 15.14.015 and 15.13.260.

Statute Being Implemented: Chapters 15.13 and 15.14 RCW.

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

Name of Proponent: Washington winegrowers association, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Cindy Cooper, 1111 Washington Street, Olympia, WA 98504, 360-870-5069.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

Chapter 16-462 WAC

Grape Planting Stock Registration and Certification

August 19, 2020

SECTION 1: **Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

Washington is the second largest producer of grapes in the United States, contributing over $7 billion annually to the state's economy. There are over 79,000 acres of grapevines in Washington, 58,000 of which are wine grapes (*Vitis vinifera*). The remaining 21,000 acres are juice grapes. Wine grape acreage has more than doubled during the last ten years while the acreage of juice grapes has remained relatively stable.

The thriving Washington grape industry has earned a reputation for producing high-quality grapes to make premier wines and juices. Much of this success is due to superior growing conditions and the absence of grape pests that plague other grape growing regions. Surveys have shown Washington is free of European grapevine moth, glassy winged sharpshooter and vine mealy bug. Of particular concern to Washington grape growers are the leaf roll-associated viruses and red blotch virus, which delay ripening and reduce quality and yields. These viruses are found in Washington vineyards, and it is important to limit further spread.

Since Washington's industry is built on own-rooted vines, grape growers are also concerned about the uptick in finds of root infesting phylloxera, which kills own-rooted vinifera grapevines. Own-rooted vines are vines that have not been grafted to a rootstock. In areas where phylloxera occurs, wine grapes must be grafted on resistant rootstocks, significantly increasing planting costs. After severe winter freezes, (a common occurrence in the major production acreage of eastern Washington), grafted grapevines may be killed to the ground and must be replanted instead of simply growing a new shoot from the root of own-rooted grapevines. If phylloxera becomes widespread in Washington, growers will shift entire vineyards to grafted vines over time, changing growing practices significantly.

To support and strengthen the state's grape industry, WSDA has maintained two important tools to limit pest introductions and reduce their spread: The grape pest quarantine and the grape planting stock registration and certification program. WSDA's grape planting stock registration and certification program and associated rule was established in 1968, to provide grape growers with a source of pest and virus free planting stock. It provides integral support to the wine and juice industries in the state, from rooted cuttings to high-quality fruit production. The rule has been revised several times since 1968 to address new threats and the changing needs of a rapidly evolving grape industry. The program supports the availability of high-quality growing stock that is free of economically important plant virus diseases. It is intended to produce healthier vineyards and a market premium for growers participating in the grapevine certification program. Healthy plant material is key to a cost-effective production of grapes.

Planting stock certification is an effective means of controlling systemic virus diseases and pests in commercial crops. Because they are long lived, grapevines tend to accumulate regionally occurring viruses that eventually affect fruit production and quality. Since grapevine viruses cannot be cured, Washington commercial grape growers rely on starting with certified virus-tested planting stock to minimize the effects of these viruses. Propagation nurseries work closely with the commercial grape industry to provide them with virus-tested planting stock. A long-lived vineyard is more cost-effective for growers. Additionally, the retail consumer benefits from the availability of disease-free grape plants for healthy, long-lived backyard fruit production.

In May 2015, USDA APHIS funded a grant, managed by the Washington wine industry foundation, called "Harmonizing Protocols in the Northwest - A Pilot Project Driven by Stakeholders." This grant was intended to create a regional approach for grapevine virus certification, and to harmonize quarantines and regulatory programs for grapevine nursery stock certification in Idaho, Oregon, and Washington. The project utilized grape industry stakeholders to drive development of a harmonized approach by focusing on agency rule development and quarantine alignment using outreach to industry stakeholders to ensure a high level of participation. All planting stock certification program participants were involved in the harmonization working group.

The project engaged stakeholders and regulatory agencies in comparing existing grapevine pest quarantines and certification programs, developing a common pest list, and identifying universally acceptable testing methods and cultural mitigations for common pests. In November 2018, after a draft certification standard was developed as a result of this project, the Washington winegrowers association petitioned the department to amend chapter 16-462 WAC to incorporate the changes recommended by the harmonization working group.

Compliance Requirements: Chapter 16-462 WAC outlines the grape planting stock registration and certification requirements in Washington state. WAC 16-462-010(4) states that participation in the grape planting stock registration and certification program is voluntary. Participants in the program may see a market premium for their planting stock over noncertified planting stock. Through this program Washington grape growers have access to grape planting stock that is free of regulated pests and diseases. Certified vines are produced under a limited generation system. Lower number generations are considered the cleanest, as they are closest to the original virus-tested mother plant. All propagative material eligible for entry into the program must be derived from a Generation 1 (G1) foundation block held at a National Clean Plant Network (NCPN) supported center approved by WSDA. Through the grape planting stock registration and certification program, grapevines or rootstocks may be designated as registered stock (G2 and G3), or certified grape planting stock (G4), if they and the stock from which they were produced have been inspected and tested in accordance with all procedures and requirements. From these registered plants, nurseries propagate large numbers of G4 vines for planting in commercial vineyards across the country and for retail sales to the public.

Requirements for nurseries participating in the program include:

1. Responsibility for the selection of location and proper maintenance of registered blocks (G2/G3) and certified grape planting stock (G4).

2. Records identifying the G1 foundation source of the registered vines (G2/G3) and certified grape planting stock (G4) must be maintained and provided to the department upon request.

3. Suitable precautions must be taken in the cultivation, irrigation, movement and use of equipment, and in other farming practices, to guard against the spread of soil-borne pests to planting stock entered in the program. All registered blocks (G2/G3) and certified grape planting stock (G4) must be clean cultivated, except for approved cover crops.

4. Removal and immediate destruction of any registered grapevine (G2/G3) or certified planting stock (G4) found to be off-type or affected by a virus or virus-like disease or quarantine pest.

Proposed rule amendments include:

1. Clarifying the circumstances under which G2 mother plants which are more than two years old, can continue to be used to propagate G3 grapevines.

2. Requiring retesting of soil after fumigation to control the presence of nematodes of the genus *Xiphinema*, to prove efficacy of the treatment.

3. Decreasing the number of required inspections of certified grape planting stock (G4) from three times per year to only twice per year.

4. Requiring virus sampling and testing for all registered (G2/G3) grapevines on a five-year rotation.

5. Removing the requirement that program participants have to use paper certification tags provided by the department.

6. Removing the requirement that certified grape planting stock (G4) adhere to certain grades and standards identified in WAC 16-462-055 when offered for sale.

7. Moving the annual application due date for registration and certification from January 1 to January 10.

Required Professional Services: No professional services would be required as a result of the proposed rule amendment.

SECTION 2: **Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	±Minor Cost Threshold = 1% of Average Annual Payroll	*Minor Cost Threshold = 0.3% of Average Annual Revenue
111332	Grape Vineyards	$4,785.74	$429.50
111421	Nursery and Tree Production	$4,836.69	$2,372.40
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	$9,042.12	$16,190.34
444220	Nursery, Garden Center and Farm Supply Stores	$3,173.49	$3,502.11

*Data source: 2017 Washington department of revenue.

±Data source 2018 Quarterly Census of Employment and Wages (Bureau of Labor Statistics).

** These codes reflect the NAICS codes that affected businesses chose when registering with the Washington state department of revenue.

SECTION 3: **Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

Under the proposed rule amendment, the primary cost to businesses would be fees associated with increased WSDA inspections and some required lab work. Businesses would not incur any additional costs for equipment, supplies, professional services, or administration. Some businesses may experience increased labor costs by choosing to have staff assist WSDA with the collection of samples. This is not a requirement under the proposed amendment. However, it would likely decrease the billable hours of the inspector's time, reducing the overall cost of the inspection. Additionally, compliance with the proposed rule will not affect sales or revenue for participating businesses. There are five businesses currently participating in the certification program, only one of which is a small business. Businesses participating in the program grow planting stock in two ways, either taking cuttings from field grown registered mother vines or producing potted vines through tissue culture.

Clarifying the circumstances under which G2 mother plants over two years old can continue to be used to propagate G3 grapevines: Proposed changes to WAC 16-462-021(5) would allow G2 mother plants, used to propagate G3 grapevines, to be more than two years old as long as they have been tested by the department within the last two growing cycles and are found free of regulated viruses and pests. Currently, the continued use of a mother vine that is more than two years old is allowed only if the department has determined it to be free of regulated viruses. Under the proposed rule amendment, the department is specifying that the mother vine has to be tested by the department within the last two growing cycles and determined to be free of regulated viruses and pests. Since this change aligns the rule with current industry practice, it will not result in additional costs to businesses. Long-term, this may be an overall benefit to the industry as it allows for a resurgence in the use of older varieties which may provide growers with greater production flexibility.

Requiring retesting of soil in registered blocks after fumigation to control the presence of nematodes of the genus *Xiphinema*: Prior to planting a registered block, WAC 16-462-021(6) already requires the growing area and its contiguous borders be tested for the presence of nematodes of the genus *Xiphinema*. If this genus is detected, the growing area must be fumigated before it can be planted with registered vines. Under the proposed rule amendment, after an area has been fumigated, it must be retested to ensure that the nematodes are no longer present. This is the current practice, however it is not stated in rule. The additional testing requirement is needed to ensure that the fumigation successfully destroyed the nematodes. Retesting must be conducted by WSDA through the collection of soil samples by inspection staff at a rate of $50 per hour plus mileage. Samples are then processed by the WSDA lab at a cost of $60 per sample. One soil sample is taken for up to five acres of each potential new block. For a business with a 5-acre block, the cost would likely be between $110-$150 depending on time and mileage. Most businesses which require testing for a new block, have >1 to 20 acres that need to be tested. The cost per business will vary depending on the size of the new block. Additionally, if a sample tests positive for *Xiphinema*, the business can either abandon that field as a potential site or fumigate and retest at their expense. In a typical year, the need for testing a new or expanded block occurs between 0-3 times. Of the five businesses currently in the certification program, two would not be impacted by the proposed changes to WAC 16-462-021(6). These businesses certify potted plants and therefore do not require new field plantings.

Decreasing the number of required inspections of certified grape planting stock (G4): Proposed amendments to

WAC 16-462-025(3) require certified grape planting stock (G4) to be inspected at least twice per year. This would be a decrease from current rule language requiring three inspections per year. The proposed language will better align with current practices and will not create any additional costs to businesses. In current practice, WSDA generally inspects G4 stock more than twice a year by request at most nurseries. This is because nurseries who ship interstate or internationally require phytosanitary inspections within thirty days prior to shipping, so inspections will occur during the growing season, as well as post-harvest. During the shipping season, G4 material will likely be inspected several times, post-harvest, as inspectors monitor compliance with destination treatment requirements.

Requiring virus sampling and testing for all registered (G2/G3) grapevines on a five-year rotation: WAC 16-462-027 is a new section which outlines mandatory virus sampling and testing requirements for registered (G2/G3) grapevines. Currently, there is no requirement on the amount of samples which must be taken annually. Rather, samples are taken based upon visual symptoms displayed at the time of inspection, new plantings, and grower requests. Due to this, the total number of samples taken annually from businesses varies greatly. Under the proposed rule amendment, all registered grapevines should be tested for viruses once every five years. This would require around twenty percent of the total registered grapevines for each business be sampled annually. In practice, this estimated percentage will likely vary from year to year, with some years sampling and testing more than twenty percent and others fewer. WSDA will work with program participants to plan ahead and determine what samples are high priority for the coming year. However, for the purpose of calculating a cost estimate, it is assumed twenty percent of registered vines will be sampled annually under the proposed amendment. The overall result of proposed changes to WAC 16-462-027 will be an increase in the number of samples taken from each business. Table 3.1 shows the number of composite samples taken in 2018 and 2019, as well as the estimated annual number of samples required under the proposed rule amendment. Totals for composite samples taken in 2019 are unusually low due to an early frost that year.

Due to this, when calculating the difference in samples taken under the proposed amendment, figures were calculated using the number of composite samples taken in 2018. In areas of Table 3.1 where no data was available (unknown), it was assumed there were no composite samples taken.

Table 3.1 - Estimated number of samples based on registered grapevines

Businesses in program	Registered grapevines	2018 composite samples	*2019 composite samples	Estimated composite samples under amendment (20% of total registered vines)	**Difference in composite samples from 2018 and under amendment
Nursery #1	185,750	4,783	987	7,430	2,647
Nursery #2	13	N/A	N/A	1	1
Nursery #3	100	0	0	4	4
Nursery #4	16,547	500	61	662	162
Nursery #5 (small business)	800	Unknown	0	32	32

* Total composite samples for 2019 were unusually low due to an early frost.

** Unknowns for 2018 were calculated as zero.

Increased sampling will result in added costs to businesses, as WSDA inspectors will likely need to make multiple trips to sites and spend more time collecting samples. These additional time and mileage costs will vary depending on the number of grapevines a business has and the distance an inspector must travel to a site.

Under WAC 16-401-027 the collection of samples by WSDA is charged at a rate of $50 per hour (including travel time) plus mileage, for licensed nurseries. It is estimated that an inspector can collect, document, and prepare a total of six composite samples per hour for submission to the testing lab. A nursery may decide to have their staff assist with the collection of samples. This is the current practice and may only be done under the direct supervision of WSDA. With nursery staff assisting in the collection of samples, the overall time required for WSDA to collect samples will be greatly reduced, leading to a reduction in costs billed by WSDA.

Composite sampling is the current technique used for sample collection. It's used to test a greater number of vines at one time. A composite sample is collected from several grapevines. The composite sample is then tested for target viruses. If the test is negative for viruses, then all vines included in the sample are considered certified. If the test is positive, then the business has the option of retesting each individual vine or removing all vines in that sample. If the business chooses to retest the vines, they must cover the cost for mileage to recollect the samples. Typically, businesses choose to remove all vines.

Table 3.2 Businesses producing field grown planting stock - approximate inspection cost under the proposed amendment

Affected businesses	Total G2/G3 vines	Composite samples taken annually	Hours to collect composite samples (6/hour)	*Mileage cost	**Inspection and travel time cost ($50/hr)	Total cost to business	Total cost with assistance from nursery staff (plus 1 WSDA inspector)
Nursery #1	185,750	7,430	1,238	$4,539	$68,495	$73,035	$12,172 (5 staff)
Nursery #4	16,547	662	110	$2,109	$8,591	$10,700	$1,421 (5 staff)
Nursery #5 (small business)	800	32	5	$13	$292	$304	***$107 (2 staff)

* Mileage cost calculated using 2019 data and multiplying total mileage by current per mile rate of $0.575 per mile.

** Travel costs estimated from total mileage assuming a travel time of one mile per minute.

*** Cost calculated with assistance from two staff, due to the low number of employees.

Table 3.3 Businesses producing tissue culture - approximate inspection costs under the proposed amendment

Affected businesses	Total G2/G3 vines	Composite samples taken annually	Hours to collect composite samples (6/hour)	*Mileage cost	**Inspection and travel time cost ($50/hr)	Total cost to business
Nursery #2	13	1	1	$41	$125	$166
Nursery #3	100	4	1	$28	$100	$128

* Mileage cost calculated using 2019 data and multiplying total mileage by current per mile rate of $0.575 per mile.

** Travel costs estimated from total mileage assuming a travel time of one mile per minute.

Tables 3.2 and 3.3 show the estimated number of composite samples collected under the proposed amendment, as well as approximate inspection and travel time costs plus mileage. Total costs shown in Table 3.2 illustrate a worst case scenario situation depicting costs as if there was no assistance from nursery staff in the collection of samples (under direct supervision of WSDA). This table also shows what costs would look like if five nursery staff assisted one WSDA inspector with the collection of samples for nurseries #1 and #4, and two nursery staff assisted one WSDA inspector for nursery #5. This is not a WSDA requirement, but is a common practice among nurseries. Thus, these costs more closely represent what costs may be in practice. Businesses in Table 3.3 did not have costs calculated with the assistance of nursery staff. This is because assistance would not be necessary due to the low number of samples collected. Mileage costs shown in Tables 3.2 and 3.3 are dependent on an inspector's physical distance from the nursery and the current mileage rate set by the office of financial management. The current rate is $0.575 per mile. Inspection and travel time costs are calculated at $50 per hour. Travel costs are determined by the amount of time it takes an inspector to travel to and from a nursery. These costs were estimated in Tables 3.2 and 3.3 based on the total mileage traveled at a rate of one mile per minute. Travel costs are highly variable depending on road conditions, weather, and traffic. Additionally, inspectors will typically try to mitigate costs to nurseries by traveling to multiple sites which are in close proximity to each other. This can greatly reduce mileage and travel costs for businesses.

Businesses currently participating in the program grow planting stock in two ways, either field grown vines or through tissue culture. Costs calculated for Table 3.2 show nurseries which produce grape planting stock that was field grown and Table 3.3 shows nurseries which produce plants through tissue culture. Businesses which grow vines in a field will generally have more registered grapevines than businesses that produce planting stock from tissue culture. This is because WSDA registers and tests either the tissue culture lines themselves or the mother plant used to establish the tissue culture. This practice is different from single field grown vines that are used as a source of cuttings. Under the proposed amendments, businesses in Table 3.3 which produce tissue cultures will not see a large increase in costs, because their total number of composite samples will not substantially increase and their mileage and travel time costs will stay relatively the same. Businesses in Table 3.2 will likely see a larger increase because they will have a greater number of composite samples taken and the inspector will likely need to make more trips, increasing their overall mileage and travel time costs. Nursery #5 (the only small business), which has the lowest number of grapevines registered among businesses producing field grown planting stock, will have an estimated total cost of $304.

Due to the increased number of samples collected under the proposed rule amendment, there will be an increased cost for testing. The number of vines bulked into one composite sample for testing at one time will also increase from five to ten vines. The increase in testing and composite samples will not increase costs for program participants. This is because testing fees are paid for by the grapevine assessment fund, through an interagency agreement with WSU. Businesses in the program will only be responsible for covering costs associated with inspection and travel time, as well as mileage.

RCW 15.13.310 requires the department adopt by rule an annual assessment on horticultural plants of the *genera Vitis* at a level necessary to carry out the grapevine certification program. The actual assessment is specified in WAC 16-401-060. The assessment was first adopted in 2003 as a result of legislation (chapter 215, Laws of 2002) passed during the 2002 legislative session that directed the department to levy an assessment on grapevines. Program participants also pay an annual application fee to participate in the program. To support the grapevine certification program, the department maintains an interagency agreement with Washington State University to fund most of the testing required by rule. RCW 15.14.145 provides that "[a]ll the moneys collected under the provisions of this chapter shall be paid to the director and deposited in the planting stock certification account within the agricultural local fund and shall be used only to carry out the purposes and provisions of this chapter."

Removing the requirement that program participants have to use paper certification tags provided by the department: Amendments to WAC 16-462-035 allows nurseries more flexibility to print the approved certification language. Program participants can affix the approved certification language directly on each bundle, box or other unit of certified grape planting stock. When tagging and identifying certified grape planting stock (G4) - if a single shipment contains only certified G4 vines, the certification language may be affixed to or printed on the invoice or bill of lading. This amendment aligns the rule with current practices and will not have an economic impact on businesses.

Removing the requirement that certified grape planting stock (G4) adhere to certain grades and standards: WAC 16-462-055 is being repealed in order to remove the requirement for certified planting stock to be bundled and labeled according to the grades and standards listed in this section when offered for sale. Nurseries have not requested the department grade their planting stock according to these standards in many years, as the grades listed are out of date with current industry production practices. Grades are now commonly agreed upon in a buying contract between the nursery and the buyer. Therefore, revising the rule by removing grades and standards will not have any economic impact to businesses.

Moving the application for registration and certification annual due date: The current application for registration and certification is January 1 of each year. Under the proposed amendment, the application deadline is delayed until January 10. Delaying the application due date will provide additional time for current and potential program participants to submit their applications after the beginning of the calendar year. There are no costs associated with this amendment.

Revising definitions used in the rule: The proposed rule language includes some additional definitions of terms and some revision of existing definitions. This is being done to align the meaning of common terms with those in neighboring states' grapevine certification program rules, and to adopt the common glossary definitions used by the National Clean Plant Network. The definitions align our rule with the language used by both the North American Plant Protection Organization and the European Plant Protection Organization, creating consistent meaning across countries with whom we trade grape planting stock. There is no cost to businesses associated with these revised or added definitions.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

Costs associated with the proposed rule amendment include retesting costs for *Xiphinema* under WAC 16-462-021(6) and additional sampling costs under WAC 16-462-027. None of the other proposed amendments are expected to impose additional costs on regulated businesses.

Requiring retesting of registered blocks after fumigation to control the presence of nematodes of the genus *Xiphinema*: Under the proposed rule amendment for WAC 16-462-021(6), costs for the collection of soil samples by WSDA staff are $50 per hour plus mileage. Testing of these samples by the lab costs $60 per sample. One sample is taken for every five-acre field block, so the estimated cost for one sample is $110 - $150. Two of the businesses in the program do not require soil testing because they produce potted planting stock from tissue culture and therefore will not be impacted by the proposed amendments. Most businesses which require testing for a new block, have between >1 - 20 acres that need to be tested. Businesses in the program typically register between 0 - 3 new blocks annually. The cost per business will vary depending on the size of the new block. The retesting cost alone will not impose more than minor costs on businesses in the industry.

Requiring virus sampling and testing for all registered (G2/G3) grapevines on a five-year rotation: Costs associated with proposed changes to WAC 16-462-027 include time and mileage for additional sample collection by WSDA inspectors at a rate of $50 per hour plus mileage. If twenty percent of each business' registered vines are sampled annually at this rate, it is likely that the proposed rule will impose more than minor costs on two of the large businesses, but none of the other businesses participating in the program.

Participation in this certification program is voluntary. Currently there are five businesses participating in the program. The minor cost threshold differs for each business based on the industry code they associated themselves with when they established their business license with the Washington state department of revenue. Table 4.1 shows the industry code used by each business, the minor cost threshold for that industry and the estimated costs incurred by businesses under the proposed rule amendments. All costs are estimated under worst case scenario situations and will likely be lower in practice.

Table 4.1 - Total estimated costs per business compared with their associated minor cost threshold

Business	NAICS Code	Business Size	Estimated Costs for Increased Sampling	Estimated Costs to Sample and Retest 5 Acre Block After Fumigation	Total Cost	Minor Cost Threshold
Nursery #1	111332	Large	$73.035	$150	$73,185	$4,785.74
Nursery #2	111421	Large	$166	$0	$166	$4,836.69
Nursery #3	111421	Large	$128	$0	$128	$4,836.60
Nursery #4	424820	Large	$10,700	$150	$10,850	$10,415.10
Nursery #5	444220	Small	$304	$150	$454	$3,173.49

Totaling all estimated costs associated with the proposed rule amendments, it is likely that more than minor costs will be imposed on nursery #1 and #4. However, no other nurseries participating in the program will experience more than minor costs.

SECTION 5: **Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.**

RCW 19.85.040(1) requires the department to compare the cost of compliance for small businesses with the cost of compliance for the largest ten percent of businesses affected by the proposed rule amendment. One or more of the following methods can be used as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per one hundred dollars of sales. The department used the cost per employee method to determine if the proposed fee increase will have a disproportionate impact on small businesses. Costs in Tables 5.1 and 5.2 were calculated using estimated total costs under the proposed amendment.

Table 5.1 - Businesses producing field grown planting stock - average cost per employee under the proposed rule amendment

Business	Business Size	Proposed Amendment Total Cost	Estimated Total Employees	Average Cost per Employee
Nursery #1	Large	$73,185	110	$665
Nursery #4	Large	$10,850	483	$22
Nursery #5	Small	$454	3	$151

Table 5.2 Businesses producing tissue culture - average cost per employee under the proposed rule amendment

Business	Business Size	Proposed Amendment Total Cost	Estimated Total Employees	Average Cost per Employee
Nursery #2	Large	$166	129	$1.29
Nursery #3	Large	$128	350	$0.36

The grape planting stock program is a voluntary certification program in which no businesses are required to participate. For those businesses wishing to have their planting stock certified by WSDA, the length of inspection time and number of samples submitted for testing is determined based on the total number of grapevines each business has. The more grapevines registered or certified for businesses that produce tissue cultures or field grown vines, the higher the overall expense will be for that business. Generally, businesses which produce tissue culture have a lower number of registered vines and will not be impacted by proposed amendments to WAC 16-462-021(6), so their overall costs will be lower. Nurseries #1, #4, and #5 all have a greater number of field grown vines and will be impacted by changes to WAC 16-462-021(6), so their costs will likely be higher.

Tables 5.1 and 5.2 compare the total cost per employee for each business. There are four large businesses currently participating in the program. One business would therefore be considered 25 percent of the largest businesses impacted by the proposed amendments. Nursery #1 has the greatest number of certified grapevines in the program and will see an estimated total cost per employee of $665 under the proposed amendments. Nursery #5 is the only small business participating in the program and has the lowest number of certified vines which are field grown. This small business will see an estimated cost of $151 per employee under the proposed amendments. When comparing per employee costs between nursery #5 and nursery #1, it is evident that small businesses will not be disproportionately impacted by the proposed rule amendments.

SECTION 6: **If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.**

It is concluded that the proposed rule amendment will not have a disproportionate impact on small businesses. The following information is provided for further explanation and clarification.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) Reducing, modifying, or eliminating substantive regulatory requirements -

Any reduction, modification, or elimination of the regulatory requirements of the proposed rule amendment could increase the risk of grape pests and viruses infesting Washington grapevines and undermine the purpose of the program. Additionally, the proposed amendments harmonize the planting stock requirements in Washington with those of Idaho and Oregon. If the amendments are not adopted, then program participants may have greater difficulty meeting interstate shipping requirements and could lose their specialty crop market niche for virus tested certified planting stock. Participation in the program is voluntary.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements -

There are no recordkeeping or reporting requirements associated with the proposed rule amendment.

(c) Reducing the frequency of inspections -

This rule does reduce the frequency of inspections for G4 certified plants to align with current practices. Reducing the frequency of inspection further may result in the spread of undetected grape pests. Reducing the frequency of inspections undermines harmonization with other northwest states and could impact interstate movement of certified grapevines.

(d) Delaying compliance timetables -

Delaying compliance timetables is not a viable mitigation measure. Any delay will result in a higher risk of spread for grape pests. Although, delaying compliance timetables is not an option, WSDA expects to work with program participants to determine what samples are their highest priority for sampling to comply with amendments to WAC 16-462-027 for the coming year.

(e) Reducing or modifying fine schedules for noncompliance -

This rule does not contain any fines for noncompliance. The purpose of the grape planting stock program is to provide vineyards with planting stock that is free of pests, viruses and pathogens.

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates -

No other mitigation techniques were presented to us by small businesses or small business advocates. Proposed changes to WAC 16-462-027 will result in an increased number of samples collected annually from each business. This will result in added costs to businesses, as WSDA will likely need to make multiple trips to sites and spend more time collecting samples. To mitigate travel costs, WSDA inspectors will visit multiple businesses within close proximity of each other. This will save on mileage and travel time. Another mitigation technique to reduce the costs charged to businesses by WSDA would be utilizing nursery staff to assist in sample collection under the direct supervision of WSDA. This would drastically reduce the amount of time WSDA inspectors would need to spend collecting samples, which could reduce costs billed by WSDA to businesses.

The grape planting stock registration and certification program is a collaborative effort between the grape industry, program participants, Washington State University, and the department to provide clean planting stock to support Washington's wine and juice growers. Under RCW 15.13.310, an assessment is levied on the sale of grapevines. This assessment is used to fund the department's grape planting stock registration and certification program.

The proposed amendment to WAC 16-462-027 will significantly increase the number of samples that need to be tested by a laboratory. The Washington State University provides most of the laboratory testing required under the rule. In an effort to mitigate costs related to the increase in testing, the department funds most of WSU's laboratory testing costs for program participants through an interagency agreement with WSU. Program participants will only be responsible for covering costs associated with sample collection and inspection and some laboratory testing fees related to confirming the efficacy of fumigation for nematodes.

SECTION 7: **Describe how small businesses were involved in the development of the proposed rule.**

Industry groups representing small businesses were involved throughout the development of the proposed rule, which included the "Harmonizing Protocols in the Northwest - A Pilot Project Driven by Stakeholders." This project engaged stakeholders and regulatory agencies in comparing existing grapevine pest quarantines and certification programs, developing a common pest list, and identifying universally acceptable testing methods and cultural mitigations for common pests. The project led to the development of a draft certification standard which was the basis for the Washington winegrowers association's petition to the department to amend chapter 16-462 WAC. The Northwest foundation block advisory group was utilized throughout the draft development to advise regulators and sound out deliverables and their feasibility. The foundation block advisory group represents industry interests by advising the Washington State University (WSU) Clean Plant Center Northwest on the Foundation Block including management, direction, selection of plant material, distribution, phytosanitary issues (testing and retesting), as well as on all policies and procedures, funding needs, quarantine issues and quarantine needs plus program reviews and industry reports. Members include wine, juice and table grape growers, wineries, nurseries, universities and departments of agriculture from Idaho, Oregon, and Washington.

All businesses impacted by the proposed amendments were invited to meetings and discussions regarding changes to the rule. They were also invited to attend focus groups where the language was developed. Additionally, there has been high stakeholder engagement in the past few years around the development of best practices for laboratory testing by composite sampling. Businesses have assisted WSDA and WSU in developing these practices by allowing more samples to be collected than required.

SECTION 8: **Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

No jobs are estimated to be created or lost as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

August 19, 2020
Brad White
Assistance [Assistant] Director

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-010 Grape planting stock program—General. (1) Participation in the grape planting stock program is voluntary.

(2) Grapevines or parts of grape plants may be designated as registered stock (G2/G3), or certified grape planting stock (G4), if they and the stock from which they were produced have been inspected((~~, indexed,~~)) and tested in accordance with procedures and requirements outlined in this chapter and found to be in compliance with all applicable standards and requirements established in this chapter.

((~~(2)~~)) (3) The issuance of a state of Washington plant tag, stamp, or other document under this chapter means only that the tagged, stamped, or otherwise documented planting stock has been subjected to standards and procedures described in this chapter and determined to be in compliance with its standards and requirements. The department disclaims all expressed or implied warranties, including without limitation, implied warranties of merchantability and fitness for particular purpose, regarding all plants, plant parts, and plant materials under this chapter.

((~~(3)~~)) (4) The department is not responsible for disease, genetic disorders, off-type, failure of performance, mislabeling, or otherwise, in connection with this chapter. No grower, nursery dealer, government official, or other person is authorized to give any expressed or implied warranty, or to accept financial responsibility on behalf of the department regarding this chapter.

((~~(4) Participation in the grape planting stock certification program is voluntary.~~))

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

"Block" means a contiguous grouping of *Vitis* plants separated from other groupings by a buffer zone. A block may contain one or multiple lots.

"Buffer zone" is an area surrounding or adjacent to an area officially delimited for phytosanitary purposes in order to minimize the probability of spread of targeted pests or diseases, into or out of the delimited area and subject to phytosanitary or other control measures, if appropriate.

"Certified grape planting stock" means vines, rooted cuttings, tissue cultures, cuttings or grafted plants taken or propagated directly from G1 foundation vines or G2/G3 registered vines in compliance with the provisions of this chapter.

"Containerized plant" means any live plant grown in a container or pot-in-pot where the plant is healthy, vigorous, well-rooted, and established in soil-less media in the container in which it is growing.

"Clean cultivation" means the site is actively managed for weed control or is planted with a cover crop approved by the department.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or the director's designee.

"Foundation block" means a planting of grapevines established, operated, and maintained by the Clean Plant Center Northwest at Washington State University, or other sources approved in writing by the director, that are ((~~indexed~~)) tested and found free from targeted pathogens and viruses designated in this chapter and that are not off-type.

"Generation 1 (G1)" means original mother ((~~plants indexed for the viruses of concern~~)) vines identified as such by the Clean Plant Center Northwest at Washington State University or an equivalent facility approved by the department. ((~~The Clean Plant Center Northwest web site is: http://healthyplants.wsu.edu/grape-program-at-cpcnw/.~~))

"Generation 2 (G2)" means grapevines propagated from G1 mother ((~~plants~~)) vines and grown under conditions to prevent infection, in accordance with the requirements of this chapter.

"Generation 3 (G3)" means grapevines propagated from G1 or G2 mother ((~~plants and grown~~)) vines, for increase of propagative material, and grown under conditions that prevent infection, in accordance with the requirements of this chapter.

"Generation 4 (G4)" means grapevines propagated from G1, G2, or G3 mother ((~~plants~~)) vines and grown in accordance with this chapter. This is material most often ((~~grown~~)) distributed for sale to commercial vineyards and retail consumers.

((~~"Index" means testing for virus infection by making a graft with tissue from the plant being tested to an indicator plant, or by any other testing method approved by the department.~~

~~"Indicator plant" means any herbaceous or woody plant used to index or determine virus infection.~~)) "Grapevine" means commercially grown species in the genus *Vitis*.

"Lot" means a contiguous group of a selection within a block, derived from one or more G1 source grapevines obtained from a single clean plant source approved by the department.

"Mother vine" means a grapevine used as a source for propagation material.

"National Clean Plant Network (NCPN)" means the national network of clean plant centers established in 2008 and supported by the United States Department of Agriculture. ((~~The NCPN web site is: http://nationalcleanplantnetwork.org/.~~))

"Off-type" means appearing under visual examination to be different from the variety listed on the application for registration and certification, or exhibiting symptoms of a genetic or nontransmissible disorder.

"Registered block" means a planting of registered (G2/G3) grapevines maintained by a nursery and used as a source of propagation material for certified (G4) grapevines.

"Registered vine" means any G2 or G3 grapevine approved by the director, identified to a single (G1) grapevine source, and registered with the Washington state department of agriculture, in compliance with provisions of this chapter.

"Screenhouse" is a structure that includes screening designed to prevent the introduction of insect vectors.

"Tissue culture" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting or from green growth (i.e., softwood) from a plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.

"Virus-like" means a graft-transmissible disorder with symptoms resembling a characterized virus disease((~~,~~)) including, but not limited to, disorders caused by viroids and phytoplasmas.

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-018 ((~~Certification levels.~~)) Foundation sources eligible for registration and certification. All propagative material ((~~produced under this~~)) eligible for entry into the WSDA grape planting stock registration and certification program must be derived from a Generation 1 ((~~stock and grown under conditions that mitigate the risk of reinfection.~~)) foundation block held at a National Clean Plant Network (NCPN) supported center and continuously grown under conditions that mitigate the risk of infection. Eligible Generation 1 ((~~level material is produced at~~)) foundation sources include the Clean Plant Center-Northwest (CPC-NW) at Washington State University((~~, or~~)) and Foundation Plant Services (FPS) at University of California at Davis. The department may approve other grapevine foundation facilities ((~~within the National Clean Plant Network (NCPN) and approved by the department~~)) as an eligible G1 foundation source. Such approval shall be in writing. The accession numbers relating to the single (G1) grapevine source ((~~at CPC-NW or other approved facilities~~)) must be retained for tracking purposes throughout the life of its certified progeny and provided to the department upon request. ((~~At each stage of propagation, progeny plants drop to a lower certification level.~~))

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-020 Requirements for participation in the grape planting stock program. (1) The applicant shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered blocks (G2/G3) and certified grape planting stock (G4).

(2) The applicant must maintain records identifying the (G1) foundation source of registered ((~~grapevines~~)) vines (G2/G3) and certified grape planting stock (G4) and provide these records to the department upon request.

(3) The applicant shall take suitable precautions in cultivation, irrigation, movement and use of equipment, and in other farming practices, to guard against spread of soil-borne pests to planting stock entered in this program. The applicant shall keep all registered blocks (G2/G3) and certified grape planting stock (G4) clean cultivated, except for approved cover crops.

(4) Following notification by the department, the applicant shall remove and destroy immediately any registered grapevine or certified planting stock found to be off-type or affected by a virus or virus-like disease or a quarantine pest.

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-021 Requirements for registered blocks (G2/G3). (1) All registered grapevines must be identified by the number assigned to the single grapevine (G1) source in the foundation block from which they were ((~~taken~~)) derived.

(2) With the exception of practices allowed in subsections (3), (4), and (5) of this section, registered ((~~plants~~)) (G2) vines must be propagated directly from cuttings or tissue cultures taken from a G1 grapevine.

(3) Plants propagated from a G1 grapevine and grown entirely under laboratory or ((~~greenhouse~~)) screenhouse conditions may serve as a source of softwood cuttings ((~~or shoot tip culture~~)) used to establish a registered block of G2 grapevines or a registered (G2) tissue culture line.

(4) ((~~G3~~)) Registered G3 grapevines may be propagated from ((~~G2~~)) registered G2 grapevines within the same registered block, for the purpose of increasing the size of the block or for replacement grapevines.

(5) Participating nurseries must obtain written permission from the department to propagate G3 grapevines from G2 grapevines, for the purpose of establishing or increasing other registered blocks within the nursery ((~~if~~)). All of the following conditions ((~~are~~)) must be complied with:

(a) The mother vines were registered G2 ((~~grapevines~~)) vines;

(b) Propagation occurs in a laboratory or insect proof greenhouse by tissue culture or softwood cuttings; and

(c) The mother vine ((~~is no more than two years old, or the department~~)) has been tested by the department within the last two growing cycles and has been determined ((~~the mother vine is~~)) to be free of regulated viruses and pests in WAC 16-462-050.

(6) Prior to planting a registered block (G2/G3), the growing area and its contiguous borders of not less than ten feet must be tested by the department for the presence of ((~~the~~)) nematodes of the genus *((~~Xiphenema~~))* *Xiphinema*, which can be virus vectors. If a *((~~Xiphenema~~))* *Xiphinema* nematode is detected, the growing area must be fumigated in accordance with rates and practices recommended by Wash-

ington State University and then retested to verify efficacy of the fumigation. This treatment must be carried out under the supervision of the department.

(7) Registered blocks must be located at least one hundred feet from noncertified or nonregistered grapevines. This does not apply to registered ((~~stock~~)) vines grown in a fully enclosed greenhouse, screenhouse or laboratory, ((~~providing the~~)) as long as that facility does not contain noncertified grapevines.

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-022 Requirements for certified grape planting stock (G4). (1) Certified grape planting stock, including all components of budded or grafted plants, must be propagated from cuttings taken from G1, G2, or G3 grapevines.

(2) Cuttings from registered blocks must be sorted and kept separate by variety and selection number or clone.

(3) Treatment to control nematodes and other soil-borne pests may be required at any time by the department.

(4) ((~~All certified planting stock other than greenhouse grown plants must comply with the grades and standards for Washington certified grape planting stock as listed in WAC 16-462-055.~~

~~(5)~~)) Certified grape planting stock must be separated from noncertified grapevines by one of the following distances. This requirement does not apply to certified grape planting stock grown in a fully enclosed greenhouse, screenhouse or laboratory, ((~~providing the~~)) as long as that facility does not contain noncertified grapevines.

(a) Ten feet for any land treated to control nematodes; or

(b) Twenty feet for land not specifically treated to control nematodes.

((~~(6)~~)) (5) Certification is based solely on compliance with the requirements prescribed in WAC 16-462-050 and other requirements of this chapter.

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-025 ((~~Foundation,~~)) Registered((~~,~~)) grapevines (G2/G3) and certified grape planting stock (G4)—Inspections. (1) Inspections ((~~and indexing~~)) of registered grapevines and certified grape planting stock will be performed by the department at times determined to be suitable for the detection of virus and virus-like disease symptoms. ((~~The Clean Plant Center Northwest will inspect and index the foundation block (G1).~~

~~(2) The department will index registered grapevines by methods consistent with those utilized by the Clean Plant Center Northwest.~~

~~(3)~~))

(2) The department will conduct at least two inspections of registered ((~~grapevines~~)) (G2/G3) vines during each growing season.

((~~(4)~~)) (3) The department will inspect certified grape planting stock (G4) at least ((~~three~~)) two times per year((~~, twice during the growing season and once during or after harvest~~)).

((~~(5)~~)) (4) The department will refuse or withdraw registration or certification for any planting stock that is infested or infected with any ((~~regulated~~)) pest regulated under this chapter, or any quarantine pest listed in WAC 16-483-001.

NEW SECTION

WAC 16-462-027 Virus sampling and testing requirements for registered (G2/G3) grapevines. (1) In addition to required visual inspections, all registered (G2/G3) grapevines may be tested by the department for regionally occurring viruses regulated under this chapter, on a five-year rotation. Regionally occurring viruses are those that can be vectored within the registered block. Pests to be tested for will be recommended annually by consensus of an agency recognized industry stakeholder group with representation for the Pacific Northwest region.

(2) Testing will be prioritized as follows:

(a) All vines showing symptoms upon visual inspection by the department will be tested immediately.

(b) Vines of varieties with the highest distribution by the nursery.

(c) Vines of varieties considered unlikely to show visual symptoms of virus shall be sampled and tested at twenty percent per year, or as directed by the department.

(d) Other vines not described above.

(3) The department and entities authorized by the department will test registered G2 grapevines by methods consistent with those utilized by the Clean Plant Center Northwest.

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-030 ((~~Certified grape planting stock—~~))Application and fees. (1) The applicant shall ((~~furnish~~)) submit an application form developed by the department, furnishing all information requested ((~~on the application form and shall give~~)), giving consent to the department to inspect and take samples from any planting stock enrolled in the program as registered grapevines or certified ((~~grapevines for inspection or indexing~~)) grape planting stock.

(2) Such application for registration and certification shall be filed with the department by January ((~~1~~)) 10 of each year accompanied by a one hundred seventy-five dollar application fee.

(3) ((~~Inspection, phytosanitary certification, indexing and testing fees are due upon completion of services.~~

~~(4) Fees for inspection and phytosanitary certification shall be assessed at the appropriate rate established in chapter 16-401 WAC. Fees for indexing shall be assessed at the appropriate rate established in chapter 16-470 WAC. Mileage for inspections and other on-site services shall be charged at a rate established by the state office of financial management.~~)) Fees for inspection and sampling shall be charged at the appropriate rate established in WAC 16-401-027. Mileage for inspections and other on-site services shall be charged at a rate established by the state office of financial management.

(4) Laboratory testing fees for nematode presence shall be charged at the appropriate rate established in WAC 16-470-912.

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-035 Certified grape planting stock (G4)—Tagging and identity. (1) Certification ((~~tags issued~~)) language approved by the department must be ((~~securely attached~~)) affixed by the grower to each bundle, box or other unit of certified grape planting stock (G4) by means of tag, stamp, sticker, or preprinted language prior to shipping. If all vines in a single shipment are considered certified, the certification language may alternatively be affixed to or printed on the invoice or bill of lading.

(2) Any person selling Washington certified grape planting stock (G4) is responsible for the identity of such planting stock. Persons ((~~issued tags authorized by this chapter~~)) authorized to use certification language must account by variety for the certified grape planting stock produced and sold. They must keep and allow the department to inspect and copy records necessary to verify this.

AMENDATORY SECTION (Amending WSR 14-21-035, filed 10/7/14, effective 11/7/14)

WAC 16-462-050 Requirements—Targeted pests and pathogens. ((~~Certified plants~~)) All grapevines produced under this program must be free of Grapevine fanleaf virus, Grapevine leafroll-associated viruses, Grapevine virus A, Grapevine virus B, ((~~Grapevine rupestris stem pitting virus,~~)) Arabis mosaic virus, Tomato ringspot virus, Grapevine red blotch virus, Grapevine vein clearing virus, *Xylella fastidiosa*, *Daktulosphaira vitifoliae*, ((~~and~~)) *Planococcus ficus*((~~. Certified plants~~)) and all other quarantine pests listed in WAC 16-483-001. Grapevines produced under this program must also be apparently free of nematode root knots, crown gall, and other visible signs of diseases or serious pest injuries.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-462-055 Certified grape planting stock—Grades and standards.

WSR 20-17-145
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 19, 2020, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-097.

Title of Rule and Other Identifying Information: WAC 36-12-195 License fees, renewals and requirements, 36-13-010 License fees, renewals and requirements, 36-14-110 License fees, renewals and requirements, 308-11-030 Auctioneer fees, 308-14-200 Court reporter fees, 308-17-150 Private investigative agency, private investigator, and armed private investigator fees, 308-18-150 Private security guard company, private security guard, and armed private security guard fees, 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees, 308-20-210 Fees, 308-22-050 Fees, 308-29-045 Collection agency fees, 308-30-060 Application fees, 308-33-105 Employment agency fees, 308-124A-775 Real estate fees, 308-127-160 Fees, 308-129-110 Seller of travel registration fees, 308-312-060 Fees, 308-320-050 Registration fees, 308-320-060 Annual renewal dates, forms, and fees, 308-408A-090 Home inspector fees, and 308-420-240 Fees and charges.

Hearing Location(s): On September 22, 2020, at 9:30 a.m. Call 360-407-3815, use Conference ID: 2868139. Hearing will be held over the phone. Participants should plan on calling the phone number and entering the meeting ID when prompted.

Date of Intended Adoption: September 23, 2020.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by September 21, 2020.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by September 18, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees by twenty-five percent across various programs to continue covering the costs to administer these programs as these costs have increased over the years. Fees impacted by this rule making are: Appraisers, bail bond, body art and tattoo, camping resorts, collections, combative sports, cosmetologists and other personal services licensees, employment agencies, home inspection, notaries public, private investigators, real estate (real estate fees will be increased by thirty-five percent), security guard, timeshare, sellers of travel, commercial telephone solicitors, and whitewater river outfitters.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Many programs have not had an increase in fees since at least 2010, some dating back to 1993.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Anticipated date for fee increases are November 1, 2020.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; Implementation and Enforcement: Lorin Doyle, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1445.

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

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

August 19, 2020
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-195 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	$((~~65.00~~)) 81.00
Referee	-	$((~~65.00~~)) 81.00
Boxer	-	$((~~25.00~~)) 31.00
Matchmaker	-	$((~~65.00~~)) 81.00
Second	-	$((~~25.00~~)) 31.00
Inspector	-	$((~~65.00~~)) 81.00
Judge	-	$((~~65.00~~)) 81.00
Timekeeper	-	$((~~65.00~~)) 81.00
Announcer	-	$((~~65.00~~)) 81.00
Event physician	-	No charge
Event chiropractor	-	$((~~65.00~~)) 81.00
Promoter	-	$((~~500.00~~)) 625.00

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (boxer and referee only).

(c) Federal identification card (boxer only).

(d) One small current photograph, not more than two years old (boxer only).

(e) Payment of license fee.

(f) Certification from an organization approved by the department under RCW 67.08.100(3) and WAC 36-12-196.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

AMENDATORY SECTION (Amending WSR 17-21-118, filed 10/18/17, effective 11/21/17)

WAC 36-13-010 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Wrestling participant	-	$((~~25.00~~)) 31.00
Inspector	-	$((~~65.00~~)) 81.00
Event physician	-	No charge
Promoter	-	$((~~200.00~~)) 250.00
Theatrical wrestling school	-	$((~~500.00~~)) 625.00

(2) No license fee is required for persons licensed under chapter 36-12 or 36-14 WAC as an inspector, event physician or promoter.

(3) In addition to license requirements found in chapter 67.08 RCW:

(a) Wrestling participants shall submit a small photograph of themselves that is not more than two years old.

(b) Theatrical wrestling schools:

(i) Must provide proof of having an established place of business that offers training in theatrical wrestling.

(ii) Must provide proof of having an active tax registration through the department of revenue.

(iii) Must reapply for licensure when there is a change in the location or change in ownership.

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-110 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	$((~~65.00~~)) 81.00
Referee	-	$((~~65.00~~)) 81.00
Kickboxer	-	$((~~25.00~~)) 31.00
Martial arts participant	-	$((~~25.00~~)) 31.00
Amateur mixed martial arts participant	-	$((~~25.00~~)) 31.00
Matchmaker	-	$((~~65.00~~)) 81.00
Second	-	$((~~25.00~~)) 31.00
Inspector	-	$((~~65.00~~)) 81.00

Judge	-	$((~~65.00~~)) 81.00
Timekeeper	-	$((~~65.00~~)) 81.00
Announcer	-	$((~~65.00~~)) 81.00
Event physician	-	No charge
Event chiropractor	-	$((~~65.00~~)) 81.00
Promoter	-	$((~~500.00~~)) 625.00
Training facility	-	$((~~500.00~~)) 625.00
Amateur mixed martial arts sanctioning organization	-	$((~~500.00~~)) 625.00

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (kickboxer, martial arts participant, amateur mixed martial arts participant, and referee only).

(c) One small current photograph, not more than two years old (kickboxer, martial arts participant, and amateur mixed martial arts participants only).

(d) Payment of license fee.

(e) Certification from an organization approved by the department under RCW 67.08.100(3).

(f) Training facility: Have an established place of business that offers training in one or more of the mixed martial arts and a current tax registration through the department of revenue.

(g) Amateur mixed martial arts sanctioning organizations:

(i) Have an established place of business that offers training in one or more of the mixed martial arts;

(ii) Have a current tax registration through the department of revenue;

(iii) Have a minimum of three years total combined amateur or professional experience in at least three of the following areas: Referee, promoter, judge, inspector, have an established place of business that offers training in one or more of the mixed martial arts;

(iv) Provide to the department a list of authorized representatives who will be in charge of events or exhibitions. Changes to this list will not be accepted within thirty days prior to an event or exhibition.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

AMENDATORY SECTION (Amending WSR 07-16-036, filed 7/23/07, effective 9/1/07)

WAC 308-11-030 Auctioneer fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	**Fee**
Auctioneer:	
Initial application	$((~~155.00~~)) 194.00
Renewal	((~~155.00~~)) 194.00
Late renewal penalty	((~~100.00~~)) 125.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Certification	25.00
Auction company:	
Initial application	((~~255.00~~)) 319.00
Renewal	((~~255.00~~)) 319.00
Late renewal penalty	((~~100.00~~)) 125.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00

AMENDATORY SECTION (Amending WSR 09-22-051, filed 10/29/09, effective 12/1/09)

WAC 308-14-200 Court reporter fees. The following fees shall be charged by the business and professions division, department of licensing:

Title of Fee	**Fee**
Certification	
Application	$((~~150.00~~)) 188.00
Renewal	((~~125.00~~)) 156.00
Late renewal penalty	((~~125.00~~)) 156.00
Verification	25.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00

AMENDATORY SECTION (Amending WSR 16-13-003, filed 6/1/16, effective 7/2/16)

WAC 308-17-150 Private investigative agency, private investigator, and armed private investigator fees. Licenses issued to private investigator agencies and private investigators expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private investigative agency/principal fee:	
Application/examination/includes first examination plus current applicable background check fees	$((~~600.00~~)) 750.00
Principal armed endorsement	((~~100.00~~)) 125.00
Reexamination	25.00
License renewal	((~~350.00~~)) 438.00
Late renewal penalty	See below*
Change of principal/includes first examination plus current applicable background check fees	150.00
Private investigator:	
Original license plus current applicable background check fees	((~~200.00~~)) 250.00
Armed endorsement plus current applicable background check fees	((~~100.00~~)) 125.00
Transfer fee	25.00
License renewal	((~~175.00~~)) 219.00
Late renewal with penalty	((~~200.00~~)) 250.00
Certified trainer endorsement examination/reexamination	((~~25.00~~)) 31.00
Certified trainer endorsement renewal	((~~15.00~~)) 19.00

*Private investigative agency license renewals filed after the license expiration date will be charged the master license service late renewal fee in compliance with RCW 19.02.085.

AMENDATORY SECTION (Amending WSR 15-22-109, filed 11/4/15, effective 12/5/15)

WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees. Licenses issued to private security guard companies and private security guards expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private security guard company/principal:	
Application/includes first examination plus background check fee	$((~~330.00~~)) 413.00
Reexamination	25.00
License renewal	((~~300.00~~)) 375.00
Late renewal with penalty	((~~400.00~~)) 500.00
Change of principal/includes first examination plus background check fee	80.00
Principal armed endorsement	((~~10.00~~)) 13.00
Private security guard:	
Original license plus background check fee	((~~91.00~~)) 114.00
Armed endorsement	((~~10.00~~)) 13.00
Transfer fee	25.00
Licensees with inactive licenses are not required to pay late renewal penalty fees.	
License renewal	((~~85.00~~)) 106.00
License late renewal with penalty. Late fee is not due if submitting a renewal with a transfer or rehire application.	((~~90.00~~)) 113.00
Certified trainer endorsement examination/reexamination	((~~25.00~~)) 31.00
Certified trainer endorsement renewal	((~~15.00~~)) 19.00
((~~Duplicate~~)) License print fee	((~~10.00~~)) 5.00

AMENDATORY SECTION (Amending WSR 16-13-002, filed 6/1/16, effective 7/2/16)

WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees. The following fees for a one-year period shall be charged by business and professions division of the department of licensing:

Title of Fee	Fee
Bail bond agency/branch office:	
Application	$((~~1,200.00~~)) 1,500.00
License renewal	((~~1,150.00~~)) 1,438.00
Late renewal with penalty	((~~1,200.00~~)) 1,500.00
Bail bond agent:	
Original license	((~~500.00~~)) 625.00
License renewal	((~~575.00~~)) 719.00
Late renewal with penalty	((~~600.00~~)) 750.00
Change of qualified agent	250.00
Original endorsement to the bail bond agent license	((~~100.00~~)) 125.00

Title of Fee	Fee
Endorsement renewal	((~~100.00~~)) 125.00
Endorsement renewal with penalty	((~~150.00~~)) 188.00
Bail bond recovery agent license:	
Original license plus current applicable background check fees	((~~450.00~~)) 563.00
License renewal	((~~475.00~~)) 594.00
Late renewal with penalty	((~~500.00~~)) 625.00
Examinations:	
Reexamination fee	25.00

AMENDATORY SECTION (Amending WSR 16-02-033, filed 12/29/15, effective 1/29/16)

WAC 308-20-210 Fees. In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
License application	$((~~25.00~~)) 31.00
Reciprocity license	((~~50.00~~)) 63.00
Renewal (two-year license)	((~~55.00~~)) 69.00
Late renewal penalty	((~~55.00~~)) 69.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Hair design:	
License application	((~~25.00~~)) 31.00
Reciprocity license	((~~50.00~~)) 63.00
Renewal (two-year license)	((~~55.00~~)) 69.00
Late renewal penalty	((~~55.00~~)) 69.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Instructor:	
License application	((~~25.00~~)) 31.00
Reciprocity license	((~~50.00~~)) 63.00
Renewal (two-year license)	((~~55.00~~)) 69.00
Late renewal penalty	((~~55.00~~)) 69.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Manicurist:	
License application	((~~25.00~~)) 31.00
Reciprocity license	((~~50.00~~)) 63.00
Renewal (two-year license)	((~~55.00~~)) 69.00
Late renewal penalty	((~~55.00~~)) 69.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Esthetician:	
License application	((~~25.00~~)) 31.00
Reciprocity license	((~~50.00~~)) 63.00
Renewal (two-year license)	((~~55.00~~)) 69.00
Late renewal penalty	((~~55.00~~)) 69.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Master esthetician:	
License application	((~~25.00~~)) 31.00
Reciprocity license	((~~50.00~~)) 63.00
Renewal (two-year license)	((~~55.00~~)) 69.00
Late renewal penalty	((~~55.00~~)) 69.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Barber:	
License application	((~~25.00~~)) 31.00
Reciprocity license	((~~50.00~~)) 63.00
Renewal (two-year license)	((~~55.00~~)) 69.00

Title of Fee	Fee
Late renewal penalty	((~~55.00~~)) 69.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
School:	
License application	((~~300.00~~)) 375.00
Renewal (one-year license)	((~~300.00~~)) 375.00
Late renewal penalty	((~~175.00~~)) 219.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Salon/shop:	
License application	((~~110.00~~)) 138.00
*Reduced license application (permanent cosmetics)	((~~15.00~~)) 19.00
Renewal (one-year license)	((~~110.00~~)) 138.00
*Reduced renewal (permanent cosmetics)	((~~15.00~~)) 19.00
Late renewal penalty	((~~50.00~~)) 63.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Mobile unit:	
License application	((~~110.00~~)) 138.00
*Reduced license application (permanent cosmetics)	((~~15.00~~)) 19.00
Renewal (one-year license)	((~~110.00~~)) 138.00
*Reduced renewal (permanent cosmetics)	((~~15.00~~)) 19.00
Late renewal penalty	((~~50.00~~)) 63.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Personal services:	
License application	((~~110.00~~)) 138.00
*Reduced license application (permanent cosmetics)	((~~15.00~~)) 19.00
Renewal (one-year license)	((~~110.00~~)) 138.00
*Reduced renewal (permanent cosmetics)	((~~15.00~~)) 19.00
Late renewal penalty	((~~50.00~~)) 63.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00

* If you have an individual artist license and an artist shop location license to practice permanent cosmetics under chapter 18.300 RCW, and an operator license under chapter 18.16 RCW you may qualify for a reduction of the license fee for your salon shop license if it is at the same location as your artist shop location license.

AMENDATORY SECTION (Amending WSR 10-14-074, filed 7/1/10, effective 7/1/10)

WAC 308-22-050 Fees. The following fees shall be charged by the professional licensing division of the department of licensing. The department may require payment of fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve.

Title of Fee	Fee
Individual License:	
Tattoo	$((~~250~~)) 313
Body Art	$((~~250~~)) 313
Body Piercing	$((~~250~~)) 313
Permanent Cosmetics	$((~~250~~)) 313
Location License:	
Shop/Business	$((~~300~~)) 375
Mobile Unit	$((~~300~~)) 375
Event	$((~~300~~)) 375
Individual License Renewal:	
Tattoo	$((~~250~~)) 313
Body Art	$((~~250~~)) 313
Body Piercing	$((~~250~~)) 313
Permanent Cosmetics	$((~~250~~)) 313
Location License Renewal:	
Shop/Business	$((~~300~~)) 375
Mobile Unit	$((~~300~~)) 375
Event	$((~~300~~)) 375
Individual License Late Renewal:	
Tattoo	$((~~350~~)) 469
Body Art	$((~~350~~)) 469
Body Piercing	$((~~350~~)) 469
Permanent Cosmetics	$((~~350~~)) 469

Title of Fee	Fee
Location License Late Renewal:	
Shop/Business	$((~~400~~)) 500
Mobile Unit	$((~~400~~)) 500
((~~Duplicate~~)) License Print Fee	$((~~50~~)) 5

AMENDATORY SECTION (Amending WSR 11-23-159, filed 11/22/11, effective 12/23/11)

WAC 308-29-045 Collection agency fees. The following fees will be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Collection agency—Main office:	
Original application	((~~$850.00~~)) $1,063.00
Renewal	((~~$475.00~~)) $594.00
Reregistration fee after 30 days	((~~$1,325.00~~)) $1,538.00
Branch office (with WA main office):	
Original application	((~~$550.00~~)) $688.00
Renewal	((~~$300.00~~)) $375.00
Reregistration fee after 30 days	((~~$850.00~~)) $988.00
Out-of-state collection agency—Main office:	
Original application	((~~$425.00~~)) $531.00
Renewal	((~~$237.50~~)) $297.00
Reregistration fee after 30 days	((~~$662.50~~)) $768.50
Branch office—With out-of-state main office:	
Original application	((~~$275.00~~)) $344.00
Renewal	((~~$150.00~~)) $188.00
Reregistration fee after 30 days	((~~$425.00~~)) $494.00

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-060 Application fees. The following fees shall be charged by the department:

Title of Fee	Fee
Application for notary public commission	((~~$30.00~~)) $38.00
Application for electronic records notary public endorsement	$15.00
Renewal of notary public commission	((~~$30.00~~)) $38.00
Renewal of electronic records notary public endorsement	$15.00
Duplicate certificate of commission (including name change)	((~~$15.00~~)) $19.00

AMENDATORY SECTION (Amending WSR 98-18-053, filed 8/28/98, effective 9/28/98)

WAC 308-33-105 Employment agency fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Agencies:	
Original application and license	$((~~783.00~~)) 979.00
Renewal	((~~648.00~~)) 810.00
Transfer of license	150.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
New/amended contract or fee schedule review	50.00
Branch office:	
Original application and license	((~~540.00~~)) 675.00
Renewal	((~~540.00~~)) 675.00
Transfer of license	25.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
General manager exam fee	((~~150.00~~)) 188.00

AMENDATORY SECTION (Amending WSR 16-05-064, filed 2/12/16, effective 3/14/16)

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed on or after ((~~July 1, 2010~~)) November 1, 2020, and all renewals for existing licenses with expiration date on or after ((~~July 1, 2010~~)) November 1, 2020. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center for the real estate broker and the real estate managing broker licenses. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	$((~~138.25~~)) 187.00
Reexamination	((~~138.25~~)) 187.00
Original license	((~~146.25~~)) 198.00
License renewal	((~~146.25~~)) 198.00
Late renewal with penalty	((~~172.75~~)) 234.00
((~~Duplicate~~)) License print fee	((~~26.50~~)) 5.00
Certification	((~~26.50~~)) 36.00
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	$((~~138.25~~)) 187.00
Reexamination	((~~138.25~~)) 187.00
Original license	((~~210.00~~)) 284.00
License renewal	((~~210.00~~)) 284.00
Late renewal with penalty	((~~236.50~~)) 320.00
((~~Duplicate~~)) License print fee	((~~26.50~~)) 5.00
Certification	((~~26.50~~)) 36.00
Name or address change, transfer or license activation	0.00
Real estate firm and assumed name license:	
Original license	$((~~200.00~~)) 270.00
License renewal	((~~200.00~~)) 270.00
Late renewal with penalty	((~~226.50~~)) 306.00
Name or address change	0.00
((~~Duplicate~~)) License print fee	((~~26.50~~)) 5.00
Certification	((~~26.50~~)) 36.00

Title of Fee	Fee
Real estate branch:	
Original license	$((~~189.50~~)) 256.00
License renewal	((~~189.50~~)) 256.00
Late renewal with penalty	((~~216.50~~)) 293.00
Certification	((~~26.50~~)) 36.00
((~~Duplicate~~)) License print fee	((~~26.50~~)) 5.00
Name or address change, transfer or license activation	0.00
Fingerprint processing	per vendor schedule
Subsequent fingerprint processing	per vendor schedule

Fingerprints rejected by the department, Washington state patrol or FBI may necessitate subsequent fingerprint processing fees.

Fingerprint rolling fee per vendor schedule.

AMENDATORY SECTION (Amending WSR 20-06-036, filed 2/27/20, effective 3/29/20)

WAC 308-127-160 Fees. The following fees shall be charged under the authority of RCW 64.36.081 and 43.24.086:

(1) Registration application fees:	
Start up timeshare program including one project.	$((~~1000.00~~)) 1250.00
Each additional project in program.	200.00
Each apartment unit in program.	10.00
The first unit of personal property in the timeshare program.	500.00
Each additional unit of personal property in the timeshare program.	100.00
Businesses of listing or brokering resale intervals.	500.00
(2) Interval Fees:	
For each interval through one thousand.	1.00
Intervals beyond one thousand.	0.00
Each monthly filing of listings of resale intervals (in lieu of interval fees for resale intervals).	10.00
(3) Renewal fees:	
Timeshare program including one project.	((~~500.00~~)) 625.00
Late renewal fee for timeshare program.	2000.00

Each additional project to a maximum of five projects.	200.00
Each apartment unit - to maximum of twenty-five apartment units.	10.00
(4) Consolidation fees:	
Each additional project added.	200.00
Each additional apartment unit.	10.00
The first additional unit of personal property being consolidated.	250.00
Each additional unit of personal property added in one consolidation.	100.00
(5) Exemption fees:	
Programs consisting of a single apartment unit in a single project with fifty-two or fewer intervals.	250.00
All other types of programs.	1000.00
(6) Impound fees:	
Initial establishment of an impound, escrow, trust, or other arrangement requiring a depositary.	500.00
Each required periodic report.	50.00
(7) Advertising fees:	
Each initial submission of advertisement whether or not submitted in a timely manner, and whether or not in use at the time of payment.	25.00
Examination of advertisement which are for the purpose of marketing surveys and not involving an examination of project or program instruments.	150.00
(8) Fees for persons in the business of offering commercial promotional programs:	
Registration of individual.	500.00
(9) Salespersons fees:	
Initial application, including first timeshare company association.	((~~25.00~~)) <u>31.00</u>
Each timeshare company association after the first.	25.00
Renewal.	((~~25.00~~)) <u>31.00</u> per timeshare company association
(10) Fees for amendment of registration:	
For a timely submission of an amendment filing.	25.00
Late fee for failure to file an amendment within twenty days of the occurrence of a materially adverse change.	500.00

(11) Inspection fees:

Applicants and registrants shall pay the cost of inspections conducted pursuant to chapter 64.36 RCW. The inspection fees shall be paid prior to the granting of a registration or consolidation. The inspection fee shall be the actual cost to the department for conducting of the inspection.

<u>AMENDATORY SECTION</u> (Amending WSR 07-16-036, filed 7/23/07, effective 9/1/07)

WAC 308-129-110 Seller of travel registration fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Original registration fee	((~~$202.00~~)) <u>$253.00</u>
Registration renewal	((~~202.00~~)) <u>253.00</u>
Service of process fee	20.00

Branch offices are subject to a duplicate registration fee. The duplicate registration fee for each branch office shall be an amount equal to the original registration fee.

<u>AMENDATORY SECTION</u> (Amending WSR 98-03-055, filed 1/16/98, effective 2/16/98)

WAC 308-312-060 Fees. (1) The following fees apply to the whitewater river outfitter license<u>:</u>

(a) New application, ((~~$25.00~~)) <u>$31.00</u> per business location.

(b) Annual renewal, ((~~$25.00~~)) <u>$31.00</u> per business location.

(2) New and renewal applications are charged the application handling fee listed in RCW 19.02.075.

Delinquent renewal applications may be charged the delinquency fee listed in RCW 19.02.085.

<u>AMENDATORY SECTION</u> (Amending WSR 90-02-060, filed 1/2/90, effective 2/2/90)

WAC 308-320-050 Registration fees. The fee for any commercial telephone solicitor required to register in this state shall be ((~~seventy-two~~)) <u>ninety</u> dollars for each business location annually. The annual fee shall be proratable and nonrefundable.

<u>AMENDATORY SECTION</u> (Amending WSR 90-02-060, filed 1/2/90, effective 2/2/90)

WAC 308-320-060 Annual renewal dates, forms, and fees. Registration renewals must be made annually on the form and date required by the department. The fee for annual renewal shall be ((~~seventy-two~~)) <u>ninety</u> dollars.

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

WAC 308-408A-090 Home inspector fees. These fees are applicable to all original licenses, examination services, and fee generating services. The following fees shall be charged by professional licensing services of the department of licensing:

TITLE OF FEE	FEE
Home Inspector:	
Application/examination	$((~~300~~)) 375
Reexamination	
Full	$((~~300~~)) 375
National portion	$((~~250~~)) 313
State portion	$((~~125~~)) 156
Original license	$((~~680~~)) 850
License renewal	$((~~375~~)) 469
Late renewal with penalty	$((~~435~~)) 544
Reinstatement penalty fine	$((~~150~~)) 188
Course review	$((~~75~~)) 94

AMENDATORY SECTION (Amending WSR 02-15-168, filed 7/23/02, effective 1/1/03)

WAC 308-420-240 Fees and charges. The following fees shall be paid under the provisions of chapter 19.105 RCW:

	TITLE OF FEE	FEE
(1)	Original registration:	
	One camping resort	$((~~3,200.00~~)) 4,000.00
	Each additional camping resort in this state	1,000.00
(2)	Contract fees:	
	One to five hundred contracts	500.00
	Each additional five hundred contracts, or fraction thereof	100.00
(3)	Renewal fees:	
	Annual renewal	((~~2,000.00~~)) 2,500.00
	Each additional camping resort in this state	800.00
	Contract fees as described in subsection (2) of this section for each grouping of contracts:	
	One to five hundred contracts	500.00
	Each additional five hundred contracts, or fraction thereof	100.00
	Late renewal penalty	800.00
(4)	Fees for amending registration and public offering statements:	
	For each amendment of registration or the public offering statement, not requiring an examination of documentation for adding campground or additional contracts to registration	50.00
	Amendment for the establishment of an additional campground into the registration for which an examination of documents is required exclusive of any other fees	1,500.00
	Penalty fee for failure to file an amendment within thirty days of the occurrence of a material change as defined in WAC 308-420-030 or 308-420-040	100.00
(5)	Fees for impounds, escrows, trust and depositories:	
	For each initial establishment of impound, escrow, trust or other arrangement requiring agency monitoring	250.00
	Each required periodic report	20.00
(6)	Advertising filings:	
	Each individual advertisement filed with the department	100.00
	Advertisement involving no examination of campground instruments and which are for the purpose of marketing surveys or feasibility studies	75.00
(7)	Salesperson fees:	
	Registration	((~~150.00~~)) 188.00
	Renewal	((~~150.00~~)) 188.00
	Transfer	150.00
	Duplicate license	35.00

	TITLE OF FEE	FEE
(8)	Fees for exemptions and exemption applications:	
	Review of application for exemption under RCW 19.105.320(2)	150.00
(9)	All fees are nonrefundable after the application has been received.	
(10)	All fees shall be paid to the order of the Washington state treasurer.	