

WSR 20-22-001
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 21, 2020, 12:46 p.m., effective November 21, 2020]

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

Purpose: WAC 246-282-990(4), sanitary control of shellfish—Fees, annual paralytic shellfish poisoning testing (PSP) fee redistribution. The adopted rule equitably assesses the cost of PSP testing by following the annual redistribution formula, which is based on the number of PSP tests done in the previous year. PSP testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck so that toxic shellfish do not reach consumers.

Citation of Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Other Authority: RCW 69.30.050.

Adopted under notice filed as WSR 20-05-057 on February 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 21, 2020.

Lauren Jenks
 Assistant Secretary

AMENDATORY SECTION (Amending WSR 19-10-026, filed 4/23/19, effective 5/24/19)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656

Type of Operation	Annual Fee
Plants with floor space > 5000 sq. ft.	\$1,210
(2) The fee for each export certificate is \$55.00.	
(3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:	

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale		
Company		
Shellstock Shipper	≤ 2	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		
Shellstock Shipper	N/A	\$961
50 or greater acres		
Shucker-Packer	≤ 2	\$752
(plants < 2000 ft ²)		
Shucker-Packer	3 or more	\$1,076
(plants < 2000 ft ²)		
Shucker-Packer	≤ 2	\$882
(plants 2000 - 5000 ft ²)		
Shucker-Packer	3 or more	\$1,297
(plants 2000 - 5000 ft ²)		
Shucker-Packer	N/A	\$2,412
(plants > 5000 ft ²)		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1st of each year for companies licensed as harvesters; or
- (iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
Department of Natural Resources	NA	(\$11,268) 10,584
Jamestown S'Klallam Tribe	WA-0588-SS	(\$1,662) 2,964

Harvester	Cert #	Fee
Lower Elwha Klallam Tribe	WA-0587-HA	\$ ((2,217)) <u>3,810</u>
Lummi Indian Business Council	WA-0098-SS	\$ ((485)) <u>635</u>
Port Gamble S'Klallam Tribe	WA-0859-HA	\$ ((3,140)) <u>2,540</u>
Puyallup Tribe of Indians	WA-1137-HA	\$ ((40,898)) <u>9,949</u>
<u>Skokomish Indian Tribe</u>	<u>WA-0577-HA</u>	<u>\$1,270</u>
Suquamish Tribe	WA-0694-SS	\$ ((20,318)) <u>13,971</u>
Swinomish Indian Tribal Community	WA-1420-SS	\$ ((1,108)) <u>423</u>
<u>Taylor Shellfish Company, Inc.</u>	<u>WA-0046-SP</u>	<u>\$7,409</u>
The Tulalip Tribes	WA-0997-HA	\$ ((3,510)) <u>4,445</u>
((Taylor Shellfish Company, Inc.	WA-0046-SP	\$3,694)

(5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 20-22-003

PERMANENT RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed October 21, 2020, 1:29 p.m., effective November 21, 2020]

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

Purpose: WAC 246-919-010 through 246-919-770, relating to allopathic physicians. The Washington medical commission (commission) adopted amendments to more closely align these sections with current industry standards and provide clearer rule language for licensed allopathic physicians (MDs). Changes include updating the name of the commission pursuant to SB 5764; updating definitions to reference new terminology or clarify their meaning; rescinding sections which are no longer relevant, utilized, or are referenced in other chapters; updating references to periodicals; updating physician licensing requirements to align with current standards; updating section titles to more clearly state the purpose of the section; incorporating language from commission interpretive statements; adding a new section on how a military spouse may obtain a temporary practice permit pursuant to RCW 18.340.020; adding a new section on the administration of deep sedation and general anesthesia by a physician in a dental office; and updating the timelines required for cooperating with an investigation.

Citation of Rules Affected by this Order: New WAC 246-919-397 and 246-919-602; repealing WAC 246-919-310, 246-919-710, 246-919-730, 246-919-740, 246-919-750, 246-919-760 and 246-919-770; and amending WAC 246-919-010, 246-919-020, 246-919-300, 246-919-320, 246-919-330, 246-919-340, 246-919-355, 246-919-360, 246-919-365, 246-919-370, 246-919-395, 246-919-396, 246-919-422, 246-919-435, 246-919-475, 246-919-480, 246-919-520, 246-919-601, 246-919-605, 246-919-606, 246-919-610, 246-919-620, 246-919-630, and 246-919-700.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Adopted under notice filed as WSR 20-16-002 on July 22, 2020.

A final cost-benefit analysis is available by contacting Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, TTY 711, email amelia.boyd@wmc.wa.gov, website wmc.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 24, Repealed 7.

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

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 24, Repealed 7.

Date Adopted: August 21, 2020.

Melanie de Leon
Executive Director

Chapter 246-919 WAC

WASHINGTON MEDICAL ((QUALITY-ASSURANCE)) COMMISSION

AMENDATORY SECTION (Amending WSR 11-05-025, filed 2/7/11, effective 3/10/11)

WAC 246-919-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" is an individual who has completed the application form and has paid the application fee.

(2) "Commission" means the Washington ((state)) medical ((quality-assurance)) commission.

(3) "Emergent" means a circumstance calling for immediate action.

(4) "Hospital" means any health care institution licensed ((pursuant to)) under chapter 70.41 RCW.

(5) "Intermittent" means providing services on a part-time or full-time nonpermanent basis.

~~(6) ("Mentally or physically disabled physician" means a physician who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety by reason of any mental or physical condition.~~

~~(7) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~(8)) "Physician" means a ((physician)) person licensed ((pursuant to)) under chapter 18.71 RCW.~~

~~((9)) (7) "Unprofessional conduct" ((as used in these regulations shall)) means the conduct described ((in RCW 18.71.0193 for conduct occurring before June 11, 1986, and the conduct described)) in RCW 18.130.180 ((for conduct occurring on or after June 11, 1986)).~~

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-020 Commission address. The commission's official mailing address is:

Washington Medical ((Quality Assurance)) Commission
Department of Health
P.O. Box 47866
Olympia, WA 98504-7866

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-300 Application withdrawals. An application for a license may not be withdrawn after the commission ((or the reviewing commission member)) determines that grounds exist for denial of the license or for the issuance of a conditional license. Applications ((which)) that are subject to investigation for unprofessional conduct or impaired practice may not be withdrawn.

AMENDATORY SECTION (Amending WSR 04-04-067, filed 2/2/04, effective 3/4/04)

WAC 246-919-320 Approved United States and Canadian medical schools. For the purposes of ((the Medical Practice Act)) RCW 18.71.055, the commission approves ((those)) medical schools accredited by the Liaison Committee on Medical Education.

AMENDATORY SECTION (Amending WSR 05-07-024, filed 3/7/05, effective 4/7/05)

WAC 246-919-330 Postgraduate medical training ((defined)). (1) ((For the purposes of this chapter,)) Postgraduate medical training means clinical training approved by the commission in general medicine or surgery, or a specialty or subspecialty in the field of medicine or surgery as recognized by the American Board of Medical Specialties ((and listed in the 2004 *Official ABMS Annual Report and Reference Handbook*, published March 18, 2004)) listed in the 2017-2018 ABMS Board Certification Report and new specialties or subspecialties approved by the commission.

(2) The commission approves only the following postgraduate clinical training courses:

(a) Programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) ((which are listed in the 1984-85 directory of residency programs, or programs approved by the Accreditation Council)) at the time of residency.

(b) Programs accredited by the Royal College of Physicians and Surgeons of Canada (RCPSC) or the College of Family Physicians of Canada (CFPC), or programs accredited by the RCPSC or CFPC at the time of residency.

(3) Postgraduate medical training includes, but is not limited to, internships, residencies and medical or surgical fellowships.

(4) A physician must complete two consecutive years of postgraduate medical training in no more than two programs. The physician must acquire this training after completion of a formal course of undergraduate medical instruction outlined in RCW 18.71.055. The commission will accept only satisfactory clinical performance evaluations.

AMENDATORY SECTION (Amending WSR 01-18-086, filed 9/5/01, effective 10/6/01)

WAC 246-919-340 Additional requirements for international medical school graduates. All graduates of medical schools outside the United States, Canada, or Puerto Rico must ((have either)) satisfy one of the following requirements:

(1) ((Been licensed)) Held a full and unrestricted license to practice medicine in another state prior to 1958;

(2) Obtained a certificate with an indefinite status granted by the Educational Commission for Foreign Medical Graduates (ECFMG); or

(3) Successfully completed one year of supervised academic clinical training in the United States, commonly referred to as a Fifth Pathway program.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-355 Examination ((scores)) accepted by the commission. ((Examinations accepted by the Washington state medical quality assurance commission:))

(1) The commission ((adopts)) accepts the United States Medical Licensing Examination (USMLE) as the examination ((accepted by the commission)) for licensure.

(2) The minimal passing scores for each component of any approved examination combination shall be a score of seventy-five as defined by the examining authority.

(3) ((Applicants who do not pass Step 3 of the USMLE examination after three sittings within seven years after passing the first examination, either Step 1 or Step 2, or acceptable combination, shall demonstrate evidence satisfactory to the commission of having completed a remedial or refresher medical course approved by the commission prior to being permitted to sit for the examination again. Applicants who do not pass after the fourth sitting may not sit for another examination without completing an additional year of postgraduate training or satisfying any other conditions specified by the commission.

(4) To be eligible for USMLE Step 3, the applicant must:
(a) Have obtained the M.D. degree;

(b) Have successfully completed the Federation Licensure Examination (FLEX) Component 1 or both National Boards Examination (NBE) Parts I and II or USMLE Steps 1 and 2 or NBE Part I and USMLE Step 2 or Step 1 and NBE Part II; and

(c) Be certified by the ECFMG if a graduate of an international medical school, or have successfully completed a fifth pathway program; and postgraduate training year in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education.)) Applicants must have passed all components of the USMLE within seven years after passing the first examination. The commission recognizes that an applicant with a combined degree may require an exception to the seven-year requirement. The commission will review exception requests on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 06-18-042, filed 8/30/06, effective 9/30/06)

WAC 246-919-360 Examinations accepted for ((reciprocity or waiver)) licensure. (1) The commission may accept certain examinations as a basis for licensure. These examinations include USMLE, ((FLEX, NBE)) Federation Licensure Examination (FLEX), National Boards Examination (NBE), or those given by the other states, or territories of the United States. Those who have taken the Licentiate of the Medical Council of Canada ((L.M.C.C.)) (LMCC) and hold((s)) a valid LMCC certification obtained after 1969, may be granted a license without examination.

(2) Examination combination acceptable. Any applicant who has successfully completed Part I (NBE) or Step 1 (USMLE) plus Part II or Step 2 plus Part III or Step 3; or FLEX Component 1 plus Step 3; or Part I or Step 1, plus Part II or Step 2, plus FLEX Component 2 shall be deemed to have successfully completed a medical licensure examination as required by RCW 18.71.070. (For clarification, see Table 1.)

Table 1

Accepted Examinations taken in Sequence	Other Acceptable Combinations
NBME Part I <i>plus</i> NBME Part II <i>plus</i> NBME Part III	NBME Part I or USMLE Step 1 <i>plus</i> NBME Part II or USMLE Step 2 <i>plus</i> NBME Part III or USMLE Step 3

Accepted Examinations taken in Sequence	Other Acceptable Combinations
FLEX Component 1 <i>plus</i> FLEX Component 2	FLEX Component 1 <i>plus</i> USMLE Step 3 or NBME Part I or USMLE Step 1 <i>plus</i> NBME Part II or USMLE Step 2 <i>plus</i> FLEX Component 2
USMLE Step 1 <i>plus</i> USMLE Step 2 <i>plus</i> USMLE Step 3	

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-365 FLEX examination standards. ~~((Reciprocity applicants who were licensed in another state by passing the FLEX examination will be eligible for a waiver of examination if the applicant received a FLEX weighted average score of at least 75. The score may be obtained in a single setting of the three-day examination or by averaging the individual day scores from different examinations. The individual day scores will be averaged according to the following formula:~~

- ~~Day 1 equals 1/6.~~
- ~~Day 2 equals 2/6.~~
- ~~Day 3 equals 3/6.~~

~~The overall average score shall be truncated to the nearest whole number (i.e., an average of 74.9 equals 74). Single subject averaging is not permitted.)) The commission will accept the Federation Licensing Examination (FLEX) weighted average of 75 reported from the Federation of State Medical Boards. All FLEX scores must be submitted directly from the Federation of State Medical Boards. FLEX scores reported by other states will not be accepted.~~

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-370 Special purpose examination. (1) The commission may require an applicant ((or licensee)) to pass the Special Purpose Examination (SPEX) or any other examination deemed appropriate. An applicant ((or licensee)) may be required to take an examination when the commission has concerns with the applicant's ((or licensee's)) ability to practice competently for reasons which may include, but are not limited to, the following:

- (a) Resolved or pending malpractice suits;
- (b) Pending action by another state licensing authority;

(c) Actions pertaining to privileges at any institution; or

(d) Not having practiced for ~~((an interval of time))~~ the immediate two years prior to the application.

(2) The minimum passing score on the SPEX examination shall be seventy-five. The passing score for any other examination under this rule shall be determined by the commission.

AMENDATORY SECTION (Amending WSR 17-18-098, filed 9/6/17, effective 10/7/17)

WAC 246-919-395 Substantially equivalent licensing standards—Temporary practice permit. (1) An applicant who holds an unrestricted, active license in another state with licensing standards substantially equivalent to those in Washington may apply for a temporary practice permit authorizing the applicant to practice as a physician in Washington.

(2) The commission will issue the physician a temporary practice permit if the following requirements are met:

(a) The applicant submits a completed application for a physician and surgeon license on a form provided by the commission on which the applicant indicates that he or she wishes to receive a temporary practice permit;

(b) The applicant submits payment of the application fee and temporary practice permit fee ~~((pursuant to))~~ under WAC 246-919-990;

(c) The commission receives the American Medical Association's physicians' data profile verifying states in which the applicant is or was licensed;

(d) The commission receives the practitioner profile from the Federation of State Medical Boards;

(e) The applicant requests and the commission receives written verification attesting that the applicant has a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment from all states which the applicant is or was licensed;

(f) The applicant is not subject to denial of a license or issuance of a conditional license under chapter 18.130 RCW; and

(g) The applicant is licensed in a state that has licensing standards substantially equivalent to Washington.

(3) The temporary practice permit allows the applicant to work in the state of Washington as a physician without restriction until the permit expires. The temporary practice permit is a license to practice medicine.

(4) The temporary practice permit shall expire upon the issuance of a license by the commission; initiation of an investigation by the commission of the applicant; or ninety days after the temporary practice permit is issued, whichever occurs first. The temporary permit will not be renewed, reissued, or extended.

(5) An applicant who receives a temporary practice permit and who does not complete the application process may not receive additional temporary practice permits even upon submission of a new application in the future.

AMENDATORY SECTION (Amending WSR 10-05-029, filed 2/9/10, effective 2/11/10)

WAC 246-919-396 Background check—Temporary practice permit. The ~~((medical quality assurance commis-~~

~~ion (MQAC)))~~ commission conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The ~~((MQAC))~~ commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the ~~((MQAC))~~ commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The ~~((MQAC))~~ commission will issue a temporary practice permit that is valid for six months. A ~~((one-time))~~ one-time extension of six months will be granted if the national background check report has not been received by the ~~((MQAC))~~ commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician during the time period specified on the permit. The temporary practice permit is a license to practice medicine.

(3) The ~~((MQAC))~~ commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

NEW SECTION

WAC 246-919-397 How to obtain a temporary practice permit—Military spouse. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for physicians.

(1) A temporary practice permit may be issued to an applicant who is a military spouse or state registered domestic partner of a military person and:

(a) Is moving to Washington as a result of the military person's transfer to Washington;

(b) Left employment in another state to accompany the military person to Washington;

(c) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for a physician to those in Washington; and

(d) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of the other state or states.

(2) A temporary practice permit grants the individual the full scope of practice for the physician.

(3) A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application

specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit to the commission the necessary application, fee(s), fingerprint card if required, and documentation for the license;

(b) Attest on the application that the applicant left employment in another state to accompany the military person;

(c) Meet all requirements and qualifications for the license that are specific to the training, education, and practice standards for physicians;

(d) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for physicians in Washington;

(e) Submit a copy of the military person's orders and a copy of:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) Documentation of a state registered domestic partnership.

(f) Submit a written request for a temporary practice permit.

(5) For the purposes of this section:

(a) "Military spouse" means the husband, wife, or registered domestic partner of a military person.

(b) "Military person" means a person serving in the United States Armed Forces, the United States Public Health Service Commissioned Corps, or the Merchant Marine of the United States.

AMENDATORY SECTION (Amending WSR 16-16-028, filed 7/22/16, effective 8/22/16)

WAC 246-919-422 Transition from post-graduate limited license to full license. In order to obtain full license status, ~~((individuals))~~ a physician with a post-graduate limited Washington license will pay the fee difference between the limited license application and the full license application. This license will expire on their second birth date after issuance and every two years thereafter.

AMENDATORY SECTION (Amending WSR 17-07-043, filed 3/8/17, effective 4/8/17)

WAC 246-919-435 Training in suicide assessment, treatment, and management. (1) A licensed physician, other than a resident holding a limited license issued under RCW 18.71.095(3), must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after

initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

~~((3))~~ ~~((Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.~~

~~((4))~~ ~~((Beginning July 1, 2017,))~~ The training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

~~((5))~~ ~~((4))~~ The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-919-460.

~~((6))~~ ~~((5))~~ The commission exempts any licensed physician from the training requirements of this section if the physician has only brief or limited patient contact, or no patient contact.

AMENDATORY SECTION (Amending WSR 01-03-115, filed 1/22/01, effective 2/22/01)

WAC 246-919-475 Expired license. (1) If the license has been expired for three years or less, the ~~((practitioner))~~ physician must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the license has been expired for over three years, the ~~((practitioner))~~ physician must:

(a) Reapply for ~~((licensing))~~ licensing under current requirements as stipulated in RCW 18.71.050 (1)(b) and WAC 246-919-330; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 11-05-025, filed 2/7/11, effective 3/10/11)

WAC 246-919-480 Retired active license. (1) To obtain a retired active license a physician must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) A physician with a retired active license may not receive compensation for health care services;

(3) A physician with a retired active license may practice only in emergent or intermittent circumstances; and

(4) A physician ~~((s))~~ with a retired active license must renew every two years and must report one hundred hours of continuing medical education at every renewal. The commission will accept a maximum of forty hours of continuing medical education in Categories II through V, as defined in WAC 246-919-460, during each renewal period. There is no limit to the number of hours that may be accepted in Category I.

AMENDATORY SECTION (Amending WSR 97-21-053, filed 10/13/97, effective 11/13/97)

WAC 246-919-520 Revocation of a physician's license. ~~((This section sets forth the procedure by which a respondent))~~ A physician may request a review by the ~~((medical quality assurance))~~ commission of its decision to revoke the ~~((respondent's))~~ physician's license under RCW 18.71-019:

(1) If the commission issues a final order revoking a ~~((respondent's))~~ physician's license following an adjudicative proceeding, the ~~((respondent))~~ physician may request a review of the decision by a review panel of the commission.

(2) The ~~((respondent))~~ physician shall file a written request with the commission within twenty days of the effective date of the final order. The ~~((respondent))~~ physician may not request an extension of the twenty-day period to file a request for review.

(3) The ~~((respondent's))~~ physician's request for review of the final order does not change the effective date of the final order.

(4) A review panel shall review the final order. The review panel is composed of the members of the commission who did not:

(a) Review the initial investigation and make the decision to issue a statement of charges against the ~~((respondent))~~ physician in this matter; or

(b) Hear the evidence at the adjudicative proceeding and issue the final order revoking the ~~((respondent's))~~ physician's license.

(5) Within seven days of receipt of the request for review of the final order, a scheduling order is issued setting a date for the review hearing, and a date for the filing of written argument by the parties. The review hearing must take place within sixty days of the ~~((respondent's))~~ physician's request for review of the final order.

(6) The review panel shall convene in person for the review hearing on the date set in the scheduling order. If a commission member is unavailable to meet on the scheduled date, a pro tempore member shall take that person's place on the review panel. At the review hearing, the review panel:

(a) Shall review the final order;

(b) Shall review written argument presented by the parties; and

(c) May hear oral argument by the parties.

(7) If the review panel determines that revocation of the ~~((respondent's))~~ physician's license is not the appropriate sanction, it shall issue an amended order setting the appropriate sanction(s) necessary to protect the public.

(8) If the review panel determines that revocation of the ~~((respondent's))~~ physician's license is appropriate, it shall issue an order confirming that decision.

AMENDATORY SECTION (Amending WSR 17-18-032, filed 8/28/17, effective 9/28/17)

WAC 246-919-601 Safe and effective analgesia and anesthesia administration in office-based surgical settings. (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The ~~((medical quality assurance))~~

commission establishes the following rule for physicians licensed under this chapter who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The following terms used in this subsection apply throughout this ~~((rule))~~ section unless the context clearly indicates otherwise:

~~((a))~~ ~~(("Commission" means the medical quality assurance commission.~~

~~((b))~~ "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~((c))~~ ~~((b))~~ "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway, and cardiovascular function may be impaired. Sedation that unintentionally progresses to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

~~((d))~~ ~~((c))~~ "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or periorbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

~~((e))~~ ~~((d))~~ "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

~~((f))~~ ~~((e))~~ "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to oral, intranasal, or intramuscular medications~~((, or both))~~.

~~((g))~~ ~~((f))~~ "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

~~((h))~~ ~~((g))~~ "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a hospital or hospital-associated surgical center licensed under chapter

70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

~~((i) "Physician" means an individual licensed under chapter 18.71 RCW.)~~

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves. Infiltration around peripheral nerves does not include infiltration of local anesthetic agents in an amount that exceeds the manufacturer's published recommendations.

(b) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(c) Performing surgery utilizing or administering general anesthesia. Facilities in which physicians administer general anesthesia or perform procedures in which general anesthesia is a planned event are regulated by rules related to hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, ~~((or))~~ an ambulatory surgical facility licensed under chapter 70.230 RCW, or a dental office under WAC 246-919-602.

(d) Administering deep sedation or general anesthesia to a patient in a dental office under WAC 246-919-602.

(e) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.71 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of ~~((his or her))~~ their specialty.

(4) Application of rule.

This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification.

(a) A physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from an accrediting entity approved by the commission.

(b) The commission may approve an accrediting entity that demonstrates to the satisfaction of the commission that it has all of the following:

(i) Standards pertaining to patient care, recordkeeping, equipment, personnel, facilities and other related matters that are in accordance with acceptable and prevailing standards of care as determined by the commission;

(ii) Processes that assure a fair and timely review and decision on any applications for accreditation or renewals thereof;

(iii) Processes that assure a fair and timely review and resolution of any complaints received concerning accredited or certified facilities; and

(iv) Resources sufficient to allow the accrediting entity to fulfill its duties in a timely manner.

(c) A physician may perform procedures under this rule in a facility that is not accredited or certified, provided that the facility has submitted an application for accreditation by a commission-approved accrediting entity, and that the facility is appropriately equipped and maintained to ensure patient safety such that the facility meets the accreditation standards. If the facility is not accredited or certified within one year of the physician's performance of the first procedure under this rule, the physician must cease performing procedures under this rule until the facility is accredited or certified.

(d) If a facility loses its accreditation or certification and is no longer accredited or certified by at least one commission-approved entity, the physician shall immediately cease performing procedures under this rule in that facility.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation;

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group ~~((e.g., ACLS, PALS or APLS))~~ must be present or immediately available with age-size-appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility. Certification in advanced resuscitative techniques includes, but is not limited to, advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or advanced pediatric life support (APLS).

(9) Sedation assessment and management.

~~((a))~~ Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

~~((b))~~ (a) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" a patient who enters a deeper level of sedation than intended.

~~((c))~~ (b) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the

patient is breathing, and that oxygenation, heart rate and blood pressure are within acceptable values. A physician who returns a patient to a lighter level of sedation in accordance with this subsection (c) does not violate subsection (10) of this section.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive, and accurate medical record for each patient.

(a) The medical record must include all of the following:

(i) Identity of the patient;

(ii) History and physical, diagnosis and plan;

(iii) Appropriate lab, X-ray or other diagnostic reports;

(iv) Appropriate preanesthesia evaluation;

(v) Narrative description of procedure;

(vi) Pathology reports, if relevant;

(vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of postoperative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

(i) The type of sedation or anesthesia used;

(ii) ~~((Drugs (name and dose)))~~ Name, dose, and time of administration of drugs;

(iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;

(iv) Fluids administered during the procedure;

(v) Patient weight;

(vi) Level of consciousness;

(vii) Estimated blood loss;

(viii) Duration of procedure; and

(ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

NEW SECTION

WAC 246-919-602 Administration of deep sedation and general anesthesia by physicians in dental offices. (1)

Purpose. The purpose of this section is to govern the administration of deep sedation and general anesthesia by physicians in dental offices. The commission establishes these standards to promote effective perioperative communication and appropriately timed interventions, and mitigate adverse events and outcomes.

(2) Definitions. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Administering physician" means an individual licensed under chapter 18.71 RCW who administers deep sedation or general anesthesia to a patient in a dental office.

(b) "Deep sedation" has the same meaning as in WAC 246-919-601.

(c) "Dental office" means any facility where dentistry is practiced, as defined in chapter 18.32 RCW, except a hospital licensed under chapter 70.41 RCW or ambulatory surgical facility licensed under chapter 70.230 RCW.

(d) "General anesthesia" has the same meaning as in WAC 246-919-601.

(e) "Perioperative" includes the three phases of surgery: Preoperative, intraoperative, and postoperative.

(3) An administering physician is responsible for the perioperative anesthetic management and monitoring of a patient and must ensure patient care, recordkeeping, equipment, personnel, facilities, and other related matters are in accordance with acceptable and prevailing standards of care including, but not limited to, the following:

(a) Preoperative requirements. An administering physician shall ensure the patient has undergone a preoperative health evaluation and document review of the evaluation. The physician shall also conduct and document a risk assessment to determine whether a patient is an appropriate candidate for deep sedation or general anesthesia and discussion of the risks of deep sedation or general anesthesia with the patient. For a pediatric patient, this assessment must include:

(i) Whether the patient has specific risk factors that may warrant additional consultation before administration of deep sedation or general anesthesia, and how each patient meets criteria for deep sedation or general anesthesia in an outpatient environment. This must include a specific inquiry into whether the patient has signs and symptoms of sleep-disordered breathing or obstructive sleep apnea;

(ii) A discussion with a parent or guardian of a pediatric patient of the particular risks of deep sedation or general anesthesia for a patient who: (A) Is younger than six years old; (B) has special needs; (C) has airway abnormalities; or (D) has a chronic condition. This discussion must include reasoning why the pediatric patient can safely receive deep sedation or general anesthesia in an outpatient environment and any alternatives.

(b) Medical record. The anesthesia record must be complete, comprehensive, and accurate for each patient, including documentation at regular intervals of information from intraoperative and postoperative monitoring. The record-keeping requirements under WAC 246-919-601 and 246-817-770 apply to an administering physician, including the

elements of a separate anesthesia record. The anesthesia record must also include temperature measurement and a heart rate and rhythm measured by electrocardiogram. For a pediatric patient, the administering physician shall ensure vital signs are postoperatively recorded at least at five-minute intervals until the patient begins to awaken, then recording intervals may be increased to ten to fifteen minutes.

(c) Equipment. An administering physician shall ensure the requirements for equipment and emergency medications under WAC 246-817-724 and 246-817-770 are met, regardless of any delineated responsibility for furnishing of the equipment or medications in a contract between the physician and dental office. Additionally, for a pediatric patient, an administering physician shall ensure there is a complete selection of equipment for clinical application to the pediatric patient. The physician shall also ensure equipment is available in the recovery area to meet the requirements in this section for monitoring during the recovery period. The physician shall ensure all equipment and medications are checked and maintained on a scheduled basis.

(d) Recovery and discharge requirements. An administering physician shall ensure that:

(i) A physician licensed under chapter 18.71 RCW capable of managing complications, providing cardiopulmonary resuscitation, and currently certified in advanced cardiac life support measures appropriate for the patient age group is immediately available for a patient recovering from anesthesia. For a pediatric patient, the physician shall also be trained and experienced in pediatric perioperative care;

(ii) At least one licensed health care practitioner experienced in postanesthetic recovery care and currently certified in advanced cardiac life support measures appropriate for the patient age group visually monitors the patient, at all times, until the patient has met the criteria for discharge from the facility. Consideration for prolonged observation must be given to a pediatric patient with an anatomic airway abnormality, such as significant obstructive sleep apnea. A practitioner may not monitor more than two patients simultaneously, and any such simultaneous monitoring must take place in a single recovery room. If a practitioner is qualified to administer deep sedation or general anesthesia, the practitioner may not simultaneously administer deep sedation or general anesthesia and perform recovery period monitoring functions. The practitioner shall provide: (A) Continuous respiratory monitoring via pulse oximetry and cardiovascular monitoring via electrocardiography during the recovery period; and (B) monitoring, at regular intervals, during the recovery period of the patient for color of mucosa, skin, or blood, oxygen saturation, blood pressure, and level of consciousness; and (C) measurement of temperature at least once during the recovery period. If a patient's condition or other factor for the patient's health or safety preclude the frequency of monitoring during the recovery period required by this section, the practitioner must document the reason why such a departure from these requirements is medically necessary;

(iii) Emergency equipment, supplies, medications, and services comply with the provisions of WAC 246-817-770 and are immediately available in all areas where anesthesia is used and for a patient recovering from anesthesia. Resuscitative equipment and medications must be age and size-appropriate,

including for care of a pediatric patient, pediatric defibrillator paddles, and vasoactive resuscitative medications and a muscle relaxant such as dantrolene sodium, which must be immediately available in appropriate pediatric concentrations, as well as a written pediatric dose schedule for these medications. The administering physician shall ensure that support personnel have knowledge of the emergency care inventory. All equipment and medications must be checked and maintained on a scheduled basis; and

(iv) Before discharge, the patient is awake, alert, and behaving appropriately for age and developmental status, normal patient vital signs, and if applicable, a capable parent or guardian present to assume care of the patient.

(e) Emergency care and transfer protocol. An administering physician shall monitor for, and be prepared to treat, complications involving compromise of the airway and depressed respiration, particularly with a pediatric patient. The physician shall ensure that in the event of a complication or emergency, his or her assistive personnel and all dental office clinical staff are well-versed in emergency recognition, rescue, and emergency protocols, and familiar with a written and documented plan to timely and safely transfer a patient to an appropriate hospital.

(4)(a) An administering physician shall submit to the commission a report of any patient death or serious perioperative complication, which is or may be the result of anesthesia administered by the physician.

(b) The physician shall notify the commission or the department of health, by telephone, email, or fax within seventy-two hours of discovery and shall submit a complete written report to the commission within thirty days of the incident. The written report must include the following:

- (i) Name, age, and address of the patient;
- (ii) Name of the dentist and other personnel present during the incident;
- (iii) Address of the facility or office where the incident took place;
- (iv) Description of the type of anesthetic being utilized at the time of the incident;
- (v) Dosages, if any, of any other drugs administered to the patient;
- (vi) A narrative description of the incident including approximate times and evolution of symptoms;
- (vii) Additional information which the commission may require or request.

AMENDATORY SECTION (Amending WSR 07-03-177, filed 1/24/07, effective 3/1/07)

WAC 246-919-605 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

- (a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and
- (b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN RESPONSIBILITIES

(4) A physician must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include all of the following:

(a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of treating professionals.

PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) A physician who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye;

(d) A physician has a written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated ~~((pursuant to))~~ under this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made;

(e) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment;

(f) The delegating physician ensures that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The delegating physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised professional may complete the initial treatment if the physician is called away to attend to an emergency; and

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating physician provided that there is a local back-up physician who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. The local back-up physician shall be reachable by phone and able to see the patient within sixty minutes. The delegating physician's absence from the site where the treatment occurs must be for brief and intermittent periods of time. The delegating physician's absence from the site where the treatment occurs cannot be an ongoing arrangement.

(11) The use of, or the delegation of the use of, an LLRP device by a physician assistant is covered by WAC 246-918-125.

AMENDATORY SECTION (Amending WSR 10-11-001, filed 5/5/10, effective 6/5/10)

WAC 246-919-606 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of a physician who delegates the injection of medication or substances for cosmetic purposes or the use of prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011(3).

(2) This rule does not apply to:

(a) Surgery;
 (b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. ~~((These))~~ The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

~~(b) ("Physician" means an individual licensed under chapter 18.71 RCW.~~

~~(c))~~ "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN RESPONSIBILITIES

(4) A physician must be fully and appropriately trained in a nonsurgical medical cosmetic procedure prior to performing the procedure or delegating the procedure. The physician must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the commission.

(5) Prior to authorizing a nonsurgical medical cosmetic procedure, a physician must:

- (a) Take a history;
- (b) Perform an appropriate physical examination;
- (c) Make an appropriate diagnosis;
- (d) Recommend appropriate treatment;
- (e) Obtain the patient's informed consent;
- (f) Provide instructions for emergency and follow-up care; and
- (g) Prepare an appropriate medical record.

(6) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is ultimately responsible for the safety of the patient.

(7) Regardless of who performs the nonsurgical medical cosmetic procedure, the physician is responsible for ensuring that each treatment is documented in the patient's medical record.

(8) The physician must ensure that there is a quality assurance program for the facility at which nonsurgical medical cosmetic procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program must include the following:

(a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised health care professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection ~~((10))~~ (11)(d) of this section and physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of supervised health care professionals.

(9) A physician may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(10) The physician must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

PHYSICIAN DELEGATION

(11) A physician who meets the above requirements may delegate a nonsurgical medical cosmetic procedure to a properly trained physician assistant, registered nurse or licensed practical nurse, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) The physician delegates procedures that are within the delegate's lawful scope of practice;

(c) The delegate has appropriate training in, at a minimum:

(i) Techniques for each procedure;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for each procedure;

(iv) Preprocedural and postprocedural care;

(v) Recognition and acute management of potential complications that may result from the procedure; and

(vi) Infectious disease control involved with each treatment.

(d) The physician has a written office protocol for the delegate to follow in performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(i) The identity of the physician responsible for the delegation of the procedure;

(ii) Selection criteria to screen patients for the appropriateness of treatment;

(iii) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(iv) A statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(e) The physician ensures that the delegate performs each procedure in accordance with the written office protocol;

(f) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and license of the delegate or delegates who will perform the procedure; and

(g) Each delegate performing a procedure covered by this section must be readily identified by a name tag or similar means so that the patient understands the identity and license of the treating delegate.

(12) If a physician delegates the performance of a procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, the physician must be on-site during the entire duration of the procedure.

(13) If a physician delegates the performance of a procedure that uses a medication or substance that is approved by the federal Food and Drug Administration for the particular purpose for which it is used, the physician need not be on-site during the procedure, but must be reachable by phone and able to respond within thirty minutes to treat complications.

(14) If the physician is unavailable to supervise a delegate as required by this section, the physician must make arrangements for an alternate physician to provide the necessary supervision. The alternate supervisor must be familiar with the protocols in use at the site, will be accountable for adequately supervising the treatment under the protocols, and must have comparable training as the primary supervising physician.

(15) A physician performing or delegating nonsurgical cosmetic procedures may not sponsor more than three physician assistants at any one time.

(16) A physician may not permit a delegate to further delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-610 Use of drugs or autotransfusion to enhance athletic ability. (1) A physician shall not prescribe, administer or dispense anabolic steroids, growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), other hormones, or any form of autotransfusion for the purpose of enhancing athletic ability.

(2) A physician shall complete and maintain patient medical records which accurately reflect the prescribing, administering or dispensing of any substance or drug described in this rule or any form of autotransfusion. Patient medical records ~~((shall))~~ **must** indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is pre-

scribed, administered or dispensed and any additional information upon which the diagnosis is based.

(3) A violation of any provision of this rule ~~((shall))~~ constitutes grounds for disciplinary action under RCW 18.130.180(7). A violation of subsection (1) of this section ~~((shall also))~~ constitutes grounds for disciplinary action under RCW 18.130.180(6).

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-620 Cooperation with investigation.

(1) A ~~((licensee))~~ physician must comply with a request, under RCW 70.02.050, for health care records or documents from an investigator who is acting on behalf of the disciplining authority ~~((pursuant to))~~ under RCW 18.130.050(2) ~~((by submitting))~~.

~~((a))~~ (a) The physician shall submit the requested items within ~~((fourteen))~~ twenty-one calendar days of receipt of the request by the ~~((licensee or the licensee's))~~ physician or the physician's attorney, whichever is first. If the ~~((licensee))~~ physician fails to comply with the request within ~~((fourteen))~~ twenty-one calendar days, the investigator shall contact the ~~((licensee or the licensee's))~~ physician or the physician's attorney by letter as a reminder.

~~((b))~~ (b) Investigators may extend the time for response if the ((licensee)) physician requests an extension for good cause for a period not to exceed ((seven)) thirty calendar days. Other requests for extension may be granted by the commission chair or the commission's ((designee)) executive director.

~~((c))~~ (c) If the ((licensee)) physician fails to comply with the request within three business days after the receipt of the written reminder, a statement of charges ((shall)) may be issued ((pursuant to)) under RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, those charges may be included in the statement of charges.

(d) In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the commission may take into consideration whether the physician has complied with the request after the statement of charges has been issued.

(2) A ~~((licensee must))~~ physician shall comply with a request ~~((for))~~ from an investigator who is acting on behalf of the disciplining authority under RCW 18.130.050(2) for information, which may include, but is not limited to:

~~((a))~~ (a) Nonhealth care records or documents ((from an investigator who is acting on behalf of the commission pursuant to RCW 18.130.050(2) by submitting)) including, but not limited to:

(i) An explanation of the matter under investigation;

(ii) Curriculum vitae;

(iii) Continuing medical education credits;

(iv) Malpractice action summaries; or

(v) Hospital affiliations.

~~((b))~~ (b) The physician shall submit the requested items within ~~((fourteen))~~ twenty-one calendar days of receipt of the request by the ~~((licensee or the licensee's))~~ physician or the physician's attorney, whichever is first. If the ~~((licensee))~~ physician fails to comply with the request within ~~((fourteen))~~ twenty-one calendar days, the investigator shall contact the

~~((licensee))~~ physician or the licensee's attorney by letter as a reminder.

~~((a))~~ ~~(c)~~ Investigators may extend the time for response if the ~~((licensee))~~ physician requests an extension for good cause for a period not to exceed ~~((seven))~~ thirty calendar days. Other requests for extension may be granted by the commission chair or the commission's ~~((designee))~~ executive director.

~~((b))~~ ~~(d)~~ If the ~~((licensee))~~ physician fails to comply with the request within three business days after the receipt of the written reminder, then a subpoena shall be served upon the ~~((licensee))~~ physician to obtain the requested items.

~~((e))~~ ~~(e)~~ If the ~~((licensee))~~ physician fails to comply with the subpoena, a statement of charges ~~((shall))~~ may be issued ~~((pursuant to))~~ under RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

~~((3))~~ ~~A licensee must comply with a request for information from an investigator who is acting on behalf of the commission pursuant to RCW 18.130.050(2). This information may include, but is not limited to, an explanation of the matter under investigation, curriculum vitae, continuing medical education credits, malpractice action summaries, or hospital affiliations. The licensee will submit the requested information within fourteen calendar days of receipt of the request by the licensee or the licensee's attorney, whichever is first. If the licensee fails to comply with the request within fourteen calendar days, the investigator shall contact the licensee or the licensee's attorney by letter as a reminder.~~

~~(a)~~ Investigators may extend the time for response if the licensee requests an extension for a period not to exceed seven calendar days. Other requests for extension may be granted by the commission chair or the commission's designee.

~~(b)~~ If the licensee fails to comply with the written reminder within three business days after the receipt of the reminder, a statement of charges shall be issued pursuant to RCW 18.130.180(8) and, if there is sufficient evidence to support additional charges, then those charges may be included in the statement of charges.

~~(4)~~ In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the reviewing commission member may take into consideration whether the licensee has complied with the request after the statement of charges has been issued. Any settlement proposal shall be presented to the commission or a duly constituted panel of the commission for a decision on ratification and until ratified, the settlement is not final.)

~~(f)~~ In negotiating a settlement on a statement of charges based on RCW 18.130.180(8), the commission may take into consideration whether the physician has complied with the request after the statement of charges has been issued.

AMENDATORY SECTION (Amending WSR 16-06-010, filed 2/18/16, effective 3/20/16)

WAC 246-919-630 Sexual misconduct. (1) The ~~((following))~~ definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

~~(b)~~ ~~("Physician" means a person licensed to practice medicine and surgery under chapter 18.71 RCW.~~

~~(c))~~ "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, and guardians ~~((and))~~ or proxies.

(2) A physician shall not engage in sexual misconduct with a current patient or a key third party. A physician engages in sexual misconduct when he or she engages in any of the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;
- (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
- (j) Soliciting a date; or
- (k) ~~((Engaging in a conversation))~~ Communicating regarding the sexual history, preferences, or fantasies of the physician.

(3) A physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the physician's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.-030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors~~((s))~~ including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed since the last health care services to the patient;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician;

(f) The nature of the patient's health problem; and

(g) The degree of emotional dependence and vulnerability of the patient.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule (~~shall~~) constitutes grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

WAC 246-919-700 Mandatory reporting. ~~((1) All reports required by these regulations shall be submitted to the commission as soon as possible, but not later than sixty days after a determination is made.~~

~~(2) A report should contain the following information if known:~~

~~(a) The name, address and telephone number of the person making the report;~~

~~(b) The name, address and telephone numbers of the physician being reported;~~

~~(c) The case number of any patient whose treatment is a subject of the report;~~

~~(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences;~~

~~(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number; and~~

~~(f) Any further information which would aid the evaluation of the report.~~

~~(3) The mandatory reporting shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept for the confidential use of the commission as provided in the Uniform Disciplinary Act and shall not be subject to subpoena or discovery proceedings in any civil action as provided in RCW 4.24.250, and shall be exempt from public disclosure pursuant to chapter 42.17 RCW except for review as provided in RCW 18.71.0195.)~~ The commission adopts the rules for mandatory reporting in chapter 246-16 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-919-310 Credentialing of physicians and surgeons.

WAC 246-919-710 Mandatory reporting requirement satisfied.

WAC 246-919-730 Medical associations or societies.

WAC 246-919-740 Health care service contractors and disability insurance carriers.

WAC 246-919-750 Courts.

WAC 246-919-760 State and federal agencies.

WAC 246-919-770 Professional standards review organizations.

WSR 20-22-006 PERMANENT RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed October 21, 2020, 2:31 p.m., effective November 21, 2020]

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

Purpose: To formally adopt amendments that correct typographical errors and redundancies. This will provide more clarity for readers of chapter 181-80 WAC.

Citation of Rules Affected by this Order: Amending WAC 181-80-005, 181-80-010, and 181-80-020.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 20-17-023 on August 6, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: October 20, 2020.

Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-05-010, filed 2/7/19, effective 3/10/19)

WAC 181-80-005 Definitions. The following definitions shall apply to terms used in this chapter:

(1) **Clinical practice:** "Clinical practice" means ~~((the period during))~~ a specific, prolonged field experience where the candidate practices or serves in the role for which ~~((he or she is))~~ they are being prepared. Clinical practice must take place in an education setting and under the general supervi-

sion of a certificated practitioner, with three years' experience in the role for which the candidate is seeking certification, as defined in WAC 181-78A-010.

(2) **District staff member:** For the purposes of chapter 181-80 WAC, these candidates may be classified district staff members~~(s)~~; or district staff members who hold initial, continuing, or limited career technical education certificates~~(s)~~; or district early learning education staff.

(3) **Field experience:** "Field experience" means learning experiences in school, clinical, or laboratory settings. These learning experiences must be related to specific program outcomes and designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor as defined in WAC 181-78A-010.

(4) **Internship:** "Internship" means the period of clinical practice for candidates enrolled in approved administrator, school counselor, and school psychologist preparation programs as defined in WAC 181-78A-010.

(5) **Preresidency intensive academy:** The preresidency intensive academy shall require candidates to, prior to beginning residency, gain foundational knowledge in professional educator standards board-approved program domain standards as described in chapter 181-78A WAC; an introduction to the culture of schools, lesson planning, and basic classroom management; and ~~((must require))~~ training in cultural competency.

(6) **Residency:** A residency is a year-long field experience with a minimum of five hundred forty hours of student teaching. Residency is facilitated through partnership of preparation program and school district. Mentoring is required for the duration of the residency.

(7) **Student teaching:** "Student teaching" means the period of clinical practice for individuals enrolled in teacher preparation programs as defined in WAC 181-78A-010.

AMENDATORY SECTION (Amending WSR 19-05-010, filed 2/7/19, effective 3/10/19)

WAC 181-80-010 Basic requirements. (1) Alternative routes to teacher certification programs are partnerships between professional educator standards board-approved preparation program providers, Washington school districts, and other partners as appropriate. These partnerships are focused on district-specific teacher shortage areas. ~~((Authorized))~~ Approved alternative routes partnerships are eligible to apply for the alternative routes block grant and to facilitate alternative route conditional scholarship program as described in RCW 28A.660.050.

(2) Each prospective teacher preparation program provider, in cooperation with a Washington school district or consortia of school districts operating an approved alternative route to teacher certification program must meet the following requirements:

(a) **Partnership requirements.** Alternative routes providers shall establish an alternative routes partnership memorandum of agreement (MOA) between the approved teacher preparation program provider and each partnering district or consortia of districts. Each MOA shall require:

(i) An identification, indication of commitment, and description of the role of approved teacher preparation pro-

gram provider and partnering district or consortia of districts, including specific duties of each partner;

(ii) The role of each partner in candidate recruitment, screening, selection, and oversight;

(iii) The role of each partner in field placement and student teaching and a description of when each begins within the program;

(iv) The role of each partner in ~~((mentorship))~~ mentor selection, training, and support;

(v) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route candidates will advance its school improvement plans.

(b) **Programmatic requirements.** Programs shall uphold the following requirements in addition to requirements and standards listed in chapter 181-78A WAC.

(i) Ensure candidates meet assessment requirements for basic skills, content knowledge, and performance-based assessment per RCW 28A.410.220, 28A.410.280, and WAC 181-78A-300~~((s))~~.

(ii) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate.

(iii) Clinical practice for teacher candidates should consist of no less than five hundred forty hours in classroom settings.

(iv) Mentorship requirements must be met in accordance with WAC 181-78A-220 and 181-78A-300 and each candidate must be assigned a mentor. The candidate must receive mentoring for the duration of the residency.

(v) **Teacher development plan:** Ensure the design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's standards for residency certification. The plan must also include:

(A) Identification of one or more tools to be used to assess a candidate's performance once the candidate is about halfway through their residency;

(B) Recognition for relevant prior learning ~~((within the teacher development plan))~~ that demonstrates meeting residency certification competencies; and

(C) A description of the criteria that would result in early exit from the program with residency certification.

(vi) **Shortage areas.** Alternative route programs shall enroll candidates in a subject or geographic endorsement shortage area, as defined by the professional educator standards board ~~((including, but not limited to, bilingual, English language learner, special education, early childhood education, and areas with shortages due to geographic location as determined by the professional educator standards board)).~~

AMENDATORY SECTION (Amending WSR 19-05-010, filed 2/7/19, effective 3/10/19)

WAC 181-80-020 Program types. Alternative route programs under this chapter shall operate one to four specific route programs. Successful completion of an alternative route

program shall meet the program completion requirements for residency teacher certification. The mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the teacher preparation program provider must both agree that the teacher candidate has successfully completed the program.

(1) **Route 1:** Providers approved to offer route one programs shall enroll currently employed district staff members seeking residency teacher certification. Candidates enrolled in route one programs may complete both their baccalaureate degree and requirements for residency certification in two years or less. Program providers and partners shall uphold entry requirements for route one candidates that include:

(a) A transferable associate degree, or associate degree, or associate of applied science, or ninety quarter credits or the equivalent in semester credits from an accredited institution of higher education;

(b) District or building validation of qualifications, including one year of student interaction and leadership.

(2) **Route 2:** Providers approved to offer route two programs shall enroll currently employed district staff members with baccalaureate degrees seeking residency teacher certification. Candidates enrolled in this route must complete a pre-residency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education;

(b) District or building validation of qualifications, including one year of student interaction and leadership.

(3) **Route 3:** Providers approved to offer route three programs shall enroll individuals with baccalaureate degrees(;) who are not employed in the district at the time of application. Candidates enrolled in this route must complete a pre-residency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education; and

(b) External validation of qualifications, including demonstrated experience with students or children, such as reference letters and letters of support from previous employers.

(4) **Route 4:** Providers approved to offer route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold limited certificates as described in WAC 181-79A-231, or hold initial, continuing, or limited career technical education certificates as described in chapter 181-77 WAC. Candidates enrolled in this route must complete a pre-residency intensive academy. The candidate will be delegated primary responsibility for planning, conducting, and evaluating instructional activities in a designated classroom. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education; and

(b) External validation of qualifications, including demonstrated experience with students or children, such as reference letters and letters of support from previous employers.

(5) Applicants for alternative route programs who are eligible veterans or National Guard members and who meet the entry requirements for the alternative route program for which application is made shall be given preference in admission.

WSR 20-22-012

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 22, 2020, 1:07 p.m., effective November 22, 2020]

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

Purpose: The board of physical therapy (board) is repealing WAC 246-915-380 Spinal manipulation—Endorsement. (Effective July 1, 2015, until June 30, 2020.) and 246-915-382 Spinal manipulation—Clinical supervisor. (Effective July 1, 2015, until June 30, 2020.). These sections of rule are no longer needed because the statutory authority established under HB 2160 (chapter 116, Laws of 2014) included a sunset clause that removed the ability for physical therapists to receive supervised clinical practical experience in spinal manipulative procedures from an out-of-state clinical supervisor who holds an endorsement or advanced certification.

RCW 18.74.190 (1)(d)(i)(C) allowed out-of-state applicants to complete the required training from a clinical supervisor who holds an endorsement or advanced certification, from July 1, 2015, through June 30, 2020. Effective July 1, 2020, RCW 18.74.190 (1)(d)(i)(C) is repealed which makes the rules obsolete.

Citation of Rules Affected by this Order: Repealing WAC 246-915-380 and 246-915-382.

Statutory Authority for Adoption: RCW 18.74.023.

Other Authority: RCW 18.74.190.

Adopted under notice filed as WSR 20-14-103 on June 30, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 2.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 2.

Date Adopted: September 1, 2020.

Renee Compton
Board Chair

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-915-380 Spinal manipulation—Endorsement. (Effective July 1, 2015, until June 30, 2020.)
- WAC 246-915-382 Spinal manipulation—Clinical supervisor. (Effective July 1, 2015, until June 30, 2020.)

WSR 20-22-015
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed October 22, 2020, 4:45 p.m., effective November 22, 2020]

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

Purpose: This action updates the effective date of the federal regulations that have been adopted by the agency.

Citation of Rules Affected by this Order: Amending Olympic Region Clean Air Agency Regulations Rule 1.11.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 20-17-135 on August 18, 2020.

Date Adopted: October 14, 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 20-22-020
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 23, 2020, 1:00 p.m., effective November 23, 2020]

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

Purpose: The department is amending WAC 388-310-1000 WorkFirst—Vocational education, 388-310-1050 WorkFirst—Skills enhancement training, 388-310-1700 WorkFirst—Self-employment, and 388-310-1800 WorkFirst—Post employment services. These amendments correct outdated cross references to working connection and seasonal child care subsidy program rules resulting from the department of early learning reorganization into the department of children, youth, and families. References to chapter 170-290 WAC are replaced with references to chapter 110-15 WAC,

consistent with recodification of these rules under WSR 18-14-078.

Citation of Rules Affected by this Order: Amending WAC 388-310-1000, 388-310-1050, 388-310-1700, and 388-310-1800.

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

Adopted under notice filed as WSR 20-18-030 on August 27, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: October 23, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-24-009, filed 11/27/17, effective 12/28/17)

WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?

Vocational education is training that leads to a degree or certificate in a specific occupation, not to result in a bachelor's or advanced degree unless otherwise indicated in subsection (4) of this section, offered by an accredited:

- (a) Public and private technical college or school;
- (b) Community college;
- (c) Tribal college; or
- (d) Community based organizations for customized job skills training programs only.

(2) Vocational education may include one or more of the following:

- (a) Customized job skills training;
- (b) High-wage/high-demand training;
- (c) Approved homework and study activities associated with the educational activity;
- (d) Remedial/developmental education, prerequisites, basic education or English as a second language training deemed a necessary part of the vocational education program.

(3) What is customized job skills training?

Customized job skills training helps you learn skills needed for an identified entry-level job that pays more than average entry-level wages, and is an acceptable WorkFirst activity when an employer or industry commits to hiring or giving hiring preference upon completion.

(4) What is high-wage/high-demand training?

(a) There are two types of high-wage/high-demand full-time training options for WorkFirst participants to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care, or other professional-technical programs that allows recipients to start and finish a one-year or shorter state, community, or technical college training program in these fields or other professional-technical programs that meet high-wage/high-demand criteria.

(ii) Certificate/degree completion programs that allow recipients to finish the last year of any certificate or degree program, not to exceed a bachelor's degree, in a high-wage/high-demand field on an exception basis. Employment security department bases the high-wage/high-demand criteria on median income and high-demand occupations with the local labor market.

(b) The department may approve high-wage/high-demand training once in a lifetime without an approved exception to policy.

(c) To qualify for high-wage/high-demand training, you must also:

(i) Meet all of the prerequisites;

(ii) Be able to obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with the employment security department during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

(5) When may vocational education be included in my individual responsibility plan?

The department may include vocational education in your individual responsibility plan for up to twelve months if:

(a) Your comprehensive evaluation shows that you:

(i) Need this education to become employed or get a better job; and

(ii) Are able to participate full time in vocational education or combine vocational education with any approved WorkFirst work activity.

(b) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand program;

(c) You have limited-English proficiency and lack job skills that are in demand for entry-level jobs in your area, and the vocational education program is the only way that you can acquire these skills (because there is no available work experience, community service or on-the-job training that can teach you these skills); or

(d) You meet the requirements in WAC 388-310-1450 and your comprehensive evaluation shows vocational education would help you find and keep employment.

(6) May I get help with paying the costs of vocational education?

WorkFirst may pay for the costs of vocational education, such as tuition or books, up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying

your child care costs through the working connections child care program if you meet criteria in chapter ~~((388-290))~~ 110-15 WAC.

(7) May the department include vocational education in my individual responsibility plan longer than twelve months?

The department may increase the twelve-month limit for vocational education training to twenty-four months subject to funding appropriated specifically for this purpose.

AMENDATORY SECTION (Amending WSR 09-14-019, filed 6/22/09, effective 7/23/09)

WAC 388-310-1050 WorkFirst—Skills enhancement training. (1) What is skills enhancement training?

Skills enhancement training ~~((€))~~ ((€)), formerly known as job skills training ~~((€))~~ ((€)), is training or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Skills enhancement training may include:

(a) Customized training programs to meet the needs of a specific employer;

(b) General education and training that prepares a person for employment to include vocational education and courses explicitly required for program entry;

(c) Basic education and English as a second language training when such instruction is focused on skills needed for employment, combined in a unified whole with job training or needed to enable the person to perform a specific job or engage in a specific job training program;

(d) Four-year bachelor degree programs at any state-certified college or university; and

(e) Approved homework and study activities.

(2) Who may provide skills enhancement training?

The ~~((training may be offered by the))~~ following types of organizations that meet the WorkFirst program's standards for service providers may offer training:

(a) Community based organizations;

(b) Businesses;

(c) Tribal governments; or

(d) Public and private community and technical colleges.

(3) When can skills enhancement training be included in my individual responsibility plan?

We may add skills enhancement training in your individual responsibility plan if you are participating the equivalent of twenty or more hours a week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities.

(4) Can I get help with paying the costs of skills enhancement training?

WorkFirst may pay your costs, such as tuition or books, if skills enhancement training is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program ~~((--(See))~~ under chapter ((388-290)) 110-15 WAC ((for the working connections child care program rules--)).

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1700 WorkFirst—Self-employment.

(1) What is self-employment?

When you work for yourself and do not have an employer, you are self-employed.

(2) When can I be deferred from job search to pursue self-employment?

(a) To be deferred from job search for self-employment, you must meet all the conditions below:

(i) You must be working at least thirty-two hours a week at your business;

(ii) Your business must generate income for you that is equal to the federal minimum wage times thirty-two hours per week after your business expenses are subtracted.

(iii) Your case manager will refer you to a local business resource center, and they must approve your self-employment plan;

(b) If you do not meet all these conditions, you ~~((ean))~~ may still be self-employed, but you will also need to participate in job search or other WorkFirst activities.

(3) What self-employment services can I get?

If you are a mandatory participant and have an approved self-employment plan in your individual responsibility plan, you may get the following self-employment services:

(a) A referral to community resources for technical assistance with your business plan.

(b) Small business training courses through local community organizations or technical and community colleges.

(c) Information on affordable credit, business training and ongoing technical support.

(4) What support services may I receive?

If you have an approved self-employment plan in your individual responsibility plan all support services are available.

(5) Can I get childcare?

Childcare is available if you have an approved self-employment plan in your individual responsibility plan. (See chapter ~~((388-290))~~ 110-15 WAC for working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 13-18-004, filed 8/22/13, effective 10/1/13)

WAC 388-310-1800 WorkFirst—Post employment services. (1) What is the purpose of post employment services?

Post employment services help TANF or SFA parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) How do I obtain post employment services?

~~((ean))~~ You ~~((ean))~~ may obtain post employment services by:

~~((+))~~ (a) Asking for a referral from the local community service office;

~~((+))~~ (b) Contacting community or technical colleges;

or
~~((+))~~ (c) Contacting the employment security department.

(3) Who provides post employment services and what kind of services do they provide?

(a) The employment security department ~~((ean))~~ may help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college ~~((ean))~~ may approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High school/GED~~((;))~~;

(ii) Vocational education training~~((;))~~;

(iii) Job skills training~~((;))~~;

(iv) Adult basic education~~((;))~~;

(v) English as a second language training~~((;))~~; or

(vi) Preemployment training.

(4) What other services are available while you receive post employment services?

While you receive post employment services, you may qualify for:

(a) Working connections childcare, if you meet the criteria for this program ~~((described in))~~ under chapter ~~((170-290))~~ 110-15 WAC~~((;))~~.

(b) Other support services, such as help in paying for transportation or work expenses if you meet the criteria for this program (WAC 388-310-0800).

(c) Other types of assistance for low-income families such as food stamps or help with getting child support that is due to you and your children.

(5) Who is eligible for post employment services?

If you are a current TANF or SFA recipient, you may qualify for post employment services if you are working twenty hours or more a week, unless you are in sanction status.

(6) What if I lose my job while I am receiving post employment services?

If you now receive TANF or SFA, help is available to you so that you ~~((ean))~~ may find another job and continue in your approved post employment services.

(a) The employment security department will provide you with reemployment services.

(b) At the same time, your case manager ~~((ean))~~ may approve support services and childcare for you.

WSR 20-22-059
PERMANENT RULES
DEPARTMENT OF COMMERCE

[Filed October 30, 2020, 9:04 a.m., effective November 30, 2020]

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

Purpose: RCW 19.27A.210 directs commerce to adopt rules to establish a state energy performance standard for commercial buildings over fifty thousand 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.

Citation of Rules Affected by this Order: New chapter 194-50 WAC.

Statutory Authority for Adoption: RCW 19.27A.210.

Adopted under notice filed as WSR 20-17-129 on August 18, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 15, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 30, 2020.

Dave Pringle
Policy Advisor

Chapter 194-50 WAC

**WASHINGTON STATE DEPARTMENT OF
 COMMERCE ADOPTION AND AMENDMENT OF
 ASHRAE STANDARD 100, 2018**

NEW SECTION

WAC 194-50-001 Foreword. *ANSI/ASHRAE/IES Standard 100-2018 Energy Efficiency in Existing Buildings* is hereby adopted by reference with the exceptions noted in this chapter of the Washington Administrative Code (WAC). In the event of a conflict between the standard and rules in this chapter, the provisions of this chapter apply.

ANSI/ASHRAE/IES Standard 100-2018 Energy Efficiency in Existing Buildings 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 for 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.

Complying with this rule requires the user to comply with *ANSI/ASHRAE/IES Standard 100-2018* as amended by this rule. When this rule amends a section of *Standard 100*, the entire section is published in the rule. The user will need to have both documents in hand, but detailed comparison within any one section is not necessary. Simply apply the entire section as published in the rule. All other sections in *Standard 100* apply.

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 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.

Campus: A campus is a collection of buildings 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: 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 demonstrates 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): Not adopted.

Energy use intensity target (EUI): 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: 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 ASHRAE 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);

(f) An energy management professional (EMP) certified by the Energy Management Association.

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 non-fuel 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-ft²) but not greater than 8 Btu/(h-ft²);

(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): 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 Common 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.

LCCA life cycle cost analysis.

O&M operations and maintenance.

WSEC Washington State Energy Code.

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. The commissioning process consists of 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 as described in ASHRAE Guideline 0.2-2015 Commissioning Process for Existing Systems and Assemblies and ASHRAE Guideline 1.2-2019 Technical Requirements for the Commissioning Process for Existing HVAC&R Systems and Assemblies.

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, the exceptions do not apply.

c. All deficiencies found during the commissioning process shall be resolved including corrections and retesting prior to submitting documentation for compliance or conditional compliance.

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. EEMs that can be implemented without modifying historical parts of the building shall be implemented as required by this standard. Documentation of historic significance must be provided 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 provided to the *AHJ* by submitting Form G in accordance with Normative Annex Z.

4.3.3.3 Verification of compliance for buildings with building energy monitoring in compliance with Section 5.2. If the building complies with Section 4.2, then within fifteen months following the completion of implementation of the optimized bundle of EEMs, building owners with conditional compliance or the qualified person representing the building owner shall submit verification that measured post implementation energy savings meet or exceed 75% of the energy savings projected in the energy audit report to the *AHJ*. Energy savings shall be compared at the whole-building consumption level in common units for electricity, fossil fuels, and other sources. If the measured postimplementation energy savings of the package of EEMs do not meet or exceed 75% of the energy savings projected in the energy audit, the conditional compliance is suspended until either:

- a. Additional EEMs are implemented that reduce the subsequently measured energy savings of the package of EEMs so that it meets or exceeds 75% of the energy savings projected in the energy audit; or
- b. The *AHJ* revokes conditional compliance.

4.3.3.4 Verification of compliance for buildings without building energy monitoring in compliance with Section 5.2. Verification of energy savings using the methods of the International Performance Measurement & Verification Protocol, Concepts and Options for Determining Energy and Water Savings Volume I options A through D. If the measurement and verification protocol identified any outstanding performance issues, they shall be corrected and the verification protocol shall be repeated to assure savings estimated in the original audit are realized.

4.4.1 Administrative requirements. Building owners shall demonstrate compliance with the standard by following the administrative requirements in Normative Annex Z, including:

- 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 management plan.

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.

5.2.2 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 conversion 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.

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 alternative to the requirement in Section 6.3. Where local government programs are more stringent than applicable utility programs, 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.

7.1.3 Building operating shifts normalization factors - Building operating shifts normalization factors for each building type are listed in Table 7-3, Normative Annex Z.

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 building, and shall complete Form B.

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 alternative to the requirement in Section 7.2.1.

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:

$$(EUI_t) = S \times (EUI_{t1})$$

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, Z3.1 Compliance 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.

7.2.4 Energy targets for vacant and partially vacant buildings.

Exception to Section 7.2.4 Vacant and partially 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, Z3.1 Compliance 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 for this part of the *building* will be determined after it becomes occupied and energy-use data for twelve consecutive months becomes available.

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_t) (I-P Units)

Table 7-2a adopted as modified and published in Section Z7

Table 7-2a Building Activity Site Energy Targets (EUI_t) (SI Units) - Not adopted

Table 7-2b Building Activity Source Energy Targets (EUI_t) (I-P Units) - Not adopted

Table 7-2b Building Activity Source Energy Targets (EUI_t) (SI Units) - Not adopted

Table 7-2c Building Activity Electricity Site Energy Use Targets (ELUI_t) (I-P Units) - Not adopted

Table 7-2c Building Activity Electricity Site Energy Use Targets (ELUI_t) (SI Units) - Not adopted

Table 7-2d Building Activity Fossil Fuel Site Energy Use Targets (FEUI_t) (I-P Units) - Not adopted

Table 7-2d Building Activity Fossil Fuel Site Energy Use Targets (FEUI_t) (SI Units) - Not adopted

Table 7-3 Building Operating Shifts Normalization Factor

Table 7-3 adopted as modified 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, ft²

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 5.3¹².

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 5.4¹².

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 con-

sidering 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.)

NEW SECTION

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. 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, the exceptions do not apply. 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 0.2-2015 Commissioning Process for Existing Systems and Assemblies and ASHRAE Guideline 1.2-2019 Technical Requirements for the Commissioning Process for Existing HVAC&R Systems and Assemblies.

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, Concepts and Options for Determining Energy and Water Savings Volume I¹* 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. ASHRAE. 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: ASHRAE.

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 consecutive 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 a 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 costs 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 costs are captured in the base case.

The alternate case captures all cost and benefits associated with implementing additional efficiency features. All costs and all benefits of implementing EEMs required by Section 9 should be captured by the analysis. All documented costs may be considered.

Extended implementation periods are allowed by this standard. This allows more EEMs 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 the cost of the alternative case and will likely make EEMs that are not cost effective as an early replacement be cost effective as replacement upgrades.

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 greater 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's 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 <i>Wall Street Journal Prime Rate</i> 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 <i>NIST Handbook - 135 Annual Supplement - Fuel Escalation Rates</i> .
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 on an annual basis publish the public owner discount rate, private owner discount rate, rate of inflation and fuel escalation rates on the agency website.

NEW SECTION

WAC 194-50-150 Normative Annex Z—Washington state reporting requirements.

Z1 Building owner notifications by the AHJ.

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 compliance 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 compliance 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.

Z3.1.1 Early compliance option. Building owners may submit for compliance to the AHJ beginning July 1, 2023. The weather normalized energy use intensity of the covered commercial building shall be measured in a period not to exceed two years prior to the submission of compliance documentation. This section expires 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 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.

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 effective-

ness 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. Verification and completion shall be documented as required in Section Z4.6.

- Form A;
- Form B;
- Form C;
- Energy audit report:
 - Level 2 Energy Audit.
- 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. Verification and completion shall be documented as required in Section Z4.6.

- 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 (NOVI) (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 NOVI.

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 square foot of gross floor area per year.

Z5.4.1.1 Penalties for building owners that submit a non-compliance mitigation plan. For building owners subject to a NOVI who respond within thirty days by submitting a non-compliance 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 comple-

tion, 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 square foot of gross floor area per year.

b. For applicants that submit a noncompliance mitigation plan but have not submitted 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 square foot of gross 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.

Z5.4.1.2 Penalties for building owners that choose to pay the fine rather than pursuing compliance. Building owners may choose to respond to the NOVI by paying the maximum penalty. The building owner will be assessed the maximum penalty of five thousand dollars plus a daily amount equal to \$1.00 per square foot of gross floor area per year not to exceed a value greater than eighteen months of accrued penalty. Penalties are assessed for each compliance period.

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 square foot of gross 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. After the building owner has demonstrated 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/ft² yr) based on completed Z6.2 Form B;
 - b. Measured site EUI (kBtu/ft²) for the compliance year for this building based on Z6.3 Form C;
 - c. Measured weather normalized site EUI (kBtu/ft²) 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_t)_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_t)_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 (ft²);
- Property GFA - EPA calculated (buildings and parking) (ft²);
- Property GFA - EPA calculated (buildings) (ft²);
- Property GFA - EPA calculated (parking) (ft²);
- Largest property use type;
- Largest property use type - Gross floor area (ft²);
- 2nd Largest property use type;
- 2nd Largest property use - Gross floor area (ft²);
- 3rd Largest property use type;
- 3rd Largest property use type - Gross floor area (ft²);
- 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 ft²;
- 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/ft²);
- Weather normalized site energy use (kBtu);
- Weather normalized site EUI (kBtu/ft²);
- Weather normalized site electricity (kWh);
- Weather normalized site electricity intensity (kWh/ft²);
- Weather normalized site natural gas use (therms);
- Weather normalized site natural gas intensity (therms/ft²) 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 with 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. Other documentation approved 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

No.	Building Activity Type ^{1,2}			Notes
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	
1	Banking/financial services	Bank Branch		
2	Banking/financial services	Financial Office		
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		

Building Activity Type^{1,2}				
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
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		
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	

Building Activity Type^{1,2}				
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
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		
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

Building Activity Type ^{1,2}				
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
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:
- Select the most specific building activity type that applies.
 - 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.
 - All medical offices considered to be diagnostic type.
 - Must use of Section 7.2.3 method for mixed use buildings.
 - Suggest considering use of Section 7.2.3 method for mixed use buildings.
 - This is a building or activity without an energy target. Included to provide definition only.
 - 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 (EUI_t) (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

No.	Building Activity Type ^{1,2}			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI _t	EUI _t
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
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

	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
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 with- out 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
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 Medi- cal & Surgical)*			215	215
52	Healthcare	Medical Office		3		
53	Healthcare	Outpatient Rehabilita- tion/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

No.	Building Activity Type ^{1,2}			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI _t	EUI _t
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
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

No.	Building Activity Type ^{1,2}			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI _t	EUI _t
97	Retail	Wholesale Club/Super-center			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		
110	Warehouse/storage	Self-Storage Facility			36	44
111	Warehouse/storage	Distribution Center			36	44
112	Warehouse/storage	Nonrefrigerated Warehouse			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

No.	Building Activity Type ^{1,2}			Notes	Weekly Hours ^{1,2}		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
1	Banking/financial services	Bank Branch		3	0.8	1.0	1.5

No.	Building Activity Type ^{1,2}			Notes	Weekly Hours ^{1,2}		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
2	Banking/financial services	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
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

No.	Building Activity Type ^{1,2}			Notes	Weekly Hours ^{1,2}		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
27	Entertainment/public assembly	Zoo		4	0.6	1.1	1.6
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture	4	0.6	1.1	1.6
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library	4	0.6	1.1	1.6
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly	4	0.6	1.1	1.6
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation	4	0.6	1.1	1.6
32	Entertainment/public assembly	Other - Entertainment/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
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

No.	Building Activity Type ^{1,2}			Notes	Weekly Hours ^{1,2}		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
55	Healthcare	Senior Care Community			1.0	1.0	1.0
56	Healthcare	Urgent Care/Clinic/Other Out-patient		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
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

No.	Building Activity Type ^{1,2}			Notes	Weekly Hours ^{1,2}		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
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/Super-center		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
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 and staff 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.

WSR 20-22-069**PERMANENT RULES****BATES TECHNICAL COLLEGE**

[Filed October 30, 2020, 1:03 p.m., effective November 30, 2020]

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

Purpose: Chapter 495A-122 WAC, Withholding services for outstanding debt, is being amended to align with current policies and practices for Bates Technical College.

Citation of Rules Affected by this Order: Amending chapter 495A-122 WAC.

Statutory Authority for Adoption: Chapters 34.05, 28B.10, 28B.15 and 28B.92 RCW; RCW 28B.50.140.

Adopted under notice filed as WSR 20-17-110 on August 17, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: October 30, 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 20-22-076
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Filed November 2, 2020, 4:45 p.m., effective December 3, 2020]

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

Purpose: The purpose of this rule is to make revisions to current rules that have been determined by the office of the insurance commissioner (OIC) to be necessary for administration of the Balance Billing Protection Act. The rule includes revisions to arbitration processes, provider notice as to whether a patient's health plan is subject to the act, informing consumers of their rights under the act, OIC enforcement and self-funded group health plan election to participate in the act.

Citation of Rules Affected by this Order: New WAC 284-43B-035, 284-43B-075, Appendix A and Appendix B; and amending WAC 284-43B-010, 284-43B-020, 284-43B-030, 284-43B-040, 284-43B-050, 284-43B-060, and 284-43B-070.

Statutory Authority for Adoption: RCW 48.49.060, 48.49.110.

Adopted under notice filed as WSR 20-19-139 on September 23, 2020.

Changes Other than Editing from Proposed to Adopted Version: The final rule differs from the proposed rule in two respects:

- The final rule makes a technical clarification to the definition of "de-identified" in WAC 284-43B-010. It references "rule" rather than "regulation."
- The final rule revises the arbitration initiation request form to make a technical clarification regarding the information needed by OIC to process an arbitration initiation request.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov [TabbaA@oic.wa.gov], website www.insurance.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 7, Repealed 0.

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

Date Adopted: November 2, 2020.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-010 Definitions. (1) The definitions in RCW 48.43.005 apply throughout this chapter unless the context clearly requires otherwise, or the term is defined otherwise in subsection (2) of this section.

(2) The following definitions shall apply throughout this chapter:

(a) "Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable enrollee cost-sharing responsibility, for a covered health care service or item rendered by a participating provider or facility or by a nonparticipating provider or facility.

(b) "Balance bill" means a bill sent to an enrollee by an out-of-network provider or facility for health care services provided to the enrollee after the provider or facility's billed amount is not fully reimbursed by the carrier, exclusive of permitted cost-sharing.

(c) "De-identified" means, for the purposes of this rule, the removal of all information that can be used to identify the patient from whose medical record the health information was derived.

(d) "Emergency medical condition" means a medical, mental health, or substance use disorder condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain or emotional distress, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical, mental health, or substance use disorder treatment attention to result in a condition (i) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.

~~((e))~~ (e) "Emergency services" means a medical screening examination, as required under section 1867 of the Social Security Act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the Social Security Act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867 (e)(3) of the Social Security Act (42 U.S.C. 1395dd (e)(3)).

~~((f))~~ (f) "Facility" means a hospital licensed under chapter 70.41 RCW or an ambulatory surgical facility licensed under chapter 70.230 RCW.

~~((g))~~ (g) "In-network" or "participating" means a provider or facility that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing obligations. A single case reimbursement agreement between a provider or facility and a carrier used for the purpose described in WAC 284-170-200 constitutes a contract exclusively for purposes of this definition

under the Balance Billing Protection Act and is limited to the services and parties to the agreement.

~~((g))~~ (h) "Median in-network contracted rate for the same or similar service in the same or similar geographical area" means the median amount negotiated for an emergency or surgical or ancillary service for participation in the carrier's health plan network with in-network providers of emergency or surgical or ancillary services furnished in the same or similar geographic area. If there is more than one amount negotiated with the health plan's in-network providers for the emergency or surgical or ancillary service in the same or similar geographic area, the median in-network contracted rate is the median of these amounts. In determining the median described in the preceding sentence, the amount negotiated for each claim for the same or similar service with each in-network provider is treated as a separate amount (even if the same amount is paid to more than one provider or to the same provider for more than one claim). If no per-service amount has been negotiated with any in-network providers for a particular service, the median amount must be calculated based upon the service that is most similar to the service provided. For purposes of this subsection "median" means the middle number of a sorted list of reimbursement amounts negotiated with in-network providers with respect to a certain emergency or surgical or ancillary service, with each paid claim's negotiated reimbursement amount separately represented on the list, arranged in order from least to greatest. If there is an even number of items in the sorted list of negotiated reimbursement amounts, the median is found by taking the average of the two middlemost numbers.

~~((h))~~ (i) "Offer to pay," "carrier payment," or "payment notification" means a claim that has been adjudicated and paid by a carrier to an out-of-network or nonparticipating provider for emergency services or for surgical or ancillary services provided at an in-network facility.

~~((i))~~ (j) "Out-of-network" or "nonparticipating" means a provider or facility that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees.

~~((j))~~ (k) "Provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law, or an employee or agent of a person acting in the course and scope of his or her employment, that provides emergency services, or surgical or ancillary services at an in-network facility.

~~((k))~~ (l) "Surgical or ancillary services" means surgery, anesthesiology, pathology, radiology, laboratory, or hospitalist services.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-020 Balance billing prohibition and consumer cost-sharing. (1) If an enrollee receives any emergency services from an out-of-network facility or provider, or any nonemergency surgical or ancillary services at an in-network facility from an out-of-network provider:

(a) The enrollee satisfies his or her obligation to pay for the health care services if he or she pays the in-network cost-

sharing amount specified in the enrollee's or applicable group's health plan contract. The enrollee's obligation must be determined using the carrier's median in-network contracted rate for the same or similar service in the same or similar geographical area. The carrier must provide an explanation of benefits to the enrollee and the out-of-network provider that reflects the cost-sharing amount determined under this subsection.

(b) The carrier, out-of-network provider, or out-of-network facility, and any agent, trustee, or assignee of the carrier, out-of-network provider, or out-of-network facility must ensure that the enrollee incurs no greater cost than the amount determined under (a) of this subsection.

(c)(i) For emergency services provided to an enrollee, the out-of-network provider or out-of-network facility, and any agent, trustee, or assignee of the out-of-network provider or out-of-network facility may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest;

(ii) For emergency services provided to an enrollee in an out-of-network hospital located and licensed in Oregon or Idaho, the carrier must hold an enrollee harmless from balance billing; and

(iii) For nonemergency surgical or ancillary services provided at an in-network facility, the out-of-network provider and any agent, trustee, or assignee of the out-of-network provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest.

(d) For emergency services and nonemergency surgical or ancillary services provided at an in-network facility, the carrier must treat any cost-sharing amounts determined under (a) of this subsection paid or incurred by the enrollee for an out-of-network provider or facility's services in the same manner as cost-sharing for health care services provided by an in-network provider or facility and must apply any cost-sharing amounts paid or incurred by the enrollee for such services toward the enrollee's maximum out-of-pocket payment obligation.

(e) If the enrollee pays an out-of-network provider or out-of-network facility an amount that exceeds the in-network cost-sharing amount determined under (a) of this subsection, the provider or facility must refund any amount in excess of the in-network cost-sharing amount to the enrollee within thirty business days of the provider or facility's receipt of the enrollee's payment. Simple interest must be paid to the enrollee for any unrefunded payments at a rate of twelve percent per annum beginning on the first calendar day after the thirty business days.

(2) The carrier must make payments for health care services described in ~~((section 6, chapter 427, Laws of 2019))~~ RCW 48.49.020, provided by an out-of-network provider or facility directly to the provider or facility, rather than the enrollee.

(3) A health care provider or facility, or any of its agents, trustees or assignees may not require a patient at any time, for any procedure, service, or supply, to sign or execute by electronic means, any document that would attempt to avoid, waive, or alter any provision of this section.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-030 Out-of-network claim payment and placing a claim into dispute ((resolution)). The allowed amount paid to an out-of-network provider for health care services described under ((section 6, chapter 427, Laws of 2019)) RCW 48.49.020, shall be a commercially reasonable amount, based on payments for the same or similar services provided in the same or a similar geographic area.

(1) Within thirty calendar days of receipt of a claim from an out-of-network provider or facility, the carrier shall offer to pay the provider or facility a commercially reasonable amount. Payment of an adjudicated claim shall be considered an offer to pay. The amount actually paid to an out-of-network provider by a carrier may be reduced by the applicable consumer cost-sharing determined under WAC 284-43B-020 (1)(a). The date of receipt by the provider or facility of the carrier's offer to pay is five calendar days after a transmittal of the offer is mailed to the provider or facility, or the date of transmittal of an electronic notice of payment. The claim submitted by the out-of-network provider or facility to the carrier must include the following information:

- (a) Patient name;
- (b) Patient date of birth;
- (c) Provider name;
- (d) Provider location;
- (e) Place of service, including the name and address of the facility in which, or on whose behalf, the service that is the subject of the claim was provided;
- (f) Provider federal tax identification number;
- (g) Federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number;
- (h) Date of service;
- (i) Procedure code; and
- (j) Diagnosis code.

(2) If the out-of-network provider or facility wants to dispute the carrier's offer to pay, the provider or facility must notify the carrier no later than thirty calendar days after receipt of the offer to pay or payment notification from the carrier. A carrier may not require a provider or facility to reject or return payment of the adjudicated claim as a condition of putting the payment into dispute.

(3) If the out-of-network provider or facility disputes the carrier's offer to pay, the carrier and provider or facility have thirty calendar days after the provider or facility receives the offer to pay to negotiate in good faith.

(4) If the carrier and the out-of-network provider or facility do not agree to a commercially reasonable payment amount within the thirty-calendar day period under subsection (3) of this section, and the carrier, out-of-network pro-

vider or out-of-network facility chooses to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration, as provided in ((section 8, chapter 427, Laws of 2019)) RCW 48.49.040.

~~((5)(a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than ten calendar days following completion of the period of good faith negotiation under subsection (3) of this section. The written notification to the commissioner must be made electronically and provide dates related to each of the time period limitations described in subsections (1) through (4) of this section.~~

~~(b) If an out-of-network provider or out-of-network facility chooses to address multiple claims in a single arbitration proceeding as provided in section 8, chapter 427, Laws of 2019, notification must be provided no later than ten calendar days following completion of the period of good faith negotiation under subsection (3) of this section for the most recent claim that is to be addressed through the arbitration. All of the claims at issue must:~~

- ~~(i) Involve identical carrier and provider or facility parties;~~
- ~~(ii) Involve claims with the same or related procedural terminology codes relevant to a particular procedure; and~~

~~(iii) Occur within a two month period of one another, such that the earliest claim that is the subject of the arbitration occurred no more than two months prior to the latest claim that is the subject of the arbitration. For purposes of this subsection, a provider or facility claim occurs on the date the service is provided to a patient or, in the case of inpatient facility admissions, the date the admission ends.~~

~~(e) A notification submitted to the commissioner later than ten calendar days following completion of the period of good faith negotiation will be considered untimely and will be rejected. A party that has submitted an untimely notice is permanently foreclosed from seeking arbitration related to the claim or claims that were the subject of the untimely notice.~~

~~(d) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The arbitrator selection process must be completed within twenty calendar days of receipt of the original list of arbitrators from the commissioner, as follows:~~

~~(i) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send the parties a list of five arbitrators within five calendar days of receipt of notice from the parties under this subsection.~~

~~(ii) If, after the opportunity to veto up to two of the five named arbitrators on the list of five arbitrators sent by the commissioner to the parties, more than one arbitrator remains on the list, the parties must notify the commissioner within five calendar days of receipt of the list of five arbitrators. The commissioner will choose the arbitrator from among the remaining arbitrators on the list.~~

~~(e) For purposes of this subsection, the date of receipt of a list of arbitrators is the date of electronic transmittal of the~~

~~list to the parties by the commissioner. The date of receipt of notice from the parties to the commissioner is the date of electronic transmittal of the notice to the commissioner by the parties.~~

~~(6) If a noninitiating party fails to timely respond without good cause to a notice initiating arbitration, the initiating party will choose the arbitrator.)~~

NEW SECTION

WAC 284-43B-035 Arbitration. (1)(a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than ten calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) using the arbitration initiation request form found in Appendix A of this rule. When multiple claims are addressed in a single arbitration proceeding, subsection (3) of this section governs calculation of the ten calendar days. Any information submitted to the commissioner with the arbitration initiation request must be included in the notice to the noninitiating party under RCW 48.49.040. A provider initiating arbitration must send the arbitration initiation request form to the email address appearing on the website established by the designated lead organization for administration simplification in Washington state under (c) of this subsection. Any patient information submitted to the commissioner with an arbitration initiation request form must be de-identified to ensure that protected health information is not disclosed.

(b) The written notification to the commissioner must be made electronically and provide dates related to each of the time period limitations described in WAC 284-43B-030 (1) through (3). The commissioner's review of the arbitration initiation request form is limited to the information necessary to determine that the request has been timely submitted and is complete.

(c) Each carrier must provide the designated lead organization for administrative simplification in Washington state with the email address and telephone number of the carrier's designated contact for receipt of notices to initiate arbitration. The email address and phone number provided must be specific to the carrier staff responsible for receipt of notices or other actions related to arbitration proceedings. The initial submission of information to the designated lead organization must be made on or before November 10, 2020. The carrier must keep its contact information accurate and current by submitting updated contact information to the designated lead organization as directed by that organization.

(2) Within ten business days of a party notifying the commissioner and the noninitiating party of intent to initiate arbitration, both parties shall agree to and execute a nondisclosure agreement. The nondisclosure agreement must prohibit either party from sharing or making use of any confidential or proprietary information acquired or used for purposes of one arbitration in any subsequent arbitration proceedings. The nondisclosure agreement must not preclude the arbitrator from submitting the arbitrator's decision to the commissioner under RCW 48.49.040 or impede the commissioner's duty to prepare the annual report under RCW 48.49.050.

(3) If an out-of-network provider or out-of-network facility chooses to address multiple claims in a single arbitration proceeding as provided in RCW 48.49.040, notification must be provided no later than ten calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) for the most recent claim that is to be addressed through the arbitration. All of the claims at issue must:

(a) Involve identical carrier and provider or facility parties. A provider group may bundle claims billed using a common federal taxpayer identification number on behalf of the provider members of the group;

(b) Involve claims with the same or related current procedural terminology codes relevant to a particular procedure; and

(c) Occur within a two month period of one another, such that the earliest claim that is the subject of the arbitration occurred no more than two months prior to the latest claim that is the subject of the arbitration. For purposes of this subsection, a provider or facility claim occurs on the date the service is provided to a patient or, in the case of inpatient facility admissions, the date the admission ends.

(4) A notification submitted to the commissioner later than ten calendar days following completion of the period of good faith negotiation will be considered untimely and will be rejected. A party that has submitted an untimely notice is permanently foreclosed from seeking arbitration related to the claim or claims that were the subject of the untimely notice.

(5) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The commissioner will use the email address for the noninitiating party provided on the arbitration initiation request form. The arbitrator selection process must be completed within twenty calendar days of receipt of the original list of arbitrators from the commissioner, as follows:

(a) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send the parties a list of five arbitrators within five calendar days of receipt of notice from the parties under this subsection. Each party is responsible for reviewing the list of five arbitrators and notifying the commissioner within three calendar days of receipt of the list if there is a conflict of interest as described in subsection (6) of this section with any of the arbitrators on the list to avoid the commissioner assigning an arbitrator with a conflict of interest to an arbitration.

(b) If, after the opportunity to veto up to two of the five named arbitrators on the list of five arbitrators sent by the commissioner to the parties, more than one arbitrator remains on the list, the parties must notify the commissioner within five calendar days of receipt of the list of five arbitrators. The commissioner will choose the arbitrator from among the remaining arbitrators on the list.

(6) Before accepting any appointment, an arbitrator shall ensure that there is no conflict of interest that would adversely impact the arbitrator's independence and impartiality in rendering a decision in the arbitration. A conflict of

interest includes (a) current or recent ownership or employment of the arbitrator or a close family member by any health carrier; (b) serves as or was employed by a physician, health care provider, or a health care facility; (c) has a material professional, familial, or financial conflict of interest with a party to the arbitration to which the arbitrator is assigned.

(7) For purposes of this subsection, the date of receipt of a list of arbitrators is the date of electronic transmittal of the list to the parties by the commissioner. The date of receipt of notice from the parties to the commissioner is the date of electronic transmittal of the notice to the commissioner by the parties.

(8) If a noninitiating party fails to timely respond without good cause to a notice initiating arbitration, the initiating party will choose the arbitrator.

(9) Good cause for purposes of delay in written submissions to the arbitrator under RCW 48.49.040 includes a stipulation that the parties intend to complete settlement negotiations prior to making such submissions to the arbitrator.

(10) If the parties settle the dispute before the arbitrator issues a decision, the parties must submit to the commissioner notice of the date of the settlement and whether the settlement includes an agreement for the provider to contract with the carrier as an in-network provider.

(11) Any enrollee or patient information submitted to the arbitrator in support of the final offer shall be de-identified to ensure that protected health information is not disclosed.

(12) The arbitrator must submit to the commissioner:

(a) Their decision; and

(b) The information required in RCW 48.49.050 using the form found in Appendix B to this rule.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-040 Determining whether an enrollee's health plan is subject to the requirements of the act. (1) To implement ~~((section 7, chapter 427, Laws of 2019,))~~ RCW 48.49.030 carriers must make information regarding whether an enrollee's health plan is subject to the requirements of chapter ~~((427, Laws of 2019,))~~ 48.49 RCW available to providers and facilities by:

(a) Using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Eligibility Benefit Response (271) transaction information through use of a standard message that is placed in a standard location within the 271 transaction; and

(b) Beginning April 1, 2021, using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the X12 industry standard Remark Code N830 to indicate that the claim was processed in accordance with this state's balance billing rules.

(2) The designated lead organization for administrative simplification in Washington state~~(,);~~:

(a) After consultation with carriers, providers and facilities through a new or an existing workgroup or committee, must post the language of the standard message and the location within the 271 transaction in which the message is to be

placed on its website on or before November 1, 2019~~((This));~~

(b) Must post on its website on or before December 1, 2020, instructions on compliant use of the X12 industry standard Remark Code N830 in the X12 Health Care Claim Payment and Remittance Advice (835) transaction; and

(c) Must post on its website on or before December 1, 2020, the information reported by carriers under WAC 284-43B-035(1).

(3) A link to the information referenced in subsection (2) of this section also must be posted on the website of the office of the insurance commissioner.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-050 Notice of consumer rights and transparency. (1) The commissioner shall develop a standard template for a notice of consumer rights under the Balance Billing Protection Act. The notice may be modified periodically, as determined necessary by the commissioner. The notice template will be posted on the public website of the office of the insurance commissioner.

(2) The standard template for the notice of consumer rights under the Balance Billing Protection Act must be provided to consumers enrolled in any health plan issued in Washington state as follows:

(a) Carriers must:

(i) Include the notice in the carrier's communication to an enrollee, in electronic or any other format, that authorizes nonemergency surgical or ancillary services at an in-network facility;

(ii) Post the notice on their website in a prominent and relevant location, such as in a location that addresses coverage of emergency services and prior authorization requirements for nonemergency surgical or ancillary services performed at in-network facilities; and

(iii) Provide the notice to any enrollee upon request.

(b) Health care facilities and providers must:

(i) For any facility or provider that is owned and operated independently from all other businesses and that has more than fifty employees, upon confirming that a patient's health plan is subject to the Balance Billing Protection Act~~((,);~~):

(A) Include the notice in any communication to a patient, in electronic or any other format~~((, confirming the))~~ related to scheduling of nonemergency surgical or ancillary services at a facility. Text messaging used as a reminder or follow-up after a patient has already received the full text of the notice under this subsection may provide the notice through a link to the provider's webpage that takes the patient directly to the notice. Telephone calls to patients following the patient's receipt of the full text of the notice under this subsection do not need to include the notice; and

(B) For facilities providing emergency medical services, provide or mail the notice to a patient within seventy-two hours following a patient's receipt of emergency medical services.

(ii) Post the notice on their website, if the provider or facility maintains a website, in a prominent and relevant loca-

tion near the list of the carrier health plan provider networks with which the provider or facility is an in-network provider; and

(iii) Provide the notice upon request of a patient.

(3) The notice required in this section may be provided to a patient or an enrollee electronically if it includes the full text of the notice and if the patient or enrollee has affirmatively chosen to receive such communications from the carrier, provider, or facility electronically. Except as authorized in subsection (2)(b)(i)(A) of this section, the notice may not be provided through a hyperlink in an electronic communication.

(4) For claims processed on or after July 1, 2020, when processing a claim that is subject to the balance billing prohibition in ~~((section 6, chapter 427, Laws of 2019))~~ RCW 48.49.020, the carrier must indicate on any form used by the carrier to notify enrollees of the amount the carrier has paid on the claim:

(a) Whether the claim is subject to the prohibition in the act; and

(b) The federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number.

~~((4))~~ (5) A facility or health care provider meets its obligation under ~~((section 11 or 12, chapter 427, Laws of 2019))~~ RCW 48.49.070 or 48.49.080, to include a listing on its website of the carrier health plan provider networks in which the facility or health care provider participates by posting this information on its website for in-force contracts, and for newly executed contracts within fourteen calendar days of receipt of the fully executed contract from a carrier. If the information is posted in advance of the effective date of the contract, the date that network participation will begin must be indicated.

~~((5))~~ (6) Not less than thirty days prior to executing a contract with a carrier, a hospital or ambulatory surgical facility must provide the carrier with a list of the nonemployed providers or provider groups that have privileges to practice at the hospital or ambulatory surgical facility or are contracted to provide surgical or ancillary services at the hospital or ambulatory surgical facility. The list must include the name of the provider or provider group, mailing address, federal tax identification number or numbers and contact information for the staff person responsible for the provider's or provider group's contracting. The hospital or ambulatory surgical facility must notify the carrier within thirty days of a removal from or addition to the nonemployed provider list. A hospital or ambulatory surgical facility also must provide an updated list of these providers within fourteen calendar days of a written request for an updated list by a carrier.

~~((6))~~ (7) An in-network provider must submit accurate information to a carrier regarding the provider's network status in a timely manner, consistent with the terms of the contract between the provider and the carrier.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-060 Enforcement. (1)(a) If the commissioner has cause to believe that any health facility or provider has engaged in a pattern of unresolved violations of ~~((section 6 or 7, chapter 427, Laws of 2019))~~ RCW 48.49.020 or 48.49.030, the commissioner may submit information to the department of health or the appropriate disciplining authority for action.

~~((2))~~ (b) In determining whether there is cause to believe that a health care provider or facility has engaged in a pattern of unresolved violations, the commissioner shall consider, but is not limited to, consideration of the following:

~~((a))~~ (i) Whether there is cause to believe that the health care provider or facility has committed two or more violations of ~~((section 6 or 7, chapter 427, Laws of 2019))~~ RCW 48.49.020 or 48.49.030;

~~((b))~~ (ii) Whether the health care provider or facility has failed to submit claims to carriers containing all of the elements required in WAC 284-43B-030(1) on multiple occasions, putting a consumer or consumers at risk of being billed for services to which the prohibition in ~~((section 6, chapter 427, Laws of 2019 applies))~~ RCW 48.49.020 applies;

~~((c))~~ (iii) Whether the health care provider or facility has been nonresponsive to questions or requests for information from the commissioner related to one or more complaints alleging a violation of ~~((section 6 or 7, chapter 427, Laws of 2019))~~ RCW 48.49.020 or 48.49.030; and

~~((d))~~ (iv) Whether, subsequent to correction of previous violations, additional violations have occurred.

~~((3))~~ (c) Prior to submitting information to the department of health or the appropriate disciplining authority, the commissioner may provide the health care provider or facility with an opportunity to cure the alleged violations or explain why the actions in question did not violate ~~((section 6 or 7, chapter 427, Laws of 2019))~~ RCW 48.49.020 or 48.49.030.

(2) In determining whether a carrier has engaged in a pattern of unresolved violations of any provision of this chapter, the commissioner shall consider, but is not limited to, consideration of the following:

(a) Whether a carrier has failed to timely respond to arbitration initiation request notifications from providers or facilities;

(b) Whether a carrier has failed to comply with the requirements of WAC 284-43-035 related to choosing an arbitrator or arbitration entity;

(c) Whether a carrier has met its obligation to maintain current and accurate carrier contact information related to initiation of arbitration proceedings under WAC 284-43-035;

(d) Whether a carrier has complied with the requirements of WAC 284-43-040;

(e) Whether a carrier has complied with the consumer notice requirements under WAC 284-43-050; and

(f) Whether a carrier has committed two or more violations of chapter 48.49 RCW or this chapter.

AMENDATORY SECTION (Amending WSR 19-23-085, filed 11/19/19, effective 12/20/19)

WAC 284-43B-070 Self-funded group health plan opt in. (1) A self-funded group health plan that elects to participate in ~~((sections 6 through 8, chapter 427, Laws of 2019))~~ RCW 48.49.020 through 48.49.040, shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by ~~((sections 6 through 8, chapter 427, Laws of 2019))~~ RCW 48.49.020 through 48.49.040 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(2) A self-funded group health plan election to participate is for a full year. The plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least ~~((thirty))~~ fifteen days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in balance billing protections as provided in RCW 48.49.130 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by Washington state employer has elected to participate in balance billing protections under RCW 48.49.130 and has employees that reside in other states, those employees are protected from balance billing when receiving care from a Washington state provider.

(5) Self-funded group health plan sponsors and their third party administrators may develop their own internal processes related to member notification, member appeals and other functions associated with their fiduciary duty to enrollees under the Employee Retirement Income Security Act of 1974 (ERISA).

NEW SECTION

WAC 284-43B-075 Severability. If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

1. This form and any attachments submitted will become public records and are subject to public disclosure laws. Do not provide sensitive or confidential information that is not necessary for the OIC to assign the claim to arbitration (you will have the opportunity to submit relevant information during the arbitration). OIC may dispose of any documents filed that are not necessary to process a claim for arbitration. Personal health information (PHI) disclosed to OIC is not subject to public disclosure under RCW 48.02.068.

2. Only claim payments made in connection with health insurance plans regulated by OIC and self-funded group health plans that have elected to participate in balance billing protections can use the arbitration process. Examples of health insurance plans that are not included are:

- Medicare and Medicaid
- Federal employee benefit plans

Please check the list of self-funded group health plans at <https://www.insurance.wa.gov/self-funded-group-health-plans> to determine whether a self-funded group health plan has elected to participate in balance billing protections for their members.

3. An out-of-network provider or facility providing emergency, surgical or ancillary services at an in-network facility may submit this request if it is believed that the payment made for the covered services was not a commercially reasonable amount. A carrier or self-funded group health plan that has elected to participate in balance billing protections for its members may also submit a request for arbitration.

4. Upon OIC review and acceptance of a request for arbitration, both the initiating and non-initiating parties will be provided with a list of approved arbitrators and arbitration entities by OIC. If the parties cannot agree on an arbitrator or arbitration entity, OIC will choose one and notify the parties, using the process outlined in WAC 284-43B-035(5). Within 10 business days of the initiating party notifying the commissioner and the non-initiating party of intent to initiate arbitration, both parties must agree to and execute a nondisclosure agreement.

5. Once the arbitrator has been chosen, OIC will send the arbitrator/arbitration entity a copy of the Arbitration Initiation Request Form and both parties will have 30 days to make written submissions to the arbitrator. A party that fails to make timely written submissions without good cause shown will be considered to be in default and will be ordered to pay the final offer amount submitted by the party not in default. The arbitrator also can require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default.

6. No later than 30 calendar days after the receipt of the parties' written submissions, the arbitrator will: Issue a written decision requiring payment of the final offer amount of either the initiating party or the non-initiating party, notify the parties of its decision, and provide the decision as well as the information described in RCW 48.49.050 regarding the decision to OIC.

NEW SECTION

WAC 284-43B-090 Appendix B.



Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM	
ARBITRATOR'S INFORMATION	
Your name and contact Information:	
Date of your decision:	OIC Tracking Number:
DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050	
Name of carrier:	
Name of health care provider:	
Name and address of the health care provider's employer or business entity in which provider has ownership interest:	
Name and address of the health care facility where services were provided:	
Type of health care services at issue:	
<i>The arbitrator reporting statutory provisions are noted on the back of this form.</i>	

RELEVANT STATUTORY PROVISIONS

RCW 48.49.040

Dispute resolution process—Determination of commercially reasonable payment amount. (Effective January 1, 2020.)

... (3)(a) Each party must make written submissions to the arbitrator in support of its position no later than thirty calendar days after the final selection of the arbitrator. The initiating party must include in its written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. A party that fails to make timely written submissions under this section without good cause shown shall be considered to be in default and the arbitrator shall require the party in default to pay the final offer amount submitted by the party not in default and may require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default. No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW 48.49.050 regarding the decision to the commissioner.

RCW 48.49.050

Commissioner's annual report on dispute resolution information regarding arbitration over commercially reasonable payment amounts. (Effective January 1, 2020, until January 1, 2024.)

(1) The commissioner must prepare an annual report summarizing the dispute resolution information provided by arbitrators under RCW 48.49.040. The report must include summary information related to the matters decided through arbitration, as well as the following information for each dispute resolved through arbitration: The name of the carrier; the name of the health care provider; the health care provider's employer or the business entity in which the provider has an ownership interest; the health care facility where the services were provided; and the type of health care services at issue.

(2) The commissioner must post the report on the office of the insurance commissioner's web site and submit the report in compliance with RCW 43.01.036 to the appropriate committees of the legislature, annually by July 1st.

(3) This section expires January 1, 2024.

WSR 20-22-089
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 3, 2020, 10:56 a.m., effective December 4, 2020]

Effective Date of Rule: Thirty-one days after filing.
 the rule have been updated to remove references to the previ-

Purpose: The department is updating WAC 458-20-267 to recognize 2020 legislation (ESB 6690), which modified the B&O tax rates for certain taxpayers engaged in manufacturing, processing for hire, and selling commercial airplanes and component parts for commercial airplanes. Examples in our rates.

Citation of Rules Affected by this Order: Amending WAC 458-20-267 (Rule 267) Annual tax performance reports for certain tax preferences.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 20-17-043 on August 10, 2020.

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

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

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

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

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

Date Adopted: November 3, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-267 Annual tax performance reports for certain tax preferences. (1) **Introduction.** Effective for tax reporting periods beginning January 1, 2018, taxpayers taking certain tax preferences must file an annual tax performance report with the department of revenue (department) providing information about their business. This rule explains how to file a report, the information that must be included in the report, due dates for filing, and other filing requirements.

(a) **References to related rules.** For tax reporting periods through December 31, 2017, readers may want to refer to the following rules:

(i) WAC 458-20-267A Annual reports for certain tax preferences;

(ii) WAC 458-20-268 Annual surveys for certain tax preferences.

(b) **Definitions.** For purposes of this rule the following definitions apply:

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) For purposes of this rule, tax preference includes only the tax preferences requiring an annual tax performance report under RCW 82.32.534.

(c) **Elimination of annual survey.** For tax preferences claimed for tax reporting periods beginning in January 2018 and later, taxpayers are no longer required to complete both an annual report and an annual survey.

(d) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual tax performance report.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Performance Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual tax performance report. Taxpayers may also contact the telephone information center at 800-647-7706 to determine whether they must file an annual tax performance report.

(3) **How to file annual tax performance reports.**

(a) **Electronic filing.** Annual tax performance reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format through the "MyDOR" system at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person who shows good cause, that person must use the annual tax performance report form developed by the department unless that person obtains prior written approval from the department to file an annual tax performance report in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the annual tax performance report form from the department's website at dor.wa.gov. It may also be obtained by calling the telephone information center at ((800-647-7706)) [360-705-6705](tel:360-705-6705), or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual tax performance report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual tax performance report with the department during the previous calendar year, or prior to 2019 did not file an annual report or annual survey, the annual tax performance report must include information on employment and wages for the two calendar years immediately preceding the due date of the report.

(e) **Due date of annual tax performance report for tax preferences other than deferrals.** Every person claiming a tax preference that requires an annual tax performance report under RCW 82.32.534 must file the report annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the report is May 31st.

(f) **Due date of annual tax performance report for tax preferences that are deferrals.** If the tax preference is a deferral of tax, an annual tax performance report must be filed by May 31st in the year following the calendar year in which the investment project is certified by the department as operationally complete, and by May 31st of each of the seven succeeding calendar years.

(g) **Due date extensions.** The department may extend the due date for filing annual tax performance reports as provided in subsection (15) of this rule.

(h) **Example 1.** ~~((An aerospace firm first claimed the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on April 1, 2017. By May 31, 2018, the aerospace firm was required to submit an annual report covering calendar years 2016 and 2017. If the aerospace firm continues to claim the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2018, an annual tax performance report is due by May 31, 2019, covering calendar year 2018.))~~ A manufacturer of commercial airplanes begins construction on a new facility in Washington. This facility will be used to manufacture fuselages of commercial airplanes. This firm first claimed the sales and use tax exemption provided by RCW 82.08.980 for construction of new facilities used to manufacture commercial airplanes, fuselages, or wings of commercial airplanes in 2020. By May 31, 2021, the aerospace firm was required to submit an annual report covering calendar years 2019 and 2020. If the aerospace firm continues to utilize the exemption provided by RCW 82.08.980 during calendar year 2021, an annual tax performance report is due by May 31, 2022, covering calendar year 2021.

(i) **Example 2.** An aluminum smelter first claimed the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, 2017. By May 31, 2018, the aluminum smelter must provide an annual report covering calendar years 2016 and 2017. If the aluminum smelter continues to claim the B&O tax rate provided by RCW 82.04.2909 during calendar year 2018, an annual tax performance report is due by May 31, 2019, covering calendar year 2018.

(4) **Amount of tax preference.** The annual tax performance report must include the amount of the tax preference claimed for the calendar year covered by the report.

(5) **What employment positions are included in the annual tax performance report?**

(a) **General rule.** Except as provided in (a)(i), (ii), or (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

(i) **Alternative to reporting employment and wage data.** A person may elect to allow, on their behalf, the employment security department to release wage and employment data to the department and the joint legislative audit and review committee. Each taxpayer electing this option must affirm that election in accordance with procedures approved by the employment security department.

(ii) **Additional reporting requirements for public research institutions claiming an exemption for machinery and equipment.** For a person that claimed an exemption provided in RCW 82.08.025651 or RCW 82.12.025651, the report must include the amount of tax exempted under those

sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual tax performance report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual tax performance report for the aerospace manufacturing industry tax preferences?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual tax performance report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration (FAA) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual tax performance report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual tax performance report provided that the jobs located at the manufacturing sites have equivalent employment positions, and wages. A person may request written approval to consolidate manufacturing sites by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes ~~((is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts))~~ claims the Aerospace Property and Leasehold Excise Tax B&O credit provided by RCW 82.04.4463 for property taxes paid on qualified buildings used exclusively in manufacturing commercial airplanes or component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufac-

tures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual tax performance reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax preference.

~~((d) **Example 4.** Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA-certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA-certified engine parts. If filing per manufacturing site, Acme Engines must file an annual tax performance report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.~~

(e) **Example 5.** Tacoma Rivets, with one in-state manufacturing site located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA-certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual tax performance report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

~~(f) **Example 6.** Dynamic Aerospace Composites is a company that manufactures only FAA-certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual tax performance reports for each of its three manufacturing sites.~~

~~(g) **Example 7.** Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual tax performance report for any employment positions in Washington that are directly related to the qualifying activity.))~~

(6) **What jobs are included in the annual tax performance report?** The annual tax performance report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (5)(b) of this rule, at the manufacturing site as of December 31st of the calendar year for which an applicable tax preference is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax preference are included in the report if the job is located in Washington state or, for persons filing as provided in subsection (5)(b) of this rule, at the manufacturing site.

~~((a)) **Example ((8)) 4.** XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual tax performance report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.~~

~~((b) **Example 9.** AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA-certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (5)(b) of this rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA-certified tires.))~~

(7) **How is employment detailed in the annual tax performance report?** The annual tax performance report requires reporting of the total hours and wages for employees in Washington for each quarter or for the calendar year, as determined by the department.

(8) **What is total employment?** The annual tax performance report must provide information on all full-time, part-time, and temporary employment positions located in Washington. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(9) **What are full-time, part-time, and temporary employment positions?** An employer must provide information on the total number of employees that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax preference is claimed.

(a) **Full-time and part-time employment positions.** For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual tax performance report.

(c) **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures (~~FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts~~) wings for commercial airplanes. National Airplane Inc. begins construction of a new facility to store raw materials used in manufacturing wings for commercial planes in Tacoma, WA, and claims the Aerospace Manufacturing Site Sales and Use Tax Exemption in RCW 82.08.980 and 82.12.980. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as (U.S. Department of Labor Standard Occupation Code) SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example ((10)) 5.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns each work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with five in full-time employment positions and six in temporary employment positions.

(ii) **Example ((11)) 6.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday through Friday. The second shift works six hours from 6:00 p.m. to midnight Monday through Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example ((12)) 7.** On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual tax performance report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with seventy-five in full-time employment positions and five in temporary employment positions.

(iv) **Example ((13)) 8.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual tax performance report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example ((14)) 9.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with four in full-time employment positions and one in part-time employment positions.

(10) **What are wages?** For the purposes of the annual tax performance report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Generally, compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not

"wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(11) How are wages detailed for the annual tax performance report?

(a) An employer must report the total wages for employees in Washington for each quarter or for the calendar year, as determined by the department.

(b) For purposes of the annual tax performance report, wages are measured on December 31st of the calendar year for which an applicable tax preference is claimed.

(12) Reporting workers furnished by staffing companies. For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual tax performance report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) Average duration of all staffing company employees.

(13) Additional reporting for aluminum smelters and electrolytic processing businesses. For an aluminum smelter or electrolytic processing business, the annual tax performance report must indicate the quantity of product produced in this state during the time period covered by the report.

(14) Are annual tax performance reports confidential? Except for the additional information that the department and the joint legislative audit and review committee may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual tax performance reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(15) What are the consequences for failing to file a complete annual tax performance report?

(a) What is a "complete annual tax performance report"? An annual tax performance report is complete if:

(i) The annual tax performance report is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) Amounts due for late filing. Except for deferrals, if a person does not timely file a required annual tax performance report, then the following amounts are immediately due and payable:

For reports due on or after July 1, 2017 or annual tax performance reports due on or after May 31, 2019:

(i) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(ii) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b) of this subsection for failure to timely submit a report for the same tax preference.

(c) **Tax deferrals.** If the tax preference is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b) and (c) of this subsection.

(e) Extension for circumstances beyond the control of the taxpayer. If the department finds the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(f) One-time only extension. A taxpayer (~~who~~) that fails to file an annual tax performance report, as required under this rule, by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual tax performance reports, annual reports and annual surveys, if any, due in prior years by their respective due dates, beginning with annual reports and annual surveys due in the calendar year 2010.

(ii) The extension is for ninety days from the original due date of the annual tax performance report.

(iii) No taxpayer may be granted more than one ninety-day extension.

WSR 20-22-093

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 3, 2020, 12:44 p.m., effective December 4, 2020]

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

Purpose: The department is amending WAC 458-20-195, 458-20-22801, 458-20-254, 458-20-261, and 458-20-272 to incorporate 2020 legislation, SHB 2246. The purpose of this legislation was to reorganize laws related to environmental health without making any substantive policy changes, specifically, adding a new title to the Revised Code of Washington to be codified as Title 70A RCW. The amendments proposed for these rules also include those to remove outdated language and for general readability purposes.

Citation of Rules Affected by this Order: Amending WAC 458-20-195, 458-20-22801, 458-20-254, 458-20-261, and 458-20-272.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Adopted under notice filed as WSR 20-18-008 on August 20, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

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

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

Date Adopted: November 3, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-16-015, filed 7/21/00, effective 8/21/00)

WAC 458-20-195 Taxes, deductibility. (1) **Introduction.** This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business and occupation tax, retail sales tax, and public utility tax. It also lists deductible and non-deductible taxes.

(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation (B&O) tax, the retail sales tax, and the public utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification with respect to which the deduction is sought, and have not been otherwise deducted through inclusion in the amount of another allowable deduction, such as credit losses.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported. License and regulatory fees are not deductible. Questions regarding the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the department of revenue for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

- ~~((State motor vehicle fuel tax chapter 82.36 RCW;~~
- State special)) Fuel tax chapter 82.38 RCW;

- Federal tax on diesel and special motor fuels (including leaking underground storage tank taxes), except train and aviation fuels 26 U.S.C.A. Sec. 4041;
- Federal tax on inland waterway commercial fuel 26 U.S.C.A. Sec. 4042;
- Federal tax on gasoline and diesel fuel for use in highway vehicles and motorboats 26 U.S.C.A. Sec. 4081.

(4) **Taxes collected as an agent of municipalities, the state, or the federal government.** The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

- FEDERAL—
- Tax on communications services (telephone and teletypewriter exchange services) 26 U.S.C.A. Sec. 4251;
- Tax on transportation of persons 26 U.S.C.A. Sec. 4261;
- Tax on transportation of property 26 U.S.C.A. Sec. 4271;
- STATE—
- Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42.010 chapter 82.42 RCW;
- Leasehold excise tax collected from lessees chapter 82.29A RCW;
- Oil spill response tax collected from taxpayers by marine terminal operators chapter 82.23B RCW;
- Retail sales tax collected from buyers chapter 82.08 RCW;
- Solid waste collection tax collected from buyers chapter 82.18 RCW;

State enhanced 911 tax collected from subscribers chapter 82.14B RCW;
 Use tax collected from buyers chapter 82.12 RCW;
 MUNICIPAL—
 City admission tax RCW 35.21.280;
 County admissions and recreations tax chapter 36.38 RCW;
 County enhanced 911 tax collected from subscribers chapter 82.14B RCW;
 Local retail sales and use taxes collected from buyers chapter 82.14 RCW.

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

FEDERAL—
Agricultural Adjustment Act (A.A.A.) compensating tax 7 U.S.C.A. Sec. 615(e);
 A.A.A. processing tax 7 U.S.C.A. Sec. 609;
 Aviation fuel 26 U.S.C.A. Sec. 4091;
 Distilled spirits, wine and beer taxes 26 U.S.C.A. chapter 51;
 Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and motor-boats 26 U.S.C.A. Sec. 4041;
 Employment taxes 26 U.S.C.A. chapters 21-25;
 Estate taxes 26 U.S.C.A. chapter 11;
 Firearms, shells and cartridges 26 U.S.C.A. Sec. 4181;
 Gift taxes 26 U.S.C.A. chapter 12;
 Importers, manufacturers and dealers in firearms 26 U.S.C.A. Sec. 5801;
 Income taxes 26 U.S.C.A. Subtitle A;
 Insurance policies issued by foreign insurers 26 U.S.C.A. Sec. 4371;
 Sale and transfer of firearms tax 26 U.S.C.A. Sec. 5811;
 Sporting goods 26 U.S.C.A. Sec. 4161;
 Superfund tax 26 U.S.C.A. Sec. 4611;
 Tires 26 U.S.C.A. Sec. 4071;
 Tobacco excise taxes 26 U.S.C.A. chapter 52;

Wagering taxes 26 U.S.C.A. chapter 35;
 STATE —
 Ad valorem property taxes Title 84 RCW;
 Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors and wineries) chapter 66.24 RCW;
 Aviation fuel tax when not collected as agent for the state chapter 82.42 RCW;
 Boxing, sparring and wrestling tax chapter 67.08 RCW;
 Business and occupation tax chapter 82.04 RCW;
 Cigarette tax chapter 82.24 RCW;
 (~~Gift and inheritance taxes~~) Estate tax Title 83 RCW;
 Insurance premiums tax chapter 48.14 RCW;
 Hazardous substance tax chapter 82.21 RCW;
 Litter tax chapter 82.19 RCW;
 Pollution liability insurance fee RCW (~~70.149.080~~) 70A.149.080;
 Parimutuel tax RCW 67.16.100;
 Petroleum products - underground storage tank tax chapter 82.23A RCW;
 Public utility tax chapter 82.16 RCW;
 Real estate excise tax chapter 82.45 RCW;
 Tobacco products tax chapter 82.26 RCW;
 Use tax when not collected as agent for state chapter 82.12 RCW;
 MUNICIPAL—
 Local use tax when not collected as agent for cities or counties chapter 82.14 RCW;
 Municipal utility taxes chapter 54.28 RCW;
 Municipal and county real estate excise taxes chapter 82.46 RCW.

AMENDATORY SECTION (Amending WSR 13-22-048, filed 11/1/13, effective 12/2/13)

WAC 458-20-22801 Tax reporting frequency. (1) Introduction.

(a) Every person liable for an excise tax imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, i.e., Title 82 RCW and chapters 67.28 (Hotel/motel tax), ~~((70.93))~~ 70A.93 (Litter tax), ~~((70.95))~~ 70A.95 (Tax on tires), and 84.33 RCW (Forest excise tax), must file an electronic tax return with the department of revenue accompanied by an electronic payment of the tax due; however, the taxes under chapter 82.24 RCW (Tax on cigarettes) must be collected through sales of revenue stamps.

(b) Other rules to reference. The department has adopted other rules that readers may want to refer to:

(i) WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection.

(ii) WAC 458-20-22802 Electronic filing and payment.

(2) ~~((Reporting frequency.))~~ **Reporting frequency.** Taxpayers are required to electronically file and pay their excise taxes on a monthly basis. However, the department may relieve any taxpayer or class of taxpayers from this monthly obligation and may require the return to cover other longer reporting periods, but not in excess of one year. ~~((See:))~~ RCW 82.32.045.

(a) General rule. Unless otherwise provided by the department, a taxpayer must report and pay taxes due according to the following schedule:

IF ANNUAL ESTIMATED TAX LIABILITY IS:	REPORTING FREQUENCY
Over \$4800.00 per year	Monthly returns:
Between \$1050.00 & \$4800.00 per year	Quarterly returns:
Less than \$1050.00 per year	Annual returns:

~~((b))~~ When requested by a taxpayer or group of taxpayers, the department may approve more frequent or less frequent reporting if, in the opinion of the department, the change assists the department in the efficient and effective administration of the tax laws of this state.

~~((c) For the same reasons, the department may require a taxpayer or group of taxpayers to report more frequently or less frequently.))~~ (b) Changes in reporting frequency. Changes in reporting frequency are effective only after the department has consented to or required the change, and notice of the change has been given by the department to the taxpayer or group of taxpayers.

~~((d))~~ Situations when changes in reporting frequency may be approved or required include, but are not limited to, the following:

(i) An increase or decrease in the estimated annual tax liability of a taxpayer results in a different threshold as provided in ~~((section (2)(a) above))~~ (a) of this subsection;

(ii) A taxpayer or group of taxpayers has substantial periods of no taxable business activity during the calendar year, i.e., temporary businesses;

(iii) The department finds a taxpayer or a group of taxpayers has repeatedly failed to comply with tax reporting and/or payment obligations; or

(iv) The type of tax reported is required to be filed on a specific reporting frequency.

~~((e))~~ (c) Notice of change in reporting frequency. No change in reporting frequency will be effective except ~~((upon))~~ with at least thirty days advance written or electronic notice from the department to the taxpayer at the taxpayer's last provided email address or reported business address.

~~((f))~~ (d) Filing returns. Returns must be submitted electronically. Taxpayers approved by the department may continue to submit paper returns that are either provided by the department, or approved and accepted by the department. Paper forms (including multipurpose returns for past and present reporting periods) are available for download from the department's website at dor.wa.gov.

~~((g))~~ Taxes not reported ~~((upon))~~ on the combined excise tax return, i.e. forest excise tax, etc. must be reported at such times and upon such forms as are otherwise provided by the department.

~~((3))~~ See ~~WAC 458-20-228 for information on returns, remittances, penalties, extensions, stay of collection.~~

~~((4))~~ See ~~WAC 458-20-22802 for information on available electronic methods for filing and paying taxes.~~

AMENDATORY SECTION (Amending WSR 16-06-040, filed 2/24/16, effective 3/26/16)

WAC 458-20-254 Recordkeeping. (1) Introduction.

This rule defines the requirements for the maintenance and retention of books, records, and other sources of information. It also addresses these requirements where all or a part of the taxpayer's books and records are received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

The general requirements imposed on taxpayers under RCW 82.32.070 are to retain and make available those records necessary to verify that the correct tax liability has been reported and paid by the taxpayer with respect to the taxes administered by the department of revenue ~~((the))~~ department~~((s))~~. The records provided to the department are confidential and privileged~~((Such records))~~ and may not be disclosed by the department, except as provided by RCW 82.32.330.

(2) **Definitions.** For purposes of this rule, the following definitions ~~((will))~~ apply:

(a) **"Database management system"** means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(b) **"Electronic data interchange" or "EDI technology"** means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(c) **"Hard copy"** means any documents, records, reports or other data printed on paper.

(d) **"Machine-sensible record"** means a collection of related information in any electronic format (e.g., database management systems, EDI technology, automated data process systems, etc.). Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(e) "**Records**" means all books, data, documents, reports, or other information, including those received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

(f) "**Storage-only imaging system**" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(3) Recordkeeping requirements—General.

(a) **Duty of taxpayer to keep records.** Every taxpayer liable for a tax or fee imposed by the laws of the state of Washington for which the department (~~(of revenue)~~) has primary or secondary administrative responsibility, e.g., Title 82 RCW, chapter 67.28 RCW (hotel/motel tax), chapter ~~(70.95)~~ 70A.95 RCW (fee on tires), and chapter 84.33 RCW (forest excise tax), must keep complete and adequate records from which the department (~~(may)~~) can determine ~~(any)~~ the tax liability ~~(for such)~~ of the taxpayer.

~~((b))~~ It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. ~~((Such))~~ Records are to be kept and preserved ~~(-All of the taxpayer's records)~~ and must be presented upon request by the department or its authorized representatives ~~((that will)).~~ The records should demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.

(iii) The payment of retail sales tax or use tax on capital assets, supplies, articles manufactured for your own use, and other items used by the taxpayer as a consumer.

(iv) The amounts of any refunds claimed. These amounts must be supported by records as may be necessary to substantiate the refunds claimed. Refer to WAC 458-20-229 Refunds, for information on the refund process.

~~((e))~~ **(b) Types of records.** The records kept, preserved, and presented must include the normal records maintained by an ordinary prudent business person. ~~((Such))~~ These records may include general ledgers, sales journals, cash receipts journals, bank statements, check registers, and purchase journals, together with all bills, invoices, cash register tapes, and other records or documents of original entry supporting the books of account entries. The records must include all federal and state tax returns and reports and all schedules, work papers, instructions, and other data used in the preparation of the tax reports or returns.

~~((d))~~ **(c) Format of records.** If a taxpayer retains records in both machine-sensible and hard-copy formats,

~~((the taxpayer))~~ they must make the records available to the department in machine-sensible format upon request of the department. However, the taxpayer is not prohibited from demonstrating tax compliance with traditional hard-copy documents or reproductions ~~((thereof))~~, although this does not eliminate the requirement that they provide access to machine-sensible records, if requested.

~~((e))~~ Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request.

~~((f))~~ At the time of an examination, the retained records must be capable of being retrieved and converted to a readable record format, as required in subsection (6) of this rule.

~~((g))~~ Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(4) **Record retention period.** All records must be open for inspection and examination at any time by the department, upon reasonable notice, and must be kept and preserved for a period of five years. RCW 82.32.070.

(5) **Failure to maintain or disclose records.** Any taxpayer who fails to comply with the requirements of RCW 82.32.070 or this rule is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept, preserved, or disclosed. RCW 82.32.070.

(6) Electronic records.

(a) Electronic data interchange requirements.

(i) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(ii) The taxpayer may capture the information at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists and make them

available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes if the vendor master file contains the required information.

(b) **Electronic data processing systems requirements.** The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

(c) **Internal controls.**

(i) Upon the request of the department, the taxpayer must provide a description of the business process that created the retained records. Such description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(ii) The taxpayer must be capable of demonstrating:

(A) The functions being performed as they relate to the flow of data through the system;

(B) The internal controls used to ensure accurate and reliable processing; and

(C) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(iii) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(A) Record formats or layouts;

(B) Field definitions (including the meaning of all codes used to represent information);

(C) File descriptions (e.g., data set name); and

(D) Detailed charts of accounts and account descriptions.

(7) **Access to machine-sensible records.**

(a) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that ~~((shall))~~ take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) ~~((Such))~~ Access will be provided in one or more of the following manners:

(i) The taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine-sensible records.

(ii) The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.

(iii) The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department.

(iv) The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

(8) **Storage-only imaging systems.**

(a) **Converting documents.** For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this rule are met. Documents which may be stored on these media include ~~((, but are not limited to,))~~ general books of account, journals, voucher registers, general and subsidiary

ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, ~~((and))~~ credit memoranda, etc.

(b) **System requirements.** Microfilm, microfiche and other storage-only imaging systems must meet the following requirements:

(i) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available upon request. Such documentation must, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(ii) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for a period of five years.

(iii) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(iv) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(v) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(vi) There must be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

(9) ~~((Effect on))~~ **Hard-copy ~~((recordkeeping requirements))~~ records.**

(a) **Recordkeeping requirements.** The provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations, except as otherwise provided in this rule. Hard-copy records may be retained on a recordkeeping medium as provided in subsection (8) of this rule. The department may request hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

~~((b) - (f))~~ Hard-copy records ~~((are))~~ not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), ~~((such hard-copy records))~~ do not need ~~((not))~~ to be created. Computer printouts that are created for validation, control, or other temporary purposes do not need to be retained.

~~((e))~~ (b) **Debit and credit card transactions.** Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule.

~~((d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.~~

~~(e) Nothing in this rule prevents the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.)~~

(10) **Out-of-state businesses.** An out-of-state business which does not keep ~~((the))~~ its necessary records within this state may either produce ~~((within this state such))~~ these records within this state as ~~((are))~~ required for examination by the department or permit the examination of all of ~~((the taxpayer's))~~ its records by the department or its authorized representatives at the place where the records are kept. RCW 82.32.070.

AMENDATORY SECTION (Amending WSR 16-04-035, filed 1/26/16, effective 2/26/16)

WAC 458-20-261 Commute trip reduction incentives. (1) **Introduction.** This rule explains the various commute trip reduction incentives that are available. RCW 82.04.355 and 82.16.047 provide exemptions from business and occupation (B&O) tax and public utility tax (PUT) on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs. RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride-sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or PUT credit in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **B&O tax and PUT exemptions for providing commuter ride sharing or ride sharing for persons with special transportation needs.** RCW 82.04.355 and 82.16.047 provide B&O tax and PUT exemptions for amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs.

(a) **What is "commuter ride sharing"?** "Commuter ride sharing" means a carpool or vanpool arrangement, whereby one or more fixed groups:

(i) Not exceeding fifteen persons each, including the drivers; and

(ii) Either:

(A) Not fewer than five persons, including the drivers; or

(B) Not fewer than four persons, including the drivers, where at least two of those persons are confined to wheelchairs when riding; are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions. RCW 46.74.010.

(b) **What is "ride sharing for persons with special transportation needs"?** "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger

motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs. RCW 46.74.010.

(i) **What is a "private, nonprofit transportation provider"?** A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs. RCW 81.66.010.

(ii) **Who are "persons with special transportation needs"?** "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation. RCW 81.66.010.

(3) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride-sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles.

(a) **What are the requirements?** To qualify for these exemptions, the passenger motor vehicles must be used:

(i) Primarily for commuter ride sharing or ride sharing for persons with special transportation needs; and

(ii) As ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Additional requirements in certain cases.** Vehicles used primarily for commuter ride sharing must be operated within a county, or a city or town within that county, which has a commute trip reduction plan under chapter ~~((70.94))~~ 70A.94 RCW in order to be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:

(i) The vehicle is operated by a public transportation agency for the general public;

(ii) The vehicle is used by a major employer, as defined in RCW ~~((70.94.524))~~ 70A.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle is owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

Individual-employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commute ride-sharing arrangement conforms to a carpool or vanpool element contained within their commute trip reduction program.

(4) **B&O tax or PUT credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** RCW 82.70.020 provides a credit against B&O tax or PUT liability for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using

nonmotorized commuting. The credit is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year. No refunds will be granted for unused credits.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is "ride sharing"?** "Ride sharing" means a carpool or vanpool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries. RCW 82.70.010.

(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries. RCW 82.70.010.

(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis. RCW 82.70.010.

(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace. RCW 82.70.010.

(f) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year. RCW 82.70.020.

(g) **What is a "fiscal year"?** A "fiscal year" begins at July 1st of one year and ends on June 30th of the following year.

(h) **When will the credit expire?** The credit program ~~is~~ is scheduled to expire ~~(June 30, 2015, but has been~~

~~extended to June 30, 2024, by legislation passed in 2015 (2ESSB 5987, chapter 44, Laws of 2015). For credits approved by the department through June 30, 2015, the approved credit may be carried forward and used for tax reporting periods through December 31, 2016. Credits approved after June 30, 2015, must be used for tax reporting periods within the calendar year for which they are approved by the department and may not be carried forward to subsequent tax reporting periods)) July 1, 2024. No credit may be claimed after June 30, 2024.~~

(i) **What are the limitations of the credit?**

(i) The credit may not exceed the amount of B&O tax or PUT that would otherwise be due for the same fiscal year.

(ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and PUT.

(iii) A person may not take a credit for amounts claimed for credit by other persons.

(iv) The total credit granted to a person under both B&O tax and PUT may not exceed ~~((two hundred thousand dollars for a fiscal year. Effective in 2016, the maximum credit that may be granted is))~~ one hundred thousand dollars for a fiscal year.

(v) The total credit granted to all persons under both B&O tax and PUT may not exceed two million seven hundred fifty thousand dollars in any fiscal year ~~((with the exception of one million five hundred thousand dollars per fiscal year for the period July 1, 2013, through June 30, 2015))~~.

(vi) No credit or portion of a credit denied, because of exceeding the limitations in (i)(iv) or (v) of this subsection, may be used against tax liability for other fiscal years.

(vii) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account (RCW 47.66.070) created by chapter 361, Laws of 2003 are terminated.

(j) **What are the credit procedures?**

(i) Persons applying for the credit must complete the commute trip reduction credit annual application. The application must be electronically filed and received by the department between January 1st and January 31st, following the calendar year in which the applicant made incentive payments. The commute trip reduction credit annual application is available through the business's "My ~~(Account))~~ DOR account on the department's website at dor.wa.gov.

(ii) The department must make a determination on an application within sixty days of the January 31st deadline. ~~((Except as explained immediately below,))~~ The department must disapprove an application not received by the January 31st deadline ~~((Legislation (2ESSB 5987, chapter 44, Laws of 2015) passed in 2015 allows)), except that the department~~ ~~((to))~~ may accept applications received up to fifteen calendar days after the deadline if the application was not received ~~((by the deadline))~~ because of circumstances beyond the control of the taxpayer. For what is considered circumstances beyond the control of a taxpayer, see WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. Once the application is approved and the tax credit is granted, the department is not allowed to increase the credit.

(iii) If the total amount of credit applied for by all applicants in a fiscal year exceeds the limitation as provided in (i)(v) of this subsection, the amount of credit allowed for all applicants must be proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years.

(iv) To claim a commute trip reduction tax credit, a person must file all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format is not filed until received by the department in an electronic format. For the purpose of this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(k) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(i) **Example 1.** An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of fifty dollars. These are the total expenditures during a fiscal year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) **Example 2.** An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) **Example 3.** As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit but is subject to the maximum credit limit of sixty dollars per employee.

(iv) **Example 4.** An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

AMENDATORY SECTION (Amending WSR 16-07-047, filed 3/14/16, effective 4/14/16)

WAC 458-20-272 Tire fee—Studded tire fee—Core deposits or credits. (1) **Introduction.** This rule describes the tire fee imposed under RCW ((70.95.510)) 70A.95.510 and the studded tire fee imposed under RCW 46.37.427 ((for collection beginning July 1, 2016. See chapter 44, Laws of 2015 (2ESSB-5987))). This rule also describes how business and occupation (B&O), sales, and use taxes apply to tire fees, battery core charges and core deposits or credits, including the exemptions described in RCW 82.08.036 and 82.12.038.

(a) **Other rules that may be relevant.** Readers may want to refer to other rules for additional information, including those in the following list:

(i) WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection.

(ii) WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law.

(b) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Tire fee.**

(a) **What is the tire fee?** The tire fee as described in RCW 70A.95.510 is a one-dollar fee collected by the seller from the buyer on every retail sale of each new replacement vehicle tire. If new tires are leased, the fee must be collected once at the beginning of the lease.

(b) **How do I report the tire fee?** A seller must report on the excise tax return the number of new replacement vehicle tires sold. Tire sellers may retain ten percent of the fee and must remit the remainder to the department of revenue (department). As a result, the amount that must be reported and paid to the department is the number of new replacement vehicle tires sold during the tax reporting period multiplied by ninety cents.

(c) **What if the seller fails to collect the fee or does not pay the fee on time?** The seller is personally liable for payment of the fee, whether or not the fee is collected from the buyer. Any seller who appropriates or converts the fee collected to ((his or her)) their own use or to any use other than the payment of the fee by the due date, minus the ten percent retained, is guilty of a gross misdemeanor. Interest and penalties apply to late payments.

(d) **What happens if a buyer fails to pay the fee?** The tire fee, until paid by the buyer to the seller or the department, is considered a debt from the buyer to the seller. Any buyer who refuses to pay the fee is guilty of a misdemeanor.

(e) **Is sales tax imposed on the tire fee?** No. The measure of the sales tax does not include the tire fee. See RCW 82.08.036.

(f) **Is the ten percent amount retained by the seller subject to B&O tax?** Yes. The seller must report the retained amount as gross income under the service and other activities tax classification on the excise tax return.

(g) **What tires are subject to the tire fee?** All new replacement vehicle tires are subject to the tire fee. Refer to RCW ((70.95.030)) 70A.95.030 for the definition of "vehicle."

(i) Examples of vehicles for which new replacement tires are subject to the fee include:

- (A) Automobiles;
- (B) Trucks;
- (C) Recreational vehicles;
- (D) Trailers;
- (E) All-terrain vehicles (ATVs);
- (F) Agricultural vehicles, such as tractors or combines;
- (G) Industrial vehicles, such as forklifts;
- (H) Construction vehicles, such as loaders or graders;

and

(I) Golf carts.

(ii) Bicycles, wheelbarrows, and hand trucks are examples of devices to which the new replacement tire fee does not apply.

(iii) The tire fee does not apply to the sale of retreaded vehicle tires. Nor does it apply to tires provided free of charge under the terms of a recall or warranty.

(h) **May I refund the fee if a tire is returned?** If a customer returns the purchased new tire and the entire selling price is refunded to the customer, the one-dollar tire fee is likewise refundable. The refunded amount may be claimed on the excise tax return in the same manner as refunded sales tax. If the seller does not refund the full sales price to the customer, the one-dollar fee is not refundable.

(i) **Does the tire fee apply on sales to the federal government or Indians and Indian tribes?** The tire fee is not imposed on sales to the federal government and need not be collected by the seller. The tire fee does not apply to sales of tires delivered to enrolled members or tribes in "Indian country." For information on sales to the federal government, see WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments, and for sales to Indians and Indian tribes, see WAC 458-20-192 Indians—Indian country.

(j) **If the sale is exempt from sales tax, is the tire fee due?** Statutory exemptions from sales tax do not apply to the tire fee. The tire fee is due on every retail sale of a new replacement tire whether or not sales tax is due.

(3) Studded tire fee.

(a) **What is the studded tire fee?** The studded tire fee as described in RCW 46.37.427 is a five dollar fee imposed on the retail sale of each new tire sold ~~((on or after July 1, 2016,))~~ that contains studs. The seller will collect the fee from the buyer. For the purpose of this subsection, "new tire sold that contains studs" means a tire that is manufactured for vehicle purposes and contains metal studs, and does not include bicycle tires or retreaded vehicle tires.

(b) **Who remits the studded tire fee to the department?** The seller collects the five dollar fee from the buyer and holds it in trust until paid to the department; however, the seller may retain ten percent of the fee collected.

(c) **What if the seller fails to collect the fee or does not pay the fee on time?** Interest and penalties, as described in subsection (2)(c) of this rule also apply to the studded tire fee.

(d) **What happens if a buyer fails to pay the fee?** As with the tire fee, a buyer who refuses to pay the fee is guilty of a misdemeanor. See subsection (2)(d) of this rule.

(e) **Is sales tax imposed on the tire fee?** No. The seller is collecting the fee as an agent for the state and thus the measure of sales tax does not include the studded tire fee. For additional information on taxpayers acting as collecting agents, see WAC 458-20-195 Taxes, deductibility.

(f) **Is the ten percent amount retained by the seller subject to B&O tax?** Yes. As with the tire fee, the seller must report the retained amount as gross income under the service and other activities tax classification on the excise tax return.

(g) **Is the studded tire fee refundable if the tire is returned?** If a new studded tire is returned, the studded tire fee is handled the same as the tire fee as described in subsection (2)(h) of this rule.

(h) **Does the studded tire fee apply to tires sold to the federal government or Indians and Indian tribes?** With respect to these sales, the studded tire fee is handled the same as the tire fee described in subsection (2)(i) of this rule.

(i) **If the sale is exempt from sales tax, is the studded tire fee due?** As with the tire fee described in subsection (2)(j) of this rule, statutory exemptions from sales tax do not apply to the studded tire fee.

(4) Core deposits or credits - Battery core charges.

(a) **Definitions.** For purposes of this rule, the following definitions apply:

(i) **Core deposits or credits.** "Core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for purposes of recycling or remanufacturing.

(ii) **Battery core charge.** "Battery core charge" refers to a core deposit, not less than five dollars, that a seller by law must retain when a retail purchaser has no used battery to exchange or trade in. A buyer may return within thirty days of the purchase with a used battery of equivalent size and claim the core charge amount. See RCW ~~((70.95.630 and 70.95.640))~~ 70A.95.630 and 70A.95.640.

(b) **How is tax calculated when the buyer receives a core deposit or credit?** Retail sales and use taxes do not apply to consideration received in the form of core deposits or credits when a purchaser exchanges or trades in a core for recycling or remanufacturing. Therefore, the measure of the sales or use tax may be reduced by the amount of the core deposit or credit. See RCW 82.08.036 and 82.12.038. The core deposit and credit exemptions apply only to the retail sales and use taxes. There is no equivalent exemption or deduction for B&O tax purposes. Therefore, the amount reported under the appropriate B&O tax classification must include the value of core deposits or credits.

(c) Examples.

(i) **Example 1.** A customer purchases at retail a new replacement battery and reconditioned starter, providing the seller with a battery core and a starter core in exchange. The selling price of the new battery, including the battery core charge, is \$60.00. The customer is allowed a \$5.00 credit because a battery core is exchanged, meaning the cost of the battery to the customer, excluding sales tax, is \$55.00. The selling price of the starter is \$50.00. The seller allows a \$3.00 credit for the starter core, meaning the cost to the customer, excluding sales tax, is \$47.00. Retailing B&O tax is due upon

the total value of cash plus core value, in this case \$110.00, or \$60.00 plus \$50.00. However, the \$8.00 of core deposits or credits may be deducted from the measure of the retail sales tax under RCW 82.08.036. Thus, retail sales tax is due on \$102.00, or \$55.00 plus \$47.00.

(ii) **Example 2.** The seller in Example 1 delivers the starter and battery cores accepted in the exchange to wholesalers. A starter wholesaler issues a refund and a battery wholesaler issues a credit memorandum to be applied against future wholesale battery purchases. The return of the used products by the auto parts store for recycling or remanufacturing and subsequent receipt of a refund or credit for the core deposit or credit is not considered taxable consideration for purposes of the B&O tax.

WSR 20-22-096
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Office of the Secretary)

[Filed November 3, 2020, 1:48 p.m., effective December 4, 2020]

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

Purpose: The rule allows electronic filing and electronic distribution of notices and orders to the office of administrative hearings (OAH) via email by striking the email prohibition in prior rule, adding a provision for email filing with OAH, and adding clarifying language.

Citation of Rules Affected by this Order: Amending WAC 388-02-0075.

Statutory Authority for Adoption: RCW 43.17.060, 43.20A.550, 34.05.020, 34.05.350.

Other Authority: Proclamation by the Governor 20-05.

Adopted under notice filed as WSR 20-19-148 on September 23, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: November 3, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0075 How does a party file documents?

(1) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission if the party mails a copy of the document the same day;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

(2) ~~((A))~~ Any party ((cannot)) may file documents with OAH by secure email. The BOA does not accept electronic submission except by fax.

WSR 20-22-101
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-242—Filed November 3, 2020, 3:56 p.m., effective December 4, 2020]

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

Purpose: These rules update ocean salmon troll and recreational fishing regulations for consistency with National Marine Fisheries Service federal regulations and reorganize regulations for clarity and understanding by participants in those fisheries.

Citation of Rules Affected by this Order: New WAC 220-306-010, 220-306-020, 220-306-030, 220-306-040 and 220-313-075; and amending WAC 220-313-010, 220-313-020, 220-313-070, 220-350-220, 220-350-230, and 220-354-300.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 20-19-097 on September 17, 2020.

Changes Other than Editing from Proposed to Adopted Version: In WAC 220-350-230, the word "detachable" was added to the definition of troll spread as a clarification and as suggested by public comment.

In WAC 220-354-300, the sentence "When troll gear is authorized under emergency regulation, the following provisions shall also apply unless expressly modified by the emergency rule:" was added to the first paragraph. This is intended to clarify that the provisions of the permanent rule do apply unless modified by emergency rule, even if the provisions are not restated in emergency rules opening the fishery.

In WAC 220-313-070, the intent was to remove only the ocean area fisheries from this section, but the August 1 - January 31 season in Area 2-1 (Willapa Bay) was accidentally removed from the draft rule. It was reinserted in subsection (b) of the final rule, with the applicable provisions listed in (b)(i)-(v).

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 6, Repealed 0.

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

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

Date Adopted: November 3, 2020.

Kelly Susewind
Director

Chapter 220-306 WAC

FISH—SALMON CONTROL ZONES

NEW SECTION

WAC 220-306-010 Cape Flattery Control Zone. This area is defined as the area from Cape Flattery (48°23'00"N. lat.) to the northern boundary of the U.S. Exclusive Economic Zone; and the area from Cape Flattery extending south to Cape Alava (48°10'00"N. lat.) that is east of 125°05'00"W. long.

NEW SECTION

WAC 220-306-020 Salmon Troll Yelloweye Rockfish Conservation Area. This area is defined as: Beginning at 48°00.00'N. lat., 125°14.00'W. long.; thence to 48°02.00'N. lat., 125°14.00'W. long.; thence to 48°02.00'N. lat., 125°16.50'W. long.; thence to 48°00.00'N. lat., 125°16.50'W. long.; thence to the point of origin.

NEW SECTION

WAC 220-306-030 Grays Harbor Control Zone. This area is defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.).

NEW SECTION

WAC 220-306-040 Columbia River Control Zone. This area is at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35"N. lat., 124°06'50"W. long.) and the green lighted Buoy #7 (46°15'09"N. lat., 124°06'16"W. long.); on the east by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00"N. lat., 124°03'07"W. long. to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48"N. lat., 124°05'20"W. long.) and then along the north jetty

to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14'03"N. lat., 124°04'05"W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-313-010 Salmon statewide rules. (1) In fresh water (~~and in Marine Areas 2-1 and 2-2 east of the Buoy 13 line~~):

(a) Adult salmon are defined as:

(i) Chinook over 24 inches in length;

(ii) Coho over 20 inches in length;

(iii) Pink, chum or sockeye over 12 inches in length; and

(iv) Atlantic salmon of any size.

(b) In these waters the minimum size for salmon is 12 inches, except no minimum size for Atlantic salmon.

(2) In (~~Marine Areas 1 through 4, in~~) Area 2-1 from the opening date of adjacent ocean waters through (~~August 15~~) July 31, and in Area 2-2 west of the Buoy 13 line, (~~Chinook salmon must be not less than 24 inches in length, coho salmon must be not less than 16 inches, but there is no minimum size on other salmon~~) the size limits specified for Marine Area 2 in WAC 220-313-075 apply.

(3) In Marine Areas 5 through 13, Chinook salmon must be not less than 22 inches in length, except in waters listed in this subsection, but there is no minimum size for other salmon.

(a) Marine Area 12 south of Ayock from July 1 through September 30: Chinook salmon must be not less than 20 inches in length.

(b) Marine Area 12 Hoodspout Hatchery Zone from July 1 through December 30: No minimum size for Chinook.

(4) The salmon possession limit shall not exceed the equivalent of two daily limits in fresh form. An additional 40 pounds of salmon may be possessed in frozen or processed form.

(5) In all areas where the daily limit allows adult salmon to be taken, it is unlawful to continue to fish for salmon after the adult portion of the daily limit has been retained.

(6) Where landlocked salmon rules apply, no sport catch record card is required for salmon, the season, daily limit, and size and gear restriction rules for salmon are the same as trout rules. The angler's combined catch of landlocked salmon and trout applies toward the trout limit.

AMENDATORY SECTION (Amending WSR 17-16-109, filed 7/28/17, effective 8/28/17)

WAC 220-313-020 Closed areas—Saltwater salmon angling. The following areas are closed to salmon angling during the times indicated:

(1) Bellingham Bay: Those waters of Bellingham, Samish, and Padilla Bays, easterly of a line from Sandy Point to the northern most point of Lone Tree Island, thence easterly of a line from Lone Tree Island to the northeast point of Sinclair Island, thence from the southeastern most point on Sinclair Island to Clark Point on Guemes Island, thence following the shoreline to Yellow Bluff on the southwest corner

of Guemes Island, thence to Yellow Bluff Reef range marker, thence to the ferry terminal dock east of Shannon Point and north of the Burlington Railroad Bridges at the north end of Swinomish Slough: Closed to salmon angling March 1 through April 30 and July 1 through August 15.

(2) Carr Inlet: Those waters of Carr Inlet within 1,000 feet of the outer oyster stakes at the mouth of Minter Creek: Closed to salmon angling April 16 through September 30.

(3) Dungeness Bay: Those waters westerly of a line from Dungeness Spit Light to the number 2 red Buoy, and then to the Port Williams boat ramp: Closed to salmon angling July 1 through August 15 and March 1 through April 15.

(4) Samish Bay: Those waters southerly of a line projected true east from Fish Point: Closed to salmon angling March 1 through April 30 and July 1 through September 30.

(5) ~~(Columbia River Mouth Control Zone 1: Washington waters within Control Zone 1, which Control Zone is described as an area at the Columbia River mouth bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N/124°06'50" W) and the green lighted Buoy #7 (46°15'09" N/124°06'16" W); on the east by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N/124°03'07" W to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N/124°05'20" W), and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14'03" N/124°04'05" W), and then along the south jetty to the point of intersection with the Buoy #10 line: Closed to salmon angling at all times, except open to fishing from the north jetty when adjacent waters north of the Control Zone are open to salmon angling, or when the Buoy #10 fishery is open.~~

(6)) Commencement Bay: Those waters east of a line projected from the Sperry Ocean Dock to landfall below the Cliff House Restaurant on the north shore of Commencement Bay: Closed to salmon angling April 1 through April 30 and June 1 through July 31.

((7)) (6) Southern Rosario Strait and the eastern Strait of Juan de Fuca: Waters of Area 7 in Rosario Strait and the eastern portion of the Strait of Juan de Fuca southerly of a line running true south from the westernmost point on Fidalgo Head to Burrows Island, then westerly and southerly along the shore of Burrows Island to the Burrows Island Lighthouse, then to Bird Rocks, then westerly from Bird Rocks to the southernmost point on Decatur Island, then across Lopez Pass to Lopez Island and following the shore of Lopez Island southerly and westerly to Iceberg Point, then from Iceberg Point to Cattle Point, then south-southwest to the Salmon Bank Buoy, and then true south from the Salmon Bank Buoy to the Area 7 boundary: Closed to salmon angling July 1 through September 30.

((8)) (7) Kydaka Point - Waters south of a line from Kydaka Point to Shipwreck Point - Closed to salmon angling ~~(May 31)~~ June 1 through October 31.

((9)) (8) Port Angeles Harbor - Waters westerly of a line from the tip of Ediz Hook to the I.T.T. Rayonier Dock: Closed to salmon angling from July 1 through August 15.

~~((10))~~ (9) Violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380((;)) Unlawful recreational fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370((;)) Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

AMENDATORY SECTION (Amending WSR 20-14-052, filed 6/25/20, effective 7/26/20)

WAC 220-313-070 Coastal salmon—Saltwater seasons and daily limits. ((4)) It is unlawful to take, fish for, or possess salmon taken by angling for personal use except from the following coastal areas, during the following seasons, in the quantities and the sizes provided for in WAC 220-313-010, and for the species designated in this section. An area is open when a daily limit is provided:

~~((2))~~ **Catch Record Card Area 1:**

(a) May 1 through June 19: Closed.

(b) Open June 20 through June 28:

(i) Daily limit 1 salmon.

(ii) Release all coho.

(iii) Chinook minimum length 22 inches.

(c) Open June 29 through September 30:

(i) Daily limit 2 salmon; no more than 1 may be a Chinook.

(ii) Release wild coho.

(iii) Chinook minimum length 22 inches.

(d) October 1 through April 30: Closed.

(e) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-313-020.

~~(3))~~ **Catch Record Card Area 2:**

(a) May 1 through June 19: Closed.

(b) Open June 20 through June 28:

(i) Daily limit 1 salmon.

(ii) Release all coho.

(iii) Chinook minimum length 22 inches.

(c) Open June 29 through September 30; Sundays through Thursdays only (closed Fridays and Saturdays):

(i) Daily limit 2 salmon; no more than 1 may be a Chinook.

(ii) Release wild coho.

(iii) Chinook minimum length 22 inches.

~~(iv) Beginning August 10, the Grays Harbor Control Zone is closed. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53.18'N latitude, 124°07.01'W longitude) to Buoy #2 (46°52.42'N latitude, 124°12.42'W longitude) to Buoy #3 (46°55.00'N latitude, 124°14.48'W longitude) to the Grays Harbor north jetty (46°55.36'N latitude, 124°10.51'W longitude):~~

~~(d) October 1 through April 30: Closed.~~

~~(4))~~ (1) **Willapa Bay (Catch Record Card Area 2-1):**

(a) ~~(May 1 through June 19: Closed.~~

(b) June 20 through July 31: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

~~(e))~~ Open concurrent with Area 2 as specified in WAC 220-313-075; otherwise closed, except as described in (b) of this subsection.

~~(b)~~ Open August 1 through January 31:

(i) Daily limit 6 salmon; up to 2 may be adult salmon.

(ii) Release wild Chinook.

(iii) Beginning August 1, the Willapa Bay Control Zone is open. The Willapa Bay Control Zone area is defined as waters east of a line drawn from Leadbetter Point (46°39.20'N, 124°3.516'W) due west to 46°39.20'N, 124°5.3'W then due north to the westerly most landfall on Cape Shoalwater (46°44.66'N, 124°5.3'W) and west from a line drawn from Leadbetter Point (46°39.20'N, 124°3.516'W) through green marker 11 to landfall.

(iv) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(v) Waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) then, northeasterly to the power transmission pole located at 46°43.19'N, 123°50.83'W are closed August 1 through September 30.

~~((d))~~ February 1 through April 30: Closed.

~~(5))~~ **(2) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**

(a) Humptulips North Bay Fishery is defined as northerly of a line running from the south end of the eastern jetty at Ocean Shores Marina, then to a fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) then to the Tripod Station located at 46°59.12'N, 124°00.72'W on Brackenridge Bluff.

(i) May 1 through July 31: Closed.

(ii) Open August 1 through September 15:

(A) Daily limit 1 salmon.

(B) Release wild Chinook and wild coho.

(b) East Grays Harbor Fishery is defined as easterly of a projected line from the mouth of Johns River (Highway 105 bridge) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green).

(i) Open September 23 through November 30:

(A) Daily limit 1 salmon.

(B) Release Chinook.

(ii) Waters south of a line running from the south end of the eastern jetty at Ocean Shores Marina to the fishing boundary marker on Sand Island (46°57.52'N, 124°03.36'W) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) and waters west of a line running from the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green) to the mouth of Johns River (Highway 105 Bridge): Closed.

(c) Notwithstanding the provisions of this subsection, the Westport Boat Basin and Ocean Shores Boat Basin are open only August 16 through January 31:

(i) Daily limit 6 salmon; up to 4 may be adult salmon.

(ii) Release Chinook.

(iii) Night closure and anti-snagging rule in effect.

~~((6))~~ **(3) Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):** ~~((a))~~ May 1 through June 19: Closed.

~~(b) June 20 through August 9: Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.~~

~~(e) August 10 through April 30: Closed.~~

~~(7) Catch Record Card Area 3:~~

~~(a) May 1 through June 19: Closed.~~

~~(b) Open June 20 through June 28:~~

~~(i) Daily limit 1 salmon.~~

~~(ii) Release all coho.~~

~~(c) Open June 29 through September 30:~~

~~(i) Daily limit 2 salmon.~~

~~(ii) Release wild coho.~~

~~(iii) Release chum salmon beginning August 1.~~

~~(d) October 1 through April 30: Closed.~~

~~(8) Catch Record Card Area 4:~~

~~(a) Waters east of a true north-south line through Sail Rock are closed through July 31.~~

~~(b) May 1 through June 19: Closed.~~

~~(c) June 20 through June 28:~~

~~(i) Daily limit 1 salmon.~~

~~(ii) Release all coho.~~

~~(d) Open June 29 through September 30:~~

~~(i) Daily limit 2 salmon.~~

~~(ii) Release wild coho.~~

~~(iii) Waters east of the Bonilla-Tatoosh line closed to Chinook retention beginning August 1.~~

~~(iv) Release chum salmon beginning August 1.~~

~~(e) October 1 through April 30: Closed.~~

~~(9))~~ Open concurrent with Area 2 as specified in WAC 220-313-075.

~~(4)~~ A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380 ~~(c))~~ Unlawful recreational fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370 ~~(c))~~ Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

NEW SECTION

WAC 220-313-075 Pacific Ocean Salmon—Seasons—Closed Areas. (1) It is unlawful to take, fish for, or possess salmon taken for personal use in Pacific Ocean waters except as provided for in this section:

(a) Marine Area 1: Closed except as provided by emergency rule. Closed in the Columbia River Control Zone during all open periods. See WAC 220-306-040.

(b) Marine Area 2: Closed except as provided by emergency rule. Closed in the Grays Harbor Control Zone, unless provided by emergency rule. See WAC 220-306-030.

(c) Marine Area 3: Closed except as provided by emergency rule.

(d) Marine Area 4: Closed except as provided by emergency rule. Closed in Marine Area 4 waters south of a line from Kydaka Point to Shipwreck Point.

(2) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested salmon. If the person has harvested salmon, the violation is punishable under RCW 77.15.380 Unlawful recreational

fishing in the second degree—Penalty, unless the salmon are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-350-220 Definitions—Troll line. "Troll line" when relating to its use for commercial purposes shall be defined as a ~~((fishing))~~ line used to drag a ~~((lure or lures))~~ hook or hooks behind a moving fishing vessel that is ~~((under power))~~ making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions. The troll line must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-350-230 Definitions—Troll spread. "Troll spread" shall be defined as a ~~((readily detachable line more than 4 inches in length, which has one or more lures attached to it, and is attached to the main troll line which cannot be removed from the vessel during its operation))~~ single detachable leader connected to the troll line and to an individual lure and/or bait.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-354-300 Coastal salmon troll seasons—Commercial. It is unlawful to take, fish for, or possess salmon taken with troll gear in Pacific Ocean waters or to land salmon taken with troll gear from Pacific Ocean waters into a Washington port except ~~((during the seasons provided for in this section.~~

(1) SMCRA 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open May 1, 2001, and remain open through June 30, 2001, or until the chinook quota is taken. Unlawful to retain coho. No more than 4 spreads per line beginning June 1. Cape Flattery and Columbia River Control Zones closed.

(2) SMCRA 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open July 1, 2001, and remains open through July 27, 2001, or until the chinook or coho quotas have been taken. Unlawful to retain wild coho. Gear is restricted to plugs with a plug body length of six inches or greater, and no more than 4 spreads per line. Cape Flattery Control Zone closed.

(3) SMCRA 1 opens July 20, 2001, and remains open through September 30, 2001, or until the chinook or coho quotas have been taken. Unlawful to retain wild coho. Columbia River Commercial Control Zone closed.

(4) SMCRA 2 south of the Queets River opens July 28, 2001 or upon closure of the fishery provided for in subsection (2) of this section, and remains open concurrent with the fishery provided for in subsection (3) of this section.

(5) In all fisheries provided for in this section, chinook minimum size 28 inches and coho minimum size 16 inches))

as provided by emergency rule. When troll gear is authorized under emergency regulation, the following provisions shall also apply unless expressly modified by the emergency rule:

(1) Closed in Salmon Control Zones defined in chapter 220-306 WAC except as provided in emergency rule.

(2) Minimum size limits for Chinook and coho will be specified in emergency rule. No minimum size for pink, sockeye or chum salmon.

~~((6) Lawful troll gear is restricted to))~~ No chum retention north of Cape Alava (48°10'00"N. lat.) beginning August 1 continuing through September 30.

(3) Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

~~((7) It is unlawful for any fisher taking salmon north of the Queets River to fail to land the salmon north of the Queets River and west of Sekiu, or to fail to notify the department before leaving the area. Notification must be made by calling the department at 360-902-2739, and reporting the name of fisher and boat, the area fished, the day leaving the area, and the port of destination.~~

~~((8) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and must land within the SMCRA fished, or within an adjacent SMCRA closed to all citizen troll fishing.~~

~~((9) The Cape Flattery Commercial Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude and west of 125°05'00" W longitude.~~

~~((10) The Columbia River Commercial Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. latitude, 124°06'50" W. longitude) and the green lighted Buoy #7 (46°15'09" N. latitude, 124°06'16" W. longitude); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. latitude, 124°03'07" W. longitude to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. latitude, 124°05'20" W. longitude) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. latitude, 124°04'05" W. longitude), and then along the south jetty to the point of intersection with the Buoy #10 line.~~

~~((11) Vessels intending to land their catch taken south of Cape Falcon into a Washington port must notify WDFW before traveling north of Cape Falcon by calling 360-902-2181 and report the name of the vessel, the intended port of landing, the estimated time and date of arrival and the catch aboard.))~~ (4) It is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for certain species of salmon while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

(5) Salmon may not be filleted prior to landing.

(6) Vessels must land and deliver their salmon within twenty-four hours of any closure of this fishery.

(7) All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than forty-eight hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than forty-eight hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught.

(8) During any single trip, only one side of the Leadbetter Point line (46°38'10"N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of the Megler-Astoria bridge.

(9) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first notifying WDFW at 360-249-1215 with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 with area fished, total Chinook, coho, and halibut catch aboard and destination.

(c) Vessels may not land fish east of the Sekiu River.

WSR 20-22-105

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 4, 2020, 6:12 a.m., effective December 5, 2020]

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

Purpose: To provide an accurate description of the function of Washington state department of transportation highway maintenance vehicles.

Citation of Rules Affected by this Order: Amending WAC 204-24-050.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.420.

Adopted under notice filed as WSR 20-17-033 on August 10, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: November 4, 2020.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 14-21-076, filed 10/13/14, effective 11/13/14)

WAC 204-24-050 Use of tire chains or other traction devices. (1) Vehicles under 10,000 pounds gross vehicle weight.

When traffic control signs are posted by the department of transportation it will be unlawful for any vehicle to enter the controlled area without having mounted on its drive tires the traction device specified by the sign, which must also meet the requirements of WAC 204-24-040.

(a) Exception for all wheel drive vehicles. When "chains required" signs are posted, all-wheel drive vehicles will be exempt from the chain requirement when all wheels are in gear and are equipped with approved traction devices as specified in WAC 204-24-040 provided that tire chains for at least one set of drive tires are carried in the vehicle.

(b) Alternative traction devices listed on the patrol's website as being approved for passenger vehicles as outlined in this chapter will be considered approved for use when "chains required" signs are posted.

(2) Vehicles or combinations of vehicles over 10,000 pounds gross vehicle weight rating (GVWR).

When traffic control signs marked "chains required" are posted by the department of transportation it will be unlawful for any vehicle or combination of vehicles to enter the controlled area without having mounted on its tires, tire chains as follows: Provided, That highway maintenance vehicles operated by the department of transportation for the purpose of snow removal and its ancillary functions are exempt from the following requirements (~~(if such vehicle has sanding capability in front of the drive tires.))~~):

(a) Vehicles or vehicle combinations with two to four axles including but not limited to trucks, truck-tractors, buses and school buses: For vehicles with a single drive axle, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers; one tire on the last axle of the last trailer or semi-trailer, must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(b) Automobile transporters are any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles. For vehicles with single drive axles, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on

each side of each of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(c) Vehicle combinations with five axles consisting of a truck tractor with dual drive axles and a tandem axled semi-trailer; all tires on one drive axle may be chained or one tire on each side of each of the drive axles may be chained. Chains must be applied to a minimum of four tires on the drive axles. On the tandem axle semi-trailer, the chained tire may be on either of the last two axles.

(d) Vehicle combinations with five axles, consisting of a truck and trailer, or truck tractor and semi-trailer with a single drive axle, or truck tractor, semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles, all tires on one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(e) Vehicle combinations with six or more axles, including but not limited to truck and trailer or truck tractor and semi-trailer or truck tractor semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles where traffic control signs marked "approved traction tires required" are posted, all tires on one of the drive axles must be chained. For vehicles with dual drive axles where traffic control signs marked "chains required" are posted, all tires on one of the drive axles must be chained. In addition, one tire on each side of the additional drive axle must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle must be chained. For vehicles with tandem axle trailers or semi-trailers, the chained tire may be on either of the last two axles.

(f) All vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must carry a minimum of two extra chains for use in the event that road conditions require the use of more chains or in the event that chains in use are broken or otherwise made useless.

(g) Approved chains for vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must have at least two side chains to which are attached sufficient cross chains of hardened metal so that at least one cross chain is in contact with the road surface at all times. Plastic chains will not be allowed.

(h) If automatic tire chains are used, the vehicle must carry regular tire chains for use on the outside tires of the drive axle of all axles equipped with the automatic tire chain.

(i) On the following routes all vehicles and combinations of vehicles over 10,000 gross vehicle weight rating (GVWR) pounds must carry sufficient tire chains to meet the requirements of this chapter from November 1 to April 1 of each year or at other times when chains are required for such vehicles:

(i) I-90 - Between North Bend (MP 32) and Ellensburg (MP 101).

(ii) SR-97 - Between (MP 145) and Junction SR-2.

(iii) SR-2 - Between Dryden (MP 108) and Index (MP 36).

(iv) SR-12 - Between Packwood (MP 135) and Naches (MP 187).

(v) SR-97 - Between the Columbia River (MP 0.00) and Toppenish (MP 59.00).

(vi) SR-410 - From Enumclaw to Naches.

(vii) SR-20 - Between Tonasket (MP 262) and Kettle Falls (MP 342); and SR-20 between Newhalem (MP 120) and Winthrop (MP 192).

(viii) SR-155 - Between Omak (MP 79) and Nespelem (MP 45).

(ix) SR-970 - Between (MP 0) and (MP 10).

(x) SR-14 - Between Gibbons Creek (MP 18.00) and (MP 108.40) intersection of Cliffs Road.

(xi) SR-542 - Mt. Baker highway between (MP 22.91) and (MP 57.26).

(xii) I-82 - Between Ellensburg Exit 3 (MP 3.00) and Selah Exit 26 (MP 26.00).

Vehicles making local deliveries as indicated on bills of lading and not crossing the mountain pass are exempt from this requirement if operating outside of a chain required area.

(3) For the purpose of this section, chained will mean that the tire has either a tire chain approved for use under chapter 204-24 WAC or an alternative traction tire device listed on the patrol's website as approved for the type of vehicle combination listed in this section.

(4) The Washington state department of transportation or Washington state patrol may prohibit any vehicle from entering a chain/approved traction device control area when it is determined that the vehicle will experience difficulty in safely traveling the area.

WSR 20-22-106

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 4, 2020, 6:19 a.m., effective December 5, 2020]

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

Purpose: To provide another method of requesting copies of current procedures for collection of biological samples.

Citation of Rules Affected by this Order: Amending WAC 446-75-060.

Statutory Authority for Adoption: RCW 43.43.759.

Adopted under notice filed as WSR 20-18-019 on August 25, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: November 4, 2020.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 14-17-108, filed 8/19/14, effective 9/19/14)

WAC 446-75-060 Collection of biological sample for the DNA identification system—Procedures—Time frame. (1) The collection, preservation, and shipment of biological samples obtained from convicted offenders pursuant to RCW 43.43.754 for the patrol's DNA identification system must be in conformance with protocols established by the patrol. Copies of the current protocol may be obtained from the Washington State Patrol ((~~Crime Laboratory Division~~),) CODIS Laboratory by emailing the request to confel@wsp.wa.gov or at 2203 Airport Way S., Suite 250, Seattle, WA 98134.

(2) The DNA profile resulting from the convicted offender's biological sample will be entered into the patrol's DNA identification system. The patrol will retain the convicted offender's DNA record in its DNA identification system until expungement pursuant to WAC 446-75-070 or the patrol determines that the DNA record no longer qualifies to be retained in the DNA identification system.

WSR 20-22-111
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed November 4, 2020, 10:23 a.m., effective December 5, 2020]

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

Purpose: SSB 6074 required the department of licensing to increase fees for Financing Statements, Financing Statement Amendments, UCC1 Financing Statement of 1 or 2 pages, UCC3 Financing Statement Amendments of 1 or 2 pages, and UCC5 Correction Statement of 1 or 2 pages.

Citation of Rules Affected by this Order: Amending WAC 308-391-104 Fees, related to the Uniform Commercial Code in Washington state.

Statutory Authority for Adoption: RCW 62A.9A-526.

Adopted under notice filed as WSR 20-10-111 on May 6, 2020.

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

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

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

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

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

Date Adopted: November 4, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-13-004, filed 6/2/16, effective 7/3/16)

WAC 308-391-104 Fees. (1) The nonrefundable processing fee for filing and indexing a UCC record is:

FILINGS	DELIVERY MODE	FEE INCLUDING SURCHARGE
Financing Statement	electronic	\$(48.00) <u>23.00</u>
Financing Statement Amendment	electronic	\$(48.00) <u>23.00</u>
UCC1 Financing Statement (1 or 2 pages)	mail	\$(25.00) <u>30.00</u>
UCC3 Financing Statement Amendment (1 or 2 pages)	mail	\$(25.00) <u>30.00</u>
UCC5 Correction Statement (1 or 2 pages)	mail	\$(25.00) <u>30.00</u>
Attachment	mail and electronic	\$1.00 each page

(2) UCC search fee. The nonrefundable fee for processing a UCC search request is:

SEARCH TYPE	DELIVERY MODE	FEE
Search by debtor name	electronic	No charge
Search by file number	electronic	No charge
Debtor name search with copies	electronic	\$15.00
Search held to reflect the filing	electronic	\$10.00/debtor name
UCC11 Search response	mail	\$10.00
UCC11 Search response with copies	mail	\$15.00
Search held to reflect the filing (UCC1 box 7)	mail	\$10.00/debtor name

(3) The fees for purchase of bulk data are:

BULK DATA	DELIVERY MODE	FEE
Full text	electronic	\$500
Text plus images	electronic	\$1,000
Weekly updates	electronic	\$150