

WSR 21-13-125
PROPOSED RULES
BENTON CLEAN AIR AGENCY

[Filed June 21, 2021, 3:10 p.m.]

June 8, 2021
Tyler Thompson
Air Quality Specialist

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: Benton Clean Air Agency Regulation 1.

Hearing Location(s): On September 23, 2021, at 5:30 p.m., at Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336.

Date of Intended Adoption: September 23, 2021.

Submit Written Comments to: Tyler Thompson, Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336, email tyler.thompson@bentoncleanair.org, fax 509-783-6562, by September 23, 2021.

Assistance for Persons with Disabilities: Contact 711 relay, or Tyler Thompson, phone 509-783-1304, fax 509-783-6562, email tyler.thompson@bentoncleanair.org, by September 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes to Regulation 1 are administrative in nature. The changes consist of removing references to outdated RCW and replacing them with the current RCW. References to fees and fee tables that are no longer part of Regulation 1 will be removed. Variance language will be added to clarify consistency with the WAC. The changes are primarily to clarify where the agency's authority is delegated from.

Reasons Supporting Proposal: The changes to Regulation 1 are proposed to clarify where the agency's authority is delegated within the RCW and WAC, and to make Regulation 1 more consistent.

Statutory Authority for Adoption: RCW 70A.15.2040, 70A.15.3050(2).

Statute Being Implemented: Chapter 70A.15 RCW; and 42 U.S.C. 7401 et. seq., 42 U.S.C. 7412.

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

Name of Proponent: Benton Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Thompson, 526 South Steptoe Street, Kennewick, WA 99336, 509-783-1304; Implementation and Enforcement: Rob Rodger, 526 South Steptoe Street, Kennewick, WA 99336, 509-783-1304.

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

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70A.15.2040(1); RCW 34.05.328 does not apply to this rule.

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

Is exempt under RCW 70A.15.2040(1).

Explanation of exemptions: A small business economic impact statement was not prepared under chapter 19.85 RCW. This is a local agency rule and pursuant to RCW 70A.15.2040(1); chapter 19.85 RCW does not apply.

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ARTICLE 1

Policy, Purpose and Applicability

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((~~70.94.205~~)) 70A.15.2510]

Section 1.01 Name of the Agency

The name of this Air Pollution Control Agency is the Benton Clean Air Agency, referred to as the Agency.

Section 1.02 Policy and Purpose

[Statutory Authority: RCW ((~~70.94.014~~)) 70A.15.1005, RCW ((~~70.94.057~~)) 70A.15.1520, and RCW ((~~70.94.141~~)) 70A.15.2040]

A. The public policy of the Agency under chapter ((~~70.94~~)) 70A.15 RCW is to:

1. Provide for the systematic control of air pollution from air contaminant sources within Benton County and for the proper development of the county's natural resources.

2. Secure and maintain such levels of air quality that protect human health and safety, including the most sensitive members of the population;
3. Secure compliance with the requirements of the Federal Clean Air Act;
4. Prevent injury to plant and animal life and to property;
5. Foster the comfort and convenience of its inhabitants;
6. Promote the economic and social development of Benton County; and
7. Facilitate the enjoyment of the natural attractions of Benton County.

B. The purpose of Regulation 1 is to establish technically feasible and reasonably attainable standards and to establish rules applicable to the control and/or prevention of the emission of air contaminants.

C. The intent of Regulation 1 is to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

D. The Agency intends to implement and enforce the state regulations. Wherever Regulation 1 restates the requirements and purposes of chapter ((~~70.94~~)) 70A.15 RCW, it is the intent of the Agency that Regulation 1 be interpreted in the same manner as the enabling statute.

Section 1.03 Applicability

[Statutory Authority: RCW ((~~70.94.144~~)) 70A.15.2040, RCW ((~~70.94.395~~)) 70A.15.3080, and RCW ((~~70.94.422~~ RCW)) 70A.15.3130]

A. The Agency implements and enforces the Washington Administrative Code State Air Pollution Control rules adopted by Ecology in Title 173 under chapter ((~~70.94~~)) 70A.15 RCW, as in effect now and including all future amendments, except where specific provisions of BCAA Regulation 1 apply.

B. The provisions of this regulation shall apply within Benton County of Washington State.

C. The Agency is authorized to enforce this regulation and may also adopt standards or requirements.

D. The Agency does not have jurisdiction over the following sources:

1. Specific source categories over which the State assumes jurisdiction.
2. Automobiles, trucks, aircraft, chemical pulp mills and primary aluminum reduction facilities.
3. Sources under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) through chapter 80.50 RCW.

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

Reviser's note: The unnecessary underscoring and strike-through in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

ARTICLE 2

General Provisions

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA)

[Statutory Authority: RCW ((~~70.94.081~~)) 70A.15.1560, and RCW ((~~70.94.141~~)) 70A.15.2040]

A. RCW ((~~70.94.081~~)) 70A.15.1560 deems Benton Clean Air Agency a municipal corporation with the following authorities:

1. Right to perpetual succession;
2. Adopt and use a seal;
3. Sue and be sued in the name of the Agency in all courts and in all proceedings;
4. Receive, account for, and disburse funds;
5. Employ personnel; and
6. Acquire or dispose of any interest in real or personal property within or without the Agency in the furtherance of its purposes.

7. The Board will have all the powers and duties of Section 2.02 of this Regulation and of an activated air pollution control authority under RCW ((~~70.94.081~~)) 70A.15.1560 and ((~~70.94.141~~)) 70A.15.2040.

Section 2.02 Requirements for Board of Directors Members

[Statutory Authority: RCW ((~~70.94.100~~)) 70A.15.2000]

A. Public interest.

1. A majority of the members of the Agency's Board of Directors (Board) will represent the public interest.

2. A majority of the members of the Board will not derive a significant portion of their income from persons subject to enforcement orders pursuant to the State and Federal Clean Air Acts.

3. An elected public official and the Board will be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she will delegate sole responsibility for administration of any part of the program that involves these persons to an assistant.

B. Disclosure.

1. Each member of the Board will disclose any potential conflict of interest in any matter prior to any action or consideration before the Board.

2. The member will remove themselves from participation as a Board member in any action, including voting on the matter.

3. The Board will, if the potential conflict of interest, in the judgment of a majority of the Board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

a. Definition of significant income: For the purposes of this Section, "significant portion of their income" means twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" will mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government will not be considered in the determination of "significant portion of income."

Section 2.03 Powers and Duties of the Board of Directors

A. Pursuant to the provisions of chapter ((~~70.94~~)) 70A.15 RCW, the Board will:

1. Establish procedures and take action required to implement Regulation 1 consistent with federal, state, and local air pollution laws or regulations;

2. Take action as may be necessary to prevent air pollution including control and measurement of the emission of air contaminant from a source; and

3. Appoint a Control Officer, in accordance with RCW ((~~70.94.170~~)) 70A.15.2300, competent in the control of air pollution who will, with the Board's advice and approval, enforce the provisions of Regulation 1 and all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

B. Under RCW ((~~70.94.141~~)) 70A.15.2040, the Board will have the power to:

1. Adopt, amend, and repeal its own rules and regulations, implementing chapter ((~~70.94~~)) 70A.15 RCW and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations will also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules will not be published in the Washington Administrative Code. Judicial review of rules adopted by the Agency will be in accordance with Part V of chapter 34.05 RCW;

2. Hold hearings relating to any aspect of or matter in the administration of chapter ((~~70.94~~)) 70A.15 RCW not prohibited by the provisions of Chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath;

3. Issue such notices, orders, permits, or determinations as may be necessary to effectuate the purposes of federal, state, or local air pollution laws or regulations and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.;

4. Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere;

5. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

6. Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction;

7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of federal, state and local air pollution laws or regulations;

8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;

9. Collect and disseminate information and conduct educational and training programs relating to air pollution;

10. Advise, consult, cooperate and contract with:

a. State agencies, departments, and educational institutions;

b. Other political subdivisions, other states, interstate or interlocal agencies, and the United States government; and
 c. Industries, interested persons or groups.

11. Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation will be construed to relieve any person from compliance with any federal, state, or local law or regulation in force pursuant thereto, or any other provision of law; and

12. Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for carrying out any of the functions any federal, state, or local law or regulation.

C. Exception to powers of the Agency.

The Agency may not hold adjudicative proceedings pursuant to the Administrative Procedures Act, chapter 34.05 RCW. Decisions and orders may be appealed to the Pollution Control Hearings Board as provided in WAC 173-400-250.

Section 2.04 Powers and Duties of the Control Officer

[Statutory Authority: RCW ((~~70.94.141~~)) 70A.15.2040, RCW ((~~70.94.170~~)) 70A.15.2300, RCW ((~~70.94.200~~)) 70A.15.2500 RCW]

A. The Control Officer and duly authorized representatives of the Agency will observe and enforce applicable federal, state, and local air pollution laws and regulations and all orders, ordinances, resolutions, or rules and regulations of the Agency pertaining to the control and prevention of air pollution pursuant to the policies set down by the Board.

B. The Control Officer, with the approval of the Board, will have the authority to appoint and remove such staff persons as are necessary to the performance of the duties assigned and to incur necessary expenses within the limitations of the budget.

C. The Control Officer will maintain appropriate records and submit reports as required by the Board, state agencies, and federal agencies.

D. The Control Officer may engage, at the Agency's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity or degree of any air contaminants that are or may be discharged from any source within Benton County.

E. As authorized under RCW ((~~70.94.200~~)) 70A.15.2500, for the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer and duly authorized representatives of the Agency will have the power to enter, at reasonable times, upon any private or public property, excepting non-multiple unit private dwellings housing two (2) families or less. No person may refuse entry or access to the Control Officer or duly authorized representatives of the Agency who requests entry for the purpose of inspection and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection.

F. If the Control Officer or a duly authorized representative of the Agency during the course of an inspection desires

to obtain a sample of air contaminant, fuel, process material or other material that affects or may affect the emission of air contaminants, the Control Officer or a duly authorized representative will:

1. Notify the owner or operator of the time and place of obtaining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and

2. Will give a receipt to the owner or operator for the sample obtained.

G. The Control Officer will be empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

Section 2.05 Severability

[Statutory Authority: chapter 43.21B RCW]

The provisions of this regulation are severable. If any provision, meaning phrase, clause, subsection or section, or its application to any person or circumstance is held to be invalid by any court of competent jurisdiction, the application of such provision to other circumstances and the remainder of the regulation to other persons or circumstances will not be affected.

Section 2.06 Confidentiality of Records and Information

[Statutory Authority: RCW ((~~70.94.205~~)) 70A.15.2510]

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information will be only for the confidential use of the Agency. Nothing herein will be construed to prevent the use of records or information by the Agency in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this Section: PROVIDED FURTHER, That emission data furnished to or obtained by the Agency will be correlated with applicable emission limitations and other control measures and will be available for public inspection during normal business hours at offices of the Agency.

Section 2.07 Entering Private, Public Property

[Statutory Authority: RCW ((~~70.94.200~~)) 70A.15.2500]

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants in the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who request entry for the purpose of inspection, and who present appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

Section 2.08 Authority to Collect Fees

[Statutory Authority: RCW ((70.94.154)) 70A.15.2200]

A. Legal Authority.

Washington Clean Air Act authorizes the agency to assess fees and recover costs for permits, registrations, and professional services.

B. Charges.

Charges include but are not limited to the following:

1. Reimbursement of agency staff time for review of complex projects of lengthy enforcement action;
2. Costs incurred by the authority for the implementation of the Air Operating Permit program as defined in WAC 173-401;
3. Reimbursement of agency staff time for costs to prepare notices of construction;
4. Reimbursement of the costs for annual registrations including periodic inspections;
5. Charges from Ecology for state level support and oversight work, and;
6. Appropriate charges incurred by other agencies and requested to be collected shall be billed as part of a penalty.

C. Refunds

1. The following fees are non-refundable:
 - a. Actual costs incurred by the authority;
 - b. Application fees.
2. Fees collected in excess of actual cost will be refunded with interest.

3. Fees collected in error will be refunded with interest.

D. Fees

1. Adoption of fee schedules.

Fee Schedules shall be adopted by board resolution under the authority of RCW 42.30 at any time after receiving public comment.

2. Fees for the Registration and Notice of Construction Programs are contained in the Fee Schedule. ~~((Other fees are listed in Article 10 of Regulation 1.))~~

3. Availability of Fee Schedules and Related Information. The Fee Schedule and billing rate schedule for reimbursable fees shall be made available upon request.

Section 2.09 Variances

[Statutory Authority: RCW 70A.15.2310]

A. Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the board for a variance from the rules or Regulation governing the quality, nature, duration or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, but only after public hearing or due notice, if it finds that:

1. The emissions occurring or proposed to occur do not endanger public health or safety; and
2. Compliance with the rules or Regulation from which variance is sought would produce serious hardship without equal or greater benefits to the public.

B. No variance shall be granted pursuant to this Section until the Board has considered the relative interests of the applicant, other owners or property likely to be affected by the discharge, and the general public.

C. Any variance or renewal thereof shall be granted within the requirements of Section 2.09A and for time periods and under conditions consistent with reasons therefore, and with the following limitations:

1. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement, or control becomes known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

2. If the variance is granted on the ground that compliance with the particulate requirements or requirement from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in subsection 2.09 (C)(1) and 2.09 (C)(1), it shall be for not more than one year.

D. Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods which would be appropriate under all circumstances including the criteria considered on the initial granting of a variance and that acquired during the existence of the variance. If a complaint is made to the board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the board finds that renewal is justified. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with the rules and Regulation of the Board.

E. A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

F. Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70A.15.6040 to any person or his property.

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

ARTICLE 3**Industrial Source Regulations****ADOPTED: 11-Dec-2014****AMENDED: 5 August 2020**

[Statutory Authority RCW ((70.94.144)) 70A.15.2040]

PURPOSE: This Article establishes controls on incinerator operations and Surface Coating operations in Benton County in order to reduce particulate emissions, reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, and to encourage pollution prevention in Benton County.

Section 3.01 Incinerator Burning and Incineration Hours

A. The Agency implements and enforces WAC 173-400-050, in Benton County in addition to Parts B through E of this Section. The more stringent requirement in WAC 173-400-050 or Section 3.01 of this Regulation supersedes the lesser.

B. It shall be unlawful for any person to burn any combustible refuse in any incinerator within the jurisdiction of this Agency except in an approved multiple-chambered incinerator or in equipment found by the Control Officer in advance of such use to be equally effective for the purpose of air pollution control. The Control Officer may require the installation of additional control apparatus on an incinerator of approved design, if he/she finds that it is not effectively controlling air pollution emissions or is the cause of legitimate complaints.

C. It shall be unlawful for any person to cause or allow the operation of an incinerator at any time other than daylight hours, except with the approval of the Control Officer.

D. Approval of the Control Officer for the operation of an incinerator at other than daylight hours may be granted upon the submission of a written request stating:

1. Full name and address of the applicant;
2. Location of the incinerator;
3. A description of the incinerator and its control equipment;
4. Good cause for issuance of such approval;
5. The hours, other than daylight hours, during which the applicant seeks to operate the equipment; and
6. The length of time for which the exception is sought.

E. No one shall install or operate an "Air Curtain Incinerator" or "Wigwam Burner" within the Agency's jurisdiction.

Section 3.02 General Surface Coating

A. Purpose. This Section establishes controls on surface coating operations in Benton County in order to:

1. Reduce particulate emissions from coating overspray;
2. Reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC;
3. Reduce emissions of precursors to the formation of tropospheric ozone and other photochemical oxidants; and
4. Encourage pollution prevention.

B. Applicability.

This Section applies to all surface preparation, surface coating, cleanup, and disposal associated with general surface coating in Benton County, unless specifically exempted.

C. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this Section have the following meaning:

1. "Airless Spray" means a spraying system that uses hydraulic atomization instead of air atomization. The coating is supplied to the gun under high fluid pressure between 1000

and 3000 psig and the coating is forced through a small orifice.

2. "Air-Assisted Airless Spray" means a spraying system that combines air and airless features. An airless type fluid tip atomizes the paint and shapes the fan pattern at fluid pressures between 300 and 1000 psig. Lower pressure air from 10 to 30 psig combines at the spray cap to adjust the fan shape to eliminate heavy edges (tails).

3. "Automated" means the technique, method, or system of operating or controlling a process by mechanical, electrical, hydraulic, or electronic means independent of human intervention.

4. "Brush Coat Application" means manual application of coatings by use of a paint brush.

5. "Coating" means a material or formulation of materials that is applied to or impregnated into a surface in order to beautify, protect, enhance the function, or otherwise cover the surface.

6. "Container" means the individual receptacle that holds a coating or coating component for storage and distribution.

7. "Dip Coat Application" means application of coatings in which the surface to be coated is immersed in a solution (or dispersion) containing the coating material and withdrawn.

8. "Electrostatic Application" means application of coatings where an electrostatic potential is created between the part to be coated and the paint particles.

9. "Exempt Solvent" means a solvent or solvent component, which is not a volatile organic compound (VOC).

10. "Flow Coat Application" means application of coatings by flowing the coating over the surface to be coated and draining the excess coating to a collection system.

11. "High Volume, Low Pressure (HVLV) or Low Volume, Low Pressure (LVLP) coating system" means equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the nozzle and that exhibits a minimum transfer efficiency of 65%, as applied.

12. "Light Duty Vehicle" means a passenger car, truck, van, or other motor vehicle which has a gross vehicle weight of 8500 pounds or less, or components thereof.

13. "Multi-Coat System" means a coating system where more than one product or coat is sequentially applied to the same surface and generally consists of a pigmented base coat, one or more semi-transparent mid-coats, and a transparent clear coat. The VOC content for a multi-coat system are calculated as follows:

$$VOC_{TM} = \frac{VOC_{BC} + VOC_{X1} + VOC_{X2} + \dots + VOC_{Xn} + 2X}{n + 3}$$

where:

VOC_{TM} is the average sum of the VOC content, as applied to the surface, in a multi-coat system; and

VOC_{BC} is the VOC content, as applied to the surface, of the base coat; and

VOC_X is the VOC content, as applied to the surface, of each sequentially applied mid-coat; and

VOC_{CC} is the VOC content, as applied to the surface, of the clear coat (Two coats are applied); and

n is the total number of coats applied to the primer coat(s) surface.

14. "Pre-packaged Aerosol Can Application" means application of coatings from cans which are sold by the coating supplier as non-reusable, hand-held pressurized containers. The coating is expelled as a finely divided spray when a valve on the container is depressed.

15. "Primer" means any coating that is applied to a surface to enhance corrosion resistance, protection from the environment, functional fluid resistance, and adhesion of subsequently applied coatings.

16. "Reducer" means any solvent added to a coating which has the effect of reducing the viscosity of the coating or shortening the drying time.

17. "Refinishing" means reapplying coating to a surface to repair, restore, or alter the finish.

18. "Roll Coat Application" means manual application of coatings by the use of a paint roller.

19. "Solvent Consumption" means the volume of solvent purchased or otherwise procured, less the volume recycled or disposed. In the absence of records which document the transfer of solvent to an authorized recycler or waste hauler, solvent consumption means the volume of solvent purchased or otherwise procured.

20. "Standard engineering practices" means that accepted, peer reviewed sets of criteria are used in designing equipment (i.e. Uniform Building, Electrical, and Fire Codes, recommendations of the American Conference of Governmental Industrial Hygienists, guidelines of the Department of Labor and Industry, etc.).

21. "Surface Coating" means the application of coating to a surface.

22. "VOC Content" means pounds of VOC per gallon of coating (Lb/Gal) or grams of VOC per liter of coating (G/L), minus water and exempt solvents. The VOC content is calculated as follows:

$$VOC_{CT} = \frac{W_V}{V_M - V_W - V_{ES}}$$

where:

VOC_{CT} is the VOC content of the coating, as applied to the surface; and

W_V is the weight of VOC per unit volume of coating, as applied to the surface; and

V_M is the unit volume of coating, as applied to the surface; and

V_W is the volume of water per unit volume of coating, as applied to the surface; and

V_{ES} is the volume of exempt solvents per unit volume of coating, as applied to the surface.

23. "Wash Solvent" means any solution, solvent, suspension, compound, or other material, excluding water that is used to clean spray equipment, spray equipment lines, containers, and any other equipment associated with the application of coatings.

24. "Wipe-Down Agent" means any solution, solvent, suspension, compound, or other material that is applied to a surface exclusively for cleaning the surface or preparing the surface for coating.

D. Prohibitions on emissions.

1. No person may cause or allow the application of any coating which contains greater than 0.1% by weight of one or more compounds of lead or hexavalent chromium.

2. Light duty vehicle refinishing - prohibitions on VOC content. Except as provided in Section 3.02.F of this Regulation, no person shall cause or allow the application of any coating or other agent to any light duty vehicle or light duty vehicle component, with a VOC content in excess of the limits listed in 40 C.F.R. 59, Subpart B, Table 1 - EPA National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings.

E. Requirements.

All persons subject to the requirements of Section 3.02 of this Regulation must comply with all of the following, unless exempted under Section 3.02.F of this Regulation.

1. Enclosure and Controls.

Spray application must be conducted in a booth or area which is vented to an operating particulate control system. The particulate control system, including filtration, ducting, and fan must be installed and sized according to standard engineering practices. Acceptable filtration methods may include:

a. Filter banks supplied with filter media designed for spray booth applications.

b. Water baths where the inlet air flow to the water bath is submerged.

c. Water wall systems that form a continuous water curtain through which the particulate flow stream must pass.

d. Other filtration methods that have received the prior written approval of the Control Officer, which meet the following conditions:

i. The control system must be equipped with a fan which is capable of capturing all visible overspray;

ii. Emissions from the booth/area must be vented to the atmosphere through a vertical stack;

iii. The top of the exhaust stack/vent must be at least 6 feet above the penetration point of the roof, or if the exhaust stack/vent exits horizontally out the side of the building, then the exhaust stack/vent must vent vertically at least 6 feet above the eave of the roof;

iv. A higher stack/vent may be required if the Agency determines that it is necessary for compliance with WAC 173-400-040;

v. There must be no flow obstruction (elbows, tees, or stack caps) inside of, or at the top of, the stack that will impede upward vertical flow of the exhausted air; and

vi. It is the owner/operator's responsibility to comply with other applicable federal, state, and local regulations for the stack/vent.

2. Visible Emissions.

Visible emissions from the stack may not exceed 10% opacity averaged over any six minute period, as determined by EPA Method 9.

3. Application methods.

Except as provided in Section 3.02.F. of this Regulation, no person may cause or allow the application of any coating or other agent containing VOC unless the coating or agent is applied by one of the following methods:

- a. High Volume, Low Pressure coating system;
- b. Low Volume, Low Pressure coating system;
- c. Wet or Dry electrostatic application;
- d. Flow coat application;
- e. Dip coat application;
- f. Brush coat application;
- g. Pre-packaged aerosol can application;
- h. Roll coat application;
- i. A spraying technique that when tested, using the methodology presented in ASTM Standard D 5327-92, or when test documentation, provided to and approved by the Agency, exhibits that the spraying technique has a transfer efficiency of at least 65%;
- j. Alternate application methods that have received the written approval of the Control Officer.

Such alternate methods may be used, provided that the owner or operator makes a written request to use an alternate method and the Control Officer grants approval. These methods include but are not limited to the following application methods and circumstances:

i. Airless and Air-Assisted Airless Spray systems may be used under any of the following circumstances:

(a) when the volatile organic compound (VOC) emissions are determined by the Control Officer to be no more than VOC emissions that would be generated by a spray application with a transfer efficiency of 65%;

(b) when the spraying operation is automated;

(c) when spray painting structural steel members where the coating, as formulated by the coating manufacturer, does not require addition of reducers to spray, and is delivered under high pressure (> 1,000 psig for airless, or > 300 psig for air-assisted airless) to the application system; or

(d) where the Control Officer has determined that the coating cannot be feasibly applied with a method that has a minimum transfer efficiency of 65%.

4. Equipment Cleanup.

Equipment cleanup and any other use of wash solvent must be totally enclosed during washing, rinsing, and draining; or wash solvent, after making contact with the equipment being cleaned, must be immediately drained to a closed sump which is an integral part of the cleaning system.

5. General Clean-up.

a. All unused or partially used containers of coatings, wipe-down agents, wash solvents, reducers, and waste materials containing VOC must be closed, except when in use, when being filled or emptied.

b. Spills must be cleaned up upon discovery and the clean-up materials and collected waste must be stored in closed metal containers.

c. All disposable materials which contain VOCs associated with wipe-down or application of coatings and other agents must be stored in closed metal containers for disposal.

6. Recordkeeping.

All persons subject to Section 3.02 of this Regulation must maintain the following records for the previous 24-

month period at the place of business where surface coating is performed:

a. The most current material safety data sheets (MSDS) or other data sheets which clearly indicate the VOC content of the product and of any multi-coat system.

b. Records of purchases and usage, including unused materials returned to the supplier.

i. Light duty vehicle refinishing. Annual purchases and usage of total primers, total top coats, total clear coats, and total gun cleaner. Usage must be reported "as applied", i.e. after reducing and catalyzing, if applicable.

ii. Other surface coating facilities. Annual purchases and usage of individual coatings, coating additives, wipe-down agents, wash solvents, reducers, there materials containing volatile organic compounds or volatile toxic air pollutants.

c. Waste materials disposal records, including volumes of waste solvents and coatings transferred in sealed containers to authorized waste haulers.

F. Exceptions.

Exceptions to Section 3.02 of this Regulation must be made as follows:

1. Noncommercial exemption.

Nothing in Section 3.02 of this Regulation may apply to surface coating operations conducted solely for personal, noncommercial purposes if, on a facility-wide basis, less than 5 gallons of surface coatings are applied per year.

2. Coating process exemptions.

Nothing in Section 3.02 of this Regulation applies to the following coating processes:

a. The application of architectural coatings to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs;

b. Fiberglass resin application operations;

c. Gel coating operations;

d. The application of asphaltic or plastic liners. This includes undercoating, sound deadening coating, and spray on bed lining for trucks;

e. Spray plasma plating operations; or

f. Application of coatings to farming equipment.

7. Low usage exemption.

Nothing in Sections 3.02.E.3 & 4 applies to surface coating operations which, on a facility-wide basis, apply less than 10 gallons per year of surface coatings.

8. Exemption for large objects.

Nothing in Subsection 3.02.E.1. of this Regulation applies to the infrequent outdoor surface coating of large objects where the Control Officer determines that it is impractical to totally enclose the object inside a booth or vented area. The request for this exemption must be made in writing to the Control Officer and the approval must be in writing. Infrequent means outdoor spray surface coating that amounts to 10% or less of the total annual gallons of paint applied at the facility in the previous 12 months. Annual records must be kept of the number of gallons of paint that are sprayed outdoors. In such case, a temporary enclosure (tarps) must be maintained around the object during the surface coating operation, sufficient at all times to prevent overspray from remaining airborne beyond the property line of the facility.

9. Wash solvent exemption.

Nothing in Subsection 3.02.E.4. of this Regulation applies to:

a. the use of wash solvents with composite vapor pressure of organic compounds less than 45mm Hg at 20°C as determined by ASTM Method D-2306-81; or

b. wash solvent operations if total wash solvent consumption does not exceed 10 gallons per year.

10. Stack exemption.

The stack/vent requirements in Subsection 3.02.E.1. of this Regulation does not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of toxic air pollutants will not exceed the Acceptable Source Impact Levels as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.

11. Non-spray and aerosol can application exemption.

Nothing in Subsection 3.02.E.1 of this Regulation applies to the application of any coating or other agent from pre-packaged aerosol cans, flow coat, dip coat, brush coat, or roll coat applications.

12. Low VOC content exemption.

Nothing in Subsection 3.02.E.3 of this Regulation applies to the application of coatings where the VOC content does not exceed 2.1 Lb/Gal or 250 G/L.

13. Lead or Hexavalent Chrome exemption.

The prohibition in Subsection 3.02.D.1 of this Regulation does not apply to a surface coating operation where the control officer determines that no practical alternative coating is available.

14. Enclosure and/or particulate control exemption.

The enclosure and/or particulate control requirements of Subsection 3.02.E.1 of this Regulation does not apply to a surface coating operation where the control officer determines that such requirements would be ineffective, or unreasonable in capturing or controlling particulate or volatile organic compounds emissions from the facility.

15. Inside exhaust exemption.

If the Department of Labor & Industries or another agency of jurisdiction determines that the emissions from a surface coating operation to an inside work area are below the threshold where an exhaust system is required and the Fire Department or District of jurisdiction has no objection, then the Control Officer may grant an exemption to Subsection 3.02.E.1 of this Regulation.

G. Compliance with other laws and regulations.

Compliance with Section 3.02 of this Regulation or qualifying for an exemption in Section 3.02.F. of this Regulation does not necessarily mean that the surface coating operation complies with fire protection, waste disposal, or other federal, state, or local applicable laws or regulations.

Section 3.03 General Air Pollution Control for Industrial Sources

A. Air Pollution sources not specifically regulated in this Section are regulated by the current 173-400 WAC General Regulations for Air Pollution Sources and 173-460 WAC Controls for New Sources of Toxic Air Pollutants.

B. In addition to the source-specific requirements in this Section, requirements of Article 9 Source Registration of this Regulation apply.

Section 3.04 Standards for Marijuana Production and Marijuana Processing

A. Purpose.

The production and processing of marijuana emits air contaminants. Section 3.04 establishes standards to minimize air contaminants from stationary sources that produce or process marijuana.

B. Authority.

BCAA implements and enforces WAC 173-400-040 (General standards for maximum emissions) in Benton County in addition to Section 3.04. The provisions of RCW ((70.94.144)) 70A.15.2040 (Air pollution control authority—Powers and duties of activated authority) are herein incorporated by reference.

C. Applicability.

This section applies to all persons or entities having an active Washington State Liquor and Cannabis Board (LCB) license for marijuana production operations and marijuana processing operations in Benton County.

D. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this section will have the following meaning:

1. "Control of environmental conditions" means modifying surroundings to facilitate plant growth, may include, but is not limited to; lighting, temperature, relative humidity, and carbon dioxide levels. For implementation of Section 3.04, watering plants and short term covering of plants for a portion of each day as needed for frost protection are not considered control of environmental conditions.

2. "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

3. "Indoor marijuana production and indoor marijuana processing" means production or processing occurring in a fully enclosed building that is permanently affixed to the ground, has permanent rigid walls, a roof that is permanent and non-retractable, and doors. The building is equipped to maintain control of environmental conditions. Hoop houses, temporary structures, or other similar structures are not considered indoor.

4. "Marijuana" means all parts of the cannabis plant, as defined in Chapter 69.50 RCW as it now exists or as amended.

5. "Processor (process, processing)" means LCB licensed operations that dry, cure, extract, compound, convert, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products.

6. "Producer (production, producing)" means LCB licensed operations that propagate, grow, harvest, and trim marijuana to be processed.

7. "Public Place" - means that portion of any building used by and open to the public. A public place does not include a private residence. A public place also includes a lot, parcel, or plot of land that includes a building or structure thereon that is used by and open to the public.

8. "Responsible person" means any person who owns or controls property on which Section 3.04 is applicable.

E. Marijuana Odor.

With respect to odor, it shall be unlawful for any production or processing facility of marijuana to cause an odor that can be detected beyond the facilities property line. The agency may take enforcement action pursuant to chapter ((70-94)) 70A.15 RCW, under this section if the Control Officer or a duly authorized representative has documented the following:

1. The odor or can be readily smelled from a public place or the private property of another housing unit;

2. An affidavit from a person making a complaint that demonstrates that they have experienced the odor of marijuana so as to unreasonably interfere with their life and property. (The affidavit should describe or identify, to the extent possible, the location, duration, and offensiveness of the odor experienced by the complainant);

3. The source of the odor.

F. With respect to odor, the agency will determine whether or not a violation of Section 3.04E has occurred based on its review of the information obtained during the investigation.

G. When determining whether to take formal enforcement action authorized in Section 3.04E, the agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the agency may decline to pursue formal enforcement action.

H. Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

I. Requirements.

All persons or entities subject to the requirements of Section 3.04 must comply with the following:

1. Production and processing must occur indoors, as defined in 3.04(B), unless the operation is exempt under Section 3.04(N);

2. Indoor production and processing requirements:

a. Control equipment and facility design:

i. Operations must be equipped with air pollution control equipment that is properly sized for the air flow to be controlled. Air pollution control equipment may include, but is not limited to, carbon adsorption within the facility, carbon filtration on facility exhaust points, vertical exhaust stacks. Air pollution control equipment is not required for windows, doors, or other openings, provided these openings are kept closed except as needed for active ingress or egress; or

ii. Operations must be designed to prevent exhaust from production and processing operations directly to the outside; or

iii. Both.

b. Operations must meet the requirements of Section 3.04(E).

3. Operation and maintenance plan. Air pollution control equipment must be operated and maintained in accordance with the manufacturers recommendations. An operation and maintenance plan for the air pollution control equipment must be available on site. The plan must include written operation instructions and maintenance schedules. Record shall be kept of the dates and description of all maintenance and repair performed on the air pollution control equipment. Record must be kept on site for the previous 24 months and be provided to the agency upon request.

J. Compliance with Other Laws and Regulations. Compliance with Regulation I, Article 3, Section 3.04, does not constitute an exemption from compliance with other Sections of Regulation I, or other laws or regulations.

K. Producers, Processors and Responsible Persons. If there is a violation of Regulation I, Article 3, Section 3.04E, a Notice of Violation may be issued to all producers and processors on the parcel, and all responsible persons.

L. Compliance Schedule. All persons or entities subject to the requirements of Article 3, Section 3.04 must be in compliance with Section 3.04 requirements as follows:

1. New producers and processors or expansion at existing producers and processors, that begin or expand operations after August 17, 2018, must be in full compliance with Section 3.04 requirements before production and/or processing begins.

M. Any new marijuana production or processing facility must notify the agency by completing the proof of notification form found on www.bentoncleanair.org.

N. Exemptions.

1. Existing marijuana producers and processors, in-operation prior to the Section 3.04 effective date August 17, 2018 are exempt from of Section 3.04I. This exemption does not exclude them from the requirements of Section 3.04E.

2. Any existing marijuana producer or processor, in-operation prior to the section 3.04 effective date August 17, 2018 found to be in violation of Section 3.04E, may be required to comply with Section 3.04I within 180 days of receipt of the penalty from said violation or as defined by a compliance schedule agreed upon with the Benton Clean Air Agency.

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

ARTICLE 4

General Standards for Particulate Matter

ADOPTED: 11-Dec-2014

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((70-94.141)) 70A.15.2040]

PURPOSE: This Article is intended to prevent and reduce fugitive dust emissions from projects which destabilize soil in Benton County.

Section 4.01 Definitions

A. "Fugitive dust" means a particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas

that originate fugitive dust. Fugitive Dust is a type of fugitive emissions.

B. "Fugitive emissions" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

C. "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products.

D. "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

E. "Destabilization project" means construction, repair, or demolition of any building or road, or landscaping work on a property, which destabilizes the soil and thus has potential for fugitive dust emissions.

F. "Emergency" means:

1. Active operations conducted during emergency, life threatening situations, or in conjunction with an officially declared disaster or state of emergency; or

2. Active operations conducted by public service utilities to provide electrical, natural gas, telephone, water, or sewer service during emergency outages.

G. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative).

H. "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

Section 4.02 Particulate Matter Emissions

A. Fallout.

No person may cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited. [WAC 173-400-040(3)]

B. Fugitive emissions.

The owner or operator of any emissions unit or operation engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission: [WAC 173-400-040(4)]

1. Must take reasonable precautions to prevent the release of air contaminants from the operation located in an attainment or unclassifiable area and not impacting any non-attainment area. [WAC 173-400-040 (4)(a)]

2. Are required to use reasonable and available control methods. If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area. The methods must include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated. [WAC 173-400-040 (4)(b)]

C. Fugitive dust [WAC 173-400-040(9)]

1. The owner or operator of a source, including developed or undeveloped property, or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and

operate the source to minimize emissions. [WAC 173-400-040 (9)(a)]

2. These reasonable precautions may include, but are not limited to watering, chemical stabilizers, physical barriers, compaction, gravel, vegetative stabilization, mulching and keeping open areas to a minimum.

3. The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4). [WAC 173-400-040 (9)(b)]

D. Project Notification.

1. Applicability.

The owner or operator of any destabilization project must notify the Agency of the project prior to commencement of any work that destabilizes the soil via the Agency website, www.bentoncleanair.org.

2. Exemptions.

a. Any project at an existing facility.

b. Any emergency project.

c. Any agricultural operation.

3. Requirements.

The notification must include all of the following:

a. At least two contacts, including name and phone number, for those responsible for mitigating fugitive dust 24 hours a day.

b. The Benton County Parcel ID of each parcel affected by the destabilization project.

c. The owner and operator(s) of the site.

d. statement, electronically signed by the owner or operator of the site, accepting responsibility for controlling fugitive dust emissions.

E. Dust Control Plans.

1. Applicability.

The owner or operator of any destabilization project must maintain a written dust control plan for the project and make the dust control plan readily available.

2. Exemptions.

a. Any project at an existing facility.

b. Any emergency project.

c. Any agricultural operation.

4. Dust Control Plan Requirements.

a. Dust control plans must identify management practices and operational procedures which will effectively control fugitive dust emissions.

b. Dust control plans must contain the following information:

i. A detailed map or drawing of the site;

ii. A description of the water source to be made available to the site, if any;

iii. A description of preventive dust control measures to be implemented, specific to each area or process; and

iv. A description of contingency measures to be implemented in the event any of the preventive dust control measures become ineffective.

c. An owner or operator must implement effective dust control measures outlined in dust control plans.

d. The owner or operator must provide the Agency with a copy of the plan within two business days of it being requested.

5. Master Dust Control Plan.

a. As an alternative to a site dust control plan, an owner or operator may develop a master dust control plan that applies to more than one site or project. The master plan must:

- i. Address all the requirements in Section 4.02.E.3 of this Regulation; and
- ii. Provide for effective control of fugitive dust emissions to all sites and projects.
- iii. Prior to the commencement of work at any site or project covered by the master plan, the owner or operator must notify the Agency.

Section 4.03 Agricultural Particulate Matter Emissions

A. Exemption.

Fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of Section 4.02 unless they have a substantial adverse effect on public health.

B. Establishing Good Agricultural Practices.

1. In determining whether agricultural activity is consistent with good agricultural practices, the Agency shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

2. Additionally, at the Agency's written request, the operator of the agricultural activity must provide the following within 5 business days to assist in determining whether agricultural activity is consistent with good agricultural practices:

- a. A description of the agricultural activity.
- b. A timeline of the agricultural activity of a length appropriate to that activity.
- c. A description of the good agricultural practices employed with respect to wind erosion.

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

ARTICLE 5

Outdoor Burning

ADOPTED: 17-Feb-2005

AMENDED: 11-Dec-2014

[Statutory Authority: RCW ((~~70.94.6511~~)) 70A.15.500, RCW ((~~70.94.6554~~)) 70.15.5220]

PURPOSE: This Article establishes controls on outdoor burning in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 5.02 Definitions

Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-425-030.

A. "Burn day" means a day, as determined by the Agency, during which outdoor burning may take place in areas where outdoor burning is allowed. The length of the burn day is defined as the period from 9:00 AM until one hour before sunset.

B. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

C. "Urban Growth Area" or "UGA" means land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.-030.

Section 5.02 Special Burning Permits

A. All types of outdoor burning require a special burning permit, unless exempted in Section 5.02.F or 5.03 of this Regulation.

B. A request for special burning permit application for a special burning permit must be submitted at least five (5) working days before the proposed burning dates. Special burning permits are subject to a fee as described in (~~Article 10 of this Regulation~~) the Benton Clean Air Agency fee schedule, Table 6: Burning Fees, and payable at the time of application. Payment of the application fee does not guarantee the applicant that a special burning permit will be approved.

C. Any special burning permit issued by the Agency will specify restrictions and conditions on a case-by-case basis.

D. Permit holders must comply with all conditions listed in the permit.

E. Special burning permits are valid for a period not to exceed one (1) year.

F. The Agency will approve with conditions, or deny, any outdoor burning permits as needed to comply with state and local air pollution rules and regulations. All permits will include conditions to satisfy the requirements in WAC 173-425-050, and may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions. The Agency may also include conditions to comply with other state and local air pollution rules and regulations pertaining to outdoor burning.

G. A special burning permit will not be required by fire protection districts for firefighting instruction fires for training to fight:

1. Structural fires by fire protection districts outside the UGAs provided that the Agency Form *Fire Training Notification Outside Urban Growth Areas* is submitted and approved prior to conducting the training fire as provided in RCW 52.12.150;

2. Aircraft crash rescue fires as provided in RCW ((~~70.94.650(5)~~)) 70A.15.5180(2); or

3. Forest fires as provided in RCW ((~~70.94.650.1.b~~)) 70A.15.5180(4).

Section 5.03 Outdoor Burning Requirements

A. The person responsible for the fire must contact the Agency to determine if the type of burning to be conducted is permitted for the day and may not burn when the type of burning to be conducted is prohibited.

B. Inside Urban Growth Areas.

Residential and land clearing burning is prohibited inside all UGAs of Benton County, which include but are not limited to Kennewick, Richland, West Richland, Prosser, and Benton City.

C. Outside Urban Growth Areas.

1. Residential burning may be conducted without obtaining a permit, if such burning can be conducted in accordance with the requirements of Section 5.03.E of this Regulation and the following:

- a. Residential burning may only occur during permitted hours on a burn day;
- b. Residential burns may contain only material that was generated at the residence where the burn occurs;
- c. The pile may not be larger than four feet by four feet by three feet (4 ft. x 4 ft. x 3 ft.);
- d. Only one pile at a time may be burned, and each pile must be extinguished before lighting another; and
- e. No outdoor fire is permitted within five hundred (500) feet of forest slash.

D. Inside and Outside Urban Growth Areas.

1. A permit is not required to burn tumbleweeds that have been blown by the wind.

2. A permit is not required for recreational fires with a total fuel area that is less than three feet in diameter and/or two feet in height.

E. General Requirements.

1. All outdoor burning is subject to the following:

a. The following materials may not be burned in any outdoor fire:

- Garbage;
- Dead animals;
- Asphalt;
- Petroleum products;
- Paints;
- Rubber products;
- Plastics;
- Paper (other than what is necessary to start a fire);
- Cardboard;
- Treated wood;
- Construction/demolition debris;
- Metal; or
- Any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned.

b. No outdoor fire may contain material (other than firewood) that has been hauled from inside the UGA to a location outside the UGA;

c. If material is transferred from multiple locations outside the UGA to a single location outside the UGA, a special burning permit must be obtained before burning the material;

d. No outdoor fire may be ignited:

- i. When the Benton County Fire Marshall has declared a ban on burning due to fire safety; or
- ii. On a day when burning is not permitted by the Agency, during any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode declared under RCW ((70.94.715)) 70A.15.-6010.

e. It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

f. The use of an outdoor container for burning, such as a "burn barrel", for burning, unless regulated under WAC 173-400-070(1), is prohibited throughout Benton County;

g. A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it;

h. No fires are to be within fifty (50) feet of structures; and

i. Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

j. Agricultural heating devices that otherwise meet the requirements of chapter ((70.94)) 70A.15 RCW will not be considered outdoor fires under this article.

2. Outdoor burning is not allowed on any construction or demolition site. However, Section 5.02.G of this Regulation provides requirements for demolition of a structure by a fire protection district for firefighting instructional purposes.

3. Material, other than firewood, may not be hauled or transferred from inside the UGA to an area outside the UGA for the purposes of burning.

Section 5.04 Benton Clean Air Agency Requirements

The Agency will make a daily decision determining the restriction on all types of outdoor burning.

ARTICLE 6

Agricultural Burning

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: chapter ((70.74)) 70.15.5070 RCW, RCW ((70.94.6528)) 70A.15.5090]

PURPOSE: This Article establishes controls on agricultural burning in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 6.01 Definitions

Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-430-030.

A. "Agricultural burn day" means a day, as determined by the Agency, during which permitted agricultural burning may take place in areas where agricultural burning is allowed. The length of the burn day is defined as the period from 9:00 AM until one hour before sunset.

B. "Incidental agricultural burning" means agricultural burning that is incidental to commercial agricultural activities and meets one of the following conditions:

1. Orchard prunings: An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, assist with tree canopy training and improve the management of plant and disease, and pest infestations.

2. Organic debris along fencelines: A fenceline or fence-row is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field.

3. Organic debris along or in irrigation or drainage ditches: An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and

is unworkable by equipment used to cultivate the adjacent field.

4. Organic debris blown by the wind: The primary example is tumbleweeds.

C. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

Section 6.02 Agricultural Burning Permit

A. Agricultural Burning Permit Required.

1. All agricultural burning, except for incidental agricultural burning, requires a written agricultural burning permit from the Agency. Agricultural burning permits are subject to a fee as described in ~~((Article 10 of this Regulation))~~ the Benton Clean Air Agency fee schedule, Table 6: Burning Fees, and payable at the time of application.

2. Permitted agricultural burning is allowed only on designated agricultural burn days.

3. It is the responsibility of the person conducting agricultural burning to be informed of additional fire safety rules established by the Benton County Fire Marshall.

4. Permit holders must comply with all conditions listed in the permit.

B. Agricultural Burning Permit Not Required.

1. Incidental agricultural burning, as defined in Section 6.01.B of this Regulation, is allowed without obtaining an agricultural burning permit from the Agency and on days that are not agricultural burn days, except when restricted by the Agency under the following conditions:

a. The Benton County Fire Marshall declared a ban on burning due to fire safety; or

b. During any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode; or

c. The National Weather Service (NWS) in Pendleton, Oregon forecasts surface wind speeds 20 mph or greater.

2. The operator must notify the local fire department within the area and the Agency.

3. The burning does not occur during an air pollution episode or any stage of impaired air quality.

ARTICLE 7

Solid Fuel Burning Device

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ~~((70.94.144))~~ 70A.15.2040; RCW ~~((70.94.450-477))~~ 70A.15.3500-3600]

PURPOSE: This Article establishes controls on solid fuel burning devices in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 7.01 Definitions

Definitions of all terms in this article, unless otherwise defined, are as defined in WAC 173-433-030.

A. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

B. "Solid fuel burning device" (same as solid fuel heating device) means a device that burns wood, coal, or any other nongaseous or non-liquid fuels, and includes any device

burning any solid fuel, except those prohibited by WAC 173-443-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one (1) million BTU/hr.

C. "Woodstove" (same as "wood heater") means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

1. An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

2. A useable firebox volume of less than twenty cubic feet;

3. A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

4. A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

5. Any combination of parts, typically consisting of but not limited to: Doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

D. "Fireplace" means: Any permanently installed masonry fireplace; or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

Section 7.02 Solid Fuel Burning Device, Prohibitions

A. Within Benton County, a person may not advertise to sell, offer to sell, sell, bargain, exchange, give away, or install woodstoves, factory-built fireplaces, or other solid fuel burning devices that do not meet the requirements of WAC 173-433-100.

B. The Agency may declare first and second state air quality impairment in accordance with WAC 173-433-150. During those declarations, the use of any solid fuel burning device is restricted as per WAC 173-433-150.

1. Whenever the Agency has declared the first stage impaired air quality conditions, declared under RCW ~~((70.94.715))~~ 70A.15.6010, residences and commercial establishments with an adequate source of heat other than a solid fuel burning device, may not operate any solid fuel burning device, unless the solid fuel burning device is:

a. A non-affected pellet stove; or

b. A woodstove certified and labeled by the EPA under "40 CFR. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

c. A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

2. Whenever the Agency has declared the second stage of impaired air quality for a geographical area a person in a

residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device must not operate any solid fuel burning device.

C. A person must not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period. The provision does not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

D. A person may not cause or allow any of the following materials to be burned in a solid fuel burning device, including fireplaces:

- Garbage;
- Treated wood, defined as wood of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration;
- Plastic and plastic products;
- Rubber products;
- Animal carcasses;
- Asphaltic products;
- Waste petroleum products;
- Paints and chemicals; or
- Any substance which normally emits dense smoke or obnoxious odors other than paper to start the fire, properly seasoned fuel wood, or coal with sulfur content less than one percent (1.0%) by weight burned in a coal-only heater.

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

ARTICLE 8 Asbestos

ADOPTED: 17-Feb-2005

AMENDED: 5 August 2020

[Statutory Authority: RCW ((~~70.94.141~~)) 70A.15.2040]

PURPOSE: The Board of Directors of the Benton Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects in order to protect the public health.

Section 8.01 Definitions

A. "AHERA Building Inspector" means a person who has successfully completed the training requirements for a building inspector established by United States Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. "AHERA Project Designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. "Asbestos" means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. "Asbestos-Containing Material" means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA.

E. "Asbestos-Containing Waste Material" means any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. "Asbestos Project" means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

G. "Asbestos Survey" means a written report resulting from a thorough inspection performed pursuant to Section 8.02 of this Regulation.

H. "Asphalt Shingles" means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

I. "Competent Person" means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

J. "Component" means any equipment, pipe, structural member, or other item or material.

K. "Contiguous" means touching or adjoining.

L. "Controlled Area" means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

M. "Demolition" means wrecking, razing, leveling, dismantling, or intentional burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. It includes any related handling operations. It also

includes moving a structure (except a mobile home which remains intact) and wrecking or taking out of any load-supporting structural member.

N. "Disposal Container" means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

O. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

P. "Homogenous Area" means an area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture. Unless approved otherwise by the Agency, rubble piles, debris piles, ash, soil, and similar materials are not homogeneous areas.

Q. "Friable Asbestos-Containing Material" means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal.

4. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

R. "Leak-Tight Container" means a dust-tight and liquid tight disposal container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

S. "Nonfriable Asbestos-Containing Material" means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

T. "Owner-Occupied, Single-Family Residence" means any non-multiple residential unit that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g. utility bills). This term does not include rental proper-

ties, multiple unit buildings (e.g. duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g. a business being operated out of a residence), structure, or installation that contains a residential unit.

U. "Owner's Agent" means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article 8 of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 8.03 of this Regulation and/or performing the asbestos survey.

V. "Person" means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

W. "Renovation" means altering a structure or component in any way, other than demolition, that disturbs materials totaling greater than or equal to 10 linear feet, or greater than or equal to 48 square feet, that was considered a suspect asbestos containing material prior to performing an asbestos survey.

X. "Residential Unit" means any building with four or fewer dwelling units each containing space for uses such as living, sleeping, preparation of food, and eating that is used, occupied, or intended or designed to be occupied by one family as their domicile. This term includes houses, mobile homes, trailers, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include any facility that contains a residential unit.

Y. "Structure" means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

Z. "Surfacing Material" means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fire-proofing material on structural members, or other material on surfaces for decorative purposes.

AA. "Suspect Asbestos-Containing Material" means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g. as determined using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993).

AB. "Thermal System Insulation" means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AC. "Visible Emissions" means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AD. "Wallboard System" means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A

wallboard system where joint compound and tape have become an integral system (40 C.F.R. Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

AE. "Waste Generator" means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

AF. "Workday" means Monday through Friday 8:00 a.m. to 5:00 p.m. excluding legal holidays observed by the Agency.

Section 8.02 Asbestos Survey Requirements

A. Except as provided for in Section 8.02.F of this Regulation, it is unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 C.F.R. 763.86 or an alternate asbestos survey method pursuant to Section 8.02.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 8.02.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a material is not a suspect asbestos-containing material and that a suspect asbestos-containing material does not contain asbestos.

3. All loose vermiculite insulation must be sampled and analyzed according to EPA 600 PLM method with milling (EPA/600/R-93/116, July 1993) or CARB 435 (California Air Resources Board Method 435, June 1991) or must be presumed to be a friable asbestos-containing material.

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA regulation 40 C.F.R. 763.85, asbestos surveys must contain, at a minimum, all of the following information:

1. General Information.

- a. Date that the inspection was performed;
- b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;
- c. Site address(es)/location(s) where the inspection was performed;
- d. Description of the structure(s)/area(s) inspected (e.g. use, approximate age and approximate outside dimensions);
- e. The purpose of the inspection (e.g. pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;
- f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);

g. Identify and describe locations of all homogeneous areas of suspect asbestos-containing materials, except where limitations of the asbestos survey identified in Section 8.02.C.1.f prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;

h. Identify materials presumed to be asbestos-containing material;

i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other detailed description sufficient for any person to match the bulk sample results to the material on site);

j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

- i. Laboratory name, address and NVLAP certification number;
- ii. Bulk sample numbers;
- iii. Bulk sample descriptions;
- iv. Bulk sample results showing asbestos content; and
- v. Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g., schematic and/or other detailed description);

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet; and

d. Describe the condition of each asbestos-containing material (e.g. good, damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, fire damage).

D. Asbestos Survey Posting.

Except as provided for in Section 8.02.F of this Regulation, a complete copy of an asbestos survey must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by the Agency and all persons at the work site. This applies even when the asbestos survey performed by an AHERA Building Inspector states there are no asbestos-containing materials in the work area. If it is not practical to post the asbestos survey in this manner, it must be made readily available for inspection by the Agency and all persons at the demolition site.

E. Asbestos Survey Retention.

The property owner, owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), must retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and provide a copy to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey

is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Demolition of a Structure 120 sq. ft. or less at a residential unit.

For demolition of a structure 120 sq. ft. or less at a residential unit, an asbestos survey is not required. A property owner's assessment for the presence of asbestos-containing material prior to demolition is adequate. A written report is not required.

3. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination must be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination must include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, must retain a complete copy of the written determination for at least 24 months from the date it was made and must provide a copy to the Agency upon request. Except for Section 8.02.A through E of this Regulation, all other requirements remain in effect.

4. Alternate Asbestos Survey.

A written alternate asbestos survey method must be prepared and used on occasions when conventional sampling methods required in EPA regulation 40 C.F.R. 763.86 cannot be exclusively performed (all other asbestos survey requirements in Section 8.02 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof (e.g., when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by the Agency. If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, alternate asbestos survey methodology must be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

Section 8.03 Notification Requirements

A. General Requirements.

Except as provided for in Section 8.03.A.7 of this Regulation, it is unlawful for any person to cause or allow any work on a renovation or demolition unless a complete notification, including the required fee and any additional informa-

tion requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in (~~Article 10, Section 10.08 of this Regulation~~) the fee schedule, Table 5: Asbestos Fees. Unless otherwise approved by the Agency, the notification must be submitted by the property owner or owner's agent via the Agency's website, www.bentoncleanair.org. Notifications will not be accepted if the earliest project start date is greater than 365 days from the date of submittal.

1. When the Notification Waiting Period Begins.

The notification waiting period begins on the workday on which a complete notification is received by the Agency and ends after the notification waiting period in (~~Section 10.08 of this Regulation~~) the fee schedule, Table 5: Asbestos Fees has passed (e.g., A 10-day notification period means work on an asbestos project or demolition can begin on day 11). A notification is considered complete when all information requested on the notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period does not begin for incomplete notifications (e.g. unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos are unknown, etc.).

2. Project Duration.

The duration of an asbestos project must be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g., asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner).

3. Multiple Asbestos Projects or Demolitions.

Notification for multiple structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to renovations or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g., alley or roadway).

b. The work will be performed by the same abatement and/or renovation/demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g., at a large commercial (site with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material associated with each structure and indicates which structures will be demolished.

4. Notification Expiration.

Notifications are valid for no more than 365 days from the earliest original notification start date. The Agency may revoke a notification for cause (e.g., providing any false material statement, representation, or certification) and may require that a new notification be submitted with the appropriate non-refundable fee as set forth in (~~Section 10.08 of this Regulation~~) the fee schedule, Table 5: Asbestos Fees prior to work continuing.

5. Notification Posting.

A copy or printout of the notification and all amendments to the notification must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by the Agency and all persons at the asbestos project or demolition site. If it is not practical to post the notification and all amendments to the notification in this manner, the documents must be made readily available for inspection by the Agency and all persons at the demolition site.

6. Notification Retention.

The property owner, owner's agent, and the person that filed the notification, must retain a complete copy of all notification records for at least 24 months from the date the notification was filed with the Agency and provide a copy to the Agency upon request.

7. Notification Exceptions.

a. Renovation Performed by Owner-Occupant of an Owner-Occupied, Single Family Residence with No Asbestos.

Notification is not required for renovation of an owner-occupied, single family residence when the work is performed by the owner-occupant and asbestos will not be disturbed.

b. Demolition of Structures at Residential Units With a Projected Roof Area \leq 120 Square Feet.

Notification is not required for demolition of structures at residential units with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article 8 of this Regulation.

c. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification waiting period and project fee, by written authorization, for removal and disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials and for demolition of abandoned structures. All other requirements remain in effect.

d. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately due to a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by non-routine failures of equipment.

e. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization must reference the applicable state of emergency, what fee(s) will be waived, to what extent the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

B. Amendments.

1. Mandatory Amendments.

An amendment must be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with Section 8.03.A of this Regulation and the advance notification requirements in ~~((Section 10.08 of this Regulation))~~ the fee schedule, Table 5: Asbestos Fees, and must be accompanied by the appropriate nonrefundable fee established in ~~((Section 10.08 of this Regulation))~~ the fee schedule, Table 5: Asbestos Fees:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition).

b. Job Size.

Increases in the job size category, which increase the fee or when the amount of asbestos affected changes by at least 20 percent. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category must be submitted. When there is an increase in the job size category which increases the fee, the additional quantities of friable asbestos-containing material must be itemized on the amendment form. If the original notification was filed as an emergency and there is an increase in the job size category which increases the notification fee category, the emergency fee applies to the new fee category.

c. Type of Asbestos.

Changes in the type or new types of asbestos-containing material that will be removed. All types and quantities of asbestos-containing material must be itemized on the amendment form.

d. Start Date.

Changes in the asbestos project start date (i.e. asbestos removal start date or earliest demolition start date). This includes placing a project "on hold" (e.g., an asbestos project is temporarily delayed and a new project date has not been determined). If an asbestos project date is placed "on hold", an amendment taking it "off hold" must be filed prior to work on the asbestos project resuming. The new asbestos project date must be provided when the project is taken "off hold".

e. End Date.

Changes in the asbestos project end date greater than two days after the original end date.

Section 8.04 Asbestos Removal Requirements Prior to Renovation or Demolition

A. Removal to Prevent Disturbance.

Except as provided in Section 8.04B of this Regulation, it is unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

B. Exceptions.

1. Hazardous Conditions.

Asbestos-containing material need not be removed prior to a demolition or renovation, if the property owner demon-

strates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination, along with any notification required in Section 8.03, of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material.

2. Leaving Nonfriable Asbestos-Containing Material in Place During Demolition.

Nonfriable asbestos-containing material may be left in place during demolition, if an AHERA Project Designer has evaluated the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls, and demonstrates, via written report, to the Agency that the asbestos-containing material will remain nonfriable during all demolition activities and subsequent disposal of the debris. The written report must include a description of the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls. No asbestos-containing material shall remain in place if the demolition involves burning or other activities that would result in the potential release of asbestos-containing materials to the ambient air.

Section 8.05 Procedures for Asbestos Projects

A. Training Requirements.

It is unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) commensurate to the type of work being performed and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Standard Asbestos Project Work Practices.

Standard asbestos project work practices generally involve manual removal methods used for asbestos-containing material that is intact and readily identifiable. Standard asbestos work practices require removal of asbestos-containing material using all procedures described in Section 8.05.B.1-6 of this Regulation. Except as provided in Sections 8.06, 8.07, and 8.08 of this Regulation, it is unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project must be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area must be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it must be equipped with transparent viewing ports, if feasible, and must be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, must be saturated with a liquid wetting agent prior to removal. Wetting must continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material exposed during removal must be immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, must be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal must be immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project must be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material must be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material must be kept coated with a liquid wetting agent until sealed in leak-tight containers.

b. All asbestos-containing waste material resulting from an asbestos project must be sealed in leak-tight containers as soon as possible after removal, but no later than the end of each work shift.

c. The exterior of each leak-tight container must be free of all asbestos residue and must be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

d. Immediately after sealing, each leak-tight container, or the outer packaged container if the waste is aggregated, must be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

e. Leak-tight containers must not be dropped, thrown, slid, or otherwise damaged.

6. Visible Emissions.

No visible emissions may result from an asbestos project.

Section 8.06 Alternate Means of Compliance

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Renovation or Demolition.

Unless otherwise approved by the Agency in writing, alternate means of compliance must be used where standard asbestos project work practices in Section 8.05.B of this Regulation cannot be utilized to remove asbestos-containing material (financial considerations aside) prior to renovation or demolition; when asbestos-containing material has been disturbed or is otherwise no longer intact (e.g., when demolition has already occurred or a similar situation exists, typically leaving a pile/area of debris, rubble, ash, or soil); or when mechanical methods are used for removal. Projects performed under this section must be performed under the alternate asbestos project work practice notification category and must comply with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 8.05.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

- a. Reason(s) why standard work practices cannot be utilized;
- b. Date(s) the work area was evaluated by the person(s) that prepared the AWP;
- c. Site address(es)/location(s) where the inspection was performed;
- d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);
- e. If an asbestos survey was performed, incorporate it by reference;
- f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;
- g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;
- h. A statement that the AWP will be as effective as the work practices in Section 8.06.B of this Regulation;
- i. Signature(s) of the person(s) that prepared the AWP; and
- j. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 8.02 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). All procedures and requirements in the AWP must be followed. Unless alternate procedures are specified in the AWP by an AHERA Project Designer and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer, the AWP must include all of the following requirements in Section 8.06.A.4.a through g of this Regulation:

a. Controlled Area.

The asbestos project must be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area must be restricted to authorized personnel only. The controlled area must protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris must be handled in a wet condition.

i. Absorbent materials must be saturated with a liquid wetting agent prior to removal. Wetting must continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal must be wetted immediately.

ii. Nonabsorbent materials must be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They must be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal must be wetted immediately.

c. Asbestos-Containing Waste Materials.

i. All asbestos-containing waste material and/or asbestos contaminated waste material must be kept wet and must be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

ii. The exterior of each leak-tight container must be free of all asbestos residue and must be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

iii. Immediately after sealing, each leak-tight container must be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

iv. Leak-tight containers must be kept leak-tight.

v. The asbestos-containing waste material must be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that must be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

i. The procedures must require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work must stop until an AHERA Project Designer has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

ii. The Agency must immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work must stop until an AHERA Project Designer has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

i. A competent person must be present for the duration of the asbestos project (includes demolition) and must observe work activities at the site.

ii. The competent person must stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

iii. The competent person must stop work if AWP procedures are not followed and must ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures must be included in the AWP. In addition to these procedures, the following requirements apply:

i. The AWP must identify what materials will be separated from the asbestos-containing material waste stream and must describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream must be free of asbestos-containing material.

ii. A competent person must ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

g. Visible Emissions.

No visible emissions may result from an asbestos project.

5. Record Keeping

a. The AWP must be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP must retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project must also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and made available to the Agency upon request. The person(s) preparing and performing such tests must also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

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Section 8.07 Exception for Hazardous Conditions

When the exception for hazardous conditions is being utilized, all of the following apply:

A. Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health.

B. An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health. The determination must be retained for at least 24 months from the date it was prepared and made available to the Agency by the property owner or owner's agent upon request.

C. An AHERA Project Designer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be protective of public health. The AWP must contain all of the following information:

1. Date(s) the work area was evaluated by the person(s) that prepared the AWP;

2. Site address(es)/location(s) where the inspection was performed;

3. A copy of the hazardous conditions determination from a government official or licensed structural engineer;

4. If an asbestos survey was performed, include a copy or incorporate it by reference;

5. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

6. A statement that the AWP will be protective of public health;

7. Signature(s) of the person(s) that prepared the AWP; and

8. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

D. AWP Procedures.

The requirements of Section 8.06.A.3-5 of this Regulation and all other applicable requirements, including those specified in the AWP, must be complied with.

Section 8.08 Disposal of Asbestos-Containing Waste Material

A. Disposal Within 10 Days of Removal.

Except as provided in Section 8.08.B of this Regulation, it is unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Temporary Storage Site.

A person may establish a temporary storage site for the purpose of collecting and temporarily storing asbestos-containing waste material if it is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.

2. The application must be accompanied by a non-refundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material must be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.

4. All asbestos-containing waste material must be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, and disposal must not exceed 90 calendar days. An extension may be granted upon written request.

7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

Section 8.09 Compliance With Other Rules

Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the Agency's rules must be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

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

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

ARTICLE 9

Source Registration

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority RCW ((70.94.151)) 70A.15.2200]

PURPOSE: This Article establishes source registration requirements for sources of air pollution in Benton County.

Section 9.01 Source Registration Required

A. The Agency regulates the sources of air contaminants in Benton County under the authority of RCW ((70.94.151)) 70A.15.2200. Any source identified in WAC 173-400-100 whether publicly or privately owned, must register with the Agency unless exempted.

B. All facilities with Permits issued under the Notice of Construction Program (WAC 173-400-110) are considered part of the Registration Program (WAC 173-400-099) and subject to annual registration fees.

Section 9.02 Source Registration Program Purpose and Components

A. Program purpose.

The registration program is a program to develop and maintain a current and accurate record of air contaminant

sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

B. Program components.

The components of the registration program consist of:

1. Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter RCW ((70.94)) 70A.15.

2. On-site inspections necessary to verify compliance with registration requirements.

3. Data storage and retrieval systems necessary for support of the registration program.

4. Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

5. Staff reviews including engineering analysis for accuracy and currency of information provided by source owners pursuant to registration program requirements.

6. Clerical and other office support in direct furtherance of the registration program.

7. Administrative support provided in directly carrying out the registration program.

Section 9.03 Registered Source General Requirements

A. General.

Any person operating or responsible for the operation of an air contaminant source in Benton County for which registration and reporting are required must register the source emission unit with the Agency. The owner or operator must make reports containing information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

B. Registration form.

Registration information must be provided on forms supplied by the Agency and must be completed and returned within the time specified on the form. Emission units within the facility must be listed separately unless the Agency determines that certain emission units may be combined into process streams for purposes of registration and reporting.

C. Signatory responsibility.

The owner, operator, or their designated management representative must sign the registration form for each source. The owner or operator of the source must be responsible for notifying the Agency of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

D. Operational and maintenance plan.

Owners or operators of registered sources within Benton County must maintain an operation and maintenance plan for process and control equipment. The plan must reflect good

industrial practice and must include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The plan must be reviewed and updated by the source owner or operator at least annually. A copy of the plan must be made available to the Agency upon request.

E. Report of closure.

A report of closure must be filed with the Agency within ninety (90) days after operations producing emissions permanently cease at any applicable source under this Section.

F. Report of change of ownership.

A new owner or operator must report to the Agency within ninety (90) days of any change of ownership or change in operator.

G. Operating permit program source exemption.

Permit program sources, as defined in RCW (~~(70.94.030)~~) 70A.15.1030 are not required to comply with the registration requirements of this Section.

Section 9.04 Registered Source Emission Level Classification

A. Gasoline Facilities:

1. Gasoline dispensing facilities (gas stations) using Stage I or Stage II vapor recovery systems, as defined in WAC 173-491;

2. Bulk gasoline plants, as defined in WAC 173-491;

3. Bulk gasoline terminals, as defined in WAC 173-491;

B. Class 1.

Facilities and sources whose actual annual emissions are less than the following will be classified as Class 1 sources:

1. 20 tons/yr of carbon monoxide (CO);

2. 8 tons/yr of nitrogen oxides (NO_x);

3. 8 tons/yr of sulfur dioxide (SO₂);

4. 5 tons/yr of total suspended particulate (TSP);

5. 3 tons/yr of fine particulate matter (PM₁₀);

6. 8 tons/yr of volatile organic compounds (VOC);

7. 240 pounds/yr of lead;

8. 1,200 pounds/yr of fluorides;

9. 2,800 pounds/yr of sulfuric acid mist;

10. 2 tons/yr of hydrogen sulfide (H₂S); or

11. 2 tons/yr of total reduced sulfur, including H₂S.

C. Class 1 Toxic Source.

Toxic air pollutants are those listed in WAC 173-460-150. Facilities and sources whose actual emissions are less than the following will be classified as Class 1 Toxic Sources:

1. One (1.0) ton/yr of a single toxic air pollutant; or

2. Two and one-half (2.5) tons/yr of a combination of toxic air pollutants will be classified as Class 1 Toxic Sources.

D. Class 2.

Sources whose actual annual emissions are greater than that listed in Section 9.04.B, of this Regulation but less than one hundred (100) tons/yr of CO, NO_x, SO₂, TSP, PM₁₀, VOCs, or lead, will be classified as Class 2 Sources.

E. Class 2 Toxic Sources.

Toxic air pollutants are those listed in WAC 173-460-150. Sources whose actual emissions are greater than that listed in Section 9.04.C of this Regulation, but less than ten (10) tons/yr of any single toxic air pollutant or less than twenty-five (25) tons/yr of a combination of toxic air pollutants, will be classified as Class 2 Toxic Sources.

F. Synthetic Minor Source.

Sources that have requested and received a federally enforceable emissions limit that limits the total potential-to-emit of the facility to less than one hundred (100) tons/yr of any criteria pollutant, ten (10) tons/yr of any single hazardous air pollutant, or twenty-five (25) tons/yr of any combination of hazardous air pollutants are synthetic minor sources.

ARTICLE 10 Fees and Charges

ADOPTED: 17-Feb-2005

AMENDED: 5 August 2020

[Statutory Authority RCW (~~(70.94.151)~~) 70A.15.2200, RCW (~~(70.94.152)~~) 70A.15.2210]

Section 10.01 Fees and Charges Required

A. Unless otherwise provided, any fee assessed by the Agency must be paid within thirty (30) days of assessment. Failure to pay a fee may result in the commencement of a formal enforcement action.

B. Upon approval by the Board as part of the annual budget process, fees may be increased annually by at least the fiscal growth factor as determined by the Washington State Office of Financial Management.

C. Electronic Payment of Fees. A convenience fee, charged by the fee processor, may be charged to a source for the electronic payment of all or part of the fee at the rates set by the processor.

Section 10.02 Fees Otherwise Provided

All fees and charges provided for in this Article must be in addition to fees otherwise provided for or required to be paid by Regulation 1, provided the Control Officer waives payment of any fee or service charge hereby required if such fee duplicates a fee charged or required to be paid by another Article of this Regulation.

Section 10.03 Fee Exemptions

A. The Control Officer may waive or reduce the registration fee for an operation provided a source presents sufficient demonstration of hardship circumstances.

B. Stationary sources subject to the Operating Permit Regulation, Chapter 173-401 WAC.

Section 10.04 General Administrative Fees

A (~~(fifty dollar (\$50.00))~~) fee, according to the fee schedule, will be assessed for any check written to the Agency returned due to non-sufficient funds.

Section 10.05 Registered Source Fees

A. The Agency will charge an annual registration fee pursuant to RCW (~~(70.94.151)~~) 70A.15.2200 for services provided in administering the registration program. Fees received under the registration program will not exceed the cost of administering the registration program. The Board will review the registration program on an annual basis.

B. All registrants must pay a fee in accordance with the current Fee Schedule.

C. Fee Payment.

1. Fee Payment. The annual registration fee is due and payable by the date on the invoice, unless otherwise specified in writing to the source by the Agency.

2. Late Payment of Fees.

A late fee will be charged to a source for late payment of all or part of its annual registration fee at the following rates:

a. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

b. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

c. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

3. Failure to Pay Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its annual registration fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee. Failure to pay all or part of an annual registration fee after the ninety first day past the due date may result in enforcement action.

4. Other Penalties.

The penalties authorized in Section 10.08.A.5.b and c of this Regulation are additional to and in no way prejudice the Agency's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

5. Facility Closure.

Sources that permanently cease operations will be required to pay only a pro rata portion of the annual registration fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

6. Transfer in Ownership.

Transfer in ownership of a source will not affect that source's obligation to pay registration fees. Any liability for fee payment, including payment of late payment and other penalties will survive any transfer in ownership of a source.

Section 10.06 Fees for Application for Notice of Construction (NOC) for Stationary and Portable Sources, and Notice of Intent to Operate (NIO) Relocating Portable Sources

A. NOC Application Filing Fee.

An application filing fee will be due and payable at the time of filing the NOC application. The filing fee is non-refundable and is contained in the Fee Schedule.

B. Portable Source NIO Filing Fee.

A Filing fee will be due and payable at the time of filing the NIO form. The fee is contained in the Fee Schedule. The filing fee is non-refundable. NIO must be received at least 15 days prior to starting operation.

1. Notice of Intent to Operate: The owner or operator of a portable source with a valid permit per WAC 173-400-036 must notify the Agency of the intent to relocate and operate within the jurisdiction of the Agency at least 15 days prior to starting operation by submitting a complete Notice of Intent to Operate (NIO). You must receive an Approval to Operate Portable Source from Benton Clean Air Agency prior to starting operation.

C. NOC or NIO Engineering Examination and Inspection Fee.

1. An examination and inspection fee will be charged according to the Fee Schedule. The engineering and inspection fee will be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the Agency.

2. Emergency application or expedited review fee will be two (2) times the normal application and review fee.

D. Additional Fees.

Additional fees may be charged according to the Fee Schedule. Fees are cumulative. The additional fees will be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the Agency.

1. Fee amounts in the Fee Schedule listed as "Actual" are based upon the Agency's actual cost to complete a review or task and will be determined using the actual or direct hours expended completing the specific review or task.

2. If an NOC or NIO applicability determination fee is received by the Agency and an NOC or NIO is determined not to be required, the Engineering Examination and Inspection Fee will be the actual time expended at the current engineering charge rate in dollars per hour.

E. Any NOC or NIO application received by the Agency without the accompanying fee will be rejected and returned to sender. Such action will not constitute a determination of completeness or incompleteness as per WAC 173-400-111.

Note: Tables 10-1 and 10-2 have been deleted. The Fee Schedule for the Registration and Notice of Construction Programs is approved by the board per Article 2.8 D.

Section 10.07 State Environmental Policy Act (SEPA) Fees

A. Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an addendum to, or adoption of, an existing environmental document pursuant to Chapter 197-11 WAC is required, in association with an NOC or a NIO, the applicant will pay a review fee of the greater of:

1. ~~((One hundred fifty dollars (\$150.00), due and payable at the time of submittal))~~ A fee as listed in the fee schedule for SEPA review; or

2. Actual costs to complete the review or task and will be determined using the actual or direct hours expended completing the specific review and the corresponding hourly rate of each staff person directly involved. Actual costs will be billed by the Agency to the owner, operator, or applicant after a threshold determination has been made and/or a preliminary determination has been issued.

B. Additional fees may be charged according to the Fee Schedule. Fees are cumulative. The additional fees will be due and payable at the time of filing, unless otherwise specified to the applicant by the Agency.

Section 10.08 Asbestos Fees and Waiting Periods

A. Any fee required for asbestos projects will be due and payable at the time of filing, unless otherwise specified to the applicant by the Agency.

B. Failure to pay all or part of the fee may result in the commencement of a formal enforcement action.

The notification waiting period begins on the workday on which a complete notification is received

Note: Table 10-3 has been deleted. The Fee Schedule for the Asbestos Program is approved by the board per Article 2.8 D.

Section 10.09 Title 5 Air Operating Permit Fees

[Statutory Authority RCW ((70.94.164)) 70A.15.2260]

All eligible sources under Chapter 173-401 WAC will be subject to the annual fees described in this Section.

A. Permanent annual fee determination and certification.

1. Fee Determination.

a. Fee Determination.

The Agency will develop a fee schedule using the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees will be sufficient to cover all permit administration costs. The Agency will also collect its jurisdiction's share of Ecology's development and oversight costs. The fee schedule will differentiate as separate line items the Agency and Ecology's fees. Opportunities for public participation will be afforded throughout the fee determination process, as provided in Section 10.0((8))2.A.3((a)) of this Regulation.

b. Fee Eligible Activities.

The costs of permit administration and development and oversight activities are fee eligible.

i. Permit Administration.

Permit administration costs are those incurred by the Agency in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Eligible permit administration costs are as follows:

(a) Pre-application assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(b) Source inspection, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(i) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(m) Required fiscal audits, periodic performance audits, and reporting activities;

(n) Tracking of time, revenues and expenditures, and accounting activities;

(o) Administering the permit program including the costs of clerical support, supervision, and management;

(p) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

ii. Ecology Development and Oversight.

Development and oversight costs are those incurred by Ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. ((Development and oversight costs are in Chapter 252, Laws of 1993 Section 6.2.b of this Regulation.))

c. Workload Analysis.

i. The Agency will conduct an annual workload analysis of the previous years' work, to projecting resource requirements for the purpose of preparation for permit administration. The workload analysis will include resource requirements for both the direct and indirect costs of the permit administration activities in Section 10.0((8))2.A.1.b.i of this Regulation.

ii. Ecology will, for the two-year period corresponding to each biennium, identify the development and oversight activities that it will perform during that biennium. The eligible activities are those referenced in Section 10.0((8))2.A.1.b.ii of this Regulation.

d. Budget Development.

The Agency will annually prepare an operating permit program budget. The budget will be based on the resource requirements identified in an annual workload analysis and will take into account the projected fund balance at the start of the calendar year. The Agency will publish a draft budget for the following calendar year on or before May 31 and will provide opportunity for public comment in accordance with Chapter 173-401 WAC Operating Permit Regulation. The Agency will publish a final budget for the following calendar year on or before June 30.

e. Allocation Method.

i. Permit Administration Costs.

The Agency will allocate its permit administration costs and its share of Ecology's development and oversight costs among the permit program sources for which it acts as permitting authority, according to a three-tiered model based upon:

- (a) The number of sources under its jurisdiction;
- (b) The complexity of the sources under its jurisdiction, and
- (c) The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted. The quantity of each regulated pollutant emitted by a source will be determined based on the annual emissions data during the most recent calendar year for which data is available. Each of the three tiers will be equally weighted.

ii. Ecology Development and Oversight Costs.

Ecology will allocate its development and oversight costs among all permitting authorities, including the Agency based upon the number of permit program sources under the jurisdiction of each permitting authority. If Ecology determines that it has incurred extraordinary costs in order to oversee a particular permitting authority and that those costs are readily attributable to the particular permitting authority, Ecology may assess to that permitting authority such extraordinary costs.

f. Fee Schedule.

The Agency will issue annually a fee schedule reflecting the permit administration fee and Ecology's development and oversight fee to be paid by each permit program source under its jurisdiction. The fee schedule will be based on the information contained in the final source data statements for each year; the final source data statements will be issued after opportunity for petition and review has been afforded in accordance with Section 10.0(8)2.A(-).4 of this Regulation.

2. Fee Collection - Ecology and Benton Clean Air Agency.

a. Collection from Sources.

The Agency, as a delegated local authority, will collect the fees from the permit program sources under its jurisdiction.

i. Permit Administration Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its permit administration costs.

ii. Ecology Development and Oversight Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its share of Ecology's development and oversight costs.

b. Dedicated Account.

All receipts from fees collected by the Agency, as a delegated local authority, from permit program sources will be deposited in - dedicated account -. Expenditures from these dedicated accounts will be used only for the activities described in RCW ((70.94.162)) 70A.15.2270.

3. Accountability.

a. Public Participation during Fee Determination Process.

The Agency will provide for public participation in the fee determination process described under Section

10.09.A((-)) of this Regulation which provision will include but not be limited to the following:

i. The Agency will provide opportunity for public review of and comment on:

(a) Each annual ((workload analysis)) AOP fee calculation;

(b) Each annual Agency budget; and

(c) Each annual Agency fee schedule

ii. ((The Agency will submit to Ecology for publication in the Permit Register notice of issuance of its draft annual workload analysis, issuance of its draft annual budget and issuance of its draft annual fee schedule.))

((iii)) ii. The Agency will make available for public inspection and to those requesting opportunity for review copies of its draft:

(a) Annual ((workload analysis)) AOP fee calculation on or before May 31;

(b) Annual Agency budget on or before May 31; and

(c) Annual Agency fee schedule on or before May 31.

((iv)) iii. The Agency will provide a minimum of thirty (30) days for public comment on the ((draft annual workload analysis and)) draft annual budget. Such thirty-day period for comment will run from the date of publication of notice in the Permit Register as provided in this Section.

b. Tracking of Revenues, Time and Expenditures.

i. Revenues.

The Agency will track revenues on a source-specific basis.

ii. Time and Expenditures.

The Agency will track time and expenditures on the basis of functional categories as follows:

(a) Application review and permit issuance;

(b) Permit modification;

(c) Permit maintenance;

(d) Compliance and enforcement;

(e) Business assistance;

(f) Regulation and guidance development;

(g) Management and training; and

(h) Technical support.

iii. Use of Information Obtained from Tracking Revenues, Time and Expenditures.

The Agency will use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during each calendar year's review provided for under Section 10.09.A.1.d of this Regulation.

iv. The information obtained from tracking revenues, time, and expenditures will not provide a basis for challenge to the amount of an individual source's fee.

c. Periodic Fiscal Audits, Reports and Performance Audits.

A system of regular, periodic fiscal audits, reports and performance audits will be conducted in order to evaluate Ecology's and the Agency's operating permit program administration, as follows:

i. Fiscal Audits.

The Agency will contract with the State Auditor to perform a standard fiscal audit of its operating permit program every other year.

ii. Annual Routine Performance Audits.

The Agency will be subject to annual routine performance audits, except that the routine audit will be incorporated into the extensive performance audit, conducted pursuant to Section 10.09.A.3.c.v of this Regulation in each year during which an extensive performance is conducted. Ecology will issue guidance regarding the content of the routine performance audits and will conduct the Agency audits.

iii. Annual Random Individual Permit Review.

One permit issued by the Agency will be subject to review in conjunction with the annual routine performance. The permit to be reviewed will be selected at random. Ecology will issue guidance regarding the content of the random individual permit review and will conduct the Agency's review.

iv. Periodic Extensive Performance Audits.

The Agency will be subject to extensive performance audits every five years. In addition, the Agency may be subject to an extensive performance audit more frequently under the conditions of Section 10.09.A.3.c.v of this Regulation. Ecology will issue guidance regarding the content of the extensive performance audits and will conduct the audits of this agency.

v. Finding of Inadequate Administration or Need for Further Evaluation.

If, in the process of conducting a fiscal audit, annual routine audit, or annual random individual permit review, the auditor or Ecology finds that the Agency is inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit will be conducted, as provided in Section 10.09.A.3.c.iv of this Regulation.

vi. Annual Reports.

The Agency will prepare an annual report evaluating its operating permit program administration. Such report will include any findings of the auditor or Ecology resulting from the relevant fiscal audits, annual routine audits, annual random individual permit reviews or periodic extensive performance audits. The Agency will submit its report to its Board and to Ecology.

4. Administrative Dispute Resolution.

a. Preliminary Statement of Source Data.

The Agency will provide to the permit program sources under their respective jurisdictions a preliminary statement of emissions and other data from that source upon which the Agency intends to base its allocation determination under Section 10.09.A.1.e of this Regulation. Such preliminary statement will be provided to the permit program sources on or before September 30 of each year. Such preliminary statement will indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under Section 10.0((8))2.A.4.b of this Regulation regarding the accuracy of the data contained therein.

b. Petition for Review of Statement.

A permit program source or other individual under the jurisdiction of the Agency as a delegated local authority, may petition to review for accuracy the data contained in the preliminary source data statement provided for under Section 10.0((8))2.A.4.a of this Regulation. Such petition will be lodged on or before October 31 of each year. Such petition

will be in writing, directed to the individual indicated on the statement of source data. Such petition will indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition will, in addition, state the name, address and telephone number of the person or persons to whom the Agency may direct inquiries regarding the request. Upon receipt of such a petition, the Agency, as a delegated local authority, must issue its written response to the petitioner on or before November 30 of each year. Such response will state the conclusions of the review and the reasons therefore, and will contain a new preliminary source data statement, revised to reflect any changes necessitated by the Agency's response.

c. Final Source Data Statement.

The Agency will provide to the permit program sources under its jurisdiction a final statement of emissions and other data from that source upon which the Agency will base its allocation determination under Section 10.0((8))2.A.1 of this Regulation along with an invoice reflecting the fee billed to that source on or before ((January)) February 20th of each year.

5. Fee Payment and Penalties.

a. Fee Payment.

Each permit program source will pay a fee in the amount reflected in the invoice issued under Section 10.09.A.4.c of this Regulation. Fees will be invoiced by ((January)) February 20th of each year. Such fee will be due on or before April 15th of each year.

b. Late Payment of Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for late payment of all or part of its operating permit fee at the following rates:

i. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

ii. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

iii. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

c. Failure to Pay Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee.

d. Other Penalties.

The penalties authorized in Section 10.0((8))2.A.5.b and c of this Regulation are additional to and in no way prejudice the Agency's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

e. Facility Closure.

Sources that permanently cease operations will be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by divid-

ing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

f. Transfer in Ownership.

Transfer in ownership of a source will not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of late payment and other penalties will survive any transfer in ownership of a source.

6. Development and Oversight Remittance by Local Authorities to Ecology.

a. Ecology will provide to the Agency a statement of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before December 31 of each year.

b. The Agency will remit to Ecology one-half of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before March 31 of each year and will remit to Ecology the balance of its share of Ecology's development and oversight costs on or before June 30 of each year.

B. Air Operating Permit sources are not subject to fees under the Registration Program.

Section 10.10 Special Burning Permit Fees

[Statutory Authority RCW ((~~70.94.6528~~)) 70A.15.5090]

A. An application fee ((~~of fifty dollars (\$75.00)~~)) as listed in the fee schedule is due and payable at the time of submittal of a request for special burning permit. The application fee is non-refundable. A fee will be charged for each additional inspection that's required.

B. ((~~An additional fee for inspection and oversight costs will be charged for each submittal of a request for special burning permit.~~)) An ((The)) additional fee will be calculated based upon the volume of the material to be burned. The additional fee will not exceed ((~~eight dollars and fifty cents (\$8.50)~~)) the amount listed in the fee schedule per cubic yard or the adjusted amount according to Chapter 173-425 WAC.

C. The additional fee will be due and payable within thirty (30) days of issuance of the special burning permit. Special burning permit fees will be due within thirty (30) days of issuance of the special burning permit.

D. A late fee ((~~of twenty five dollars (\$25.00)~~)) as listed in the fee schedule may be charged for special burning permit fees that have not been paid within thirty (30) days of issuance of the special burning permit. Failure to pay said fee within sixty (60) days of the issuance of the special burning permit may result in the commencement of a formal enforcement action.

Section 10.11 Agricultural Burning Permit Fees

A. An application fee for an agricultural burning permit will be due and payable at the time of submittal of the application. Refunds may be issued by the Agency for acres or tons not burned under each permit provided the adjusted fee after subtracting refunds is no less than the minimum fee.

B. Permit Fee Schedule.

The agricultural burning permit fee schedule established through Chapter 173-430 WAC applies in the Agency.

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

ACRONYMS AND ABBREVIATIONS

- ACM Asbestos Containing Material
- ARP. Application for Relief from Penalty
- AWP Alternate Work Plan
- BACT Best Available Control Technology
- BART Best Available Retrofit Technology
- BCAA Benton Clean Air Agency Board. . . . Benton Clean Air Agency Board of Directors
- BTU. British Thermal Unit (unit of measure)
- CEM Continuous Emission Monitoring
- C.F.R. U.S. Code of Federal Regulations
- Ecology Washington State Department of Ecology
- ERC Emission Recovery Credit
- LAER Lowest Achievable Emission Rate
- MACT Maximum Achievable Control Technology
- NESHAP National Emission Standards for Hazardous Air Pollutants
- NOC Notice of Construction
- NIO Notice of Intent to Install and Operate a Temporary Source
- NOI Notice of Intent to Demolish or Remove Asbestos
- NOP. Notice of Penalty
- NSPS New Source Performance Standard
- PCHB Washington State Pollution Control Hearings Board
- PSD Prevention of Significant Deterioration
- RACM. Regulated Asbestos Containing Material
- RACT Reasonably Available Control Technology
- RCW Revised Code of Washington
- SEPA State Environmental Policy Act
- UGA Urban Growth Area
- USC United States Code
- WAC Washington Administrative Code

WSR 21-15-007

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed July 7, 2021, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-029, published March 9, 2021.

Title of Rule and Other Identifying Information: Lead-based paint—Lowering dust wipe clearance standards for floors and window sills, amending certain requirements including clarifying language for firms and employees, and adding definitions for "landlord" and "property manager."

Hearing Location(s): On September 9, 2021, at 11 a.m. This will be a remote only public hearing due to the pandemic. Please use this Zoom link to attend. You can also call into the meeting by using a number that best suits your location. +1 253 215 8782 US (Tacoma), +1 971 247 1195 US (Portland), +1 213 338 8477 US (Los Angeles), Meeting ID 826 6102 9563, Passcode 699686.

Date of Intended Adoption: October 1, 2021.

Submit Written Comments to: Devin Proctor, email Devin.Proctor@commerce.wa.gov, submit comments online, by September 10, 2021.

Assistance for Persons with Disabilities: Contact Devin Proctor, phone 360-725-2999, fax 360-586-8440, email Devin.Proctor@commerce.wa.gov, by September 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is lowering dust wipe clearance standards for floors and window sills to bring the rule into alignment with the Environmental Protection Agency's (EPA) updated clearance standards effective January 6, 2020, and existing definitions for "landlord" and "property manager;" amending training, certification and recertification requirements to reflect routine programmatic changes in how the department's lead-based paint programs are currently administered, and clarifying language for firms and employees to make the rule easier to use.

Reasons Supporting Proposal: EPA increased the federal requirement for clearance standards effective January 6, 2020. The department is required to implement these rule changes to be at-least-as-effective-as the federal requirements. Proposed amendments to training, certification and recertification requirements, and clarifying language for firms and employees bring the rule into conformance with routine programmatic updates. Adding definitions for "landlord" and "property manager" bring the rule into alignment with existing EPA definitions.

Statutory Authority for Adoption: Chapter 70A.420 RCW.

Statute Being Implemented: Lead-based paint requirements.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Cynthia Sanderson, 1011 Plum Street S.E., Olympia, WA 98504-2525, 360-725-2941.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: [No further information supplied by agency].

July 7, 2021
Amber Siefer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-010 Authority, purpose and scope. (1) The authority for these regulations is chapter ((70-103)) 70A.420 RCW.

(2) Purpose.

(a) These regulations address Washington's need for a qualified and properly trained work force to perform lead-based paint activities, and lead-based paint renovation work, as defined in these rules, to safeguard the environment and protect human health, especially for children under six years of age and other high-risk groups from lead-based paint hazards.

(b) These regulations prescribe the accreditation requirements for training providers offering lead-based paint activities and lead-based paint renovation training courses to qualify individuals for lead-based paint certification and will require that all lead-based paint training courses be offered or provided only by accredited training providers.

(c) These regulations prescribe the certification requirements of individuals and firms engaged in lead-based paint activities and renovation in target housing and child occupied facilities.

(d) These regulations establish work practice standards for the performance of lead-based paint abatement, inspection, risk assessment, renovation, dust sampling by individuals and firms, and will require that only certified individuals and the certified firms employing such individuals perform these lead-based paint activities and lead-based paint renovations.

(3) Scope.

(a) These rules apply to all individuals and firms that are engaged in lead-based paint activities and lead-based paint renovation as defined in these regulations, (WAC 365-230-200 and 365-230-330) except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities and renovation be performed only by certified individuals and the certified firms employing such individuals.

(c) These rules prescribe the requirements for, and the manner of, certifying competency of applicants for certification of lead-based paint inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker, and of legally registered firms employing such individuals.

(d) These rules prescribe work practice standards for lead-based paint abatement and renovation, and for the performance of lead-based paint inspection, risk assessment, renovation, dust sampling, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke, or modify certification.

(e) These rules establish application fees for certification and accreditation.

(f) These rules establish a procedure by which training providers may apply for and obtain accreditation to offer initial and refresher lead-based paint courses in any of the following disciplines: Inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker.

(g) These rules prescribe the requirements for training programs to provide, offer, or claim to provide accredited lead-based paint activities and renovation courses.

(h) These rules prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke or modify accreditation.

(i) These rules describe the actions or failures to act that constitute violations of these rules and for which the department may issue fines.

(j) These rules establish a schedule of penalties for failure to comply with these rules.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-020 Definitions. As used in these rules unless otherwise required by context:

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of paint and dust, the permanent enclosure or the encapsulation of lead-based paint with an EPA-approved encapsulant, the replacement of painted surfaces or fixtures, or the removal or covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(b) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards and described in (a) and (b) of this subsection.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under (c) of this subsection.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under (c) of this subsection.

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accreditation" means the process whereby the department has reviewed and approved a training provider's written application with associated materials for accreditation, and has conducted an on-site audit finding the training program is in compliance as specified in these rules.

(3) "Accredited training program" means a training program accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, to provide training for individuals engaged in lead-based paint activities, renovation, or dust sampling.

(4) "Accredited training course" means either an initial or a refresher training course accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, that provides training for individuals engaged in lead-based paint activities and renovation.

(5) "Accredited training provider" means an individual, corporation, partnership or other unincorporated association or public entity to which the department has approved accreditation to offer one or more lead-based paint courses.

(6) "Approved" means approved in writing by the department.

(7) "Arithmetic mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(8) "Business day" means Monday through Friday with the exception of legal Washington state holidays.

(9) "Certified" means issued a certificate by the department based on meeting requirements for the appropriate discipline. Those requirements include, but are not limited to, the following:

(a) Successful completion of a training program accredited by the department; and

(b) Receiving a passing score on a certification examination administered by the department, or by the training firm in the certification of lead-based paint workers, renovators, and dust sampling technicians; and

(c) Satisfaction of any other requirements for the appropriate discipline; and

(d) Submittal and approval of the appropriate application by the department for inspection, risk assessment or abatement activities in target housing and child-occupied facilities; and

(e) Submittal and approval of the appropriate renovator or dust sampling technician application by the department.

Note: Guidance policy is written to grandfather in all Washington state residents previously certified by EPA as renovators, dust sampling technicians, or Washington renovation firms into the department. Out-of-state residents are required to submit appropriate renovator, dust sampling technician, or renovation firm application and fee to the department.

(10) "Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a certificate under these rules.

(11) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under the age of six, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(12) "Clearance levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(13) "Clearance examination standards" means a maximum of 40 micrograms of lead in dust per square foot on floors, 250 micrograms of lead in dust per square foot on interior window sills, and 400 micrograms of lead in dust on window troughs.

(14) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but that is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(15) "Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.

(16) "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vani-

ties, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(17) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(18) "Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement or renovation.

(19) "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

(20) "Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

(21) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited lead-based paint training course.

(22) "Course completion certificate" means documentation issued by an accredited training provider to an individual as proof of successful completion of a department-approved lead-based paint course or initial training course. All course completion certificates are valid for six months from the course completion date.

(23) "Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

(24) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during an initial or refresher training course.

(25) "Department" means the department of commerce.

(26) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(27) "Director" means the director of the department of commerce.

(28) "Discipline" means one of the specific types or categories of lead-based paint activities or renovation identified in these rules for which individuals may receive training from accredited programs and become certified by the department. For example, "abatement worker" is a discipline.

(29) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(30) "Documented methodologies" are the methods or protocols used to sample for the presence of lead in paint, dust, and soil.

(31) "Dripline" means the area within three feet surrounding the perimeter of a building.

(32) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft² on floors or 250 µg/ft² on interior window sills based on wipe samples.

(33) "Elevated blood lead level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken three to four months apart.

(34) "Encapsulant" means an EPA-approved substance that forms a barrier between lead-based paint and the environment using a liquid applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

(35) "Encapsulation" means the application of an encapsulant.

(36) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(37) "EPA" means the Environmental Protection Agency.

(38) "Firm" means a sole proprietorship, corporation, association, firm, partnership, or joint stock company legally registered with the Washington department of licensing to conduct business in the state of Washington.

(39) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(40) "Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(41) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(42) "Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in WAC 365-230-200 or 365-230-330 as well as any other skill taught in a training course.

(43) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(44) "Initial training course" means a full, accredited lead-based paint training course required for certification. It is different than a refresher course.

(45) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(46) "Inspector" means an individual who is certified by the department to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing; and conduct clearance procedures in accordance with WAC 365-230-200. An inspector may also collect dust and soil samples to perform clearance testing. An inspector

may cite the applicable standard for the medium being sampled, but may not evaluate the results or assess risk.

(47) "Interim controls" mean a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(48) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(49) "Landlord" means an individual who owns the property, maintains and manages the property by themselves, and they do not outsource the management of the property to a third party.

(50) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter, 5000 parts per million, or 0.5 percent by weight.

~~((50))~~ (51) "Lead-based paint activities" mean, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in these rules.

~~((51))~~ (52) "Lead-based paint activities courses" mean training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training providers.

~~((52))~~ (53) "Lead-based paint hazard" means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

~~((53))~~ (54) "Lead-hazard screen" is a limited risk assessment activity that involves limited paint and dust sampling as described in WAC 365-230-200.

~~((54))~~ (55) "Licensed" means a person who has been certified by the department in one or more disciplines.

~~((55))~~ (56) "Living area" means any area of a residential dwelling used by one or more children under the age of six, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

~~((56))~~ (57) "Loading" means the quantity of specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

~~((57))~~ (58) "Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

~~((58))~~ (59) "Multifamily housing" means a housing property consisting of more than four dwelling units.

~~((59))~~ (60) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a

related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

~~((60))~~ (61) "Permanent" means having an expected design life of twenty years.

~~((61))~~ (62) "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian tribe, state, or political subdepartment thereof; any interstate body; and any department, agency, or instrumentality of the federal government.

~~((62))~~ (63) "Play area" means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, such factors including the following: The presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

~~((63))~~ (64) "Preliminary clearance" means clearance of interior living areas according to which an inspector or risk assessor determines that residual lead levels (as determined by laboratory analysis) do not exceed clearance levels.

~~((64))~~ (65) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

~~((65))~~ (66) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a manual disability is an example of a proficiency test.

~~((66))~~ (67) "Project designer" means an individual who is certified by the department to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for large lead abatement projects in target housing and child-occupied facilities, including occupant notification and protection, cleanup and clearance, and abatement reports.

~~((67))~~ (68) "Property manager" means an individual or company hired by the property owners to manage (hired service) the property. Property managers may or may not have their own maintenance staff who work on these properties.

(69) "Refresher training course" means a minimum of eight training hours, or four training hours for project designer, renovator, or dust sampling technician accredited by the department to update an individual's knowledge and skills in the discipline in which training is offered.

~~((68))~~ (70) "Renovator courses" means certified renovator or certified dust sampling technician courses accredited by the department.

~~((69))~~ (71) "Residential dwelling" means:

(a) A detached single-family dwelling unit, including attached structures such as porches and stoops; or

(b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

~~((70))~~ (72) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

~~((71))~~ (73) "Risk assessor" means an individual who is certified by the department to conduct in target housing and child-occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based paint hazards; and who may conduct a lead-hazard screen, in accordance with WAC 365-230-200.

~~((72))~~ (74) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or book-cases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened-in porch that is used as a living area is a room.

~~((73))~~ (75) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

~~((74))~~ (76) "Scope of work" means a written description of all of the abatement activities to be conducted at a specific abatement project site.

~~((75))~~ (77) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 250 parts per million or, (mg/kg) based on soil samples.

~~((76))~~ (78) "Soil sample" means a sample collected in a representative location using ASTM E1727, "*Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques*," or equivalent method. ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

~~((77))~~ (79) "Supervisor" means an individual who is certified by the department to either conduct or oversee and direct the work-site conduct of lead-based paint abatement and clearance activities in target housing and child-occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with WAC 365-230-200.

~~((78))~~ (80) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any one or more children under the age of six resides or is expected to reside in such housing for the elderly or persons with disabilities ~~(3)~~) or any 0-bedroom dwelling).

~~((79))~~ (81) "These rules" means Washington Administrative Code (WAC) 365-230-010 through 365-230-385.

~~((80))~~ (82) "Train-the-trainer course" means a course that includes, but is not limited to, instruction in the planning

and teaching of adult education, adult learning principles, designing training objectives, selecting and designing training activities, creating an effective learning environment, facilitating group involvement and discussions, and strategies for dealing with difficult training situations and difficult learners.

~~((81))~~ (83) "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

~~((82))~~ (84) "Training hour" means at least fifty minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

~~((83))~~ (85) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

~~((84))~~ (86) "Training provider" means any business entity accredited under WAC 365-230-035 and 365-230-040 that offers lead-based paint activities and renovation courses.

~~((85))~~ (87) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example the weighted arithmetic mean of a single surface sample containing 60 $\mu\text{g}/\text{ft}^2$, a composite sample (three subsamples) containing 100 $\mu\text{g}/\text{ft}^2$, and a composite sample (four subsamples) containing 110 $\mu\text{g}/\text{ft}^2$ is 100 $\mu\text{g}/\text{ft}^2$. This result is based on the equation $[60+(3*100)+(4*110)]/(1+3+4)$.

~~((86))~~ (88) "Window trough" means for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool), and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

~~((87))~~ (89) "Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

~~((88))~~ (90) "Worker" means an individual who is certified by the department and licensed by the construction contractors' board to conduct lead-based paint abatement activi-

ties in target housing and child-occupied facilities in accordance with WAC 365-230-200.

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

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-035 Training provider application process. The following are procedures a training program must follow to receive accreditation by the department to offer lead-based paint activities training courses, or renovation and dust sampling technician courses:

(1) A training program seeking accreditation shall submit a complete written application to the department. To be considered complete, the application must be on the appropriate departmental form and include all required documentation and attachments.

(2) Information that must be provided with the application is as follows:

(a) Name, address, and phone number of training provider and training program manager.

(b) A list of course(s) for which accreditation is being applied. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(c) The name and documentation of the qualifications of the training manager.

(d) The name(s) and documentation of qualifications of any principal instructor(s).

(e) A statement signed by the training program manager certifying that the training program meets the requirements under WAC 365-230-040.

(f) If a training program uses EPA-recommended model training materials, or training materials approved by an EPA-authorized state or Indian tribe, the training manager shall include a statement certifying that. If the training program makes any changes or additions to the model curriculum, the training manager shall submit a statement indicating the changes or additions and shall submit a copy of the new or changed curriculum. It is not necessary to submit unchanged model training curriculum materials.

(g) If a training program does not use model training materials as described in (f) of this subsection, the training manager shall include: A copy of the entire course instruction curriculum, including, but not limited to: Learning objectives; documentation of course agenda with time allocation for each course topic; the sequence of topics to be covered during the course(s); student and instructor manuals, and any other materials to be used for the course.

(h) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

(i) All applications for accreditation shall include:

(i) A copy of the course test blueprint describing the portion of test questions devoted to each major course topic.

(ii) A description of the facilities and equipment to be used for lecture and hands-on training, respectively.

(iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(iv) A copy of the quality control plan developed by the training manager. The plan shall be used to maintain and improve the training program and contain at least the following elements:

(A) Procedures for periodic revision of training materials and course test to be current with innovations in the field.

(B) Procedures for the training manager's annual review of principal instructor competency.

(v) Documentation of accreditation by other state or federal agencies, if applicable.

(vi) A check or money order made out to the department of commerce in the amount as described in WAC 365-230-120.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-100 Notification of lead-based paint training activity. (1) The training manager must provide notification of lead-based paint activities courses or renovator and dust sampling technician courses offered.

(a) The training manager must provide the department with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by the department at least seven business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities courses.

(b) The training manager must provide the department updated notification when lead-based paint activities or renovator and dust sampling technician courses will begin on a date other than the start date specified in the original notification, as follows:

(i) For lead-based paint activities or renovator and dust sampling technician courses beginning prior to the start date provided to the department an updated notification must be received by the department at least seven business days before the new start date.

(ii) For lead-based paint activities or renovator and dust sampling technician courses beginning after the start date provided to the department, an updated notification must be received at least two business days before the start date provided to the department.

(c) The training manager must update the department of any change in location of lead-based paint activities or renovator and dust sampling technician courses at least seven business days prior to the start date provided to the department.

(d) The training manager must update the department regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the department at least two business days prior to the start date provided to the department.

(e) Each notice, including updates, shall include the following:

(i) Notification type (original, update, cancellation).

(ii) Training program name, department accreditation number, address, and phone number.

(iii) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(iv) Date(s) and time(s) of training.

(v) Training location(s) phone number and address.

(vi) Principal instructor's name.

(vii) Training manager's name and signature.

(f) Notification must be accomplished using any of the following methods: Written notification or electronic. Notification of lead-based paint activities, renovator, or dust sampling technician course schedules can be accomplished by using either the sample form titled "Pre-Training Notification" or a similar form developed by the training program containing the required information and submitted electronically to the department. ~~((All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.)))~~ Instructions and sample forms can be obtained from the department at 360-586-5323, or on the internet at <http://www.commerce.wa.gov/lead>.

(g) Lead-based paint activities or renovator and dust sampling technician courses must not begin on a date, or at a location other than that specified in the original notice unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(h) No training program shall provide lead-based paint activities or renovator and dust sampling technician courses without first notifying the department of such activities in accordance with the requirements of this section.

(2) The training manager must provide notification following completion of lead-based paint activities or renovator and dust sampling technician courses.

(a) The training manager must provide the department with notification after the completion of any lead-based paint activities or renovator and dust sampling technician course that shall be received by the department no later than ten business days following course completion.

(b) The notice must include the following:

(i) Training program name, department accreditation number, address, and phone number.

(ii) Course discipline and type (initial/refresher).

(iii) Date(s) of training.

(iv) The following information for each student who took the course:

(A) Name.

(B) Address.

(C) Course completion certificate number.

(D) Course test score.

(v) Training manager's name and signature.

(c) Notification shall be accomplished using one of the following methods: Written or electronic. Notification following lead-based paint activities, renovator, or dust sampling technician courses can be accomplished by using either the sample form titled "Post-Training Notification" or a sim-

ilar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from department at 360-586-5323, or on the internet at <http://www.commerce.gov/lead>.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-160 Recertification. (1) To maintain certification in a Lead-Based Paint Activities discipline, a certified individual shall apply to and be recertified by the department in that discipline ~~((either:~~

~~((a)))~~ every three years after the original date of issue if the individual completed a training course with a course test and hands-on assessment ~~((or~~

~~((b)))~~ Every five years if the individual completed a training course with a proficiency test).

(2) An individual shall be recertified if the individual:

(a) Successfully completes the appropriate accredited refresher training course; and

(b) Submits a valid copy of the appropriate refresher course completion certificate; and

(c) Complies with the following application requirements established by the department:

(i) Submit a complete and signed application; and

(ii) Submits ~~((two recent passport-size photographs))~~ a digital photograph; and

(iii) Submit a check or money order made out to the department of community, trade, and economic development in the amount as described in WAC 365-230-260.

(3) Application materials can be obtained by mail from Department of Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at <http://commerce.wa.gov/lead>.

(4) An individual whose certification expires may obtain certification by completing another initial training class and meeting the requirements described in WAC 365-230-150 and 365-230-130.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-170 Certification of lead-based paint firms. (1) No firm shall perform or offer to perform any of the lead-based paint activities described in WAC 365-230-200 without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint activities. The firm is responsible for ensuring that its employees follow the work practice requirements described in WAC 365-230-200.

(2) A firm seeking certification shall submit to the department a complete application as described in this section.

(3) ~~((A firm seeking certification must provide documentation that it either:~~

~~((a) Meets the current minimum requirements of the department of labor and industries regarding a surety bond and insurance; or~~

~~((b) Has in force a business, e.g., liability, errors and omissions, insurance policy in the minimum amount of five hundred thousand dollars.~~

~~((4) A certified firm may not conduct lead-based paint activities, as described in WAC 365-230-200, if, at any time, it does not have in force the minimum bonding or insurance coverage described in this section.~~

~~((5)))~~ The firm shall maintain all records pursuant to WAC 365-230-200.

~~((6)))~~ (4) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within thirty days of the change of ownership of any changes to information submitted on the original application.

~~((7)))~~ (5) The certification period for firms is three years from the date certification is issued.

~~((8)))~~ (6) To retain certification, a firm shall submit to the department an application and documentation as described above prior to the expiration date listed on the firm's certification.

(7) A firm seeking certification shall have at least one certified individual employed with the firm.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-190 Approval or disapproval of certification. (1) The department may disapprove an application for certification for the following reasons, including, but not limited to:

(a) Failure to complete application in accordance with these rules, or department policy or instructions;

(b) Failure to satisfy eligibility requirements for certification;

(c) Failure to satisfy training requirements;

(d) Failure to provide required documentation or information requested by the department;

(e) History of citations or violations of existing regulations or these rules, regulations including execution of a consent agreement in settlement of an enforcement action;

(f) History of revocation of a certificate;

(g) Making false or misleading statements in the application;

(h) Permitting the duplication or use of the individual's own certificate by another;

(i) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under department.

(2) In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for certification. The department may also request additional materials under the recordkeeping requirements of WAC 365-230-200(8). If an individual or firm's application for certification has been disapproved, the ~~((program))~~ applicant may reapply for certification at any time.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-200 Work practice standards. (1)

Only certified individuals and the certified firms employing such individuals shall perform or offer to perform lead-based paint activities.

(2) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (Revised, July, 2012); the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by this department; any other equivalent methods and guidelines.

(3) Clearance levels appropriate for the purposes of this section may be found in subsection (8)(g)(i) and (v) of this section or other equivalent guidelines.

(4) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations described in this section, and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 C.F.R. part 35, subpart R.

(a) The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(i) Two square feet of deteriorated lead-based paint per room or equivalent;

(ii) Twenty square feet of deteriorated paint on the exterior building; or

(iii) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

(b) When performing any lead-based paint activity described as a lead-based paint inspection, lead hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with these rules, documented methodologies, work practice requirements, and the work practice standards described in this section.

(5) Inspection. Only a person certified by the department as an inspector or risk assessor may conduct an inspection.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead-based paint as follows:

(i) In target housing and child-occupied facilities, each interior and exterior component with a distinct painting history shall be tested for lead-based paint, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint; and

(ii) In a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a

laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

(i) Inspection date;

(ii) Building address;

(iii) Date of construction;

(iv) Apartment identification (numbers, letters, names if applicable);

(v) Name, address and telephone number of owner or owners of each unit;

(vi) Name, signature, and certification number of each inspector or risk assessor conducting testing;

(vii) Name, address and telephone number of the certified firm employing each inspector or risk assessor;

(viii) Each testing method and device or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device; and

(ix) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(6) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under shall be collected.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined using documented methodologies, and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age six or under are likely to come in contact with dust.

(e) In multifamily dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified for conducting lead hazard screens in residential dwellings in the Work Practice Standard section of these rules. In addition, composite dust samples shall be collected in common areas where one or more children age six or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(i) Information in a risk assessment report as specified in subsection (7) including (i)(i) through (xiv) and excluding (i)(xv) through (xviii). Additionally, any background infor-

mation collected pursuant to the lead hazard screen shall be included.

(ii) Any recommendations for follow-up risk assessment and other further actions.

(7) Risk assessment. Only an individual certified by the department as a risk assessor may conduct a risk assessment of target housing or child-occupied facility. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint.

(ii) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age six and under, are most likely to come in contact with dust.

(e) For multifamily dwellings and child-occupied facilities, the samples required in "residential dwellings" as described in (b) of this subsection shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to sampled target house or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., nonplay areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report which shall include as a minimum the following information:

(i) Assessment date.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment identification (numbers, letters, names if applicable).

(v) Name, address and telephone number of each owner of each building.

(vi) Name, signature, and certification number of each risk assessor conducting the assessment.

(vii) Name, address and telephone number of the certified firm employing each risk assessor.

(viii) Name, address and telephone number of each laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure employed for paint analysis.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to subsection background information portion of the risk assessment work practice standard of this section.

(xvi) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(8) Abatement. An abatement project shall be conducted only by certified individuals and the certified firms employing such individuals. Abatement shall be conducted as follows:

(a) A certified supervisor or project designer is required for each abatement project and shall be on-site during all worksite preparation and during postabatement cleanup of work areas. At all other times, the certified supervisor or project designer shall be on-site or available by telephone, pager, or answering service, and be able to be present at the worksite in no more than two hours.

(b) The certified supervisor or project designer, as well as the certified firm employing that individual shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(c) A certified project designer may replace and assume the responsibilities of a certified supervisor required for an abatement project. If a certified project designer provides supervision on an abatement project, the project designer shall be responsible for preparing the occupant protection plan and the abatement report.

(d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified supervisor or project designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

(e) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

(f) These work practices shall be restricted during abatement and paint removal:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(iii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with high efficiency particulate air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iv) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than twenty square feet on exterior surfaces; and

(v) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100°F.

(g) When soil abatement is conducted, if the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but less than 250 parts per million (<250 ppm).

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(iii) If the soil is not removed, the soil shall be permanently covered so as to be separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement, asphalt or concrete.

(h) Soil interim controls:

(i) Grass, mulch, shrubbery and other landscaping materials are not considered permanent covering, but may be used as interim controls that eliminate contact with bare soils.

(ii) Interim control measures are acceptable in areas where bare soils contain less than the current HUD abatement standard (see 24 C.F.R. part 35.1330 (f)(2)) for lead in soils, except in:

(A) A child's play area, or any bare soil area where a child under six years of age regularly plays. Interim control measures are not acceptable in these areas where soil lead levels exceed 250 ppm.

(B) A garden area, or any other area where bare soils produce edibles intended for human consumption. Interim controls are not acceptable in these areas where soil lead levels exceed 250 ppm.

(ii) On-going monitoring and evaluation of interim soil control measures must adhere to HUD Guidelines, as found in chapter 6.

(i) The following clearance procedures shall be performed only by a certified and licensed inspector or risk assessor and according to the following procedures:

(i) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor or designer may apply in writing to the department for authorization of a preliminary clearance. The application must include the following:

(A) The project address.

(B) The name and certification number of the abatement project supervisor or project designer.

(C) A description of the conditions that justify issuance of a waiver.

(D) A description of the abatement work that remains to be done on the project.

(E) A schedule for completion of the abatement work that remains to be done.

(F) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(G) At the conclusion of all work on a project for which preliminary clearance has been authorized, the project supervisor or designer shall present the department with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all clearance test results are below clearance levels.

(iii) Following the visual inspection and any postabatement cleanup required in subsection (8)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iv) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of one hour after completion of final cleanup activities.

(v) Postabatement clearance activities shall be conducted based upon the extent or manner of work activities conducted in or on the target housing or child-occupied facility as follows:

(j) After conducting an abatement with containment between containment and noncontainment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(i) After conducting abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-

occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(ii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be re-cleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(iii) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(iv) The certified and licensed inspector or risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance examination standards as defined in these rules for lead in dust on floors and interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance examination refresher or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance examination refresher divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be re-cleaned and retested until clearance examination standards are met.

(v) The clearance levels for lead in dust are less than ((40)) 10 $\mu\text{g}/\text{ft}^2$ for floors, less than ((250)) 100 $\mu\text{g}/\text{ft}^2$ for interior window sills, and less than 400 $\mu\text{g}/\text{ft}^2$ for window troughs.

(k) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (8)(i) of this section.

(iii) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five percent level of confidence that no more than five percent or fifty of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance examination standards.

(l) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(i) Start and completion dates of abatement.

(ii) The name, address and telephone number of each certified firm conducting the abatement and the name of each

supervisor or project designer assigned to the abatement project.

(iii) The occupant protection plan.

(iv) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date(s) that clearance sampling was performed.

(v) The results of clearance sampling and all soil analyses and the name of each laboratory conducting analysis of collected samples.

(vi) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(m) A clearance report shall be prepared by a certified inspector or risk assessor. The clearance report shall include the following information:

(i) The property address where the clearance sampling occurred.

(ii) The abatement clean-up completion date and time.

(iii) The date and time of clearance sampling.

(iv) Name and certification number of each inspector or risk assessor conducting the clearance.

(v) The signature of the inspector or risk assessor conducting the clearance.

(vi) Name, address, telephone number, and certification number of the certified firm employing the inspector or risk assessor.

(vii) Results of the visual inspection.

(viii) Identification of containment or noncontainment applications.

(ix) Identification of location(s) where clearance samples were collected.

(x) Name, address, and telephone number of the laboratory analyzing the collected samples.

(xi) All results of laboratory analysis on collected samples, including quality control results.

(xii) Documented methodology used for sampling.

(9) Sampling. Any paint chip, dust, or soil samples collected pursuant to this section shall be collected by a certified inspector or risk assessor. Such sampling shall incorporate sample quality control procedures and the samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(10) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or postabatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(11) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months.

(a) The following reports must be submitted to the department as specified in WAC 365-230-100 and 365-230-220:

(i) Notification of lead-based paint activities course to take place.

(ii) Notification of lead-based paint activities course that has taken place.

(iii) Notice of abatement.

(b) All reports required by these rules may be submitted on forms available from the department. The exhibit referred to in this rule is not printed in this WAC. Copies are available as follows from department of commerce:

Lead-Based Paint Program((§))
P.O. Box 42525((§))
Olympia, WA 98504-2525
Telephone number: 360-586-5323
Website: www.commerce.wa.gov/lead.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-210 Determinations of lead-based paint and lead-based paint hazards. (1) Lead-based paint is present:

(a) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter, equal to or in excess of 5,000 parts per million, or equal to or in excess of 0.5 percent by weight; and

(b) On any surface similar to a surface tested in the same room equivalent that has a similar painting history and is found to be lead-based paint.

(2) A paint-lead hazard is present:

(a) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the "clearance examination standards" definition of these rules;

(b) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(c) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against a door frame); and

(d) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust lead-hazard is present in a residential dwelling or child-occupied facility:

(a) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills is equal to or greater than ((40)) 10 µg/ft² for floors and ((250)) 100 µg/ft² for interior window sills, respectively;

(b) On floors or interior window sills in an unsampled residential dwelling in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(c) On floors or interior window sills in an unsampled common area in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively in at

least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present in a residential dwelling or child-occupied facility when the soil-lead concentration from a composite sample of bare soil is equal to or greater than 250 ppm.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-360 Certification of renovation firms.

(1) No firm may perform, offer, or claim to perform renovations for compensation any of the lead-based paint renovation activities described in WAC 365-230-330 without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint renovation activities. The firm is responsible for ensuring that its employees follow the work practice requirements for renovation as described in WAC 365-230-330.

(2) A firm seeking certification shall submit to the department a completed application as described in this section.

(3) The firm shall maintain all records pursuant to WAC 365-230-340.

(4) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within thirty days of the change of ownership, and of any changes to information submitted on the original application.

(5) The certification period for renovation firms is five years from the date certification is issued. To maintain its renovation firm certification, a firm must be recertified by the department every five years.

(6) To retain certification, a firm shall submit to the department an application as described above prior to the expiration date listed on the firm's certification.

(7) A firm seeking certification shall have at least one certified individual employed with the firm.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-380 Renovator and dust sampling technician certification and recertification.

(1) No individual shall perform lead-based paint renovation or dust sampling technician activities as described in this section unless they are certified by the department. Individuals seeking initial certification by the department to engage in lead-based paint renovation activities must successfully complete a dust sampling technician or renovator course accredited by the department. The course completion certificate serves as proof of training. Certified individuals may perform only lead-based paint renovation activities for which they are certified. To become certified as a renovator or dust sampling technician, an individual must:

(a) Submit a completed application to the department as described under WAC 365-230-150 and must provide documentation that the applicant has either:

(i) Met the certification requirements as described in this subsection for renovator or dust sampling technician.

(ii) Hold a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 C.F.R. 745.324.

(A) Applicants for certification based on certification from another state or tribal program must ~~((document to))~~ register their certification with the department ~~((that they have read and understand the certification and work practice standards as described in these rules))~~.

(B) Certification based on a valid lead-based paint renovator or renovation dust sampling technician certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

(b) ~~((Submit two passport size photos.~~

~~((e)))~~ A signed and dated renovator or dust sampling technician application.

~~((d)))~~ (c) A check or money order made out to the department in the amount as described in the certification fees section of these rules.

~~((e)))~~ (d) Application materials can be obtained by mail from Department of Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by telephone, 360-586-5323, electronically at <http://www.commerce.wa.gov/lead>.

(2) ~~((Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/ HUD model renovation training course before October 4, 2011, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.~~

(3) ~~Individuals who have successfully completed an accredited lead based paint inspector or risk assessor course before October 4, 2011, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.~~

(4)) Individuals may first apply to the department for certification to engage in lead-based paint renovation or dust sampling pursuant to this section on or after the effective date of these rules.

~~((5)))~~ (3) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as renovator, or dust sampling technician.

~~((6)))~~ (4) Upon receiving the department certification, individuals conducting lead-based paint renovator or dust sampling technician activities shall comply with the work practice standards for performing the appropriate lead-based paint renovation activities as established in the work practice standards, WAC 365-230-330.

~~((7)))~~ (5) It shall be a violation of these rules for an individual to conduct any of the lead-based paint renovator or dust sampling technician activities described in the work practice standards under WAC 365-230-330 who has not been certified by the department.

~~((8)))~~ (6) To maintain renovator certification or dust sampling technician, an individual must complete a renovator refresher course or a dust sampling refresher course accredited by the department within five years of the date the individual completed the initial course as described in subsection (1) of this section, or within five years of the date of his/her last refresher course for the discipline. If the individual does not complete a refresher course within this time, the individual must retake the initial course to become certified again. Individuals who take a renovator refresher course that does not include hands-on training (E-learning Refresher) will be certified for three years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will be certified for five years. Individuals who take the renovator refresher course without the hands-on training must, for their next refresher course, take a refresher course that includes hands-on training to maintain renovator certification.

WSR 21-15-014

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 8, 2021, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-003.

Title of Rule and Other Identifying Information: WAC 182-130-0100 Family initiated treatment (FIT)—Appropriately trained professional person.

Hearing Location(s): On August 24, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance for this public hearing https://zoom.us/webinar/register/WN_BNCWCw0FQSOhcaAMJzTrTw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 25, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 24, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by August 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As required in RCW 71.34.670 for family-initiated treatment, the authority intends to adopt rules to define "appropriately trained professional person" operating within their scope of practice within Title 18 RCW for the purposes of conducting mental health and substance use disorder evaluations under RCW 71.34.-600(3) and 71.34.650(1).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71.34.670, 41.05.021, 41.05.160.

Statute Being Implemented: RCW 71.34.670, 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Enos Mbajah, P.O. Box 45056, Olympia, WA 98504-5056, 360-725-1879.

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

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

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

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

July 8, 2021
Wendy Barcus
Rules Coordinator

Chapter 182-130 WAC

FAMILY INITIATED TREATMENT (FIT)

NEW SECTION

WAC 182-130-0100 Family initiated treatment (FIT)—Appropriately trained professional person. (1) An appropriately trained professional person means a psychiatrist, psychologist, psychiatric nurse, social worker, licensed marriage and family therapist, licensed mental health counselor, and other mental health professionals as defined by the department of health under chapter 71.05 RCW.

(2) An appropriately trained professional person can also be a substance use disorder professional, or those who hold co-occurring substance use disorder and mental health credentials as defined by the department of health under chapter 18.205 RCW.

(3) The professional person evaluating for mental health must hold mental health or co-occurring credentials.

(4) The professional person evaluating for substance use disorder must hold substance use disorder or co-occurring credentials.

WSR 21-15-016 PROPOSED RULES PARKS AND RECREATION COMMISSION

[Filed July 9, 2021, 9:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-010 and 21-08-079.

Title of Rule and Other Identifying Information: Chapter 352-66 WAC, Uniform waterway marking system; chapter 352-60-080 WAC, Fire extinguishers; and chapter 352-60-030 WAC, Personal flotation devices required.

Hearing Location(s): On September 16, 2021, at 9:00 a.m., at City of Richland City Hall, Council Chambers, 625 Swift Boulevard, Richland, WA 99352.

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Rob Sendak, 1111 Israel Road S.W., Olympia, WA 98504, email rob.sendak@parks.wa.gov, fax 360-586-6603, by September 10, 2021.

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-586-0355, TTY 1-800-833-6388, email becki.ellison@parks.wa.gov, by September 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 33 C.F.R. Part 60 establishes the requirements and use of United States Aids to Navigation. This update is necessary to ensure that Washington state statute is consistent [consistent] with 33 C.F.R. Part 60. It is also necessary to ensure that state and local marine law enforcement and our citizens better understand the federal, state, local, and private aids to navigation within Washington state. The anticipated effects of these changes will be to clarify aids to navigation and to make the state system consistent with the federal system; thus, providing clarity and consistency to Washington state boaters.

C.F.R. 46 Part 160 governs the approval and labeling of personal flotation devices (PFD). C.F.R. 46 Part 160 has recently been updated by United States Coast Guard (USCG) to include a new PFD labeling procedure to provide consistency with Canada. This update is necessary to ensure that our state is adhering to the requirements of C.F.R. 46 Part 160. It is also needed to ensure that state and local marine law enforcement officers and our citizens better understand the new labeling authorization and labeling requirements.

46 C.F.R. Part 30-20 establishes the requirements for marine use fire extinguishers. This update is necessary to ensure that state statute is consistent with the current regulations under C.F.R. It is also necessary to ensure that state and local law enforcement and our citizens better understand the federal, state, and local requirements for required equipment fire extinguisher.

Reasons Supporting Proposal: Washington state waters include those waters under sole state jurisdiction as well as waters under concurrent jurisdiction with the United States government. Those concurrent waters are governed by rules established by the USCG and are codified under C.F.R. As part of these federal rules and statutes, USCG has been tasked with establishing a uniformed Aids to Navigation System to assist mariners with navigation. Currently, chapter 352-66 WAC, Uniformed waterway marking system, is not consis-

tent with the United States Aids to Navigation System. WAC uses terms and color configurations that are inconsistent and thus cause confusion among the boating public. The recommended changes will bring WAC into compliance and consistency with the federal Aids to Navigation System. The recommended changes will also provide clarity and uniformity for the boating public in Washington state.

Additionally, WAC 352-60-030 and 352-60-080 are not consistent with new labeling standards as set forth in 46 C.F.R. Part 160, Personal Flotation labeling, and Part 30-20, Fire Extinguisher labeling. The revisions to the WAC are needed to create consistency with C.F.R. and state statutes. They are also needed to ensure our citizens understand the requirements when boating in Washington state.

Statutory Authority for Adoption: RCW 79A.60.500, 79A.60.110, 79A.60.140.

Statute Being Implemented: Chapter 352-66 WAC; and WAC 352-60-030 and 352-60-080.

Rule is necessary because of federal law, 33 C.F.R. Parts 60, 160, 30-20.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The changes to the WAC are necessary to update statutory language that comply and provide consistency with federal statutes.

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Rob Sendak, 11834 Tilley Road S.W., Olympia, WA, 360-628-1879; Implementation and Enforcement: Matt Stowers, 11834 Tilley Road S.W., Olympia, WA, 360-791-4668.

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

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs involved as changes are for clarification purposes only.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 33 C.F.R. Part 60.

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

July 9, 2021
Valeria Veasley
Management Analyst

AMENDATORY SECTION (Amending WSR 94-16-027, filed 7/25/94, effective 8/25/94)

WAC 352-60-030 Personal flotation devices required. No person shall operate or permit the operation of a vessel on the waters of the state unless the vessel has on

board United States Coast Guard approved personal flotation devices as follows:

(1) Vessels less than sixteen feet (4.9 meters) in length, and canoes and kayaks of any length, must have one Type I, II, or III PFD, or one wearable with a buoyancy of 50, 70, 100, 150, or 275 newtons and is of the proper size for each person on board.

(2) Vessels sixteen feet (4.9 meters) or more in length, except a canoe or kayak, must have one Type I, II, or III wearable PFD, or a wearable PFD with a buoyancy of 50, 70, 100, 150, or 275 newtons of the proper size for each person on board and, in addition, one Type IV, or a throwable PFD.

(3) Alternate PFD requirement. A United States Coast Guard approved Type V PFD may be carried in lieu of any required PFD under this section if it is approved for the activity in which the vessel is engaged in and used in compliance with requirements on the approval label.

(4) Stowage and condition.

(a) All personal flotation devices required by this section shall be readily accessible to all persons on board and be in good and serviceable condition. All Type IV or throwable personal flotation devices must be immediately available.

(b) All devices shall be approved by the United States Coast Guard and marked in compliance with Coast Guard standards.

(c) No PFD may exhibit deterioration that could diminish the performance of the PFD, including:

(i) Metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion;

(ii) Webbing and straps used to secure the PFD on the wearer that are ripped, torn, or which have become separated from the attachment point on the PFD; or

(iii) Any rotted or deteriorated structural component that fails when tugged.

(d) In addition to meeting the requirements of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit:

(i) Rips, tears, or open seams in the fabric or coating that are large enough to allow the loss of buoyant material;

(ii) Buoyant material that has become hardened, nonresilient, permanently compressed, waterlogged, oil-soaked, or which shows evidence of fungus or mildew; or

(iii) Loss of buoyant material or buoyant material that is not held in place.

(e) Except as provided in this section, a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed, must also have:

(i) Inflatable chambers that are all capable of holding air;

(ii) Oral inflation tubes that are not blocked, detached, or broken;

(iii) A manual inflation lanyard or lever that is not inaccessible, broken, or missing; and

(iv) Inflator status indicators that are not broken or otherwise nonfunctional.

(f) All devices shall be approved by the United States Coast Guard or Underwriters Laboratory and marked in compliance with United States Coast Guard Standards.

(5) Exemptions. Racing shells, rowing sculls and racing kayaks are exempt from the requirements of this section provided they are manually propelled, recognized by a national or international racing association and designed solely for competitive racing.

AMENDATORY SECTION (Amending WSR 94-16-027, filed 7/25/94, effective 8/25/94)

WAC 352-60-080 Fire extinguisher required. (1)

Every vessel with a motor, except vessels with an outboard motor, less than twenty-six feet (7.9 meters) in length and of open construction, shall carry on board, fully charged and in serviceable condition the following hand portable United States Coast Guard, for vessels manufactured prior to August 22, 2016, or Underwriters Laboratory for vessels manufactured after August 22, 2016, approved fire extinguishers:

(a) Motorboats with no fixed fire extinguishing system in the machinery space and which are:

(i) Less than twenty-six feet (7.9 meters) in length - One extinguisher;

(ii) Twenty-six feet (7.9 meters) but less than forty feet (12 meters) in length - Two extinguishers;

(iii) Forty feet (12 meters) or longer in length - Three extinguishers.

(b) Motorboats with a fixed extinguishing system in the machinery space and which are:

(i) Less than twenty-six feet (7.9 meters) - No hand portable extinguisher required;

(ii) Twenty-six feet (7.9 meters) or longer in length, but less than forty feet (12 meters) in length - One extinguisher;

(iii) Forty feet (12 meters) or longer in length - Two extinguishers.

(2) The fire extinguishers required by this section are Class B-I for vessels manufactured prior to August 22, 2016, or are 5-B for vessels manufactured after August 22, 2016, as described in Title 46, Code of Federal Regulations, ~~((25.30))~~ Part 34 and Title 46, Code of Federal Regulations, Part 25, 30-20, however, one Class B-II described in that regulation may be substituted for two Class B-I extinguishers. One UL 20-B may be substituted for two 5-B extinguishers.

Chapter 352-66 WAC

~~((UNIFORM WATERWAY MARKING))~~ UNITED STATES AIDS TO NAVIGATION SYSTEM

AMENDATORY SECTION (Amending WSR 90-07-051, filed 3/19/90, effective 4/19/90)

WAC 352-66-010 Purpose. ~~((+))~~ The purpose of this chapter is to establish a uniform waterway marking system of aids to navigation, including regulatory markers compatible with ~~((the United States lateral system of buoyage))~~ Title 33, Code of Federal Regulations, Part 62, United States Aids to Navigation System, to which all waterway markers owned by state, local government, or private parties shall conform. The ~~((uniform waterway marking))~~ United States Aids to Navigation System is designed to assist the recreational boater in safe navigation and to allow the state and its political subdivisions to provide uniform regulatory information regarding

vessel operation on the waters of Washington state not serviced by a marking system administered by the federal government.

AMENDATORY SECTION (Amending WSR 90-07-051, filed 3/19/90, effective 4/19/90)

WAC 352-66-020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Aid to navigation" means any device external to the vessel intended to assist the navigator to determine position or safe course or to warn of dangers or obstructions.

(2) "Beacons" are aids to navigation structures permanently attached to the earth's surface. Lighted beacons are called lights; unlighted beacons are called day beacons.

(3) "Buoyage" means a system of buoys.

(4) "Buoys" ~~((is))~~ are any waterway markers designed to float on the water while anchored in a fixed position so as to be clearly visible to operators of an approaching vessel and used to convey an official message.

~~((2))~~ (5) "Lateral system" is a system of waterway markers prescribed in Title 33, Code of Federal Regulations, Part 62, employing an arrangement of shapes, colors, numbers, and light characteristics to indicate to a vessel operator the preferred direction of travel for safe passage. They may be either beacons or buoys.

~~((3))~~ "Sign" is any device designed to carry an official message which is attached to another object, such as a piling, buoy, pier, or the land itself.

(4) "Uniform state waterway marking system (USWMS)" (6) "Navigable waters of the United States." The term navigable waters of the United States is defined in Title 33, Code of Federal Regulations, Part 62 means:

(a) Territorial seas of the United States;

(b) Internal waters of the United States that are subject to tidal influences that: Are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage.

(7) "United States Aids to Navigation System (USATONS)" means the system of aids to navigation including regulatory markers, buoys, and signs prescribed in Title 33, Code of Federal Regulations, ~~((subpart 66-10))~~ Part 62, which are used to provide vessel operators guidance for safe navigation and to identify water areas where vessel operation is restricted or controlled.

~~((5))~~ (8) "Vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane or swim toy.

~~((6))~~ (9) "Waters of Washington state" means any waters within the territorial limits of Washington state.

AMENDATORY SECTION (Amending WSR 90-07-051, filed 3/19/90, effective 4/19/90)

WAC 352-66-030 General regulations. (1) On the navigable waters of Washington state, marking to assist navigation is accomplished by a lateral system of buoyage for use with nautical charts. The lateral system is used by the

United States Coast Guard in the marking of navigable waters of the United States as determined by the United States Coast Guard Commandant. The lateral system may be also used by the state and subdivisions thereof for private aids to navigation only when all applicable permits for private aids to navigation have been approved by the United States Coast Guard and other federal, state, or local authorities.

(2) The ~~((USWMS))~~ USATONS has been developed to provide a system of visual, audible, and electronic signals which are designed to assist the prudent mariner in the process of navigation. They have been established to provide a means to convey to the ~~((small))~~ recreational vessel operator ~~((, in particular,))~~ adequate guidance to indicate safe boating channels by indicating the presence of either natural or artificial obstructions or hazards, marking restricted or controlled areas, and providing directions. The ~~((USWMS))~~ USATONS is suited to use on all waters of Washington state and is designed to satisfy the needs of all types of ~~((small))~~ recreational vessels. ~~((It supplements and is generally compatible with the Coast Guard lateral system of aids to navigation.~~

~~(3) The USWMS consists of two categories:~~

~~(a) A system of regulatory markers; and~~

~~(b) A system of aids to navigation.)~~

(3) The U.S. Aids to Navigation System is primarily a lateral system which employs a simple arrangement of colors, shapes, numbers, and light characteristics to mark the limits of navigable routes. This lateral system is supplemented by nonlateral aids to navigation where appropriate.

(4) Generally, lateral aids to navigation indicate on which side of a vessel an aid to navigation should be passed when the vessel is proceeding in the conventional direction of buoyage. Normally, the conventional direction of buoyage is the direction in which a vessel enters navigable channels from seaward and proceeds towards the head of navigation. In the absence of a route leading from seaward, the conventional direction of buoyage generally follows a clockwise direction around land masses.

(5) Although aids to navigation are maintained to a reasonable degree of reliability, the rigors of the marine environment and various equipment failures do cause discrepancies on occasion.

NEW SECTION

WAC 352-66-045 Beacons and buoys. Beacons and buoys indicate to a vessel operator the existence of dangerous areas, as well as those areas which are restricted or controlled, such as speed zones and areas dedicated to a particular use, or to provide general information and directions:

(1) Aids to navigation are placed on shore or on marine sites to assist a navigator to determine his position or safe course. They may mark limits of navigable channels, or warn of dangers or obstructions to navigation. The primary components of the U.S. Aids to Navigation System are beacons and buoys.

(2) Beacons are aids to navigation structures which are permanently fixed to the earth's surface. They range from large lighthouses to small, single-pile structures and may be

located on land or in the water. Lighted beacons are called lights; unlighted beacons are called day beacons.

(3) Beacons exhibit a daymark. For small structures these are colored geometric shapes which make an aid to navigation readily visible and easily identifiable against background conditions. Generally, the daymark conveys to the mariner, during daylight hours, the same significance as does the aid's light or reflector at night. The daymark of large lighthouses and towers, however, consists of the structure itself. As a result, these daymarks do not infer lateral significance.

(4) Vessels should not pass beacons close aboard due to the danger of collision with riprap or structure foundations, or the obstruction or danger that the aid marks.

(5) Buoys are floating aids to navigation used extensively throughout U.S. waters. They are moored to the seabed by sinkers with chain or other moorings of various lengths.

(6) The daymark of a buoy is the color and shape of the buoy and, if so equipped, of the top mark.

(7) Can buoys have a cylindrical shape. Nun buoys have a tapered, conical shape.

(8) Pillar buoys have a wide cylindrical base supporting a narrower superstructure. They may be surmounted by colored shapes called top marks.

(9) Spherical buoys have a round shape.

(10) Mariners attempting to pass a buoy close aboard risk collision with a yawing buoy, the buoy's mooring, or with the obstruction which the buoy marks.

(11) Mariners should not rely on buoys alone for determining their positions due to factors limiting their reliability. Prudent mariners will use bearings or angles from beacons or other landmarks, soundings, and various methods of electronic navigation. Buoys vary in reliability because:

(a) Buoy positions represented on nautical charts are approximate positions only, due to practical limitations in positioning and maintaining buoys and their sinkers in precise geographical locations.

(b) Buoy moorings vary in length. The mooring lengths define a "watch circle," and buoys can be expected to move within this circle. Actual watch circles do not coincide with the dots or circles representing them on charts.

(c) Buoy positions are normally verified during periodic maintenance visits. Between visits, environmental conditions, including atmospheric and sea conditions, and seabed slope and composition, may shift buoys off their charted positions. Also buoys may be dragged off station, sunk, or capsized by a collision with a vessel.

NEW SECTION

WAC 352-66-055 Lateral marks. (1) Lateral marks define the port and starboard sides of a route to be followed. They may be either beacons or buoys.

(2) Side marks are lateral marks which advise the mariner to stay to one side of the mark. Their most frequent use is to mark the sides of channels; however, they may be used individually to mark obstructions outside of clearly defined channels. Side marks are not always placed directly on a channel edge and may be positioned outside the channel as indicated on charts and nautical publications.

(3) Port hand marks indicate the left side of channels when proceeding in the conventional direction of buoyage. Beacons have green square daymarks, while buoys are green can or pillar buoys.

(4) Starboard hand marks indicate the right side of channels when proceeding in the conventional direction of buoyage. Beacons have red triangular daymarks, while buoys are red nun or pillar buoys.

(5) Preferred channel marks indicate channel junctions or bifurcations and may also mark wrecks or obstructions which the mariner, after consulting a chart to ascertain the location of the obstruction relative to the aid, may pass on either side. Preferred channel marks have red and green horizontal bands with the color of the topmost band indicating the preferred channel. If the topmost band is green, the mark serves as a port hand mark for vessels following the preferred channel proceeding in the conventional direction of buoyage, and as a starboard hand mark for the other channel. Beacons would have square daymarks, while buoys would be can or pillar buoys. If the topmost band is red, the mark serves as a starboard hand mark for vessels following the preferred channel proceeding in the conventional direction of buoyage, and a port hand mark for the other channel. Beacons would have triangular daymarks, while buoys would be nun or pillar buoys.

(6) The color schemes in this section apply to IALA Region B (Washington state).

NEW SECTION

WAC 352-66-065 Safe water marks. Safe water marks indicate that there is navigable water all around the mark. They are often used to indicate fairways or mid channels, or the seaward end of channels. Safe water marks are colored with red and white vertical stripes. Beacons have an octagonal daymark; red and white buoys are spherical or display a red spherical top mark.

NEW SECTION

WAC 352-66-075 Isolated danger marks. Isolated danger marks indicate an isolated danger which may be passed on all sides. As these marks are erected or moored on or near dangers, they should not be approached closely without special caution. These marks are colored black with one or more broad horizontal red bands and are equipped with a top mark of two black spheres, one above the other.

NEW SECTION

WAC 352-66-085 Special marks. Special marks are not primarily intended to assist safe navigation, but to indicate special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, cable or pipeline areas, traffic separation schemes, military exercise zones, ocean data acquisition systems, etc. Special marks are colored solid yellow.

NEW SECTION

WAC 352-66-095 Inland waters obstruction mark.

(1) On inland waters designated by the commandant as state waters in accordance with 33 C.F.R., Part 66 and on nonnavigable internal waters of a state which have no defined head of navigation, a buoy showing alternate vertical black and white stripes may be used to indicate to a vessel operator that an obstruction to navigation extends from the nearest shore to the buoy.

(2) The black and white buoy's meaning is "do not pass between the buoy and the shore." The number of white and black stripes is discretionary, provided that the white stripes are twice the width of the black stripes. Prior to December 31, 2003, this aid shall not be used on a waterway which has a red and white striped obstruction marker defined in 33 C.F.R., Part 66 of that chapter, unless all obstruction markers are replaced.

NEW SECTION

WAC 352-66-105 Information and regulatory marks.

(1) Information and regulatory marks are used to alert the mariner to various warnings or regulatory matters. These marks have orange geometric shapes against a white background. The meanings associated with the orange shapes are as follows:

- (a) A vertical open-faced diamond signifies danger;
- (b) A vertical diamond shape having a cross centered within indicates that vessels are excluded from the marked area;
- (c) A circular shape indicates that certain operating restrictions are in effect within the marked area;
- (d) A square or rectangular shape will contain directions or instructions lettered within the shape.

(2) When a buoy is used as an information or regulatory mark it shall be white with two horizontal orange bands placed completely around the buoy circumference. One band shall be near the top of the buoy body, with a second band placed just above the waterline of the buoy so that both bands are clearly visible.

NEW SECTION

WAC 352-66-115 Mooring buoys. (1) Mooring buoys are white with a blue horizontal band. This distinctive color scheme is recommended to facilitate identification and to avoid confusion with aids to navigation.

(2) A lighted mooring buoy shall normally display a slow flashing white light. When its location in a waterway is such that it constitutes an obstruction to a vessel operated during hours of darkness, it shall display a quick flashing white light.

(3) A mooring buoy shall bear ownership identification provided that the manner and placement of the identification does not detract from the meaning intended to be conveyed by the color scheme or identification letter when assigned.

NEW SECTION

WAC 352-66-125 Lighthouses. Lighthouses are prominent beacons of varying size, color, and appearance employed to mark headlands, landfalls, harbor entrances, channel edges, hazards, and other features. While normally identified by their distinctive appearance, some lighthouses display diamond shaped, checkered daymarks to facilitate recognition.

NEW SECTION

WAC 352-66-130 Large navigational buoys. Large navigational buoys (LNBs) may be considered floating lighthouses. They generally provide light, sound, and radio beacon signals, and some are equipped with radar beacons (racons). LNBs are red in color, have a forty-foot diameter hull, and a tower approximately forty feet in height.

NEW SECTION

WAC 352-66-140 Ranges. Ranges are aids to navigation systems employing dual beacons which, when the structures appear to be in line, assist the mariner in maintaining a safe course. The appropriate nautical chart must be consulted when using ranges to determine whether the range marks the centerline of the navigable channel and also to ascertain what section of the range may be safely traversed. Ranges are generally, but not always, lighted, and display rectangular daymarks of various colors.

NEW SECTION

WAC 352-66-150 Numbers and letters. (1) All solid red and solid green aids are numbered, with red aids bearing even numbers and green aids bearing odd numbers. The numbers for each increase in the conventional direction of buoyage. Numbers are kept in approximate sequence on both sides of the channel by omitting numbers where necessary.

(2) Only side marks are numbered. However, aids other than those mentioned in (1) of this section may be lettered to assist in their identification, or to indicate their purpose. Side marks may carry letters in addition to numbers to identify the first aid to navigation in a waterway, or when new aids to navigation are added to channels with previously completed numerical sequences. Letters on side marks will follow alphabetical order from seaward and proceeding toward the conventional direction of buoyage and will be added to numbers as suffixes.

(3) Aids to navigation may be fitted with light-reflecting material to increase their visibility in darkness. The colors of this material may convey the same significance as the aid except that letters and numbers may be white.

NEW SECTION

WAC 352-66-160 Light characteristics. (1) Lights on aids to navigation are differentiated by color and rhythm. Lighthouses and range lights may display distinctive light characteristics to facilitate recognition. No special significance should be attached to the color or rhythm of such lights.

Other lighted aids to navigation employ light characteristics to convey additional information.

(2) When proceeding in the conventional direction of buoyage, aids to navigation, if lighted, display light characteristics as follows:

(a) Green lights mark port (left) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the port (left) hand of a vessel. Green lights are also used on preferred channel marks where the topmost band is green.

(b) Red lights mark starboard (right) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the starboard (right) hand of a vessel. Red lights are also used on preferred channel marks where the topmost band is red.

(3) The purpose of aids exhibiting white or yellow lights may be determined by their shape, color, letters or numbers, and the light rhythm employed.

(4) Light rhythms, are employed as follows:

(a) Aids with lateral significance display regularly flashing or regularly occulting light rhythms. Ordinarily, flashing lights (frequency not exceeding thirty flashes per minute) will be used.

(b) Preferred channel marks display a composite group flashing light rhythm (groups of two flashes followed by one flash).

(c) Safe water marks display a white morse code "A" rhythm (short-long flash).

(d) Isolated danger marks display a white group flashing two.

(e) Special marks display yellow lights with fixed or slow flashing rhythm preferred.

(f) Mooring buoys and information and regulatory marks display white lights of various rhythms.

(g) For situations where lights require a distinct cautionary significance, as at sharp turns, sudden channel constrictions, wrecks, or obstructions, a quick flashing light rhythm (sixty flashes per minute) may be used.

(h) Occasionally lights use sectors to mark shoals or warn mariners of other dangers. Lights so equipped show one color from most directions and a different color or colors over definite arcs of the horizon as indicated on the appropriate nautical chart. These sectors provide approximate bearing information since the observer should note a change of color as the boundary between the sectors is crossed. As sector bearings are not precise, they should be considered a warning only and not used to determine exact bearing to the light.

NEW SECTION

WAC 352-66-170 Sound signals. (1) Often sound signals are located on or adjacent to aids to navigation. When visual signals are obscured, sound signals warn mariners of the proximity of danger.

(a) Sound signals are distinguished by their tone and phase characteristics.

(b) Tones are determined by the devices producing the sound (i.e., diaphones, diaphragm horns, reed horns, sirens, whistles, bells, and gongs).

(c) Phase characteristics are defined by the signal's sound pattern, i.e., the number of blasts and silent periods per minute and their durations.

(2) Where no live watch is maintained, sound signals are normally operated continuously. Mariners should not rely solely on sound signals to determine their positions for the following reasons:

(a) Distance cannot be accurately determined by sound intensity.

(b) Occasionally sound signals may not be heard in areas close to their location.

(c) As previously noted, buoy positions are not always reliable. Therefore, their sound signals cannot be assumed to be emanating from a fixed position.

NEW SECTION

WAC 352-66-180 Racons. (1) Aids to navigation may be enhanced by the use of radar beacons (racons). Racons, when triggered by a radar signal, will transmit a coded reply to the interrogating radar. This reply serves to identify the aid station by exhibiting a series of dots and dashes which appear on the radar display in a line emanating radially from just beyond the echo of the aid station. Although racons may be used on both laterally significant and nonlaterally significant aids alike, the racon signal itself is for identification purposes only, and therefore carries no lateral significance.

(2) Racons are also used as bridge marks to mark the best point of passage.

NEW SECTION

WAC 352-66-190 Ownership identification. Ownership identification on private or state aids to navigation is permitted so long as it does not change or hinder an understanding of the meaning of the aid to navigation.

NEW SECTION

WAC 352-66-200 Maritime radio beacons. (1) Maritime radio beacons operate during specific intervals as published in *Coast Guard Light Lists*. For station identification, simple characteristics consisting of combinations of dots and dashes are used. The transmitted power of maritime radio beacons is adjusted to provide a usable signal at the service range which meets the operational requirement.

(2) Carrier type operation. Radio beacons superimpose the characteristic code on a carrier frequency which is on continuously during the period of transmission. This extends the usefulness of maritime radio beacons to aircraft and ships employing automatic direction finders

(3) Special calibration radio beacons, as listed in the current editions of the *Coast Guard Light Lists*, will broadcast continuously for the purpose of enabling vessels to calibrate their direction finders upon request either to the cognizant district commander, or, if time does not permit, directly to the calibration station.

(4) Caution: A vessel steering a course for a radio beacon should observe the same precautions that apply when steering for a light or any other mark.

(5) Distance cannot be accurately determined by radio beacon signal. Mariners must exercise extreme caution when the aid to navigation which supports the radio beacon is not visible, and no other means of determining its distance is available.

(6) If the radio beacon is aboard a large navigational buoy (LNB) or on any marine site, particular care should be exercised to avoid the possibility of collision. In addition, caution should be exercised in using radio beacons aboard floating aids, because of the possibility that the aid could be off station.

NEW SECTION

WAC 352-66-220 Procedure for reporting defects and discrepancies. (1) Mariners should notify the nearest Coast Guard facility immediately of any observed aids to navigation defects or discrepancies.

(2) The Coast Guard cannot monitor the many thousands of aids in the U.S. Aids to Navigation System simultaneously and continuously. As a result, it is not possible to maintain every aid operating properly and on its charted position at all times. Marine safety will be enhanced if persons finding aids missing, sunk, capsized, damaged, off station, or showing characteristics other than those advertised in the *Light List*, or other publication, promptly inform the Coast Guard.

NEW SECTION

WAC 352-66-230 Placement to conform. No person, political subdivision, or agent of the state shall establish, erect, or place any new or replacement regulatory marker or aid to navigation after January 1, 1991, unless such device conforms to the provisions of this chapter.

NEW SECTION

WAC 352-66-240 Abuse prohibited. (1) No person shall damage, remove, interfere with, moor to, or otherwise obstruct the purpose of any regulatory marker or aid to navigation.

(2) When a vessel is involved with a violation of this chapter, violators shall be subject to the penalties set forth in RCW 88.02.380.

(3) Other violations of this chapter shall subject the violator to the penalties set forth in RCW 79A.05.165.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 352-66-040 Regulatory markers.

WAC 352-66-050 Aids to navigation.

WAC 352-66-060 Size, shape, material, and construction of waterway markers.

WAC 352-66-070 Numbers, letters, or words on markers.

WAC 352-66-080 Reflectors or reflective materials.

WAC 352-66-090 Navigation lights.

WAC 352-66-100 Mooring (anchor) buoys.
 WAC 352-66-110 Placement to conform.
 WAC 352-66-120 Abuse prohibited.

WSR 21-15-035
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed July 13, 2021, 2:20 p.m.]

Supplemental Notice to WSR 21-07-101.

Preproposal statement of inquiry was filed as WSR 20-19-074.

Title of Rule and Other Identifying Information: Chapter 212-10 WAC, Smoke detection devices in dwelling unit.

Hearing Location(s): On September 1, 2021, at 1:30 - 2:30 p.m., Zoom, Call-in 1-253-215-8782, Meeting ID 917 7657 2638, Passcode 969320.

Date of Intended Adoption: September 2, 2021.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by September 1, 2021.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, by August 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will provide clean up and clarification to the existing language to ensure the rules reference and comply with current laws in the state of Washington and national recognized standards.

Reasons Supporting Proposal: Updates are to provide clarity and clean up existing language.

Statutory Authority for Adoption: RCW 43.44.110.

Statute Being Implemented: RCW 43.44.110.

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

Name of Proponent: Washington State Patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: Washington State Patrol, Olympia, Washington, 360-596-4017.

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

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

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

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

July 13, 2021
 John R. Batiste
 Chief

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-010 Administration, authority. These rules are adopted pursuant to chapter 50, Laws of 1980, entitled smoke detection devices in dwelling units, and to RCW ((48.48.140)) 43.44.110 to provide for the installation and maintenance of smoke detection devices inside all dwelling units:

- (1) Occupied by persons other than the owner((s)); or
- (2) Built or manufactured in this state.

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-015 Application and scope. (1) The provisions of these rules shall apply to:

- (a) All dwelling units occupied by persons other than the owner after December 31, 1981((, and));
- (b) All dwelling units built or manufactured in this state after December 31, 1980; and
- (c) All dwelling units sold on or after July 1, 2019.

(2) Notwithstanding the provisions of chapter 19.27 RCW, RCW 43.22.340 through 43.22.434 and 43.22.450 through 43.22.490, the provisions of these rules shall also apply to all buildings or structures, mobile homes and factory built housing used as dwelling units.

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-020 Definitions. (1) **Smoke detection device.** A self-contained alarm for detecting visible or invisible particles of combustion, which consists of an assembly of electrical components including a smoke chamber, alarm sounding appliance, and provision for connection to a power supply source, either by splice leads or a cord and plug arrangement or containing integral batteries. A supplemental heat detector may be included as part of the appliance. Terminals may be included for connection to a remote, audible signaling appliance or accessory. An integral transmitter may also be included to energize a remote audible signaling appliance. The smoke detection device may be of the photoelectric and/or ionization type.

(2) **Photoelectric detector.** A smoke detection device which activates when visible smoke from a fire enters the detector. Sensitive to smoldering fires as well as smoke generated by an open flame fire.

(3) **Ionization detector.** A smoke detection device which activates in response to invisible particles created by combustion. Sensitive to open flame fire.

(4) **Combination photoelectric/ionization detector.** A smoke detection device containing both an ionization and a photoelectric element.

(5) **Dwelling unit.** A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(6) **Sleeping room.** A room or area of the dwelling unit which is ordinarily used for sleeping.

(7) Factory built housing. For the purpose of these rules, factory built housing is considered as any structure designed primarily for human occupancy other than a mobile home, the structure of any room of which is either entirely or substantially prefabricated or assembled at a place other than a building site, and which is subject to regulation by the Washington department of labor and industries pursuant to RCW 43.22.450 through 43.22.490.

~~((7))~~ **(8) Mobile home.** For the purpose of these rules, a mobile home is considered as a factory-assembled structure or structures assembled with the necessary service connections and made so as to be readily movable as a unit or units on its (their) own running gear and designed to be used as a dwelling unit without a permanent foundation, and which is subject to regulation by the Washington department of labor and industries pursuant to RCW 43.22.340 through 43.22.-434.

~~((8))~~ **(9) New building.** For the purpose of these rules, a new building is considered as any structure constructed, erected or moved onto a permanent site on or after December 31, 1980, any portion of which is used or intended for use as a dwelling unit by any person or persons.

~~((9))~~ **(10) Existing building.** For the purpose of these rules an existing building is considered as any structure in existence prior to December 31, 1981, any portion of which is used, intended for use or thereafter converted for use as a dwelling unit by any person or persons other than the owner who do not otherwise qualify as a guest or member of the household of the owner.

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-025 Conformance with nationally accepted standards. All smoke detection devices shall be designed ~~((and))~~, manufactured, and installed in conformance with the requirements of Underwriters Laboratories, Inc. Standard UL 217 or ~~((International Conference of Building Officials Standard 43-6))~~ codes adopted by chapter 19.27 RCW, and shall be approved or listed for the purposes for which they are intended.

Exception: Smoke detection devices in dwelling units built or manufactured in this state after December 31, 1980, shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent without a disconnecting switch other than those required for overcurrent protection.

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-045 Installation responsibility. (1) It is the responsibility of the builder or manufacturer of each new building, mobile home or factory built housing to install smoke detection devices within each dwelling unit.

(2) It is the responsibility of the owner of each existing building, mobile home or factory built housing to install smoke detection devices within each dwelling unit occupied by persons other than the owner.

(3) It is the responsibility of the owner of each new or existing building, mobile home or factory built housing, containing dwelling units occupied by persons other than the owner, to inspect and test all smoke detection devices at the time of vacancy or at time of sale and make the necessary repairs or replacements to insure that the smoke detection devices are operational prior to reoccupancy, and to instruct the occupants of the purpose, operation and maintenance of the smoke detection device(s).

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-050 Maintenance responsibility. It is the responsibility of the occupant of all new or existing dwelling units, owned by other than the occupant, to maintain and test all smoke detection devices installed within the dwelling unit by the owner. Actual costs of maintenance, repair or replacement of smoke detection devices shall be as agreed beforehand by the occupant and owner. However, failure of the owner to abide by the terms of any such agreement does not relieve the occupant of the responsibility to maintain the smoke detection devices in a fully operational condition at all times. Failure to do so can subject the occupant to the penalty provisions of WAC 212-10-055.

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-055 Penalties. Any person who violates any of the provisions of RCW ~~((48.48.140))~~ 43.44.110 or these rules shall be punished by a fine ~~((of not more than fifty dollars))~~ as defined in RCW 43.44.110(5).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 212-10-030 Primary power supply.
- WAC 212-10-035 Number of smoke detection devices.
- WAC 212-10-040 Location of smoke detection devices.

WSR 21-15-038 PROPOSED RULES HEALTH CARE AUTHORITY

[Filed July 14, 2021, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-057.

Title of Rule and Other Identifying Information: WAC 182-550-1700 Authorization and utilization review (UR) of inpatient and outpatient hospital services, 182-550-6250 Pregnancy—Enhanced outpatient benefits, and 182-550-2900 Payment limits—Inpatient hospital services.

Hearing Location(s): On August 24, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease (COVID-19) public health emer-

agency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_BNCWCw0FQSOhcaAMJzTrTw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 25, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 24, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by August 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to update outdated references, terminology, and language to align with behavioral health integration.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-5282; Implementation and Enforcement: Cynthia Rivers, P.O. Box 45111, Olympia, WA 98504-5111, 360-725-5282.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed amendments are updates to terminology, references, and language and do not impose any cost to businesses.

July 14, 2021
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-019, filed 7/24/14, effective 8/24/14)

WAC 182-550-1700 Authorization and utilization review (UR) of inpatient and outpatient hospital services.

(1) This section applies to the agency's authorization and utilization review (UR) of inpatient and outpatient hospital services provided to Washington apple health ((WAH)) medicaid clients receiving services through the fee-for-service

program. For clients (~~eligible under other WAH programs~~) enrolled in an agency-contracted managed care organization (MCO), see chapters 182-538 and 182-538D WAC ((for managed care organizations, and chapter 388-865 WAC for mental health treatment programs coordinated through the department of social and health services' division of behavioral health and recovery or its designee)). See chapter 182-546 WAC for transportation services.

(2) All hospital services paid for by the agency are subject to UR for medical necessity, appropriate level of care, and program compliance.

(3) Authorization for inpatient and outpatient hospital services is valid only if a client is eligible for covered services on the date of service. Authorization does not guarantee payment.

(4) The agency will deny, recover, or adjust hospital payments if the agency or its designee determines, as a result of UR, that a hospital service does not meet the requirements in federal regulations and WAC.

(5) The agency may perform one or more types of UR described in subsection (6) of this section.

(6) The agency's UR:

(a) Is a concurrent, prospective, and/or retrospective (including postpay and prepay) formal evaluation of a client's documented medical care to assure that the services provided are proper and necessary and of good quality. The review considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the conditions(s) being treated; and

(b) Includes one or more of the following:

(i) "Concurrent utilization review"—An evaluation performed by the agency or its designee during a client's course of care. A continued stay review performed during the client's hospitalization is a form of concurrent UR;

(ii) "Prospective utilization review"—An evaluation performed by the agency or its designee prior to the provision of health care services. Preadmission authorization is a form of prospective UR; and

(iii) "Retrospective utilization review"—An evaluation performed by the agency or its designee following the provision of health care services that includes both a post-payment retrospective UR (performed after health care services are provided and paid), and a prepayment retrospective UR (performed after health care services are provided but prior to payment). Retrospective UR is routinely performed as an audit function.

(7) During the UR process, the agency or its designee notifies the appropriate oversight entity if either of the following is identified:

- (a) A quality of care concern; or
- (b) Fraudulent conduct.

AMENDATORY SECTION (Amending WSR 19-18-026, filed 8/28/19, effective 9/28/19)

WAC 182-550-2900 Payment limits—Inpatient hospital services. (1) To be eligible for payment for covered inpatient hospital services, a hospital must:

(a) Have a core-provider agreement with the medicaid agency; and

(b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of that hospital, as defined in WAC 182-550-1050; or

(c) Be an out-of-state hospital that meets the conditions in WAC 182-550-6700.

(2) The agency does not pay for any of the following:

(a) Inpatient care or services, or both, provided in a hospital or distinct unit to a client when a managed care organization (MCO) plan is contracted to cover those services.

(b) Care or services, or both, provided in a hospital or distinct unit provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.

(c) Ancillary services provided in a hospital or distinct unit unless explicitly spelled out in this chapter.

(d) Additional days of hospitalization on a non-DRG claim when:

(i) Those days exceed the number of days established by the agency or ~~((mental health))~~ the agency's designee under WAC 182-550-2600, as the approved length of stay (LOS); and

(ii) The hospital or distinct unit has not received prior authorization for an extended LOS from the agency or ~~((mental health))~~ the agency's designee as specified in WAC 182-550-4300(4). The agency may perform a prospective, concurrent, or retrospective utilization review as described in WAC 182-550-1700, to evaluate an extended LOS. ~~((A mental health))~~ An agency designee may also perform those utilization reviews to evaluate an extended LOS.

(e) Inpatient hospital services when the agency determines that the client's medical record fails to support the medical necessity and inpatient level of care for the inpatient admission. The agency may perform a retrospective utilization review as described in WAC 182-550-1700, to evaluate if the services are medically necessary and are provided at the appropriate level of care.

(f) Two separate inpatient hospitalizations if a client is readmitted to the same or affiliated hospital or distinct unit within fourteen calendar days of discharge and the agency determines that one inpatient hospitalization does not qualify for a separate payment. See WAC 182-550-3000 (7)(f) for the agency's review of fourteen-day readmissions.

(g) Inpatient claims for fourteen-day readmissions considered to be provider preventable as described in WAC 182-550-2950.

(h) A client's day(s) of absence from the hospital or distinct unit.

(i) A nonemergency transfer of a client. See WAC 182-550-3600 for hospital transfers.

(j) Charges related to a provider preventable condition (PPC), hospital acquired condition (HAC), serious reportable event (SRE), or a condition not present on admission (POA). See WAC 182-502-0022.

(k) An early elective delivery as defined in WAC 182-500-0030. The agency may pay for a delivery before thirty-nine weeks gestation, including induction and cesarean section, if medically necessary under WAC 182-533-0400(20).

(3) This section defines when the agency considers payment for an interim billed inpatient hospital claim.

(a) When the agency is the primary payer, each interim billed nonpsychiatric claim must:

(i) Be submitted in sixty-calendar-day intervals, unless the client is discharged before the next sixty-calendar-day interval.

(ii) Document the entire date span between the client's date of admission and the current date of services billed, and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(iii) Be submitted as an adjustment to the previous interim billed hospital claim.

(b) When the agency is not the primary payer:

(i) The agency pays an interim billed nonpsychiatric claim when the criteria in (a) of this subsection are met; and

(ii) Either of the following:

(A) Sixty calendar days have passed from the date the agency became the primary payer; or

(B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(c) For psychiatric claims, (a)(i) and (b)(i) of this subsection do not apply.

(4) The agency considers for payment a hospital claim submitted for a client's continuous inpatient hospital admission of sixty calendar days or less upon the client's formal release from the hospital or distinct unit.

(5) To be eligible for payment, a hospital or distinct unit must bill the agency using an inpatient hospital claim:

(a) Under the current national uniform billing data element specifications:

(i) Developed by the National Uniform Billing Committee (NUBC);

(ii) Approved or modified, or both, by the Washington state payer group or the agency; and

(iii) In effect on the date of the client's admission.

(b) Under the current published international classification of diseases clinical modification coding guidelines;

(c) Subject to the rules in this section and other applicable rules;

(d) Under the agency's published billing instructions and other documents; and

(e) With the date span that covers the client's entire hospitalization. See subsection (3) of this section for when the agency considers and pays an initial interim billed hospital claim and any subsequent interim billed hospital claims;

(f) That requires an adjustment due to, but not limited to, charges that were not billed on the original paid claim (e.g., late charges), through submission of an adjusted hospital claim. Each adjustment to a paid hospital claim must provide complete documentation for the entire date span between the client's admission date and discharge date, and include the following for that date span:

(i) All inpatient hospital services provided; and

(ii) All applicable diagnosis codes and procedure codes; and

(g) With the appropriate NUBC revenue code specific to the service or treatment provided to the client.

(6) When a hospital charges multiple rates for an accommodation room and board revenue code, the agency pays the

hospital's lowest room and board rate for that revenue code. The agency may request the hospital's charge master. Room charges must not exceed the hospital's usual and customary charges to the general public, as required by 42 C.F.R. Sec. 447.271.

(7) The agency allows hospitals an administrative day rate for those days of a hospital stay in which a client no longer meets criteria for the acute inpatient level of care, as provided in WAC 182-550-4550.

(8) The agency pays for observation services according to WAC 182-550-6000, 182-550-7200, and other applicable rules.

(9) The agency determines its actual payment for an inpatient hospital admission by making any required adjustments from the calculations of the allowed covered charges. Adjustments include:

- (a) Client participation (e.g., spenddown);
- (b) Any third-party liability amount, including medicare part A and part B; and
- (c) Any other adjustments as determined by the agency.

(10) The agency pays hospitals less for services provided to clients eligible under state-administered programs, as provided in WAC 182-550-4800.

(11) All hospital providers must present final charges to the agency according to WAC 182-502-0150.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-6250 Pregnancy—Enhanced outpatient benefits. The medicaid agency will provide outpatient ~~((chemical dependency))~~ substance use disorder treatment in programs qualified under ~~((chapter 388-810))~~ WAC 182-538C-230 and certified under ~~((chapter 388-805 WAC or its successor))~~ 246-341 WAC or its successor. See RCW 71.24.385.

WSR 21-15-040
PROPOSED RULES
PARAEDUCATOR BOARD

[Filed July 14, 2021, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-05-035.

Title of Rule and Other Identifying Information: WAC 179-11-040 General paraeducator certificate process. This rule making relates to when paraeducators must complete training on the general paraeducator certificate. The proposed changes align with board members' intent regarding the training and responds effectively to recent legislative changes.

Hearing Location(s): On September 15, 2021, at 8 a.m., at Spokane, Washington. The exact location is to be determined. Once determined, the location will be posted to the website. We will also have a link available to listen to the meeting virtually, which will become available several weeks prior to the meeting. More information regarding this can be found on the website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 15, 2021.

Submit Written Comments to: Paraeducator Board, 600 Washington Street S.E., Room 400, Olympia, WA 98504, email paraboard@k12.wa.us, by September 13, 2021.

Assistance for Persons with Disabilities: Contact professional educator standards board, phone 360-725-6275, email pesb@k12.wa.us, by September 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendment responds to recent legislative activity for the effective implementation and execution of the paraeducator certificate program. Proposed amendment removes the requirement on paraeducators to complete general paraeducator certificate within three years of completing the fundamental course of study.

Reasons Supporting Proposal: The recent legislative session concluded with a budget allocation that requires two days of training on the paraeducator certificate program per school year. The general paraeducator certificate, a component of the program, is met by completing ten days of training. A paraeducator cannot complete this training within three years if funding is only provided for two days of training per school year.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

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

Name of Proponent: Paraeducator board, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Busbee, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6275; Implementation and Enforcement: Paraeducator Board, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6275.

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

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

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

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

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

July 14, 2021

Jack Busbee
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-21-071, filed 10/11/19, effective 11/11/19)

WAC 179-11-040 Process. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) School districts are encouraged to provide at least one day of the ten days of general courses, as defined by the board, on the state paraeducator standards of practice as a professional learning day, where paraeducators collaborate with certified staff and other classified staff on applicable courses.

(3) ~~((The paraeducator must complete the general paraeducator certificate within three employed years after completing the fundamental course of study))~~ After completing the fundamental course of study, paraeducators must complete annual training provided by their school district on the general paraeducator certificate and only for the number of days that are funded by the appropriation, as follows:

(a) If the fundamental course of study is completed prior to June 30th of a calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the same calendar year regardless of the date of completion; and

(b) If the fundamental course of study is completed July 1st or later in the calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the next calendar year regardless of the date of completion.

(4) Beginning with the 2019-20 school year, school districts must:

(a) Provide paraeducators with general courses on the state paraeducator standards of practice; and

(b) If four days of funding is appropriated, ensure all paraeducators employed by the district meet the general paraeducator certificate requirements of this section within three years of completing the four-day fundamental course of study.

The district is only required to ensure paraeducators meet the general certificate requirement by the end of the paraeducator's third year of employment in that district as a paraeducator.

(5) To attain the paraeducator general certificate, the paraeducator must complete training that meets in-service education approval standards as written in chapter 181-85 WAC.

(6) A maximum of one professional growth plan may be completed towards the attainment of the general paraeducator certificate.

(7) A paraeducator who completes continuing education credit hours to meet the English language learner subject matter certificate or special education subject matter certificate may count these hours towards meeting the general paraeducator certificate.

(8) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the general paraeducator certificate.

WSR 21-15-043

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Economic Services Administration)

[Filed July 14, 2021, 10:26 a.m.]

The economic services administration requests the withdrawal of WAC 388-434-0015 Extension of certification periods and waiver of eligibility reviews and mid-certification reviews during the COVID-19 pandemic, Proposed rule making (CR-102) filed as WSR 21-06-049 on February 25, 2021.

Katherine I. Vasquez
Rules Coordinator

WSR 21-15-049

PROPOSED RULES OLYMPIC REGION CLEAN AIR AGENCY

[Filed July 14, 2021, 3:06 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations: Rule 1.11 Federal Regulation Reference Date.

Hearing Location(s): On September 8, 2021, at 10:00 a.m., at Olympic Region Clean Air Agency, 2940 Limited Lane N.W., Olympia, WA 98502.

Date of Intended Adoption: September 8, 2021.

Submit Written Comments to: Mark Goodin, 2940 Limited Lane N.W., email mark.goodin@orca.org, fax 360-491-6308, by September 7, 2021.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610 ext. 111, fax 360-491-6308, email dan.nelson@orca.org, by September 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA proposes to update the effective date of the federal regulations that were previously adopted by the agency. Currently, where federal rules are referenced in agency regulations, the effective date of the federal regulations is July 1, 2020. The agency intends to update the effective date annually. This proposal would change the reference date to July 1, 2021.

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

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, 360-539-7610; Implementation and Enforcement: Francea L. McNair, 2940 Limited Lane N.W., Olympia, 360-539-7610.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 applies to state government. It does not apply to local air agencies per RCW 70A.15.2040.

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

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

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70A.15.2040(1) states "An air pollution control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

July 14, 2021
Francea L. McNair
Executive Director

AMENDED SECTION

RULE 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 2021((#))L.

WSR 21-15-050

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed July 14, 2021, 3:25 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Clarify contract goals for the small and veteran-owned business enforceable goals program.

Hearing Location(s): On August 24, 2021, at 10 a.m., https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzVIYTc0NjEtNGE4Yy00OGY1LW15YjctNDQ0M2FmOWNmN2R1%40thread.v2/0?context=%7b%22Tid%22%3a%226f10858a-931e-4554-89f7-a3694e8e0f1a%22%2c%22Oid%22%3a%22f2663ad6-d7bd-4270-97fc-7de8de8e7642%22%7d, Teams meeting.

Date of Intended Adoption: September 10, 2021.

Submit Written Comments to: Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98504-7314, email BayneJ@wsdot.wa.gov, fax 360-705-6801, other 360-705-7090, by August 6, 2021.

Assistance for Persons with Disabilities: Contact Jackie Bayne, phone 360-705-7084, fax 360-705-6801, TTY 711, email Baynej@wsdot.wa.gov, by as soon as possible.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are being modified to simplify the process, and clarify the language, regarding contract goals for the small and veteran-owned business enforceable goals program. This rule simplification will refine the WAC 468-17-030(5) definition of "Contract goal" to apply only to the contract amount, and will clarify current language by removing multiple references to "condition of award."

The revisions include: (5) "contract goal" means a percentage of the contract ~~award~~ amount the prime contractor or prime consultant must meet with small, mini, micro and veteran-owned businesses. ~~in order to receive award of the contract.~~

~~(a) For design-bid-build contracts, the contract goal is a percentage of the prime contractor's total bid plus any executed change orders;~~

~~(b) For design-build and consulting agreements, the contract goal is a percentage of the original contract amount plus any executed change orders or supplements;~~

~~(c) For general contractor/construction manager contracts, the contract goal is a percentage of the maximum allowable contract cost (MACC) plus any executed change orders or supplements.~~

Additional modifications include the striking of all usage of the term "condition of award."

Reasons Supporting Proposal: The Washington state department of transportation (WSDOT) is in the process of implementing the small and veteran's business enforceable goals program. Program participants require clarity in both the application of goals and the terminology regarding goal settings. Confusion in the administration of goals will both increase the administrative burden of the program as well as reduce the program effectiveness. Striking all the condition of award language will reduce confusion and streamline program implementation.

Statutory Authority for Adoption: RCW 39.04.155, 43.19.727, 47.01.101, and 47.28.030.

Statute Being Implemented: RCW 47.01.101 and 47.01.260.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WSDOT is in the process of implementing the small and veteran's business enforceable goals program. The proposed changes will help reduce confusion in a new program, which will both lessen the program's administrative burden and increase program effectiveness. Striking all the condition of award language will remove duplicative definitions within the program.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jackie Bayne, 310 Maple Park Avenue S.E., Olympia, WA 98504-7314, 360-338-5783.

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

A cost-benefit analysis is not required under RCW 34.05.328. As WSDOT is not listed in RCW 34.05.328

(5)(a)(i), no preliminary collective bargaining agreement is required.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 34.05.328.

Explanation of exemptions: RCW 34.05.328 only requires an impact statement for significant legislative rules of certain agencies listed in RCW 34.05.328 (5)(a)(i), which do not include WSDOT. The proposed rule is exempt because is not for a significant legislative rule of those agencies.

July 14, 2021
Shannon Gill
Interim Director
Risk Management
and Legal Services

AMENDATORY SECTION (Amending WSR 21-07-127, filed 3/23/21, effective 4/23/21)

WAC 468-17-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Award" means the formal decision by the department to accept a bid and the intent to enter into a contract with the bidder.

(2) "Commercially useful function" means the activity conducted by a firm responsible for the execution of the work of the contract and that is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Additional requirements are discussed in WAC 468-17-060.

(3) "Condition of award (COA)" means that a prime contractor or consultant, on a design-bid-build or consultant agreement, commits to subcontracting with a small business enterprise (SBE) or veteran-owned business (VOB). On design-build or general contractor/construction manager contracts, all SBEs and VOBs in the quarterly small and veteran business plans are considered COA firms.

(4) "Consultant agreement" means a contract entered into by a public body for architectural and engineering services (performed pursuant to chapter 39.80 RCW) with another party, i.e., an independent individual or firm, in which the other party agrees to perform a service, render an opinion, or recommendations according to the consultant's methods and without being subject to the control of the public body except as to the result of the work.

(5) "Contract goal" means a percentage of the contract (~~award~~) amount the prime contractor or prime consultant must meet with small, mini, micro and veteran-owned businesses (~~in order to receive award of the contract~~;

~~(a) For design-bid-build contracts, the contract goal is a percentage of the prime contractor's total bid plus any executed change orders;~~

~~(b) For design-build and consulting agreements, the contract goal is a percentage of the original contract amount plus any executed change orders or supplements;~~

~~(c) For general contractor/construction manager contracts, the contract goal is a percentage of the maximum allowable contract cost (MACC) plus any executed change orders or supplements).~~

(6) "Department" means the Washington state department of transportation (WSDOT).

(7) "Design-bid-build (DBB) contract" means a contract between a public body and another party in which the public body contracts separately with a designer and a contractor for the design and construction of a facility, portion of the facility, or other item specified in the contract. Designers and contractors bear no contractual obligation to one another under a DBB contract.

(8) "Design-build (DB) contract" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(9) "General contractor/construction manager (GC/CM)" means a contract between a public body and another party in which the party agrees to both build and manage the construction of the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(10) "Good faith efforts (GFE)" means efforts to achieve a goal or other requirement of this chapter which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. GFE is not necessary when a contract goal has been met.

(11) "Mini-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than three million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "mini-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "mini-business" on the Washington electronic business service (WEBS).

(12) "Micro-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "micro-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "micro-business" on the WEBS.

(13) "Quarterly small and veteran business plans" means documents design-builders are required to submit which outline the strategies the organization will be utilizing to meet the established contract goals.

(14) "Small business enterprise (SBE)" means an in-state business that:

(a) Is owned and operated independently from all other businesses and has either:

(i) Fifty or fewer employees; or

(ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

(b) Is self-certified as a "small business enterprise (SBE)" through the Washington state department of enterprise services and is listed as a SBE on the WEBS.

(15) "Tiered participation" means the amount of additional contract goal credit the prime contractor or prime consultant may receive for using SBE and VOBs of different designations, as detailed in WAC 468-17-080.

(16) "Veteran-owned businesses (VOB)" means a business certified by the Washington state department of veterans affairs, pursuant to RCW 43.60A.190.

AMENDATORY SECTION (Amending WSR 19-12-026, filed 5/29/19, effective 6/29/19)

WAC 468-17-050 ((~~Condition of award~~)) Goals. On solely state-funded projects, the small and veteran business goals for participation of small and veteran-owned enterprises shall be as directed by the department or other state agencies conducting disparity studies. Presently these goals are set as follows:

- (1) Veteran business goal of five percent; and
- (2) Small business goal of five percent.

AMENDATORY SECTION (Amending WSR 19-12-026, filed 5/29/19, effective 6/29/19)

WAC 468-17-060 Commercially useful function.

Under the enforceable goals program, commercially useful function (CUF) restrictions apply to all SBEs, mini-businesses, micro-businesses and VOBs. These businesses must perform a CUF in order for their participation to be counted against any ((~~condition of award~~)) goal. A business performs a CUF when it is both responsible for the execution of the work of the contract and it meets its responsibility under the contract by actually performing, managing, and supervising the work involved. If any materials or supplies are needed to perform the contract, the business must negotiate price, determine quality and quantity, order the material, install (if applicable), and pay for those materials or supplies itself.

Additional considerations when making a determination on a CUF are as follows:

(1) A SBE, VOB, micro-business or mini-business does not perform a CUF if its role is limited to that of an extra participant in a transaction or contract or it is involved in a project for the purposes of creating a semblance of SBE, VOB, micro-business or mini-business participation.

(2) Other relevant factors that may be considered when evaluating whether a SBE, VOB, micro-business or mini-business is performing a CUF include industry practices, the amount of work subcontracted and whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing.

(3) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and executing material changes in the configuration of those goods or materials; or

(b) Secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(4) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

(a) A minimum amount of inventory is not maintained;

(b) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(d) The firm does not take ownership of the product.

AMENDATORY SECTION (Amending WSR 19-12-026, filed 5/29/19, effective 6/29/19)

WAC 468-17-090 Small and veteran business plans.

(1) Prime contractors, design-builders, general contractors/construction managers and consultants must submit a small and veterans' business plan that specifies how the contractor will meet SBE and VOB participation goals, prior to the award of any contract. The small and veteran business plan for design-bid-build and consultant contracts must list all of the SBEs, VOBs, mini-businesses and micro-businesses that will participate in the contract; a description of the work that each SBE, VOB, micro-business or mini-business will perform; the dollar amount of the participation of each SBE, VOB, micro-business or mini-business; the contractor's written commitment to use the SBE, VOB, micro-business or mini-business submitted; and written confirmation from each SBE or VOB firm that it is participating in the contract in the kind and amount of work provided in the inclusion plan. The small and veteran business plan for design-build and general contractor/construction manager contracts must list in detail the contractor's means and methods that it will use to meet the goal and a commitment by the contractor to attempt to meet the goal. If the total SBE and VOB participation in the small and veteran business plan does not meet the ((~~condition of award~~)) goal, then the contractor must also submit evidence of good faith efforts (GFEs) ((~~to meet the contract goal~~)). A contractor may be awarded a project only after WSDOT has approved its small and veteran business plan or confirmed its GFEs. Revisions of small and veteran business plans may be necessary prior to plan approvals.

(2) Quarterly small and veteran business plans are required for design-build and general contractor/construction manager projects. The first quarterly small and veteran business plan shall be submitted prior to contract award and must be approved by the department prior to contract execution. Subsequent small and veteran business plans must include information, as applicable, regarding:

(a) Small and veteran business goal attainment;

- (b) A list all of the SBEs, VOBs, mini-businesses or micro-businesses that have been contracted to date;
- (c) A description of the work that each SBE, VOB, micro-business or mini-business will perform;
- (d) The dollar amount of the participation of each SBE, VOB, micro-business or mini-business;
- (e) The contractor's written commitment to use the SBE, VOB, micro-business or mini-business submitted;
- (f) Written confirmation from each SBE, VOB, micro-business or mini-business firm that it is participating in the contract in the kind and amount of work provided in the small and veteran business plan;
- (g) Corrective actions necessary to meet the established goals;
- (h) Outreach strategies;
- (i) Innovative approaches to secure goal(s); and
- (j) Other evidence of GFEs to meet the contract goal.

WSR 21-15-056
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed July 15, 2021, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-028.

Title of Rule and Other Identifying Information: WAC 182-526-0010 Definitions, 182-526-0030 Contacting the board of appeals, 182-526-0040 Service of documents on another party, 182-526-0070 Filing documents, and 182-526-0340 Hearing location.

Hearing Location(s): On August 24, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_BN CWCw0FQSOhcaAMJzTrTw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 25, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 24, 2021.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.loughheed@hca.wa.gov, by August 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending procedural rules applicable to adjudicative proceedings to permit the use of electronic means to file and serve documents and conduct and attend hearings.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.
 Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700, 360-725-9970.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

July 15, 2021
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0010 Definitions. The following definitions and those found in RCW 34.05.010 apply to this chapter:

"Administrative law judge (ALJ)" - An impartial decision-maker who is an attorney and presides at an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency, as defined in RCW 34.05.010. ALJs are not department of social and health services or health care authority (HCA) employees or representatives.

"Agency" - See WAC 182-500-0010.

"Appellant" - A person or entity who requests a hearing about an action of HCA or its designee.

"Applicant" - Any person who has made a request, or on whose behalf a request has been made, to HCA, or HCA's authorized agent on HCA's behalf, for assistance through a medical service program established under chapter 74.09 RCW.

"Authorized agent" - A person or agency, as defined in RCW 34.05.010, acting on HCA's behalf under an agreement authorized by RCW 41.05.021 to act as an HCA hearing representative. An authorized agent may be an employee of the department of social and health services or its contractors but may not be an employee of an HCA-contracted managed care organization.

"Board of appeals" or "BOA" - The HCA's board of appeals.

"Business days" - All days except Saturdays, Sundays, and designated holidays under WAC 357-31-005.

"Calendar days" - All days including Saturdays, Sundays, and designated holidays under WAC 357-31-005.

"Continuance" - A change in the date or time of a prehearing conference, hearing, or the deadline for other action.

"Date of the health care authority (HCA) action" - The date when the HCA's decision is effective.

"Deliver" - Giving a document to a person or entity in person or placing the document into the person or entity's possession as authorized by the rules in this chapter or chapter 34.05 RCW.

"Department" - The department of social and health services.

"Documents" - Papers, letters, writings, emails, or other printed or written items.

"Electronic service" - The service of documents sent or received through electronic communications, cloud services, or other electronic means established by the agency.

"Filing" - The act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

"Final order" - An order that is the final HCA decision.

"HCA" - The health care authority.

"Health care authority (HCA) hearing representative" - An employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing. The HCA hearing representative may or may not be an attorney. An employee of an HCA contracted managed care organization is not an HCA hearing representative.

"Hearing" - Unless context clearly requires a different meaning, a proceeding before an ALJ, HCA-employed presiding officer, or a review judge that gives a party an opportunity to be heard in disputes about medical services programs established under chapter 74.09 RCW. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Titles 182 and 388 WAC, chapter 10-08 WAC, or other law.

"Initial order" - A hearing decision entered (made) by an ALJ that may be reviewed by a review judge at any party's request.

"Intermediary interpreter" - An interpreter who:

(1) Is a certified deaf interpreter (CDI); and

(2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a person with hearing loss and a qualified interpreter.

"Judicial review" - Review of a final order as provided under RCW 34.05.510 through 34.05.598.

"Limited-English proficient (LEP)" - Includes limited-English-speaking persons or other persons unable to communicate in spoken English because of hearing loss.

"Limited-English-speaking (LES) person" - A person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

"Mail" - Placing a document in the United States Postal system, or commercial delivery service, properly addressed and with the proper postage.

"Managed care organization" or "MCO" - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid health care services to eligible recipients under HCA's managed care programs.

"OAH" - The office of administrative hearings.

"Order of default" - An order entered by an administrative law judge (ALJ) or review judge when the appellant fails to appear in a prehearing conference or a hearing. Once the order of default becomes a final order, it terminates the appellant's request for a hearing and ends the hearing process.

"Order of dismissal" - An order from the administrative law judge (ALJ) or review judge ending the hearing process.

"Party":

(1) The health care authority (HCA);

(2) HCA-contracted managed care organization (MCO) (if applicable); and

(3) A person or entity:

(a) Named in the action;

(b) To whom the action is directed; or

(c) Is allowed to participate in a hearing to protect an interest as authorized by law or rule.

"Person with hearing loss" - A person who, because of a loss of hearing, cannot readily speak, understand, or communicate in spoken language.

"Prehearing conference" - A formal proceeding scheduled and conducted by an ALJ or other reviewing officer on the record for the purposes identified in WAC 182-526-0195.

"Prehearing meeting" - An informal, voluntary meeting that may be held before any prehearing conference or hearing.

"Program" - An organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers and HCA-contracted managed care organizations.

"Qualified interpreter" - Includes qualified interpreters for a limited-English-speaking person or a person with hearing loss.

"Qualified interpreter for a limited-English-speaking person" - A person who is readily able to interpret or translate spoken and written English communications to and from a limited-English-speaking person effectively, accurately, and impartially. If an interpreter is court certified, the interpreter is considered qualified.

"Qualified interpreter for a person with hearing loss" - A visual language interpreter who is certified by the Registry of Interpreters for the Deaf (RID) or National Association of the Deaf (NAD) and is readily able to interpret or translate spoken communications to and from a person with hearing loss effectively, accurately, and impartially.

"Recipient" - Any person receiving assistance through a medical service program established under chapter 74.09 RCW.

"**Reconsideration**" - Asking a review judge to reconsider a final order entered because the party believes the review judge made a mistake.

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

"**Review**" - A review judge evaluating initial orders entered by an ALJ and making the final HCA decision as provided by RCW 34.05.464, or issuing final orders.

"**Review judge**" - A decision-maker with expertise in program rules who serves as the reviewing officer under RCW 34.05.464. The review judge reviews initial orders and the hearing record exercising decision-making power as if hearing the case as a presiding officer. In some cases, review judges conduct hearings under RCW 34.05.425 as a presiding officer. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by HCA but may be physically located at the board of appeals (BOA). The review judge must not have been involved in the initial HCA action.

"**Rule**" - A regulation adopted by a state agency. Rules are found in the Washington Administrative Code (WAC).

"**Service**" - The delivery of documents as explained in WAC 182-526-0040.

"**Should**" - That an action is recommended but not required.

"**Stay**" - An order temporarily halting the HCA decision or action.

"**Witness**" - For the purposes of this chapter, means any person who makes statements or gives testimony that becomes evidence in a hearing. One type of witness is an expert witness. An expert witness is qualified by knowledge, skill, experience, training, and education to give opinions or evidence in a specialized area.

AMENDATORY SECTION (Amending WSR 15-04-102, filed 2/3/15, effective 3/6/15)

WAC 182-526-0030 Contacting the board of appeals. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the health care authority's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Board of Appeals	
Location	626 8th Avenue S.E. Olympia, Washington
Mailing address	P.O. Box 42700 Olympia, WA 98504-2700
Toll free telephone	1-844-728-5212
Fax	360-507-9018
Electronic service	HCABoardofAppeals@hca.wa.gov
Internet website	www.hca.wa.gov/appeals

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0040 Service of documents on another party. (1) When the rules in this chapter or in other program rules or statutes require a party to serve copies of documents on other parties, the party must send copies of the documents to all other parties or their representatives.

(2) When sending documents to the office of administrative hearings (OAH) or the board of appeals (BOA), the party must file the documents at one of the locations listed in WAC 182-526-0025(2) for OAH or in WAC 182-526-0030 for BOA.

(3) When sending documents to the assigned OAH field office, the parties should use the address of the assigned OAH listed on the notice of hearing. If a field office has not been assigned, all written communication about the hearing must be sent to the OAH Olympia field office, which sends the communication to the correct office. Documents may be sent only as described in this section to accomplish service.

(4) Unless otherwise stated in law, a party may serve someone by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax;
- (d) Electronic service;
- (e) Commercial delivery service; or
- ~~((f))~~ (f) Legal messenger service.

(5) A party must serve all other parties or their representatives whenever the party files a pleading, brief, or other document with the office of administrative hearings (OAH) or the board of appeals (BOA), or when required by law.

(6) Service is complete when:

- (a) Personal service is made;
- (b) Mail is properly stamped, addressed, and deposited in the United States mail;
- (c) A fax produces proof of transmission;
- (d) Electronic service is sent;
- (e) A parcel is delivered to a commercial delivery service with charges prepaid; or
- ~~((f))~~ (f) A parcel is delivered to a legal messenger service with charges prepaid.

(7) A party may prove service by providing any of the following:

- (a) A sworn statement;
- (b) The certified mail receipt signed by the person who received the envelope;
- (c) An affidavit or certificate ~~((of))~~ of mailing;
- (d) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or
- (e) Proof of fax or electronic service transmission.

(8) ~~((A party))~~ The OAH or BOA may serve documents, including notices, initial orders, and final orders, by email only if the other parties have agreed to accept electronically served documents.

AMENDATORY SECTION (Amending WSR 17-23-201, filed 11/22/17, effective 12/23/17)

WAC 182-526-0070 Filing documents. (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during business days between 8:00 a.m. to 5:00 p.m. If the documents are received after 5:00 p.m. on a business day, the filing is effective the next business day.

(4) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (e.g., hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission;
- (d) Electronic service;
- (e) Other secure electronic means established by the agency or OAH;

(f) Electronic cloud sharing service approved by the agency;

- (g) Commercial delivery service; or
- ~~((e))~~ (h) Legal messenger service.

(5) ~~((A party may deliver documents for filing by email only if OAH or BOA staff agreed to accept electronically filed documents.))~~ A party ~~((must))~~ may obtain confirmation of receipt of the filing from the OAH or BOA staff to prove that the documents were successfully filed electronically.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0340 Hearing location. (1) The office of administrative hearings (OAH) may schedule ~~((an))~~ a hearing to be conducted in-person ~~((hearing or a telephonic hearing)),~~ by telephone, or by video.

(2) A telephonic or video hearing is where the appellant appears by telephone, video, or other electronic means.

(3) An in-person hearing is where the appellant appears face-to-face with the ALJ. The other parties may choose to appear either in person ~~((or))~~, by telephone, or by video.

(4) Whether a hearing is held in-person, by video, or telephonically, each party has the right to see all documents, hear all testimony, and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, the appellant may ask that the ALJ change it to a telephonic or video hearing. Once a telephonic or video hearing begins, the ALJ may stop, reschedule, and change the hearing to an in-person hearing if any party makes such a request.

Preproposal statement of inquiry was filed as WSR 21-11-029.

Title of Rule and Other Identifying Information: WAC 182-526-0195 Prehearing conferences.

Hearing Location(s): On August 24, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of Washington state residents. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_BNCWCw0FQSOhcaAMJzTrTw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 25, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 24, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by August 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-526-0195 to change subsection (4) to specify that the administrative law judge has discretion to grant or deny an agency or managed care organization request for a prehearing conference.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700, 360-725-9970.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

WSR 21-15-057

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 15, 2021, 1:01 p.m.]

Original Notice.

July 15, 2021

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-11-039, filed 5/12/21, effective 6/12/21)

WAC 182-526-0195 Prehearing conferences. (1)

Unlike a prehearing meeting, a prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must make an audio record of the prehearing conference.

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

(2) All parties must attend the prehearing conference. If the party who requested the hearing does not attend the prehearing conference, the ALJ may enter an order of default and an order dismissing the hearing.

(3) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the appellant's, and may grant the managed care organization's or the agency representative's, first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, the ALJ must continue the previously scheduled hearing when necessary to comply with notice requirements in this section.

(6) The ALJ may grant additional requests for prehearing conferences.

(7) The office of administrative hearings (OAH) must schedule prehearing conferences for all cases which concern:

(a) Provider and vendor overpayment hearings.

(b) Estate recovery and predeath liens.

(c) Notice of violation disputes under chapter 182-51 WAC.

(d) Notice of violation disputes under chapter 182-70 WAC.

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

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

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

(c) Identify any accommodation or safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the notice or the hearing request;

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

(g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

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

(k) Rule on any procedural issues and substantive motions raised by any party.

(9) After the prehearing conference, the ALJ must enter a written order describing:

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

(c) A statement of the issue or issues identified for the hearing;

(d) Any agreements reached; and

(e) Any ruling of the ALJ.

(10) OAH must serve the prehearing order on the parties at least fourteen calendar days before the scheduled hearing.

(11) A party may object to the prehearing order by notifying OAH in writing within ten calendar days after the mailing date of the order. The ALJ must issue a ruling on the objection within five days from the date a party files an objection.

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

(13) The ALJ may take further appropriate actions to address other concerns raised by the parties.

WSR 21-15-089

PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed July 19, 2021, 5:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-079.

Title of Rule and Other Identifying Information: WAC 181-86-145 and 181-86-150, educator discipline appeals process.

Hearing Location(s): On September 16, 2021, at 8 a.m. The September board meeting will be held in Spokane, Washington. The exact location is to be determined. Once determined, we will post the location on our website. We will also have a link available to listen to the meeting virtually, which will become available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., Monday, September 13, 2021.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb@k12.wa.us, by Friday, September 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule clarifies that within both the informal and formal appeals process, the level of discipline may be changed. For example, a suspension could be changed to a reprimand or a revocation, or there could be a modification within the level of discipline. For example, there could be a modification to the length of a

suspension, or to the type or amount of professional learning an educator is required to complete.

Reasons Supporting Proposal: This rule clarifies current policy. This policy has long acted in this way at the informal appeals level, and this clarifies that it acts in the same way at the formal appeals level.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-867-8424; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

July 17, 2021
Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-08-022, filed 3/29/21, effective 4/29/21)

WAC 181-86-145 Appeal procedure—Informal SPI review. Any person who appeals the decision or order to deny their application, the issuance of a reprimand, or the order to suspend or revoke their certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of postmarked mailing or other notification, whichever is earlier, from the section of the superintendent of public instruction's office responsible for certification of the decision or order. A written notice of appeal is deemed filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

The written notice must set forth the reasons why the appellant believes their application should have been granted or why their certificate should not be suspended or revoked, or why the reprimand should not be issued whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall proceed as follows:

(1) If the appeal does not involve good moral character, personal fitness, or unprofessional conduct, the review officer shall review the application and appeal notice and may request further written information including, but not limited

to, an explanation from the person or persons who initially reviewed the application of the reason(s) why the application was denied. If the review officer deems it advisable, they shall schedule an informal meeting with the appellant, the person or persons who denied the application, and any other interested party designated by the review officer to receive oral information concerning the application. Any such meeting must be held within thirty calendar days of the date of receipt by the superintendent of public instruction of the timely filed appeal notice.

(2) If the appeal involves good moral character, personal fitness, or acts of unprofessional conduct, the review officer shall schedule an informal meeting of the applicant or education practitioner, the office of superintendent of public instruction, and/or counsel for the applicant or education practitioner with the admissions and professional conduct advisory committee. Such meeting shall be scheduled in accordance with the calendar of meetings of the advisory committee. However, the notice of appeal must be received at least thirty calendar days in advance of a scheduled meeting.

(3) Send by certified mail a written decision (i.e., findings of fact and conclusions of law) on the appeal within thirty calendar days from the date of post-marked mailing the timely filed appeal notice or informal meeting, whichever is later. The review officer may (~~uphold, reverse, or~~) modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate. Modifying the decision may include upholding, reversing, decreasing, or increasing the discipline, including changing the level of discipline imposed.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) In the case of an action for suspension or revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the suspension or revocation proceeding, are completed, including appeals, if the appellant signs the agreement stated in WAC 181-86-160. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

(6) Forms of written notice accepted will be as published by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 21-08-022, filed 3/29/21, effective 4/29/21)

WAC 181-86-150 Appeal procedure—Formal SPI review process. Formal appeals to the superintendent of public instruction shall be provided as follows:

(1) Any person who has filed an appeal in accordance with WAC 181-86-140 and desires to have the decision of the review officer formally reviewed by the superintendent of public instruction may do so. To instigate review under this section, a person must file a written notice with the superintendent of public instruction within thirty calendar days following the date of post-marked mailing of the review officer's written decision. A written notice of appeal is deemed

filed upon actual receipt during office hours by the section of the superintendent of public instruction's office responsible for certification of the decision or order.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction shall conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings under RCW 28A.300.120 to hear a particular appeal. Decisions in cases formally appealed under this section may be made by the administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority under RCW 28A.300.120.

(3) The decision of the superintendent of public instruction or the administrative law judge, whichever is applicable, shall be sent by certified mail to the appellant's last known address and if the decision is to reprimand, suspend, or revoke, the appellant shall be notified that such order takes effect upon signing of the final order.

The superintendent of public instruction or the administrative law judge, whichever is applicable, may (~~uphold, reverse, or~~) modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate. Modifying the decision may include upholding, reversing, decreasing, or increasing the discipline, including changing the level of discipline imposed.

(4) Forms of written notice accepted will be as published by the superintendent of public instruction.

WSR 21-15-090

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed July 19, 2021, 5:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-101.

Title of Rule and Other Identifying Information: WAC 181-82-127 Educational interpreters.

Hearing Location(s): On September 16, 2021, at 8 a.m. The September board meeting will be held in Spokane, Washington. The exact location is to be determined. Once determined, we will post the location on our website. We will also have a link available to listen to the meeting virtually, which will become available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., Monday, September 13, 2021.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb@k12.wa.us, by Friday, September 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule clarifies the performance standards for educational interpreters for the deaf, with standards as adopted by PESB.

Reasons Supporting Proposal: This rule clarifies current policy. PESB sets standards for educational interpreters for the deaf. The standards adopted by PESB are those recommended by a stakeholder workgroup.

Statutory Authority for Adoption: RCW 28A.410.271.

Statute Being Implemented: RCW 28A.410.271.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-867-8424; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

July 17, 2021

Maren Johnson

Rules Coordinator

NEW SECTION

WAC 181-82-127 Educational interpreters. (1) Educational interpreters for the deaf are required to meet the performance standards adopted and published by the professional educator standards board.

(2) Educational interpreters for the deaf who have not met the performance standards under subsection (1) of this section may provide or continue providing educational interpreter services to students according to the timelines and provisions under RCW 28A.410.271.

WSR 21-15-091

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed July 19, 2021, 5:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-098.

Title of Rule and Other Identifying Information: WAC 181-82A-207, 181-82A-208, 181-82A-210, and 181-82A-212, rule making relating to specialty endorsements.

Hearing Location(s): On September 16, 2021, at 8 a.m. The September board meeting will be held in Spokane, Washington. The exact location is to be determined. Once determined, we will post the location on our website. We will also have a link available to listen to the meeting virtually, which will become available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., Monday, September 13, 2021.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb@k12.wa.us, by Friday, September 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule revises policy around specialty endorsements. Under this rule, teachers, administrators, and educational staff associates would be able to add a specialty endorsement to their certificate. In addition, this rule clarifies a process for adding a specialty endorsement to the state system. Currently, teacher preparation programs can offer a specialty endorsement. This rule provides a process for other organizations to apply to offer a specialty endorsement.

Reasons Supporting Proposal: This rule revises and updates current policy. This rule reflects the recommendations of a stakeholder workgroup convened by PESB. This rule allows for the assets that community organizations can bring to professional learning for educators.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-867-8424; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

July 17, 2021
Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-82A-208 Specialty endorsements and educator certificates. (1) The following specialty endorsements may only be added to an existing endorsed (~~teaching~~) teacher certificate:

~~((1))~~ (a) Environmental and sustainability education.

~~((2))~~ (b) Teacher of the visually impaired. Upon adoption of a content knowledge assessment by the professional educator standards board, teacher of the visually impaired will be available as an endorsement. Until adoption, teacher of the visually impaired will be available as a specialty endorsement.

~~((3))~~ (c) Gifted education.

~~((4))~~ (d) Elementary mathematics specialist.

~~((5))~~ (e) Other specialty endorsements as approved by the professional educator standards board.

(2) The following specialty endorsements may be added to an existing administrator certificate, educational staff associate certificate, or endorsed teacher certificate:

(a) Elementary computer science.

(b) Secondary computer science.

(c) Other specialty endorsements as approved by the professional educator standards board.

(3) Providers approved by the professional educator standards board may recommend a candidate for a specialty endorsement to the superintendent of public instruction.

NEW SECTION

WAC 181-82A-210 Proposal process for a new specialty endorsement in Washington state. Organizations seeking the creation of a new specialty endorsement in Washington state follow a two-phase process including a preproposal and a proposal.

(1) **Preproposal.** The applicants must submit a preproposal declaring an intent to submit a proposal for the creation of a new specialty endorsement in Washington state. The preproposal will address all requirements published by the board including, but not limited to, the following. The preproposal will:

(a) Provide the name of the specialty endorsement;

(b) Identify at least two organizations submitting the proposal for the new specialty endorsement. These organizations must be eligible to serve as in-service education agencies under WAC 181-85-045;

(c) Identify the proposed essential learnings for the specialty endorsement, or describe the plan to develop the essential learnings;

(d) Describe how the specialty endorsement is aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the specialty endorsement is aligned and responsive to the cultural competency standards published by the board; and

(e) Describe the need for the specialty endorsement, demonstrating response to educator, student, and community needs.

(2) **Proposal.** If the preproposal receives approval from the professional educator standards board, the proposers shall submit a proposal. The proposal will address all requirements published by the board including, but not limited to, the following:

(a) Identify any changes to the preproposal information since the preproposal was submitted;

(b) Letter of commitment from at least two organizations interested in seeking approval to offer the specialty endorsement. If the organizations submitting letters of commitment are the same organizations who are submitting the proposal, the proposal must include at least one letter of support from an additional organization;

(c) Pilot. The proposal will include a description of the pilot of essential learnings for the specialty endorsement including, but not limited to:

(i) Report on the diversity of pilot participants;

(ii) Description of how the pilot was aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the proposers will describe how the pilot was aligned and responsive to the cultural competency standards published by the board;

(iii) Approved specialty endorsement providers may consider work completed by an individual in a specialty endorsement pilot towards meeting the requirements for recommendation for a specialty endorsement.

NEW SECTION

WAC 181-82A-212 Proposal process for an organization to be approved to offer a specialty endorsement. Organizations seeking approval to offer a specialty endorsement follow a one-phase proposal process.

(1) Organizational eligibility:

(a) Organizations eligible to apply for approval as a specialty endorsement program provider include those eligible to serve as an in-service education agency under WAC 181-85-045.

(b) In order to offer a specialty endorsement, providers must maintain status as an approved in-service education agency or professional educator standards board approved educator preparation program provider.

(2) **Proposal process.** The prospective provider will submit a proposal that addresses all requirements published by the board including, but not limited to, the following:

(a) Description of how the organization will determine that a participant has met the requirements for the specialty endorsement, including the essential learnings;

(b) Statement of need for the provider offering the specialty endorsement, demonstrating response to educator, student, and community needs;

(c) Description of strategies and practices the organization will use to recruit and retain participants from historically excluded groups, including participants of color;

(d) Description of how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the pro-

poser will describe how the provider will implement the specialty endorsement offering in a manner aligned and responsive to the cultural competency standards published by the board;

(e) At least two letters of support from education or community-related organizations; and

(f) Organizational capacity to support participants in completing a specialty endorsement.

(3) Reapproval, rescindment, and disapproval.

(a) Specialty endorsement program providers approved under this section must complete a reapproval process every five years per a schedule posted by the professional educator standards board.

(b) The board, upon receipt of a serious complaint from any source, or upon its own initiative prompted by indications of the need for response, may require a provider to complete the reapproval process.

(c) Approved providers that voluntarily rescind their approval shall be permitted to continue to prepare and recommend for a specialty endorsement. Candidates who have been previously admitted to the program, provided that no recommendations for credentials will be accepted later than twelve months following receipt of the formal letter to rescind provider approval. The provider will notify all currently enrolled candidates of the provider's change in status and notify candidates of the twelve-month timeline to complete requirements for recommendation.

(d) Disapproved specialty endorsement programs may reapply for approval by following the specialty endorsement approval process.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-82A-207 Specialty endorsement criteria.

WSR 21-15-092
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 19, 2021, 5:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-099.

Title of Rule and Other Identifying Information: WAC 181-78A-105, 181-78A-110, 181-78A-125, 181-78A-220, 181-78A-225, 181-78A-232, and 181-78A-236, school counselor and school psychologist preparation program standards.

Hearing Location(s): On September 16, 2021, at 8 a.m. The September board meeting will be held in Spokane, Washington. The exact location is to be determined. Once determined, we will post the location on our website. We will also have a link available to listen to the meeting virtually, which will become available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Professional Educator Standards Board (PESB), P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., Monday, September 13, 2021.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email pesb@k12.wa.us, by Friday, September 2, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule clarifies which PESB program standards apply to school counselor and school psychologist preparation programs. School counselor and psychologist programs must continue to adhere to standards of their national accreditation bodies.

Reasons Supporting Proposal: In spring 2021, PESB staff convened two focus groups of school counselor and school psychologist preparation program leaders to clarify which PESB program standards apply to school counselor and school psychologist preparation programs. Through an alignment process, focus group members identified applicable gaps between the related national standards and PESB program standards. This rule reflects the workgroup's recommendations. The board has also reviewed this rule.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-867-8424; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

July 17, 2021
Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. A prospective provider desiring to establish a preparation program shall comply with the following:

(1) Notification of intent. Prospective providers must submit the appropriate form, published by the professional educator standards board, declaring an intent to apply for

approval to offer an educator preparation program or a new educator certification program.

(a) The notification of intent will be posted on the board website as public notice.

(b) The board will contact the prospective provider to begin the preproposal process.

(2) Preproposal. The prospective provider will develop and submit a preproposal that addresses all requirements approved and published by the board including evidence of necessary capacity, resources, and projected sustainability of the program. After board staff verify the preproposal is complete, the preproposal will be brought to the board.

(3) Final proposal. The prospective provider may be approved to develop a final proposal or the preproposal may be denied.

(a) If denied, the provider may resubmit its preproposal informed by suggestions of the board.

(b) If the preproposal is approved by the board, the prospective provider must develop and submit a written plan which addresses all final proposal elements including domains, components, and other program approval requirements contained in chapter 181-78A WAC and published by the board, including letters of support from partner districts and/or community agencies as evidence of how the program will meet Washington educator workforce needs.

(c) Final proposals submitted by prospective providers of school counselor preparation programs shall include (~~verification of program approval~~) evidence of seeking accreditation by the council for the accreditation for counseling and related education programs.

(d) Final proposals submitted by prospective providers of school psychologist programs shall include (~~verification of program approval~~) evidence of seeking accreditation by the National Association for School Psychology.

(4) After reviewing a prospective provider's final program proposal, the board may approve or deny the program approval:

(a) The program may be approved in a specific location(s) for an initial approval period of up to twenty-seven months following the beginning of instruction. The prospective provider must notify the board when instruction has begun. If initial approval is denied, the prospective provider may resubmit a revised plan informed by suggestions given by the board and its staff.

(b) School counselor and school psychologist programs: Approve the program for a time period to align with their respective national association approvals.

(5) Prior to the expiration of initial approval, staff of the board shall conduct a site visit to determine if the program is in full compliance and performance aligned with the state approval requirements. This includes a review of all applicable indicators and domain components for the type of program.

(a) The twenty-seven-month review is a formal review to evaluate recently approved educator preparation programs and consider them for continued approval.

(i) The formal review will incorporate the following elements:

(A) The board shall determine the schedule for formal reviews and the forms of documentation and validation that will be used for evaluation.

(B) Preparation program providers will submit requested evidence to the staff of the board.

(C) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the programs professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses.

(ii) The twenty-seven-month review team will use multiple data sources to address the specific goals listed in this section.

(A) The twenty-seven-month review team and the preparation program provider will use annual performance indicator data available at the time of review. Performance of programs on board approved indicators will be used by the review team to write the review report and by the board in consideration of the program's continued approval status.

(B) The twenty-seven-month review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(C) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has implemented the program in alignment with the goals and design for which it was approved. Fidelity to approved program designs and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(D) The twenty-seven-month review team and the preparation program provider will evaluate whether and to what degree the provider of the program under review has demonstrated continuous improvement in its implementation and outcomes. Providers' ability to demonstrate continuous improvement in processes and outcomes will be used by the review team to write the review report and by the board in consideration of continued approval status.

(iii) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(A) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(B) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal twenty-seven-month review.

(C) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(D) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) The board's staff may provide technical assistance to providers to help them improve their performance as described in WAC 181-78A-110 (1)(b)(iv).

(b) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision. This request must be made within twenty days from the decision date. The hearing will be conducted through the office of administrative hearings by an administrative law judge ((per)) under chapter 34.05 RCW. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035.

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-110 Approval status for existing programs. Providers will be notified of their current program approval status after each annual review period. Approval status for all programs will be published on the board website.

(1) Based upon performance thresholds, formal program review reports, and national accreditation status, as applicable, the board shall take one of the following actions:

(a) Full approval.

(i) Teacher and principal preparation programs: The board shall approve programs that maintain overall performance at or above thresholds on program performance indicators.

(ii) School counseling and school psychology: The board shall approve programs that maintain accreditation from their national accrediting organizations.

(iii) Superintendent programs: The board shall approve programs that meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(iv) Program administrator programs: The board shall approve programs that meet or exceed the program approval standards and requirements established in this chapter and published by the board.

(b) Limited approval.

(i) Teacher and principal: The board may grant limited approval to educator preparation programs with performance below thresholds established by the professional educator standards board for more than three consecutive review periods. Based on the report of the site-based review team, the board may elect to consider these programs "at-risk" for purposes of federal reporting. Programs deemed "at-risk" after subsequent review periods of low performance on established thresholds, and with board consideration of the outcome of the formal review and report submitted per WAC 181-78A-100, may be granted continued limited approval with the designation of "low-performing" for purposes of federal reporting.

(ii) School counseling and school psychology: The board shall give limited approval to programs with limited approval from their national accrediting organizations.

(iii) Superintendent and program administrator: The board shall give limited approval to programs that do not meet approval criteria or national standards after being reviewed and reported on by a review team per WAC 181-78A-100(2).

(iv) The board's staff may provide technical assistance to providers of low-performing preparation programs to help them improve their performance. Technical assistance may include, but is not limited to:

(A) Detailed information on the programs performance relative indicators.

(B) Assistance to address the performance and rigor of programs.

(C) Assistance to identify resources to assist program improvement.

(D) Sharing practices found effective in exemplary programs.

(c) Disapproval.

(i) A teacher(~~(, principal, superintendent))~~ or (~~(program))~~ administrator program must be in limited approval status for at least one full review period before being considered by the board for disapproval. A provider whose program has been disapproved may request a hearing to be conducted through the office of administrative hearings under WAC 10-08-035.

(ii) Providers of school counseling programs must notify the board if the program loses approval from the council for the accreditation for counseling and related education programs or, if that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225, from the relevant national organization. The board may rescind approval of the program upon receipt of this notification.

(iii) Providers of school psychology programs must notify the board if the program loses approval from the National Association of School Psychologists or, if that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225, from the rel-

evant national organization. The board may rescind approval of the program upon receipt of this notification.

(2) The board, upon receipt of a serious complaint from any source or upon its own initiative prompted by indications of the need for response, may at any time review all or any part of a preparation program for compliance with the provisions of this chapter. If deviations from standards or requirements are found, the board is authorized to change the program's current approval status, including full disapproval.

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-220 Program approval standards for approved preparation programs. The board shall adopt and revise program standards that describe domains of practice, program components, and other expectations for ~~((teacher and principal))~~ educator preparation programs to align and maintain currency with recognized national association standards for the specific certificate role. The board will use national standards as guidance for determining domains, components, and indicators used for program review.

(1) General domain outcome expectations for teacher, principal, career and technical education administrator, superintendent, ~~((and))~~ program administrator, school counselor, and school psychologist preparation programs are as follows:

(a) Candidates and cohorts. Providers of educator preparation programs recruit, select, and prepare diverse cohorts of candidates with potential to be outstanding educators.

(i) Providers conduct strategic and ongoing outreach to identify, recruit, admit, support, and transition promising educator candidates.

(ii) Providers of preparation programs use strategies to recruit and prepare a greater number of candidates from underrepresented groups including, but not limited to, candidates of color in effort to prepare an educator workforce that mirrors the characteristics of the student population in Washington state public schools.

(iii) Providers set, publish and uphold admission standards to ensure that candidates and cohorts are academically capable and prepared to succeed in educator preparation programs.

(b) Knowledge, skills and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(i) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(ii) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(iii) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the professional standards adopted by the board for the role for which candidates are being prepared.

(iv) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(v) Providers ensure that teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710 and WAC 181-78A-232.

(c) Novice practitioners. Providers prepare candidates who are role ready.

(i) Providers prepare candidates who are ready to engage effectively in their role and context upon completion of educator preparation programs.

(ii) Providers prepare candidates to develop reflective, collaborative, and professional growth-centered practices through regular evaluation of the effects of their teaching through feedback and reflection.

(iii) Providers prepare candidates for their role in directing, supervising, and evaluating paraeducators.

(iv) Providers require candidates to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(d) State and local workforce needs. Providers contribute positively to state and local educator workforce needs.

(i) Providers partner with local schools to assess and respond to educator workforce, student learning, and educator professional learning needs.

(ii) Providers use preparation program and workforce data in cooperation with professional educator advisory boards to assess and respond to local and state workforce needs.

(iii) Providers of teacher educator preparation programs prepare and recommend increasing numbers of candidates in endorsement areas identified by the professional educator standards board workforce priorities.

(e) Data systems. Providers maintain data systems that are sufficient to direct program decision making, inform state-level priorities, and report to the professional educator standards board.

(i) Providers develop and maintain effective data systems that are sufficient for program growth, evaluation, and mandated reporting.

(ii) Providers utilize secure data practices for storing, monitoring, reporting, and using data for program improvement.

(iii) Providers produce and utilize data reports in accordance with data and reporting guidance published by the professional educator standards board.

(f) Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(i) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement per WAC 181-78A-125.

(ii) Providers ensure that candidates integrate knowledge and skills developed through field experiences with the content of programs' course work.

(ii) Providers offer field experiences that are in accordance with chapter 181-78A WAC and the board approved candidate assessment requirements.

(iv) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status, or local population density.

(g) Program resources and governance. Providers ensure that programs have adequate resources, facilities, and governance structures to enable effective administration and fiscal sustainability.

(i) Providers ensure that programs utilize a separate ~~((administrative))~~ administrative unit responsible for the composition and organization of the preparation program.

(ii) Providers ensure the program has adequate personnel to promote teaching and learning.

(iii) Providers ensure the program has adequate facilities and resources to promote teaching and learning.

(2) General knowledge and skills standards are as follows:

(a) Teacher: The board adopts the national knowledge and skills competencies most recently published by the Council of Chief State School Officers known as the *Interstate Teacher Assessment and Support Consortium Model Core Teaching Standards and Learning Progressions for Teachers* with any additions deemed necessary by the professional educator standards board.

Endorsement competencies will be aligned with the national standards of each content area/specialized professional organization, when such a national standard is available. Currently approved endorsement standards and competencies will be published on the board website.

(b) Principal: The board adopts the national knowledge and skills competencies most recently published by the National Policy Board for Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - Building Level* with any additions deemed necessary by the professional educator standards board.

(c) Superintendent: The board adopts the national knowledge and skills competencies published by the University Council of Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - District Level* published in 2018, or as subsequently revised. ~~((Until the publication of the *National Educational Leadership Preparation (NELP) Standards - District Level* with any additions deemed necessary by the professional educator standards board.))~~

(d) Program administrator: Provider may select national knowledge and skills competencies published by the University Council of Educational Administration known as the *National Educational Leadership Preparation (NELP) Standards - Building Level* or those known as the *National Educational Leadership Preparation (NELP) Standards - District Level* with any additions deemed necessary by the professional educator standards board.

(e) School counselor: The board adopts the national knowledge and skills competencies most recently published by the Council for Accreditation of Counseling and Related Educational Programs known as the CACREP standards with

any additions deemed necessary by the professional educator standards board.

(f) School psychologist: The board adopts the national knowledge and skills competencies most recently published by the National Association for School Psychologists known as the National Association for School Psychologists standards for graduate preparation of school psychologists with any additions deemed necessary by the professional educator standards board.

(g) Standards for career and technical education teacher preparation programs resulting in an initial certificate area, as published by the professional educator standards board and as described in WAC 181-77A-165.

(h) Standards for career and technical education administrator preparation programs are as published by the professional educator standards board.

AMENDATORY SECTION (Amending WSR 19-15-144, filed 7/24/19, effective 8/24/19)

WAC 181-78A-225 Acceptance of alternative standards and additions to national standards for school counselor and school psychologist preparation programs.

(1) For a given program, the professional educator standards board may allow the substitution of alternative national standards for program approval standards for school counselor and school psychologist program approval, if they are deemed by the board to be equivalent to the board-adopted national standards for the role (WAC 181-78A-220 (2) through (5)).

(2) The professional educator standards board has deemed necessary the following additions to the standards adopted by the Council for Accreditation of Counseling and Related Educational Programs (CACREP):

WAC 181-78A-232 (1), (1)(a), and (2)(d); 181-78A-233 (2)(c); 181-78A-234 (2)(c) and (d); 181-78A-235 (1)(b), (2)(b) and (d), (3), (3)(b) and (c); and 181-78A-236 (1)(a), (2)(c), and (4)(a).

(3) The professional educator standards board has deemed necessary the following additions to the standards adopted by the National Association of School Psychologists (NASP):

WAC 181-78A-232 (2)(d); 181-78A-233 (2)(c); 181-78A-234(1), (1)(a) and (b), (2), (2)(a), (c), and (d); 181-78A-235 (1)(b), (2)(a), (b), and (d), (3), (3)(b) and (c); 181-78A-236 (2)(c) and (f); and 181-78A-237 (1)(b).

(4) The professional educator standards board may allow the substitution of national standards (e.g., the National Council for Accreditation of Teacher Education (NCATE) teacher education standards) for program approval with any additions deemed necessary by the professional educator standards board. National standards may also be approved for programs in specific endorsement areas if they are deemed to be equivalent to state standards.

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-232 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval

domain standard—Candidate knowledge, skills, and cultural responsiveness. Knowledge, skills, and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(1) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(a) Qualified faculty use multiple instructional strategies, pedagogies, and assessments to address candidates' academic language ability levels and cultural and linguistic backgrounds.

(b) Providers create opportunities for faculty members and program personnel to pursue, apply, and practice ongoing professional learning to improve their knowledge, skill, effectiveness, and cultural responsiveness.

(c) Faculty within the program and the unit collaborate among one another, with content specialists, P-12 schools, members of the broader professional community, and diverse members of local communities for continuous program improvement.

(d) Faculty members and program leaders systematically and comprehensively evaluate faculty's effectiveness in teaching and learning.

(2) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate the most recently published InTASC Standards, candidates in principal programs demonstrate the most recently published NELP - Building Level Standards, ~~((and))~~ candidates in superintendent programs demonstrate the most recently published NELP - District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP standards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Teacher candidates must take a board approved basic skills assessment prior to program. A provider of a teacher preparation program must assure that all candidates entering the program have successfully met the basic skills requirement under chapter 181-01 WAC at the time of admission. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher candidates must take a content knowledge assessment prior to beginning student teaching. The provider must collect and hold evidence of candidates meeting this requirement. Teacher candidates apply content knowledge as reflected in board approved endorsement competencies. Endorsement assessments are not required for teacher candidates in career and technical education business and industry route programs.

(d) Providers ensure that educator candidates complete a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030.

(e) Under RCW 28A.410.040, a teacher candidate whose only baccalaureate degree is in early childhood education, elementary education, or special education must have completed thirty quarter credits, or the equivalent in semester credits or continuing education credit hours, in one academic field in an endorsement area under WAC 181-82A-202.

(f) Candidates for an initial certificate in a career and technical education residency teacher preparation program must complete a minimum of forty-five quarter credits, or the equivalent in semester credits or continuing education credit hours, in the specific career and technical education area for which certification is sought.

(3) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the professional standards adopted by the board for the role for which candidates are being prepared.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role, which were adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate most recently published InTASC Standards, candidates in principal programs demonstrate most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate most recently published NELP - District Level Standards, candidates in school counselor programs demonstrate the most recently published CACREP standards, candidates in school psychologist programs demonstrate the most recently published NASP standards for graduate preparation of school psychologists, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Faculty and mentors provide regular and ongoing feedback to candidates regarding field based performance that is actionable and leads to improvement in candidates' practice.

(c) Providers demonstrate through structured observation, discussion, surveys, and/or artifacts that program completers effectively apply the professional knowledge, skills, and dispositions that the preparation program was designed to achieve.

(d) Providers ensure that teacher candidates achieve passing scores on the teacher performance assessment, also known as the pedagogy assessment, approved by the board. Teacher preparation program providers shall require that each candidate engage in a performance assessment process approved by the board. The teacher performance assessment is not required for teacher candidates in career and technical education business and industry route programs. Candidates who participated in the teacher performance assessment field trials or took the pedagogy assessment prior to January 1, 2014, may be recommended for certification by the preparation program without a passing score.

(e) Providers of career and technical educator preparation programs provide candidates all necessary guidance to document, demonstrate, and submit for approval the required hours of occupational experience.

(f) In order to ensure that teacher and principal candidates can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, teacher and principal preparation program providers must incorporate the social emotional standards and benchmarks, and must provide guidance to candidates on related competencies described in RCW 28A.410.270.

(4) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(a) Providers offer all candidates meaningful, reflective opportunities to interact with racially and culturally diverse colleagues, faculty, P-12 practitioners, and P-12 students and families.

(b) Providers prepare candidates to adapt their practices based on students' prior experiences, cultural knowledge, and frames of reference to make learning encounters more relevant and effective.

(c) Providers ensure course work explicitly focuses on cultural responsiveness and integrates components of culturally responsive education within and throughout all courses.

(d) Faculty explicitly model equity pedagogy in course work and ~~((practices))~~ field experiences in ways that enable candidates to integrate their own cultural and linguistic backgrounds into classroom activities.

(5) Teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710.

(a) There shall be a one quarter or semester course, or the equivalent in continuing education credit hours, in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-236 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Field experience and clinical practice. Field experience and clinical practice. Providers offer field-based learning experiences and formalized clinical practice

experiences for candidates to develop and demonstrate the knowledge and skills needed for their role.

(1) Providers establish and maintain field placement practices, relationships, and agreements with all school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(a) The program provider and school partners cooperatively design, implement, and evaluate field experiences and clinical practices conforming to board standards and requirements for the role.

(b) Clinical practice for teacher candidates in programs approved to offer traditional routes to teacher certification must consist of no less than four hundred fifty hours in a classroom setting, with a qualifying mentor teacher. Clinical practice for teacher candidates in programs approved to offer alternative routes to certification must consist of no less than five hundred forty hours in a classroom setting with a qualifying mentor.

(c) Principal candidates complete an internship for a full school year, consisting of at least five hundred forty hours, half of which must be during school hours when students and/or staff are present. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(d) Superintendent candidates must complete an internship of at least three hundred sixty hours. Interning candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220 and 181-78A-232.

(e) Candidates in career and technical education teacher preparation programs as described in WAC 181-77-031 must complete a student teaching experience of at least four hundred fifty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(f) Candidates in career and technical education administrator and business and industry route programs must complete a practicum of at least sixty hours. Candidates must demonstrate that they have the appropriate, specific skills pursuant to the standards identified in the career and technical education standards approved by the professional educator standards board.

(g) Providers articulate in writing clear entry and exit criteria as well as a process for mitigating concerns during clinical practice for candidates, school leader(s), and the mentor.

(2) Providers ensure that candidates integrate knowledge and skills developed through field and industry experiences with the content of programs' course work.

(a) Providers offer field experiences in which teacher and principal candidates plan, practice, discuss, and reflect upon methods of instruction and differentiation, and all educator candidates demonstrate that they have the appropriate, specific relevant skills pursuant to WAC 181-78A-220 and 181-78A-232 to be effective in the role.

(b) Integrate assignments, assessments, and actionable feedback throughout candidates' field experiences.

(c) Provide faculty supervision, including ~~((on-site))~~ supervisory visits, on an ongoing basis.

(d) Identify and recruit mentors for candidates who are educational leaders collaboratively with the partner school(s) or district(s).

(e) Ensure that candidates' mentors are fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(f) Mentors and school leaders are provided with a set of internship expectations and receive, or provide evidence of having received, training and experience mentoring adult learners and culturally responsive teaching and learning.

(g) Effectiveness of mentor preparation and communication are reviewed annually by program faculty.

(3) Providers offer field experiences in accordance with chapter 181-78A WAC and the board approved candidate assessment requirements.

(a) Ensure that educator candidates are placed in settings where they can be evaluated and given actionable feedback.

(b) Ensure that educator candidates are fingerprinted and have completed required character clearance prior to placement in field experience settings.

(4) Providers ensure that candidates participate in field experiences in school settings with students and teachers who differ from themselves in race, ethnicity, home language, socio-economic status or local population density.

(a) Field experiences provide opportunities to work in communities or with student populations with backgrounds dissimilar to the background of the candidate.

(b) Course assignments and discussions offer candidates opportunities to reflect upon interactions with diverse populations and communities in order to integrate professional growth in cultural responsiveness as a habit of practice.

(c) Candidates have opportunities to design, implement and receive feedback on cultural responsiveness in lessons, assignments, and activities.

WSR 21-15-099

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 20, 2021, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-030.

Title of Rule and Other Identifying Information: WAC 182-60-027 Patient decision aid review advisory panel and 182-60-040 Agency medical director certification.

Hearing Location(s): On August 24, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_BNCWCw0FQSOhcaAMJzTrTw. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 25, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 24, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by August 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-60-027 to add patient representative to the list of panel members. Patient representatives add value to HCA's patient decision aid (PDA) review advisory panels. After conducting several rounds of certification and recertification, HCA has determined that two years is too short of a time frame between the initial certification of a PDA and its recertification. Therefore, HCA is amending WAC 182-60-040 to change the length of time for certification of PDAs from two years to five years.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 7.70.060(4).

Statute Being Implemented: RCW 41.05.021, 41.05.160, and 7.70.060(4).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Sarah Pearson, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-0877.

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

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

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

July 20, 2021
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-17-039, filed 8/9/17, effective 9/9/17)

WAC 182-60-027 Patient decision aid review advisory panel. (1) The agency's medical director has the authority to establish one or more expert advisory panels to review patient decision aids using established criteria under WAC 182-60-025.

(2) The panel may include the following as necessary:

- (a) Practicing physicians or other relevant licensed health professionals;
- (b) Health literacy and numeracy experts;
- (c) Experts in shared decision making; (~~and~~)
- (d) Legal experts; and
- (e) Patient representatives.

(3) The agency's medical director may contract with an evidence-based practice center or other appropriate expert to review and advise on the validity or presentation of evidence, other elements of the decision aid, or on developing and updating policies or practices.

(4) Advisory review panel members must meet conflict of interest and disclosure requirements. Each advisory panel member must:

(a) Complete an advisory panel member agreement, including a conflict of interest disclosure form, and keep disclosure statements current;

(b) Abide by confidentiality requirements and keep all proprietary information confidential; and

(c) Not use information gained as a result of advisory panel membership outside of advisory panel responsibilities, unless the information is publicly available.

(5) The agency's medical director makes the final determination on certification.

AMENDATORY SECTION (Amending WSR 17-17-039, filed 8/9/17, effective 9/9/17)

WAC 182-60-040 Agency medical director certification. (1) Decisions.

(a) The agency's medical director, with input as determined necessary by an advisory review team, or contracted experts, or both, makes a written determination to:

(i) Certify the decision aid;

(ii) Notify the developer of areas of deficiency and provide an opportunity to remedy deficiencies as described in WAC 182-60-045; or

(iii) Decline to certify the decision aid.

(b) Upon certification, the agency adds the decision aid to a list of certified products posted on the agency website.

(c) Certification determinations are final and not subject to appeal.

(2) Certification period. For patient decision aids certified on January 1, 2021, and after, a certification under this chapter is valid for (~~two~~) five years from the date of the written certification determination, except in the case of withdrawal or suspension under subsection (4) of this section.

(3) Recertification.

(a) The developer may request recertification by taking the following steps six months before the current certification expires:

(i) Request recertification;

(ii) Submit any needed updates or modifications using HCA 82-328 form; and

(iii) Pay the required certification fee.

(b) The agency's medical director may limit review to the updated elements of the application and the decision aid, together with associated evidence and may make the determinations described in subsection (1) of this section.

(c) For patient decision aids certified on January 1, 2021, and after, recertification is effective for ~~(two)~~ five years from the date of the written recertification determination.

(4) Withdrawal or suspension of certification.

(a) Developers must notify the agency's medical director when they become aware of information that may materially change the content of an approved decision aid or supporting application materials on file.

(b) The agency's medical director may withdraw or suspend a certification:

(i) On the medical director's own initiative, if information becomes available that may materially change the decision aid's content or supporting application materials; or

(ii) In response to developer notification under (a) of this subsection.

(c) Within ten business days of the agency's withdrawal or suspension of a certification, the agency sends notification to the developer's address on file.

(d) The developer must submit its updated application materials to the agency's medical director within the time frame specified in the agency's notice. The agency charges the developer reasonable costs associated with the recertification.

(e) The agency's medical director may limit review to the updated elements of the decision aid and may make the determinations described in subsection (1) of this section.

(f) If a developer fails to submit updated application materials within the time frame in (d) of this subsection, the agency withdraws the certification.

(g) The agency posts withdrawal, suspension, and recertification decisions on the agency's website.

(5) Effect of certification determination.

(a) Certification under this chapter provides the basis for heightened legal protections under RCW 7.70.065; and

(b) A certified patient decision aid used as part of a shared decision-making process may also be a requirement or preference in contract or arrangements for state-purchased health care.

you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 25, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 24, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by August 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-70-040 Registration requirements, to set the Washington covered person threshold at one thousand covered persons for data suppliers in the all-payer health care claims database program. HCA also added the required procedure for determining if the data supplier meets this threshold.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 43.371.070.

Statute Being Implemented: RCW 41.05.021, 41.05.160, and 43.371.070.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Lorie Geryk, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1598.

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

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

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

July 20, 2021

Wendy Barcus
Rules Coordinator

WSR 21-15-100
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed July 20, 2021, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-121.

Title of Rule and Other Identifying Information: WAC 182-70-040 Registration requirements.

Hearing Location(s): On August 24, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_BNCWCw0FQSOhcaAMJzTrTw. After registering,

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-040 Registration requirements. (1) Washington covered persons threshold for data suppliers. Any carrier, third-party administrator, public program, or other potential data supplier identified in RCW 43.371.030 with 1000 or more Washington covered persons, as defined in WAC 182-70-030, as of December 31st of the previous calendar year must submit data in accordance with this chapter.

(a) For the purposes of determining whether a potential data supplier is subject to the requirements of this chapter, potential data suppliers must aggregate the number of Washington covered persons for all companies at the group code level, as defined by the National Association of Insurance Commissioners.

(b) Potential data suppliers that offer any combination of medical, dental, or pharmaceutical benefits under separate or combined plans must count all Washington covered persons, regardless of the comprehensiveness of the plan, toward the 1000 Washington covered persons threshold.

~~((2))~~ **(2) Initial registration.** Each data supplier required to submit health care data pursuant to chapter 43.371 RCW (~~shall~~) must register within thirty days of notification from the lead organization.

~~((2))~~ **(3) Annual registration.** Each data supplier required to submit health care data pursuant to chapter 43.371 RCW (~~shall~~) must register by December 31st of each year after the initial registration. If the data supplier initially registers September 1st or later, then the data supplier (~~shall~~) must file its annual registration by December 31st of the year following the year of the initial registration.

~~((3))~~ **(4)** Each data supplier newly required to submit health care data under chapter 43.371 RCW, either by a change in law or loss of qualified exemption, (~~shall~~) must register with the lead organization within thirty days of being required to submit data.

WSR 21-15-109
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed July 20, 2021, 3:34 p.m.]

Continuance of WSR 21-06-077.

Preproposal statement of inquiry was filed as WSR 20-18-085.

Title of Rule and Other Identifying Information: Chapter 352-28 WAC, Protection and conservation of state park natural resources, the proposal would update and consolidate definitions and clarify the agency approval process for resource sales.

WSR 21-12-109 is withdrawn (July 15 hearing date) and will be heard on September 16.

Hearing Location(s): On September 16, 2021, at 9:30 a.m., at City of Richland City Hall, 625 Swift Boulevard, Richland, WA 99352.

Date of Intended Adoption: September 16, 2021.

Submit Written Comments to: Lisa Lantz, 1111 Israel Road S.W., Olympia, WA, email lisa.lantz@parks.wa.gov, fax 360-586-6647, by September 10, 2021, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-386-0355, TTY 711, email becki.ellison@parks.wa.gov, by September 10, 2021, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would update definitions and consolidate them into WAC

352-28-005. It would also clarify the agency approval process for resource sales by setting new measures and thresholds for approval of sales based on volume, rather than value of timber. Current rule requires state parks and recreation commission approval for sales with an appraised value over \$25,000 and director approval under that threshold. The proposed rule would require state parks and recreation commission approval for timber sales over one million board-feet, director approval for sales between one million and five thousand board-feet, and program manager approval for sales five thousand board-feet or less. The proposal would also require state parks and recreation commission approval for timber sales resulting from the conversion of forest land for the development of park facilities, where the appraised value of the timber is over \$25,000. The revision will clarify the agency's internal approval process, but it is not anticipated to affect the overall number or quantity of resource sales.

Reasons Supporting Proposal: The current rule has definitions in multiple sections. In addition, the existing rule on resource sales, which uses a dollar threshold for determining the approval process for sales, can be interpreted in different ways. The proposal would transition to a volume threshold, which clarifies the approval process, is more consistent with other state resource agencies, and more accurately represents the scale and significance of forest health treatments.

Statutory Authority for Adoption: RCW 79A.05.070.

Statute Being Implemented: RCW 79A.05.035.

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

Name of Proponent: [No information supplied], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: David Cass, Olympia Headquarters, 360-902-8606; Enforcement: Lisa Lantz, Olympia Headquarters, 360-902-8641.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not identify the Washington state parks and recreation commission as one of the agencies required to prepare a cost-benefit analysis.

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

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

July 20, 2021
Valeria Veasley
Mangement Analyst

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-005 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) (~~“(Catastrophic forest event” means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.~~

(2)) "Commission" means the Washington state parks and recreation commission.

~~((3))~~ (2) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(3) "Cruise" means a forest survey to locate and estimate the quantity of timber on a given area according to species, size, quality, possible products, or other characteristics.

(4) "Director" means the director of the Washington state parks and recreation commission.

(5) "Emergency tree" means any tree that has already failed, or that poses an imminent or probable likelihood of failure before the next inspection, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, could impact a target.

(6) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC ((232-12-014)) 220-610-010.

~~((6))~~ (7) "Natural resource(s)" includes biological organisms, their processes, dead or organic matter, soils, and geologic materials.

~~((7))~~ (8) "Resource conservation plan" means a plan that advances the stewardship of that resource. The plan may address, although not be limited to, resource conservation, protection, restoration or mitigation.

~~((8))~~ (9) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

~~((9))~~ (10) "Significant tree" means living and dead standing trees greater than 10 inches in diameter at breast height (4.5 feet above the ground).

(11) "Target" means a structure, facility, property, activity, or person that has the potential to be hit or impacted by a falling tree or tree part.

(12) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

(13) "Timber" means forest trees of commercial value.

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-010 Cutting, collection and removal of natural resources. (1) **Trees may be cut and removed subject to the following limitations:**

(a) **Significant trees:** (~~(Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground).)~~) Except in emergencies and when feasible, significant trees in any area under the jurisdiction and/or management of the commission shall be removed only after they have been evaluated, rated, appraised and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet process and upon the written approval of the director or the designee of the director.

(b) **Emergency trees:** (~~(Emergency trees means any tree that has already failed (cracked, tipped, diseased, or standing dead) or that poses an imminent threat, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part.)~~) The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or (~~(arboriculture manager)~~) certified arborist is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) **Worksheet:** The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emergency trees, occur only after agency review through the tree activity worksheet process and the written approval of the director or designee.

(d) **Consultation:** The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except in the case of emergency trees, be approved only by the director or designee and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a resource conservation plan for affected natural resources, and a public hearing (~~(on each such proposed cutting or removal conducted)~~) in the county/counties in which the cutting or removal is to take place (~~(as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county or by an alternative method prescribed by the commission deemed to yield equal or better public notice. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director)~~).

(2) **Native plants, fungi, and dead organic matter:** The cutting or removal of natural resources, other than trees or those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or designee.

(3) **Protected species:** Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of natural resources in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director or designee after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of natural resources to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005, on lands managed by the commission or on other state lands, will only occur as a part of an interagency agreement or resource conservation plan that involves consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or designee.

(4) **Land classification (chapter 352-16 WAC) criteria:** Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required, and only where necessary, to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of boundary fences, trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recreation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and overstory trees to provide screening, wind, and sun protection.

(vi) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

(vii) Prevent the deterioration or loss of historical/cultural resources.

(viii) Maintenance or construction of fire lanes for abatement of fires.

(ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

(x) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) **Use of fallen trees:** When feasible, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood, or where the tree has no economic values contributed to a state managed resource conservation effort. In natural area preserves, natural forest areas, natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

(6) **Parks use:** Subject to the guidelines of this section, the commission may authorize the use of natural resources within recreation areas, resource recreation areas, and heritage areas for park purposes.

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-020 Resource sales and leases. The following qualifications, procedures, and general provisions pertain to the sale of natural resources from commission owned or managed lands:

(1) Subject to the limitations set forth under WAC 352-28-010(4), the sale of natural resources will be undertaken only where they advance a commission approved development, are part of a resource conservation plan or interagency agreement approved by the director or designee, or are deemed by the director or designee to advance agency stewardship goals and are surplus to the ~~((parks))~~ park's needs.

(2) Prior to a sale of natural resources, qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid, unless such natural resources are for use by the park or qualify for direct sale under subsection ~~((4))~~ (5) of this section.

Where ~~((trees are))~~ timber is to be sold, such ~~((trees))~~ timber shall be cruised or appraised using methods consistent with those applied by the Washington department of natural resources or other applicable professional standards of forest land and timber appraisal. Complete records of the methods and assumptions used to make the cruise or timber appraisal and estimated minimum acceptable bids shall be maintained.

(3) Sales of timber where the ~~((appraised value))~~ cruised volume of the ~~((materials))~~ timber is in excess of ~~((twenty-five thousand dollars))~~ one million board-feet shall require approval by a majority of the commission.

(4) Sales of timber where the ~~((appraised value))~~ cruised volume of the ~~((materials))~~ timber is less than or equal to ~~((twenty-five thousand dollars))~~ one million board-feet and greater than five thousand board-feet shall require approval by the director or designee. The director may defer approval to the commission, in which case it shall require approval by a majority of the commission.

(5) Sales of timber where the cruised volume of timber is less than or equal to five thousand board-feet shall require approval by the natural resources program manager.

(6) Sales of timber resulting from the conversion of forest land for the development of park facilities where the appraised value of the timber removed is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(7) Sales of natural resources other than timber where the appraised value is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(8) All sales shall be conducted pursuant to procedures approved by the commission.

WSR 21-15-120

PROPOSED RULES

TRANSPORTATION COMMISSION

[Filed July 21, 2021, 10:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-114.

Title of Rule and Other Identifying Information: For purposes of setting State Route (SR) 520 Bridge toll rates, fees, and policies, amending WAC 468-270-071 What are the toll rates on the SR 520 Bridge?

Hearing Location(s): On August 24, 2021, at 10:00 a.m., virtual, https://us02web.zoom.us/webinar/register/WN_RWa6Kv9MSZGhsSWsf-0ovw. In response to the COVID-19 pandemic, the Washington state transportation commission (WSTC) will hold this hearing virtually to promote social distancing and the safety of the citizens of Washington state. This is an online meeting that you can attend from any computer using internet access. Please register at https://us02web.zoom.us/webinar/register/WN_RWa6Kv9MSZGhsSWsf-0ovw. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer to attend and testify.

Date of Intended Adoption: August 24, 2021.

Submit Written Comments to: WSTC, P.O. Box 47308, Olympia, WA 98504-7308, email transc@wstc.wa.gov, fax 360-705-6802, by August 16, 2021.

Assistance for Persons with Disabilities: Contact Bobbie Garver, phone 360-705-7070, fax 360-705-6802, TTY 711 connect to 360-705-7070, email transc@wstc.wa.gov, by August 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to adjust future toll rates for the SR 520 Bridge to mitigate a reduction in revenue resulting from the COVID-19 pandemic and to ensure that long-term financial obligations and legal requirements can be met.

The anticipated effects of this proposal are that toll rates will be raised, effective July 1, 2023.

Reasons Supporting Proposal: Pursuant to RCW 47.56.-870, WSTC, as the state tolling authority, must consider toll rates that will help maintain travel time, speed, and reliability on the SR 520 corridor, and must set and adjust toll rates and policies on the SR 520 Bridge to generate revenue sufficient and necessary to cover costs and obligations described in RCW 47.56.830 and 47.56.850. Toll rates must also be set to

meet requirements contained in the SR 520 master bond resolution. Pursuant to RCW 47.56.795, WSTC is also authorized to assess system-wide administrative fees as appropriate for toll collection processes.

Statutory Authority for Adoption: RCW 47.56.030, 47.56.795, 47.56.850, and 47.56.862.

Statute Being Implemented: RCW 47.56.870, 47.56.830, 47.56.795.

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

Name of Proponent: WSTC, governmental.

Name of Agency Personnel Responsible for Drafting: Carl See, WSTC, 2404 Chandler Court S.W., Olympia, WA 98504, 360-705-7070; Implementation and Enforcement: Ed Barry, Washington State Department of Transportation, 2901 Third Avenue, Suite 500, Seattle, WA 98121, 206-464-1217.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(b)(vi), a cost-benefit analysis is not required, as this is setting or adjusting fees or rates pursuant to legislative requirements in RCW 47.56.850.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

July 21, 2021

Reema Griffith

Executive Director

AMENDATORY SECTION (Amending WSR 18-17-163, 19-01-066 and 19-10-006, filed 8/21/18, 12/14/18, and 4/18/19, effective 8/1/19)

WAC 468-270-071 What are the toll rates on the SR 520 Bridge? Tables 2 through 6 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

TABLE 2, Effective July 1, (~~2017~~) 2023
SR 520 BRIDGE
TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 6 a.m.	(\$2.00) <u>\$2.50</u>	(\$4.00) <u>\$4.50</u>	(\$2.25) <u>\$2.75</u>
6 a.m. to 7 a.m.	(\$3.40) <u>\$3.80</u>	(\$5.40) <u>\$5.80</u>	(\$3.65) <u>\$4.05</u>
(7 a.m. to 9 a.m.) 7 a.m. to 10 a.m.	(\$4.30) <u>\$4.50</u>	(\$6.30) <u>\$6.50</u>	(\$4.55) <u>\$4.75</u>
(9 a.m. to 10 a.m.) 10 a.m. to 11 a.m.	(\$3.40) <u>\$3.80</u>	(\$5.40) <u>\$5.80</u>	(\$3.65) <u>\$4.05</u>
(10 a.m. to 2 p.m.) 11 a.m. to 2 p.m.	(\$2.70) <u>\$3.25</u>	(\$4.70) <u>\$5.25</u>	(\$2.95) <u>\$3.50</u>
2 p.m. to 3 p.m.	(\$3.40) <u>\$3.80</u>	(\$5.40) <u>\$5.80</u>	(\$3.65) <u>\$4.05</u>
(3 p.m. to 6 p.m.) 3 p.m. to 7 p.m.	(\$4.30) <u>\$4.50</u>	(\$6.30) <u>\$6.50</u>	(\$4.55) <u>\$4.75</u>
(6 p.m. to 7 p.m.) 7 p.m. to 8 p.m.	(\$3.40) <u>\$3.80</u>	(\$5.40) <u>\$5.80</u>	(\$3.65) <u>\$4.05</u>
(7 p.m. to 9 p.m.) 8 p.m. to 9 p.m.	(\$2.70) <u>\$3.25</u>	(\$4.70) <u>\$5.25</u>	(\$2.95) <u>\$3.50</u>
9 p.m. to 11 p.m.	(\$2.00) <u>\$2.50</u>	(\$4.00) <u>\$4.50</u>	(\$2.25) <u>\$2.75</u>
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$1.25	\$3.25	\$1.50
5 a.m. to 8 a.m.	(\$1.40) <u>\$1.60</u>	(\$3.40) <u>\$3.60</u>	(\$1.65) <u>\$1.85</u>
8 a.m. to 11 a.m.	(\$2.05) <u>\$2.35</u>	(\$4.05) <u>\$4.35</u>	(\$2.30) <u>\$2.60</u>

Saturdays and Sundays ³	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
11 a.m. to 6 p.m.	(\$2.65) <u>\$3.05</u>	(\$4.65) <u>\$5.05</u>	(\$2.90) <u>\$3.30</u>
6 p.m. to 9 p.m.	(\$2.05) <u>\$2.35</u>	(\$4.05) <u>\$4.35</u>	(\$2.30) <u>\$2.60</u>
9 p.m. to 11 p.m.	(\$1.40) <u>\$1.60</u>	(\$3.40) <u>\$3.60</u>	(\$1.65) <u>\$1.85</u>
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 3, Effective July 1, (~~2017~~) 2023
SR 520 BRIDGE
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 6 a.m.	(\$3.00) <u>\$3.75</u>	(\$6.00) <u>\$6.75</u>	(\$3.25) <u>\$4.00</u>
6 a.m. to 7 a.m.	(\$5.10) <u>\$5.70</u>	(\$8.10) <u>\$8.70</u>	(\$5.35) <u>\$5.95</u>
(7 a.m. to 9 a.m.) 7 a.m. to 10 a.m.	(\$6.45) <u>\$6.75</u>	(\$9.45) <u>\$9.75</u>	(\$6.70) <u>\$7.00</u>
(9 a.m. to 10 a.m.) 10 a.m. to 11 a.m.	(\$5.10) <u>\$5.70</u>	(\$8.10) <u>\$8.70</u>	(\$5.35) <u>\$5.95</u>
(10 a.m. to 2 p.m.) 11 a.m. to 2 p.m.	(\$4.05) <u>\$4.90</u>	(\$7.05) <u>\$7.90</u>	(\$4.30) <u>\$5.15</u>
2 p.m. to 3 p.m.	(\$5.10) <u>\$5.70</u>	(\$8.10) <u>\$8.70</u>	(\$5.35) <u>\$5.95</u>
(3 p.m. to 6 p.m.) 3 p.m. to 7 p.m.	(\$6.45) <u>\$6.75</u>	(\$9.45) <u>\$9.75</u>	(\$6.70) <u>\$7.00</u>
(6 p.m. to 7 p.m.) 7 p.m. to 8 p.m.	(\$5.10) <u>\$5.70</u>	(\$8.10) <u>\$8.70</u>	(\$5.35) <u>\$5.95</u>
(7 p.m. to 9 p.m.) 8 p.m. to 9 p.m.	(\$4.05) <u>\$4.90</u>	(\$7.05) <u>\$7.90</u>	(\$4.30) <u>\$5.15</u>
9 p.m. to 11 p.m.	(\$3.00) <u>\$3.75</u>	(\$6.00) <u>\$6.75</u>	(\$3.25) <u>\$4.00</u>
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Saturdays and Sundays ³	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 8 a.m.	(\$2.10) <u>\$2.40</u>	(\$5.10) <u>\$5.40</u>	(\$2.35) <u>\$2.65</u>
8 a.m. to 11 a.m.	(\$3.10) <u>\$3.55</u>	(\$6.10) <u>\$6.55</u>	(\$3.35) <u>\$3.80</u>
11 a.m. to 6 p.m.	(\$4.00) <u>\$4.60</u>	(\$7.00) <u>\$7.60</u>	(\$4.25) <u>\$4.85</u>
6 p.m. to 9 p.m.	(\$3.10) <u>\$3.55</u>	(\$6.10) <u>\$6.55</u>	(\$3.35) <u>\$3.80</u>
9 p.m. to 11 p.m.	(\$2.10) <u>\$2.40</u>	(\$5.10) <u>\$5.40</u>	(\$2.35) <u>\$2.65</u>
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 4, Effective July 1, (~~2017~~) **2023**
 SR 520 BRIDGE
 FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 6 a.m.	(\$4.00) <u>\$5.00</u>	(\$8.00) <u>\$9.00</u>	(\$4.25) <u>\$5.25</u>
6 a.m. to 7 a.m.	(\$6.80) <u>\$7.60</u>	(\$10.80) <u>\$11.60</u>	(\$7.05) <u>\$7.85</u>
(7 a.m. to 9 a.m.) 7 a.m. to 10 a.m.	(\$8.60) <u>\$9.00</u>	(\$12.60) <u>\$13.00</u>	(\$8.85) <u>\$9.25</u>
(9 a.m. to 10 a.m.) 10 a.m. to 11 a.m.	(\$6.80) <u>\$7.60</u>	(\$10.80) <u>\$11.60</u>	(\$7.05) <u>\$7.85</u>
(10 a.m. to 2 p.m.) 11 a.m. to 2 p.m.	(\$5.40) <u>\$6.50</u>	(\$9.40) <u>\$10.50</u>	(\$5.65) <u>\$6.75</u>
2 p.m. to 3 p.m.	(\$6.80) <u>\$7.60</u>	(\$10.80) <u>\$11.60</u>	(\$7.05) <u>\$7.85</u>
(3 p.m. to 6 p.m.) 3 p.m. to 7 p.m.	(\$8.60) <u>\$9.00</u>	(\$12.60) <u>\$13.00</u>	(\$8.85) <u>\$9.25</u>
(6 p.m. to 7 p.m.) 7 p.m. to 8 p.m.	(\$6.80) <u>\$7.60</u>	(\$10.80) <u>\$11.60</u>	(\$7.05) <u>\$7.85</u>
(7 p.m. to 9 p.m.) 8 p.m. to 9 p.m.	(\$5.40) <u>\$6.50</u>	(\$9.40) <u>\$10.50</u>	(\$5.65) <u>\$6.75</u>
9 p.m. to 11 p.m.	(\$4.00) <u>\$5.00</u>	(\$8.00) <u>\$9.00</u>	(\$4.25) <u>\$5.25</u>
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 8 a.m.	(\$2.80) <u>\$3.20</u>	(\$6.80) <u>\$7.20</u>	(\$3.05) <u>\$3.45</u>
8 a.m. to 11 a.m.	(\$4.10) <u>\$4.70</u>	(\$8.10) <u>\$8.70</u>	(\$4.35) <u>\$4.95</u>
11 a.m. to 6 p.m.	(\$5.30) <u>\$6.10</u>	(\$9.30) <u>\$10.10</u>	(\$5.55) <u>\$6.35</u>
6 p.m. to 9 p.m.	(\$4.10) <u>\$4.70</u>	(\$8.10) <u>\$8.70</u>	(\$4.35) <u>\$4.95</u>
9 p.m. to 11 p.m.	(\$2.80) <u>\$3.20</u>	(\$6.80) <u>\$7.20</u>	(\$3.05) <u>\$3.45</u>
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 5, Effective July 1, (~~2017~~) **2023**
 SR 520 BRIDGE
 FIVE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 6 a.m.	(\$5.00) <u>\$6.25</u>	(\$10.00) <u>\$11.25</u>	(\$5.25) <u>\$6.50</u>
6 a.m. to 7 a.m.	(\$8.50) <u>\$9.50</u>	(\$13.50) <u>\$14.50</u>	(\$8.75) <u>\$9.75</u>
(7 a.m. to 9 a.m.) 7 a.m. to 10 a.m.	(\$10.75) <u>\$11.25</u>	(\$15.75) <u>\$16.25</u>	(\$11.00) <u>\$11.50</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
((9 a.m. to 10 a.m.)) 10 a.m. to 11 a.m.	((\$8.50)) <u>\$9.50</u>	((\$13.50)) <u>\$14.50</u>	((\$8.75)) <u>\$9.75</u>
((10 a.m. to 2 p.m.)) 11 a.m. to 2 p.m.	((\$6.75)) <u>\$8.15</u>	((\$11.75)) <u>\$13.15</u>	((\$7.00)) <u>\$8.40</u>
2 p.m. to 3 p.m.	((\$8.50)) <u>\$9.50</u>	((\$13.50)) <u>\$14.50</u>	((\$8.75)) <u>\$9.75</u>
((3 p.m. to 6 p.m.)) 3 p.m. to 7 p.m.	((\$10.75)) <u>\$11.25</u>	((\$15.75)) <u>\$16.25</u>	((\$11.00)) <u>\$11.50</u>
((6 p.m. to 7 p.m.)) 7 p.m. to 8 p.m.	((\$8.50)) <u>\$9.50</u>	((\$13.50)) <u>\$14.50</u>	((\$8.75)) <u>\$9.75</u>
((7 p.m. to 9 p.m.)) 8 p.m. to 9 p.m.	((\$6.75)) <u>\$8.15</u>	((\$11.75)) <u>\$13.15</u>	((\$7.00)) <u>\$8.40</u>
9 p.m. to 11 p.m.	((\$5.00)) <u>\$6.25</u>	((\$10.00)) <u>\$11.25</u>	((\$5.25)) <u>\$6.50</u>
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 8 a.m.	((\$3.50)) <u>\$4.00</u>	((\$8.50)) <u>\$9.00</u>	((\$3.75)) <u>\$4.25</u>
8 a.m. to 11 a.m.	((\$5.15)) <u>\$5.90</u>	((\$10.15)) <u>\$10.90</u>	((\$5.40)) <u>\$6.15</u>
11 a.m. to 6 p.m.	((\$6.65)) <u>\$7.65</u>	((\$11.65)) <u>\$12.65</u>	((\$6.90)) <u>\$7.90</u>
6 p.m. to 9 p.m.	((\$5.15)) <u>\$5.90</u>	((\$10.15)) <u>\$10.90</u>	((\$5.40)) <u>\$6.15</u>
9 p.m. to 11 p.m.	((\$3.50)) <u>\$4.00</u>	((\$8.50)) <u>\$9.00</u>	((\$3.75)) <u>\$4.25</u>
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 6, Effective July 1, (~~2017~~) 2023
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 6 a.m.	((\$6.00)) <u>\$7.50</u>	((\$12.00)) <u>\$13.50</u>	((\$6.25)) <u>\$7.75</u>
6 a.m. to 7 a.m.	((\$10.20)) <u>\$11.40</u>	((\$16.20)) <u>\$17.40</u>	((\$10.45)) <u>\$11.65</u>
((7 a.m. to 9 a.m.)) 7 a.m. to 10 a.m.	((\$12.90)) <u>\$13.50</u>	((\$18.90)) <u>\$19.50</u>	((\$13.15)) <u>\$13.75</u>
((9 a.m. to 10 a.m.)) 10 a.m. to 11 a.m.	((\$10.20)) <u>\$11.40</u>	((\$16.20)) <u>\$17.40</u>	((\$10.45)) <u>\$11.65</u>
((10 a.m. to 2 p.m.)) 11 a.m. to 2 p.m.	((\$8.10)) <u>\$9.75</u>	((\$14.10)) <u>\$15.75</u>	((\$8.35)) <u>\$10.00</u>
2 p.m. to 3 p.m.	((\$10.20)) <u>\$11.40</u>	((\$16.20)) <u>\$17.40</u>	((\$10.45)) <u>\$11.65</u>
((3 p.m. to 6 p.m.)) 3 p.m. to 7 p.m.	((\$12.90)) <u>\$13.50</u>	((\$18.90)) <u>\$19.50</u>	((\$13.15)) <u>\$13.75</u>
((6 p.m. to 7 p.m.)) 7 p.m. to 8 p.m.	((\$10.20)) <u>\$11.40</u>	((\$16.20)) <u>\$17.40</u>	((\$10.45)) <u>\$11.65</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
((7 p.m. to 9 p.m.)) 8 p.m. to 9 p.m.	((\$8.10) <u>\$9.75</u>)	((\$14.10) <u>\$15.75</u>)	((\$8.35) <u>\$10.00</u>)
9 p.m. to 11 p.m.	((\$6.00) <u>\$7.50</u>)	((\$12.00) <u>\$13.50</u>)	((\$6.25) <u>\$7.75</u>)
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 8 a.m.	((\$4.20) <u>\$4.80</u>)	((\$10.20) <u>\$10.80</u>)	((\$4.45) <u>\$5.05</u>)
8 a.m. to 11 a.m.	((\$6.15) <u>\$7.05</u>)	((\$12.15) <u>\$13.05</u>)	((\$6.40) <u>\$7.30</u>)
11 a.m. to 6 p.m.	((\$7.95) <u>\$9.15</u>)	((\$13.95) <u>\$15.15</u>)	((\$8.20) <u>\$9.40</u>)
6 p.m. to 9 p.m.	((\$6.15) <u>\$7.05</u>)	((\$12.15) <u>\$13.05</u>)	((\$6.40) <u>\$7.30</u>)
9 p.m. to 11 p.m.	((\$4.20) <u>\$4.80</u>)	((\$10.20) <u>\$10.80</u>)	((\$4.45) <u>\$5.05</u>)
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

WSR 21-15-122
PROPOSED RULES
TRANSPORTATION COMMISSION
 [Filed July 21, 2021, 10:13 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 21-07-116.
 Title of Rule and Other Identifying Information: For purposes of setting State Route (SR) 16 Tacoma Narrows Bridge toll rates, fees, and policies, amending WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge?
 Hearing Location(s): On August 24, 2021, at 10:00 a.m., virtual, https://us02web.zoom.us/webinar/register/WN_RWa6Kv9MSZGhsSWsf-0ovw. In response to the COVID-19 pandemic, the Washington state transportation commission (WSTC) will hold this hearing virtually to promote social distancing and the safety of the citizens of Washington state. This is an online meeting that you can attend from any computer using internet access. Please register at https://us02web.zoom.us/webinar/register/WN_RWa6Kv9MSZGhsSWsf-0ovw. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer to attend and testify.
 Date of Intended Adoption: Tuesday, August 24, 2021.
 Submit Written Comments to: WSTC, P.O. Box 47308, Olympia, WA 98504-7308, email transc@wstc.wa.gov, fax 360-705-6802, by August 16, 2021.
 Assistance for Persons with Disabilities: Contact Bobbie Garver, phone 360-705-7070, fax 360-705-6802, TTY 711

connect to 360-705-7070, email transc@wstc.wa.gov, by August 16, 2021.
 Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to adjust toll rates for the SR 16 Tacoma Narrows Bridge to meet financial requirements.
 The anticipated effects of this proposal are that toll rates for the SR 16 Tacoma Narrows Bridge will increase.
 Reasons Supporting Proposal: Pursuant to RCW 47.56-030 and 47.46.100, these rules establish toll rates for the Tacoma Narrows Bridge. Pursuant to RCW 47.46.100(3), WSTC shall set toll rates to be sufficient to meet maintenance and operations costs, insurance costs, make repayments to the motor vehicle fund, and make principal and interest payments on the debt. Pursuant to RCW 47.56.795, WSTC is also authorized to assess system-wide administrative fees as appropriate for toll collection processes. This increase is pursuant to RCW 47.46.190(4).
 Statutory Authority for Adoption: RCW 47.46.100, 47.56.030.
 Statute Being Implemented: RCW 47.46.100, 47.56.030, 47.46.190.
 Rule is not necessitated by federal law, federal or state court decision.
 Name of Proponent: WSTC, governmental.
 Name of Agency Personnel Responsible for Drafting: Carl See, WSTC, 2404 Chandler Court S.W., Olympia, WA 98504, 360-705-7070; Implementation and Enforcement: Ed Barry, Washington State Department of Transportation, 2901 Third Avenue, Suite 500, Seattle, WA 98121, 206-464-1217.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(b)(vi), a cost-benefit analysis is not required, as this is setting or adjusting fees or rates pursuant to legislative requirements in RCW 47.46.100.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

July 21, 2021
Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 18-17-163, 19-01-066 and 19-10-006, filed 8/21/18, 12/14/18 and 4/18/19, effective 8/1/19)

WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge? The toll rates for the Tacoma Narrows Bridge are shown in Table 1.

**Table 1, Effective ((~~July 1, 2015~~)) October 1, 2021
Tacoma Narrows Bridge Toll Rates**

Vehicle Axles	Good to Go!™ Pass ¹	Cash ¹	Pay By Mail ¹	Good To Go!™ Pay by Plate ²
2	(\$5.00) \$5.25	(\$6.00) \$6.25	(\$7.00) \$7.25	(\$5.25) \$5.50
3	(\$7.50) \$7.90	(\$9.00) \$9.40	(\$10.50) \$10.90	(\$7.75) \$8.15
4	(\$10.00) \$10.50	(\$12.00) \$12.50	(\$14.00) \$14.50	(\$10.25) \$10.75
5	(\$12.50) \$13.15	(\$15.00) \$15.65	(\$17.50) \$18.15	(\$12.75) \$13.40
6	(\$15.00) \$15.75	(\$18.00) \$18.75	(\$21.00) \$21.75	(\$15.25) \$16.00

Notes: ¹The rate has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

**WSR 21-15-123
PROPOSED RULES
TRANSPORTATION COMMISSION**

[Filed July 21, 2021, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-115.

Title of Rule and Other Identifying Information: For purposes of setting State Route (SR) 99 Tunnel toll rates, fees, and policies, amending WAC 468-270-073 What are the toll rates on the SR 99 Tunnel?

Hearing Location(s): On August 24, 2021, at 10:00 a.m., virtual, https://us02web.zoom.us/webinar/register/WN_RWa6Kv9MSZGhsSWsf-0ovw. In response to the COVID-19 pandemic, the Washington state transportation commission (WSTC) will hold this hearing virtually to promote social distancing and the safety of the citizens of Washington state. This is an online meeting that you can attend from any computer using internet access. Please register at [https://us02web.zoom.us/webinar/register/WN_RWa6Kv9MSZGhsSWsf-](https://us02web.zoom.us/webinar/register/WN_RWa6Kv9MSZGhsSWsf-0ovw)

0ovw. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer to attend and testify.

Date of Intended Adoption: August 24, 2021.

Submit Written Comments to: WSTC, P.O. Box 47308, Olympia, WA 98504-7308, email transc@wstc.wa.gov, fax 360-705-6802, by August 16, 2021.

Assistance for Persons with Disabilities: Contact Bobbie Garver, phone 360-705-7070, fax 360-705-6802, TTY 711 connect to 360-705-7070, email transc@wstc.wa.gov, by August 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to adjust toll rates for the SR 99 Tunnel, to mitigate a reduction in revenue resulting from the COVID-19 pandemic and to ensure that toll revenues cover repair and replacement costs for the tunnel as required under state law.

The anticipated effects of this proposal are that toll rates for the SR 99 Tunnel will increase.

Reasons Supporting Proposal: The commission is proposing the adjustment of toll rates for the SR 99 Tunnel that ensures legal and funding requirements are met, supports reliable travel times and speed on the facility, and that minimizes traffic impacts on the downtown Seattle street network.

Pursuant to RCW 47.56.862 the tolling authority shall set a variable schedule of toll rates to maintain travel time, speed, and reliability on the SR 99 Tunnel and to generate the necessary revenue sufficient to meet the redemption of bonds, to meet the obligations or the tolling authority under RCW 47.56.850, and interest payments on bonds and for those costs that are eligible under RCW 47.56.820. Therefore, in order to meet these requirements in state law, the commission must adjust SR 99 Tunnel toll rates, fees, and policies.

Statutory Authority for Adoption: RCW 47.56.030, 47.56.795, 47.56.850, and 47.56.862.

Statute Being Implemented: RCW 47.56.862.

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

Name of Proponent: WSTC, governmental.

Name of Agency Personnel Responsible for Drafting: Carl See, WSTC, 2404 Chandler Court S.W., Olympia, WA

98504, 360-705-7070; Implementation and Enforcement: Ed Barry, Washington State Department of Transportation, 2901 Third Avenue, Suite 500, Seattle, WA 98121, 206-464-1217.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(b)(vi), a cost-benefit analysis is not required, as this is setting or adjusting fees or rates pursuant to legislative requirements in RCW 47.56.850.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

July 21, 2021

Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 19-06-037, filed 3/1/19, effective 4/1/19)

WAC 468-270-073 What are the toll rates on the SR 99 Tunnel? (1) Tables 7 through 11 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

(2) Effective July 1, 2022, and every three years thereafter, subject to review and potential adjustment by the commission, toll rates shall be increased as described in WAC 468-270-040 (3)(b).

**TABLE 7
SR 99 TUNNEL
TWO-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	(\$1.00) <u>\$1.15</u>	(\$3.00) <u>\$3.15</u>	(\$1.25) <u>\$1.40</u>
6 a.m. to 7 a.m.	(\$1.25) <u>\$1.45</u>	(\$3.25) <u>\$3.45</u>	(\$1.50) <u>\$1.70</u>
7 a.m. to 9 a.m.	(\$1.50) <u>\$1.75</u>	(\$3.50) <u>\$3.75</u>	(\$1.75) <u>\$2.00</u>
9 a.m. to 3 p.m.	(\$1.25) <u>\$1.45</u>	(\$3.25) <u>\$3.45</u>	(\$1.50) <u>\$1.70</u>
3 p.m. to 6 p.m.	(\$2.25) <u>\$2.60</u>	(\$4.25) <u>\$4.60</u>	(\$2.50) <u>\$2.85</u>
6 p.m. to 11 p.m.	(\$1.25) <u>\$1.45</u>	(\$3.25) <u>\$3.45</u>	(\$1.50) <u>\$1.70</u>
11 p.m. to midnight	(\$1.00) <u>\$1.15</u>	(\$3.00) <u>\$3.15</u>	(\$1.25) <u>\$1.40</u>
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to Midnight	(\$1.00) <u>\$1.15</u>	(\$3.00) <u>\$3.15</u>	(\$1.25) <u>1.40</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 8
SR 99 TUNNEL
THREE-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	(\$1.50) <u>\$1.75</u>	(\$4.50) <u>\$4.75</u>	(\$1.75) <u>\$2.00</u>
6 a.m. to 7 a.m.	(\$1.90) <u>\$2.20</u>	(\$4.90) <u>\$5.20</u>	(\$2.15) <u>\$2.45</u>
7 a.m. to 9 a.m.	(\$2.25) <u>\$2.65</u>	(\$5.25) <u>\$5.65</u>	(\$2.50) <u>\$2.90</u>
9 a.m. to 3 p.m.	(\$1.90) <u>\$2.20</u>	(\$4.90) <u>\$5.20</u>	(\$2.15) <u>\$2.45</u>
3 p.m. to 6 p.m.	(\$3.40) <u>\$3.90</u>	(\$6.40) <u>\$6.90</u>	(\$3.65) <u>\$4.15</u>
6 p.m. to 11 p.m.	(\$1.90) <u>\$2.20</u>	(\$4.90) <u>\$5.20</u>	(\$2.15) <u>\$2.45</u>
11 p.m. to midnight	(\$1.50) <u>\$1.75</u>	(\$4.50) <u>\$4.75</u>	(\$1.75) <u>\$2.00</u>
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to Midnight	(\$1.50) <u>\$1.75</u>	(\$4.50) <u>\$4.75</u>	(\$1.75) <u>\$2.00</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 9
SR 99 TUNNEL
FOUR-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	(\$2.00) <u>\$2.30</u>	(\$6.00) <u>\$6.30</u>	(\$2.25) <u>\$2.55</u>
6 a.m. to 7 a.m.	(\$2.50) <u>\$2.90</u>	(\$6.50) <u>\$6.90</u>	(\$2.75) <u>\$3.15</u>
7 a.m. to 9 a.m.	(\$3.00) <u>\$3.50</u>	(\$7.00) <u>\$7.50</u>	(\$3.25) <u>\$3.75</u>
9 a.m. to 3 p.m.	(\$2.50) <u>\$2.90</u>	(\$6.50) <u>\$6.90</u>	(\$2.75) <u>\$3.15</u>
3 p.m. to 6 p.m.	(\$4.50) <u>\$5.20</u>	(\$8.50) <u>\$9.20</u>	(\$4.75) <u>\$5.45</u>
6 p.m. to 11 p.m.	(\$2.50) <u>\$2.90</u>	(\$6.50) <u>\$6.90</u>	(\$2.75) <u>\$3.15</u>
11 p.m. to midnight	(\$2.00) <u>\$2.30</u>	(\$6.00) <u>\$6.30</u>	(\$2.25) <u>\$2.55</u>
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to Midnight	(\$2.00) <u>\$2.30</u>	(\$6.00) <u>\$6.30</u>	(\$2.25) <u>\$2.55</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 10
SR 99 TUNNEL
FIVE-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	(\$2.50) <u>\$2.90</u>	(\$7.50) <u>\$7.90</u>	(\$2.75) <u>\$3.15</u>
6 a.m. to 7 a.m.	(\$3.15) <u>\$3.65</u>	(\$8.15) <u>\$8.65</u>	(\$3.40) <u>\$3.90</u>
7 a.m. to 9 a.m.	(\$3.75) <u>\$4.40</u>	(\$8.75) <u>\$9.40</u>	(\$4.00) <u>\$4.65</u>
9 a.m. to 3 p.m.	(\$3.15) <u>\$3.65</u>	(\$8.15) <u>\$8.65</u>	(\$3.40) <u>\$3.90</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
3 p.m. to 6 p.m.	((\$5.65) <u>\$6.50</u>)	((\$10.65) <u>\$11.50</u>)	((\$5.90) <u>\$6.75</u>)
6 p.m. to 11 p.m.	((\$3.15) <u>\$3.65</u>)	((\$8.15) <u>\$8.65</u>)	((\$3.40) <u>\$3.90</u>)
11 p.m. to midnight	((\$2.50) <u>\$2.90</u>)	((\$7.50) <u>\$7.90</u>)	((\$2.75) <u>\$3.15</u>)
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to Midnight	((\$2.50) <u>\$2.90</u>)	((\$7.50) <u>\$7.90</u>)	((\$2.75) <u>\$3.15</u>)

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

TABLE 11
SR 99 TUNNEL
SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	((\$3.00) <u>\$3.45</u>)	((\$9.00) <u>\$9.45</u>)	((\$3.25) <u>\$3.70</u>)
6 a.m. to 7 a.m.	((\$3.75) <u>\$4.35</u>)	((\$9.75) <u>\$10.35</u>)	((\$4.00) <u>\$4.60</u>)
7 a.m. to 9 a.m.	((\$4.50) <u>\$5.25</u>)	((\$10.50) <u>\$11.25</u>)	((\$4.75) <u>\$5.50</u>)
9 a.m. to 3 p.m.	((\$3.75) <u>\$4.35</u>)	((\$9.75) <u>\$10.35</u>)	((\$4.00) <u>\$4.60</u>)
3 p.m. to 6 p.m.	((\$6.75) <u>\$7.80</u>)	((\$12.75) <u>\$13.80</u>)	((\$7.00) <u>\$8.05</u>)
6 p.m. to 11 p.m.	((\$3.75) <u>\$4.35</u>)	((\$9.75) <u>\$10.35</u>)	((\$4.00) <u>\$4.60</u>)
11 p.m. to midnight	((\$3.00) <u>\$3.45</u>)	((\$9.00) <u>\$9.45</u>)	((\$3.25) <u>\$3.70</u>)
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to Midnight	((\$3.00) <u>\$3.45</u>)	((\$9.00) <u>\$9.45</u>)	((\$3.25) <u>\$3.70</u>)

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

WSR 21-15-126
PROPOSED RULES
DEPARTMENT OF REVENUE
 [Filed July 21, 2021, 11:10 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule.

Hearing Location(s): On August 25, 2021, at 10:00 a.m., telephonic/internet meeting only. Contact Keith Dacus at KeithD@dor.wa.gov for dial-in/login information.

Date of Intended Adoption: October 1, 2021.

Original Notice.
 Preproposal statement of inquiry was filed as WSR 21-11-093.

Submit Written Comments to: Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, email Brenton.M@dor.wa.gov, fax 360-534-1606, by September 10, 2021.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.49.040 requires the department of revenue (DOR) to prepare a depreciation schedule (at minimum annually) for use in the determination of fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The purpose of this rule-making effort is to adopt a watercraft excise tax depreciation schedule by rule.

The rule will also provide general guidance and overview of the watercraft excise tax and include several examples which illustrate the topics covered in the rule.

Reasons Supporting Proposal: RCW 82.49.040 requires DOR to engage in rule-making activities in the adoption of the watercraft excise tax depreciation schedule. Aside from the depreciation schedule, the proposed rule covers topics related to the watercraft excise tax that are not currently addressed by rule. The rule is intended to clarify DOR's policies on a number of watercraft excise tax issues.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, 82.49.040.

Statute Being Implemented: RCW 82.49.040.

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

Name of Proponent: DOR, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton M. Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brenton M. Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as the depreciation rate schedule proposed in the rule is not materially different from the depreciation rate schedule used by the same taxpayers for the last several years. The only changes are depreciation rates, not the method for determining the measure of the watercraft excise tax. The other topics covered in the rule are general concepts and issues related to the watercraft excise tax and do not represent any change in existing policy.

July 21, 2021

Atif Aziz

Rules Coordinator

NEW SECTION

WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule. (1) **Introduction.** This rule addresses the watercraft excise tax, including an overview of the tax, exemptions from the tax, and the watercraft depreciation schedule used to determine a watercraft's fair market value. The rule also addresses administrative issues including payment, interest and penalties, and includes examples.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions and terms.** The following definitions and terms apply throughout this rule.

(a) **"Dealer"** means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state. RCW 88.02.310.

(b) **"Fair market value."**

(i) In cases where the most recent purchase price of a vessel is known to the vessel owner, "fair market value" means the purchase price of the vessel in the year it was purchased. For subsequent years, "fair market value" means the purchase price of the vessel depreciated according to the schedule in subsection (6) of this rule. RCW 82.49.040.

(ii) In cases where a vessel has been acquired by lease or gift, or the most recent purchase price of the vessel is not known to the vessel owner, "fair market value" means the appraised value of the vessel determined according to subsection (7) of this rule. RCW 82.49.050(1).

(iii) In cases where the department determines that the purchase price stated by the owner is not a reasonable representation of the true "fair market value" of the vessel, the department must appraise the vessel according to subsection (7) of this rule. RCW 82.49.050(2).

(c) **"Owner"** means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner. RCW 88.02.310.

(d) **"Powerboat"** means any vessel sixteen feet or longer, other than a sailboat, that uses mechanical power as a method of propulsion.

(e) **"Sailboat"** means any vessel sixteen feet or longer that is capable of using sails as a method of propulsion. A vessel is considered a sailboat regardless of whether the vessel is also capable of using mechanical power as a method of propulsion.

(f) **"Vessel"** means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. RCW 88.02.310.

(g) **"Waters of this state"** means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. RCW 88.02.310.

(4) **Overview of the watercraft excise tax.**

(a) The watercraft excise tax generally applies to vessels measuring sixteen feet or more in overall length. The tax is imposed for the privilege of using a vessel upon the waters of this state, except those vessels which are exempt from the tax

under subsection (5) of this rule and under RCW 82.49.020. The tax is imposed on an annual basis and is equal to the greater of five dollars or one-half of one percent of a vessel's fair market value.

(b) Persons required to register a vessel with this state under chapter 88.02 RCW who fail to register their vessel and avoid paying the watercraft excise tax are guilty of a gross misdemeanor and are liable for any unpaid excise tax. The department must also impose the penalties authorized under subsection (9) of this rule and under RCW 82.49.080 and chapter 82.32 RCW.

(c) When a person first registers a vessel in this state, the watercraft excise tax is imposed beginning with the month in which the vessel is registered through the following June 30th. In cases where the initial registration period is less than twelve months, the watercraft excise tax is prorated according to the number of months covered by the registration period. The initial registration is valid from the month of registration through the following June 30th.

(i) The department of licensing may extend or diminish the initial registration period for purposes of staggered renewal periods under RCW 88.02.560.

(ii) A vessel is considered first registered in this state if in the immediately preceding twelve month period the vessel was not registered in this state or was registered in another jurisdiction during the same period.

(iii) Example 1. Watercraft excise tax computation - Initial vessel registration.

Facts: Dan Carter purchases a 20 foot powerboat from a Washington dealer in April 2022. The purchase price is \$20,000. Dan is a resident of Washington. Dan registers the vessel with the department of licensing shortly after his purchase, in April 2022.

Result: The department of licensing will issue a registration decal for the vessel covering the registration period of July 2021 through June 2022 and collect the annual watercraft excise tax liability for this registration period in the amount of \$25 (\$20,000 (purchase price) x .005 (watercraft excise tax rate) x .25 (3 month prorated period April - June 2022)).

(5) **Exemptions.** The following types of vessels are exempt from watercraft excise tax:

(a) Those exempt from vessel registration under RCW 88.02.570;

(b) Those used exclusively for commercial fishing purposes;

(c) Those measuring less than sixteen feet in overall length, including personal watercraft;

(d) Those owned and operated by the United States, another state, or any municipality or subdivision thereof;

(e) Those owned by a nonprofit organization or association engaged in character building of children under eighteen years of age and solely used for such purposes;

(f) Those held for sale by a dealer, but not rented on a regular commercial basis; and

(g) Those owned by Indian tribes and tribal members, used in the exercise of treaty fishing rights, and exempt under WAC 308-93-720.

(6) Depreciation schedule.

(a) RCW 82.49.040 requires the department to prepare a depreciation schedule annually, for use in determining the fair market value of vessels, which is the measure of the watercraft excise tax. The following schedule includes separate depreciation rates for three categories of vessels, including a column for the number of years the vessel has been owned and columns for the depreciated percentage of the vessel's value by vessel type. First, vessel owners must determine the appropriate column to use, depending on the type of vessel they own. Second, vessel owners must identify the depreciated percentage of value for their vessel according to the row which corresponds to the number of years they have owned the vessel.

Years Owned	Sailboat	Powerboat less than 30 feet	Powerboat 30 feet or more
1	1.00	1.00	1.00
2	0.90	0.84	0.83
3	0.85	0.76	0.74
4	0.79	0.70	0.67
5	0.74	0.65	0.62
6	0.68	0.61	0.58
7	0.63	0.57	0.55
8	0.60	0.54	0.52
9	0.58	0.51	0.49
10	0.54	0.49	0.47
11	0.51	0.47	0.46
12	0.48	0.45	0.45
13	0.44	0.43	0.44
14 or more	0.44	0.39	0.42

(b) Example 2. Standard sailboat registration renewal.

Facts: Deborah Peters purchased a sailboat in September 2017. The purchase price of the sailboat was \$40,000. Deborah is a Washington resident and the sailboat is used exclusively upon Washington waters. In June 2022, Deborah renews the vessel's registration for the upcoming annual period of July 2022 through June 2023.

Result: Deborah will use the column titled "Sailboat" to determine the fair market value of her sailboat. Since Deborah bought the sailboat within the annual period of July 2017 through June 2018, that period is considered Year 1 for purposes of ownership. Accordingly, the period of July 2022 through June 2023 is considered Year 6 for purposes of ownership. The depreciated value of the sailboat in Year 6 is equal to 68 percent of Deborah's initial purchase price of \$40,000, or \$27,200. Deborah is subject to watercraft excise tax in the amount of \$136 (\$27,200 (fair market value) x .005 (watercraft excise tax rate)).

(7) Vessel appraisal.

(a) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the

owner, the department must appraise the vessel before it can be registered for use upon the waters of this state.

(b) If the department determines the purchase price of a vessel reported by the vessel's owner at the time of its registration is not representative of its fair market value, the department must appraise the vessel to determine its fair market value. If the appraised value is less than the reported purchase price, the department will issue a refund of the overpaid tax. If the appraised value is greater than the reported purchase price, the department will notify the vessel owner of the additional tax liability, which must be paid within thirty days of the department's notice.

(c) If a vessel is homemade, the vessel's owner must make a notarized declaration of its value. See RCW 82.49-.050(3) for more information.

(d) For purposes of this subsection, "appraisal" includes the use of industry pricing guides, other evaluation tools, and independent appraisals in order to ascertain the fair market value of a vessel.

(8) Disputes related to a vessel's fair market value, appraised value, or taxability.

(a) Any vessel owner who disputes a vessel's computed fair market value under RCW 82.49.040, appraised value under RCW 82.49.050, or taxable status may request a review of a tax assessment by filing a petition with the department as provided in WAC 458-20-100 (Informal administrative reviews).

(b) If the vessel owner's petition is denied, the vessel owner may appeal to the board of tax appeals as provided in RCW 82.03.190. In deciding the case, the board of tax appeals may require an independent appraisal of the vessel, the cost of which must be shared between the vessel owner and the department.

(9) Administration.

(a) **Payment of tax.** The watercraft excise tax is due and payable to the department of licensing, county auditor, or other appointed agent at the time the vessel is registered. A registration will not be issued or renewed until the watercraft excise tax is paid in full. For previously registered vessels, watercraft excise tax is due at the time of the vessel's registration renewal and must be paid prior to the start of the vessel registration period, which covers the period of July 1st through June 30th of the following year.

(b) **Refunds.** Taxpayers who overpay the watercraft excise tax in full or in part at the time of a vessel's registration are eligible for a refund of the overpaid tax. Taxpayers are also entitled to receive interest according to RCW 82.32.060. See RCW 82.49.065 for more information regarding refunds.

(c) **Penalties and interest.** An owner of a vessel that is not registered as required under chapter 88.02 RCW and that avoided payment of the watercraft excise tax is liable for the following penalties and interest:

- (i) One hundred dollars for the owner's first violation;
- (ii) Two hundred dollars for the owner's second violation;
- (iii) Four hundred dollars for the owner's third violation and any successive violations;
- (iv) The penalties prescribed under chapter 82.32 RCW; and
- (v) The interest prescribed under chapter 82.32 RCW.

**WSR 21-15-127
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES**

[Filed July 21, 2021, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-091.

Title of Rule and Other Identifying Information: WAC 332-130-020, 332-130-050, 332-130-060, and 332-130-080, amending current land boundary survey standards, updating the definition and use of error analysis and relative accuracy as they relate to land boundary surveys positioning. Removing the graphic depiction requirement of auditor indexing information for records of survey.

Hearing Location(s): On August 26, 2021, at 2:00 p.m., at DNR PLSO Office, 801 88th Avenue S.E., Tumwater, WA 98501-7019. In-person at the PLSO Conference Room, and online access with M365 Teams.

Date of Intended Adoption: September 1, 2021.

Submit Written Comments to: Patrick J. Beehler, PLS, CFedS, 1111 Washington Street S.E., Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1778, 360-902-1181, by August 26, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes and additions update existing language and clarify definitions and procedures in the practice of professional land surveying.

Reasons Supporting Proposal: These proposed changes to update and clarify chapter 332-130 WAC should have little to no effect on the practice of professional land surveying. The profession has already adopted field and office procedures that comply with most of the proposed changes.

Statutory Authority for Adoption: RCW 58.24.040(1).

Statute Being Implemented: RCW 58.24.040(1).

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

Name of Proponent: Department of natural resources, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1181; Implementation: Bob R. Knuth, PLS, 801 88th Avenue S.E., Tumwater, WA 98501-7019, 360-902-1190; and Enforcement: Board of Registration, PE and LS, P.O. Box 9025, Olympia, WA 98507-9025, 360-664-1571.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is little or no additional cost to the professional land surveyor. The profession has already adopted field and office procedures to comply with the proposed changes.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed revisions provide clarification and guidance on land survey professional practice. Little or no additional cost is projected due to these updates.

July 20, 2021
 Angus Brodie
 Deputy Supervisor
 State Uplands

AMENDATORY SECTION (Amending WSR 20-23-021, filed 11/6/20, effective 12/7/20)

WAC 332-130-020 Definitions. The following definitions shall apply to this chapter:

(1) **Local geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the National Geodetic Survey horizontal and vertical control nets, also known as the National Spatial Reference System (NSRS), but not submitted to the National Geodetic Survey for inclusion in the NSRS.

(2) **GLO and BLM:** The General Land Office and its successor, the Bureau of Land Management.

(3) **Land boundary surveys:** All surveys, whether made by individuals, entities or public bodies of whatever nature, for the specific purpose of establishing, reestablishing, laying out, subdividing, defining, locating and/or monumenting the vertical or horizontal boundary of any easement, right of way, lot, tract, or parcel of real property or which reestablishes or restores General Land Office or Bureau of Land Management survey corners.

(4) **Land corner record:** The record of corner information form as prescribed by the department of natural resources in WAC 332-130-025.

(5) **Land description:** A description of real property or of rights associated with real property.

(6) **Land surveyor:** Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

(7) **Redundant measurements:** Independent observations of a quantity that are collected under different conditions. Horizontal angles measured to a point from multiple backsights, observing reciprocal zenith angles and backsight distances, "closing the horizon," and GNSS positions for a point that are computed using different satellite constellations are examples of redundant measurements.

(8) **Parcel:** A part or portion of real property including but not limited to GLO and BLM segregations, easements, rights of way, aliquot parts of sections or tracts.

(9) **Survey Recording Act:** The law as established and designated in chapter 58.09 RCW.

(10) **Washington plane coordinate system:** The system of plane coordinates as established and designated by chapter 58.20 RCW.

(11) **Intelligent interpretation:** A land boundary survey capable of intelligent interpretation will provide, either on the face of the document or by reference to other pertinent surveys of record, information that is sufficient in kind and quality to explain the rationale for the boundary locations shown thereon and to allow for the accurate and unambiguous retracement or re-creation thereof without requiring oral testimony for clarification. Includes, but is not limited to, information required in RCW 58.09.060(1) and WAC 332-130-050.

(12) **Relative accuracy:** Relative accuracy is the theoretical uncertainty in the horizontal position of any subordinate point or corner with respect to other controlling points or corners, whether set, found, reestablished, or established. Relative accuracy is not related to uncertainties due to differences between measured values and record values ((~~or uncertainties in the geodetic position~~)).

(13) **Relative precision:** An expression of linear misclosure, e.g., 1 part in 5000, in a closed traverse. Relative precision is computed after azimuths in a traverse have been adjusted. Relative precision is not a reliable predictor of relative accuracy.

(14) **Controlling point or corner:** Those points, whose horizontal positions are used to compute, establish or reestablish the horizontal positions of other subordinate points or corners. Subordinate points or corners are therefore dependent upon the positions of controlling points or corners.

(15) **GNSS:** Global navigation satellite system.

(16) **Signature:** A handwritten identification, or a scanned image of a handwritten identification, that represents the act of signing the person's name on a document to attest to its validity. This must be made with black ink on the document being certified; applied to the document by the identified person; and under the exclusive control of the person.

AMENDATORY SECTION (Amending WSR 20-23-021, filed 11/6/20, effective 12/7/20)

WAC 332-130-050 Survey map requirements. The following requirements apply to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county.

(1) All such documents filed or recorded shall conform to the following:

(a) They shall display a county recording official's information block which shall be located along the bottom or right edge of the document unless there is a local requirement specifying this information in a different format. The county recording official's information block shall contain:

(i) The title block, which shall be on all sheets of maps, plats or plans, and shall identify the business name of the firm and/or land surveyor that performed the survey. For documents not requiring ~~((a))~~ the surveyor's certificate ((and seal)) required by RCW 58.09.080, the title block shall show the name and business address of the preparer and the date prepared. Every sheet of multiple sheets shall have a sheet identification number, such as "sheet 1 of 5";

(ii) The auditor's certificate, where applicable, which shall be on the first sheet of multiple sheets; however, the county recording official shall enter the appropriate volume and page and/or the auditor's file number on each sheet of multiple sheets;

(iii) The surveyor's certificate, where applicable, which shall be on the first sheet of multiple sheets and shall show the name, license number, signed seal of the land surveyor who had responsible charge of the survey portrayed, and the date the land surveyor approved the map or plat. Every sheet of multiple sheets shall have the signed seal of the land surveyor and the date signed;

(iv) The following indexing information on the first sheet of multiple sheets:

(A) The section-township-range and quarter-quarter(s) of the section in which the surveyed parcel lies, except that if the parcel lies in a portion of the section officially identified by terminology other than aliquot parts, such as government lot, donation land claim, homestead entry survey, townsite, tract, and Indian or military reservation, then also identify that official subdivisional tract and call out the corresponding approximate quarter-quarter(s) based on projections of the aliquot parts. Where the section is incapable of being described by projected aliquot parts, such as the Port Angeles townsite, or elongated sections with excess tiers of government lots, then it is acceptable to provide only the official GLO designation (~~A graphic representation of the section divided into quarter-quarters must also be used with the quarter-quarter(s) in which the surveyed parcel lies clearly marked~~);

(B) Additionally, if appropriate, the lot(s) and block(s) and the name and/or number of the filed or recorded subdivisional plat or short plat with the related recording data;

(b) They shall contain:

(i) A north arrow;

(ii) The vertical datum when topography or elevations are shown;

(iii) The basis for bearings, angle relationships or azimuths shown. The description of the directional reference system, along with the method and location of obtaining it, shall be clearly given (such as "North by Polaris observation at the SE corner of section 6"; "Grid north from azimuth mark at station Kellogg"; "North by compass using twenty-one degrees variation"; "None"; or "Assumed bearing based on..."). If the basis of direction differs from record title, that difference should be noted;

(iv) Bearings, angles, or azimuths in degrees, minutes and seconds;

(v) Distances in feet and decimals of feet;

(vi) Curve data showing the controlling elements.

(c) They shall show the scale for all portions of the map, plat, or plan provided that detail not drawn to scale shall be so identified. A graphic scale for the main body of the drawing, shown in feet, shall be included. The scale of the main body of the drawing and any enlargement detail shall be large enough to clearly portray all of the drafting detail, both on the original and reproductions;

(d) The document filed or recorded and all copies required to be submitted with the filed or recorded document shall, for legibility purposes:

(i) Have a uniform contrast suitable for scanning or microfilming;

(ii) Be without any form of cross-hatching, shading, or any other highlighting technique that to any degree diminishes the legibility of the drafting detail or text;

(iii) Contain dimensioning and lettering no smaller than 0.08 inches, vertically, and line widths not less than 0.008 inches (equivalent to pen tip 000). This provision does not apply to vicinity maps, land surveyors' seals and certificates.

(e) They shall not have any adhesive material affixed to the surface;

(f) For the intelligent interpretation of the various items shown, including the location of points, lines and areas, they shall:

(i) Reference record survey documents that identify different corner positions;

(ii) Show deed calls that are at variance with the measured distances and directions of the surveyed parcel;

(iii) Identify all corners used to control the survey whether they were calculated from a previous survey of record or found, established, or reestablished;

(iv) Give the physical description of any monuments shown, found, established or reestablished, including type, size, and date visited;

(v) Show the record land description of the parcel or boundary surveyed or a reference to an instrument of record;

(vi) Identify any ambiguities, hiatuses, and/or overlapping boundaries;

(vii) Give the location and identification of any visible physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title.

(2) All signatures and writing shall be made with permanent black ink.

(3) The following criteria shall be adhered to when altering, amending, changing, or correcting survey information on previously filed or recorded maps, plats, or plans:

(a) Such maps, plats, or plans filed or recorded shall comply with the applicable local requirements and/or the recording statute under which the original map, plat, or plan was filed or recorded;

(b) Alterations, amendments, changes, or corrections to a previously filed or recorded map, plat, or plan shall only be made by filing or recording a new map, plat, or plan;

(c) All such maps, plats, or plans filed or recorded shall contain the following information:

(i) A title or heading identifying the map, plat, or plan as an alteration, amendment, change, or correction to a previously filed or recorded map, plat, or plan along with, when applicable, a cross-reference to the volume and page and auditor's file number of the altered map, plat, or plan;

(ii) Indexing data as required by subsection (1)(a)(iv) of this section;

(iii) A prominent note itemizing the change(s) to the original map, plat, or plan. Each item shall explicitly state what the change is and where the change is located on the original;

(d) The county recording official shall file, index, and cross-reference all such maps, plats, or plans received in a manner sufficient to provide adequate notice of the existence of the new map, plat, or plan to anyone researching the county records for survey information;

(e) The county recording official shall send to the department of natural resources, as per RCW 58.09.050(3), a legible copy of any map, plat, or plan filed or recorded which alters, amends, changes, or corrects survey information on any map, plat, or plan that has been previously filed or recorded pursuant to the Survey Recording Act.

(4) Survey maps, plats and plans filed with the county shall be an original that is legibly drawn in black ink and is suitable for producing legible prints through scanning, micro-

filming or other standard copying procedures. The following are allowable formats for the original that may be used in lieu of the format stipulated above:

(a) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. Provided, that records of survey filed pursuant to chapter 58.09 RCW are subject to the restrictions stipulated in RCW 58.09.110(5);

(b) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(5) The following checklist is the only checklist that may be used to determine the recordability of records of survey filed pursuant to chapter 58.09 RCW. There are other requirements to meet legal standards. This checklist also applies to maps filed pursuant to the other survey map recording statutes, but for these maps there may be additional sources for determining recordability.

CHECKLIST FOR SURVEY MAPS BEING RECORDED

(Adopted in WAC 332-130)

The following checklist applies to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county. There are other requirements to meet legal standards. Records of survey filed pursuant to chapter 58.09 RCW, that comply with this checklist, shall be recorded; no other checklist is authorized for determining their recordability.

ACCEPTABLE MEDIA:

- Acceptable media are:
 - Any standard material compatible with county processes; or, an electronic version of the original.
- All signatures must be made with black ink.
- The media submitted for filing must not have any material on it that is affixed by adhesive.

LEGIBILITY:

- The documents submitted, including paper copies, must have a uniform contrast throughout the document.
- The documents submitted must be legible and reproducible by the auditor's recording system regardless of media used for recording.
- No information, on either the original or the copies, should be obscured or illegible due to cross-hatching, shading, or as a result of poor drafting technique such as lines drawn through text or improper pen size selection (letters or number filled in such that 3's, 6's or 8's are indistinguishable).
- Signatures, date, and seals must be legible on the prints or the party placing the seal must be otherwise identified.

- Text must be 0.08 inches or larger; line widths shall not be less than 0.008 inches (vicinity maps, land surveyor's seals and certificates are excluded).

INDEXING:

- The recording officer's information block must be on the bottom or right edge of the map.
 - A title block (shows the name of the preparer and is on each sheet of multiple sheets).
 - An auditor's certificate (on the first sheet of multiple sheets, although Vol./Pg. and/or AF# must be entered by the recording officer on each sheet).
 - A surveyor's certificate (on the first sheet of multiple sheets; seal, date, and signature on multiple sheets).
- The map filed must provide the following indexing data:
 - S-T-R and the quarter-quarter(s) or approximate quarter-quarter(s) of the section in which the surveyed parcel lies (~~and a graphic representation of the section divided into quarter-quarters in which the surveyed parcel lies are clearly marked~~).

MISCELLANEOUS:

- If the function of the document submitted is to change a previously filed record, it must also have:
 - A title identifying it as a correction, amendment, alteration or change to a previously filed record.
 - A note itemizing the changes.
- For records of survey:
 - The sheet size must be 18" x 24".
 - The margins must be 2" on the left and 1/2" for the others, when viewed in landscape orientation.
 - In addition to the map being filed there must be two prints included in the submittal; except that, in counties using imaging systems fewer prints, as determined by the auditor, may be allowed.

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

AMENDATORY SECTION (Amending WSR 19-01-045, filed 12/13/18, effective 1/13/19)

WAC 332-130-060 Local geodetic control survey standards. The following standards shall apply to local geodetic control surveys:

The datum for the horizontal control network in Washington shall be as officially adjusted and published by the National Geodetic Survey of the United States Department of Commerce as established in accordance with chapter 58.20 RCW. ~~((The datum tag and coordinate epoch date shall be reported on all documents prepared, which show local geodetic control.))~~ All documents listing WPCS coordinates must report the values of the ninety-five percent confidence level relative to fixed control. Metadata as defined in RCW 58.20.111(1) shall be reported on all documents which show geodetic control, and shall include an equipment and proce-

dures statement as described in WAC 332-130-100. Such metadata shall also be reported if other geodetic reference systems as described in RCW 58.20.205 are used for the survey.

AMENDATORY SECTION (Amending WSR 90-06-028, filed 3/1/90, effective 4/1/90)

WAC 332-130-080 Relative accuracy—Principles.

The following principles of relative accuracy are provided to guide those who may be analyzing their work by these procedures.

(1) Relative accuracy means the theoretical uncertainty in the location of any point or corner relative to other points or corners set, found, reestablished, or established. A standard of relative accuracy can be achieved by using appropriate equipment and implementing field and office procedures that will result in a ninety-five percent probability of achieving the accuracy required.

~~(2) ((Relative accuracy is not related to uncertainties due to differences between measured values and record values or uncertainties in the geodetic position.~~

~~(3))~~ In the application of a relative accuracy standard, the surveyor must consider the established land use patterns, land values of and in the vicinity of the surveyed parcel, and the client's intended use of the property. Higher levels of precision are expected to be used in situations necessitating higher accuracy.

~~((4))~~ (3) Each land boundary survey should contain a statement identifying the method of mathematical analysis used in achieving a stated relative accuracy.