WSR 24-22-002
PROPOSED RULES
CASCADIA COLLEGE
[Filed October 23, 2024, 12:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-134.

Title of Rule and Other Identifying Information: WAC 132Z-115-028 Hazing prohibited, sanctions; and chapter 132Z-119 WAC, Supplemental sex discrimination student conduct code and procedures.

Hearing Location(s): On December 10, 2024, at 2:30 p.m., at Cascadia College (college), CC2-260.

Date of Intended Adoption: January 15, 2025.

Submit Written Comments to: Susan Thomas, 18345 Campus Way N.E., Bothell, WA 98011, email sthomas@cascadia.edu, beginning October 25, 2024, 3:00 p.m., by December 10, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Susan Thomas, phone 425-352-8272, email sthomas@cascadia.edu, by December 10, 2024, by 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to add WAC 132Z-115-028, update existing student conduct code sections related to jurisdiction and definitions, and to add chapter 132Z-119 WAC as a supplement to the student conduct code specifically addressing sex discrimination. The effect is to bring the college's student conduct code into compliance with RCW 28B.10.900 - [28B.10].902, Washington's antihazing laws and the Department of Education's 2024 Title IX updates.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment.

In addition to complying with the new final rule, the college is updating its student conduct code to bring it into compliance with the antihazing provision of SHB 1751 and RCW 28B.10.900 - [28B.10].902.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.10.900.

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et seq.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gordon Dutrisaci, CC1-130B, 425-352-8288.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule adopts revisions to the college's student code of conduct, which describes student rights and responsibilities. It does not impact rights or responsibilities of small businesses.

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 information supplied by agency].

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.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule adopts revisions to the college's student code of conduct, which describes student rights and responsibilities. It does not impact rights or responsibilities of small businesses. Moreover, the proposed rule is necessary to comply to changes in federal Title IX regulations, state statutes, and to ensure the protection of individual students' constitutional and procedural rights.

Scope of exemption for rule proposal:

Is fully exempt.

October 25, 2024
Susan Thomas
Rules Coordinator

OTS-5667.1

AMENDATORY SECTION (Amending WSR 15-14-013, filed 6/19/15, effective 7/20/15)

WAC 132Z-115-006 Authority—Jurisdiction. (1) This student conduct code is adopted by the governing board of Cascadia College as authorized under RCW 28B.50.140. Authority is hereby delegated to the college president and administrative officers to administer and enforce the provisions of this code.

(2) ((~~The student conduct code shall apply to student conduct that occurs on college premises and to conduct that occurs at or in connection with college sponsored events, programs, or activities. This code may also apply to other student conduct occurring off campus or in noncollege electronic environments when the college deems such conduct to threaten safety or security or otherwise adversely impact the college community. Students shall be responsible for their conduct from the time of acceptance for admission or registration through the actual awarding of a degree or other certificate of completion. The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate. Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.~~

~~(3) The college shall not be required to stay disciplinary action under this student code pending any criminal or civil proceeding arising from the same conduct that would constitute a violation of this code. Nor shall the disposition of any such criminal or civil proceeding control the outcome of any student disciplinary proceeding.~~

~~(4)~~)) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises; or

(b) At or in connection with college-sponsored activities; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(3) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences, or any other college-sanctioned social or club activities and college-sanctioned housing.

(4) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(5) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(6) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

(7) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(8) Nothing in this student code shall be construed as authorizing the college to prohibit or to discipline speech or other conduct that is protected by law or constitutional right.

AMENDATORY SECTION (Amending WSR 15-14-013, filed 6/19/15, effective 7/20/15)

WAC 132Z-115-015 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) **College premises.** "College premises" shall include all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, websites, and other property owned, used, or controlled by the college.

(2) **Complainant.** A "complainant" for purposes of this student code means any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint.

(3) **Conduct officer.** The "conduct officer" or "student conduct officer" is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.

(4) **Conduct review officer.** The "conduct review officer" is the college official designated by the college to hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct committee.

(5) **Day.** The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means any day within an academic term that the college is open for business, excluding weekends and holidays.

(6) **Disciplinary action.** The term "disciplinary action" means the decision of the designated college official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension.

(7) **Filing and service.**

(a) **Filing.** The term "filing" means the delivery to the designated college official of any document that is required to be filed under this code. A document is filed by hand-delivering it or by mailing it to the college official (or the official's assistant) at the official's office address. Filing is complete upon actual receipt during office hours at the office of the designated official.

(b) **Service.** The term "service" means the delivery to a party of any document that is required to be served under this code. A document is served by hand-delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand-delivered or actually deposited in the mail.

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

(8) **Party.** A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.

(9) **Preponderance of evidence.** The term "preponderance of the evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

(10) **Respondent.** A "respondent" is a student against whom disciplinary action is initiated.

(11) **Service.** See "Filing and service."

(12) **Student.** The term "student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

(13) **Student group.** A student group for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(14) **Vice president.** The term "vice president" means the chief student affairs officer of the college and includes any acting or interim vice president and any other college official designated by the president to perform the functions and duties of the vice president under this student code.

AMENDATORY SECTION (Amending WSR 15-14-013, filed 6/19/15, effective 7/20/15)

WAC 132Z-115-025 Prohibited student conduct. Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" includes cheating, plagiarism, and fabrication.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

(b) **Plagiarism.** Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an academic assignment.

(2) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** An "alcohol violation" includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **((Marijuana)) Cannabis.** A "((~~marijuana~~)) cannabis violation" includes using, possessing, delivering, selling, or being under the influence of ((~~marijuana~~)) cannabis or the psychoactive compounds found in ((~~marijuana~~)) cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of ((~~marijuana~~)) cannabis, federal law prohibits any possession or use of ((~~marijuana~~)) cannabis on college premises or in connection with college activities.

(c) **Drug.** A "drug violation" includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A "tobacco violation" means smoking or using tobacco products, electronic smoking devices (including e-cigarettes or vape pens), or other smoking devices in any area of college premises where smoking or tobacco use is prohibited in accordance with public law and college policy.

(3) **College policy violations.** The term "policy violation" means the violation of any applicable law or college policy governing the conduct of students as members of the college community, including college policies governing nondiscrimination, alcohol and drugs, computer use, copyright, and parking and traffic.

(4) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, pro-

cedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(5) **Ethics violations.** An "ethics violation" includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.

(6) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(7) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(8) **Harassment.** The term "harassment" means unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "sexual misconduct" for the definition of "sexual harassment."

(9) **Hazing.** ((~~"Hazing" includes any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes or is likely to cause the destruction or removal of public or private property or that causes or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person.~~))

(a) **Hazing** is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group.

(b) Any act that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(c) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(d) **Hazing** does not include customary athletic events or other similar contests or competitions.

(e) Consent is not a valid defense against hazing.

(10) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(11) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(12) **Retaliation.** The term "retaliation" means harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(13) **Safety violations.** The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(14) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s).

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, and sexual coercion. The term further includes acts of dating or domestic

violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.

(15) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the college or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(16) **Weapons violations.** A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

NEW SECTION

WAC 132Z-115-028 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132Z-115-025(9).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

OTS-5666.2

Chapter 132Z-119 WAC
SUPPLEMENTAL SEX DISCRIMINATION STUDENT CONDUCT CODE AND PROCEDURES

NEW SECTION

WAC 132Z-119-010 Sex discrimination—Supplemental student conduct code and procedures—Order of precedence. This supplemental student conduct code and procedure applies to allegations of sex discrimination arising on or after August 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard student conduct code and procedure, WAC 132Z-115-006 through 132Z-115-105, these supplemental student conduct code and procedures shall take precedence.

NEW SECTION

WAC 132Z-119-020 Sex discrimination—Prohibited conduct and definitions. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sex discrimination."

For purposes of this supplemental procedure, the following definitions apply:

(1) "Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee;

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(2) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(3) "Program" or "programs and activities" means all operations of the college.

(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(5) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(6) "Respondent" is a student who is alleged to have violated the student conduct code.

(7) "Sex Discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) Sexual violence. "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact (fondling) is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts,

groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing un-

der this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.

(10) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(11) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

NEW SECTION

WAC 132Z-119-030 Sex discrimination—Jurisdiction. This supplemental procedure applies only if the alleged misconduct meets the definition of "sex discrimination" as that term is defined in WAC 132Z-119-020(7) and occurs:

(1) On college premises;

(2) At or in connection with college programs or activities; or

(3) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

NEW SECTION

WAC 132Z-119-040 Sex discrimination—Dismissal and initiation of discipline. (1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.

(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.

(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(4) When a summary suspension is imposed pursuant to WAC 132Z-115-105, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended finding and disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) The student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) The respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.

(g) Upon receipt of the student conduct officer's written recommendation, the Title IX Coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

NEW SECTION

WAC 132Z-119-050 Sex discrimination—Prehearing procedure. (1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) Notice. The college must provide a notice that includes all information required in WAC 132Z-115-075, as well as a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (4)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) Notice. In addition to all information required to be provided in a prehearing notice pursuant to WAC 132Z-115-075, the prehearing notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

NEW SECTION

WAC 132Z-119-060 Sex discrimination—Presentation of evidence. (1) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged

sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

NEW SECTION

WAC 132Z-119-070 Sex discrimination—Initial order. In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

NEW SECTION

WAC 132Z-119-080 Sex discrimination—Appeals. (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on all parties and the Title IX coordinator.

(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.

WSR 24-22-017
PROPOSED RULES
WASHINGTON STATE LOTTERY
[Filed October 25, 2024, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-109.

Title of Rule and Other Identifying Information: Washington's lottery (lottery) is proposing revisions to chapter 315-38 WAC, Mega Millions. Lottery is proposing amendments to this chapter in order to make changes consistent with the upcoming game changes by the Mega Millions Consortium, which controls the operation of this multistate game.

Hearing Location(s): On December 12, 2024, at 8:30 a.m., at 814 East 4th Avenue, Olympia, WA 98506-3922. A virtual option will be available for this hearing using Microsoft Teams. See walottery.com or contact Kristi Weeks for details on how to participate virtually.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300, Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, beginning October 31, 2024, by December 11, 2024.

Assistance for Persons with Disabilities: Contact Leah White-Noreen, phone 360-791-3045, fax 360-742-3902, TTY 360-586-0933, email Leah.White@walottery.com, by December 5, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rule will allow lottery to continue to offer Mega Millions tickets in accordance with the rules promulgated by the Mega Millions Consortium.

Reasons Supporting Proposal: The current rules will not be consistent with the Mega Millions Consortium's changes to the multistate game after April 2025.

Statutory Authority for Adoption: RCW 67.70.040 (1) and (3).

Statute Being Implemented: RCW 67.70.044(1).

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

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881; and Enforcement: Joshua Johnston, 814 4th Avenue East, Olympia, WA, 360-810-2866.

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. Lottery is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii) and to date the joint [administrative] rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

October 24, 2024
Kristi Weeks

Director of Legal Services

OTS-5955.1

AMENDATORY SECTION (Amending WSR 14-06-048, filed 2/26/14, effective 3/29/14)

WAC 315-38-010 General description. Mega Millions is a game conducted by the Washington state lottery, pursuant to chapter 67.70 RCW and Title 315 WAC and pursuant to the requirements of the multi-state agreement, Mega Millions official game rules, Mega Millions finance and operation procedures, and Mega Millions ((~~line~~)) online drawing procedures, all of which are incorporated by this rule pursuant to WAC 315-30-010. The Mega Millions game awards prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. Chapter 315-38 WAC applies only to Mega Millions tickets purchased and redeemed in Washington state. Players who purchase Mega Millions tickets in other party lottery states must comply with the rules of the party lottery state in which the ticket was purchased.

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

WAC 315-38-020 Definitions. Words and terms set forth below, when used herein, shall have the following meaning unless otherwise indicated:

(1) Annual/annuitized/annuity option: The manner in which the Mega Millions jackpot prize may be paid in ((~~thirty~~)) 30 consecutive graduated annual installments. Payments shall escalate by a factor of five percent annually, and annual payments shall be rounded to the nearest even $1,000 increment to facilitate the purchase of securities.

(2) Authorized claim center: Any Mega Millions agent or retailer, or party lottery office, in the state where the winning official Mega Millions ticket was purchased.

(3) Cash option: The manner in which the Mega Millions jackpot prize may be paid in a single payment.

(4) Claimant: Any person or entity submitting a claim form within the required time period to collect a prize for an official Mega Millions ticket. A claimant may be the purchaser, the person or entity named on a signed official Mega Millions ticket, the bearer of an unsigned official Mega Millions ticket, or any other person or entity who may seek entitlement to a Mega Millions prize payment in accordance with the Mega Millions rules and party lottery governing laws, policies, and rules. No claimant may assert rights different from the rights acquired by the original purchaser at the time of purchase.

(5) Director(s): The chief ((~~officers~~)) executives of the party lotteries or any other persons to whom the directors' authority is lawfully delegated.

(6) Multistate agreement: The amended and restated multistate agreement regarding the Mega Millions game, or any subsequent amended agreement, signed by the party lotteries and including the Mega Millions official game rules, finance and operations procedures for Mega Millions, and online drawing procedures for Mega Millions.

(7) Official Mega Millions ticket: A game ticket, produced on official paper ((~~stock~~)) with certain security controls by a Mega Millions agent or retailer in an authorized manner, bearing player or computer selected numbers, game name, drawing date, amount of wager, participation in any add-on game(s), and validation data.

(8) Party lottery or lotteries: One or more of the state lotteries ((~~authorized to become a member of Mega Millions~~)) that is a current signatory on the then-current multistate agreement.

(9) Parimutuel: Total amount of sales allocated to pay prize claimants, at the designated prize level, divided among the number of winning official Mega Millions ((~~tickets at the designated prize level~~)) plays.

(10) Prize fund: That portion of Mega Millions gross sales set aside for the payment of Mega Millions prizes. The prize fund for any drawing is expected to be ((~~fifty~~)) 50 percent of Mega Millions sales, but may be higher or lower based upon the number of winners at each set prize level, as well as the funding required to ((~~meet the advertised~~)) contribute to the jackpot.

(11) Purchaser(s): Player(s) of Mega Millions who purchase tickets in accordance with Mega Millions rules and party lottery governing laws, policies, and rules.

(12) Quick-pick, auto-pick, or easy pick: ((~~A player option in which Mega Millions number selections are determined at random by computer software~~)) The random selection of game play number indicia by the selling party lottery's gaming system for an official Mega Millions ticket transaction.

(13) Total prize liability: The liability of the participating states in any Mega Millions game prize, or any Mega Millions add-on game prize, will be in accordance with the finance and operations procedures for Mega Millions.

(14) Subscription/season ticket: An extended, multidraw purchase option, which may be offered in Washington state at the discretion of the director of the Washington state lottery, wherein the same set(s) of numbers may be played for a specified number of consecutive drawings (for example, 26, 52 or 104), effective on a future date. Subscription/season tickets are distinguished from multidraw tickets, which are effective for specified future drawings and are sold at the retailer level.

(15) Mega Millions agent, sales agent or retailer: A location in one of the states which are party lotteries and which is licensed or contracted and equipped by its respective state lottery to sell official Mega Millions tickets.

(16) Mega Millions panel, play board, or play area: That area of an official Mega Millions ticket identified by an alpha character and containing one field of five one-digit or two-digit player or computer selected numbers, and a second field of one one-digit or two-digit player or computer selected number, and one multiplier number that is computer selected.

(17) Mega Millions play/bet slip: A computer-readable form, printed and issued by each party lottery, used in purchasing an official Mega Millions ticket, with each play area consisting of two fields. One field contains ((~~seventy~~)) 70 areas/spaces numbered one through

((~~seventy~~)) 70; and one field contains ((~~twenty-five~~)) 24 areas/spaces numbered one through ((~~twenty-five~~)) 24.

(18) Mega Millions winning numbers - Five one or two digit numbers from one through ((~~seventy~~)) 70, and one or two digit number from one to ((~~twenty-five~~)) 24, randomly selected at each Mega Millions drawing, which shall be used to determine winning Mega Millions plays contained on official Mega Millions tickets.

(19) Add-on game: A game that may provide prize amounts in addition to the Mega Millions prizes, other than the Mega Millions jackpot prize.

(20) Exchange ticket: A ticket provided to a player when a multi-draw ticket with outstanding draws is validated. An exchange ticket will be valid for the remaining draws purchased by the player, have a serial number distinct from the original ticket, and be labeled as an exchange ticket.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

WAC 315-38-030 Ticket sales. (1) The sale of official Mega Millions tickets may be conducted only by such locations as the directors shall contract with and/or license pursuant to the governing laws, policies, and rules of the party lotteries and the Mega Millions rules.

(2) Internet sales and lottery courier services are not authorized in Washington state.

(3) The director of the Washington state lottery shall have the discretion to take steps to improve the efficiency of ticket sales when the Mega Millions jackpot prize reaches what ((~~he or she~~)) the director considers a high enough level to warrant action. Steps include, but are not limited to, allowing retailers to restrict ticket purchases to quick pick only.

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

WAC 315-38-040 Ticket price. ((~~(1)~~)) Official Mega Millions tickets may be purchased for ((~~two~~)) five dollars per play, or multiples thereof, at the discretion of the purchaser, in accordance with the number of game panels and inclusive drawings. The purchaser receives one play for every ((~~two~~)) five dollars wagered in Mega Millions. The multiplier feature is included in the five dollar price and is not an add-on game.

((~~(2) Subject to the laws and regulations governing each party lottery, the directors may collectively authorize the sale of official Mega Millions tickets at a discount for promotional purposes.~~

~~(3) Individual directors may authorize sale of official Mega Millions tickets at a discount for promotional purposes within their respective jurisdictions, provided that such discounted sales shall be reported to the party lotteries at full gross sales value.~~))

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

WAC 315-38-050 Play characteristics and restrictions. (1) Official Mega Millions tickets may only be sold to persons ((~~eighteen~~)) 18 years of age or older, ((~~providing~~)) provided such persons are not prohibited from playing Mega Millions in a party lottery state by the governing law, policies, or rules of that party lottery, or any contract executed by that party lottery.

(2) Official Mega Millions tickets may not be purchased in any other party lottery state by any party lottery board member or commissioner; or any officer or employee; or any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of any such person.

(3) Under no circumstances will a claim be paid without an official Mega Millions ticket matching all game play, serial number, and other validation data residing in the selling party lottery's online gaming system computer, and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize.

(4) Official Mega Millions tickets cannot be canceled.

(5) Purchasers may submit a manually completed Mega Millions play slip to a Mega Millions agent or retailer to have issued an official Mega Millions ticket. Mega Millions play slips shall be available at no cost to the purchaser and shall have no pecuniary or prize value, and shall not constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other nonmanual method of marking play slips is prohibited.

(6) Purchasers may orally convey their selections to a Mega Millions agent or retailer to have issued an official Mega Millions ticket. Such selections shall be manually entered into the computer terminal by the Mega Millions agent or retailer.

(7) If player operated sales terminals or self-service terminals are available, purchasers may use such terminals for the purchase of official Mega Millions tickets.

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

WAC 315-38-080 Prize structure and odds. (1) Winning number matches shall win prizes as set forth below, based on an estimated anticipated prize fund of ((~~fifty~~)) 50 percent of gross sales and estimated percents of prize fund, as defined in WAC 315-38-020(10) and the Mega Millions multistate agreement:

((~~PRIZE LEVEL~~	~~MATCH (Field 1 + Field 2)~~	~~ODDS~~	~~PRIZE~~
~~Jackpot~~	~~5 numbers + mega ball~~	~~1 in 302,575,350~~	~~Jackpot~~
~~Second~~	~~5 numbers~~	~~1 in 12,607,306~~	~~$1,000,000~~
~~Third~~	~~4 numbers + mega ball~~	~~1 in 931,001~~	~~$10,000~~
~~Fourth~~	~~4 numbers~~	~~1 in 38,792~~	~~$500~~

((~~PRIZE LEVEL~~	~~MATCH (Field 1 + Field 2)~~	~~ODDS~~	~~PRIZE~~
~~Fifth~~	~~3 numbers + mega ball~~	~~1 in 14,547~~	~~$200~~
~~Sixth~~	~~3 numbers~~	~~1 in 606~~	~~$10~~
~~Seventh~~	~~2 numbers + mega ball~~	~~1 in 693~~	~~$10~~
~~Eighth~~	~~1 number + mega ball~~	~~1 in 89~~	~~$4~~
~~Ninth~~	~~Mega ball only~~	~~1 in 37~~	~~$2~~))

Match Field 1	Match Field 2	Odds	Prize Level	Base Prize	% of Sales	% of Payout
5	1	290,472,336	Grand	Jackpot	27.63%	55.26%
5	0	12,629,232	Second	$1,000,000	4.75%	9.50%
4	1	893,761	Third	$10,000	0.67%	1.34%
4	0	38,859	Fourth	$500	0.77%	1.54%
3	1	13,965	Fifth	$200	0.86%	1.72%
3	0	607	Sixth	$10	0.99%	1.98%
2	1	665	Seventh	$10	0.90%	1.80%
1	1	86	Eighth	$7	4.89%	9.79%
0	1	35	Ninth	$5	8.53%	17.06%
TOTAL		1:23.07			50.00%	100.00%

(2) The multiplier shall print directly on, or be applied to, official Mega Millions tickets for each play board. Each Mega Millions play board will have one multiplier. If any official Mega Millions ticket contains multiple play boards, each play board will have its own multiplier. Multipliers apply only to the play board that they were printed on or applied to. However, on official Mega Millions tickets with multiple play boards, the multipliers may repeat due to the frequency and limited multiplier levels. Exchange tickets, if any, shall print or apply the multiplier(s) from the ticket being exchanged. The multiplier shall apply to all prize levels except the jackpot. The multiplier frequency and odds are as follows:

Multiplier	Frequency	Odds
10X	1	32.00
5X	2	16.00
4X	4	8.00
3X	10	3.20
2X	15	2.13
	32*	3.00**

* Total of frequencies
** Average multiplier value

AMENDATORY SECTION (Amending WSR 19-16-015, filed 7/25/19, effective 8/25/19)

WAC 315-38-090 Jackpot prize payments. (1) Prior to each drawing, the directors shall determine the estimated annuitized jackpot prize amount to be advertised. The jackpot prize amount shall be estimated and established based upon sales and the annuity factor estab-

lished for the drawing. The advertised jackpot prize amount shall be the basis for determining the amount to be awarded for each Mega Millions panel matching all five of the five Mega Millions winning numbers drawn for Field 1 and the one Mega Millions winning number drawn for Field 2. ((~~No annuitized jackpot prize, when there is only one jackpot prize winning ticket, shall be less than $12 million.~~))

(2) If, in any Mega Millions drawing, there are no Mega Millions panels that qualify for the jackpot prize category, the portion of the prize fund allocated to such jackpot prize category shall remain in the jackpot prize category and be added to the amount allocated for the jackpot prize category in the next consecutive Mega Millions drawing.

(3) If the annuitized jackpot prize divided by the number of Mega Millions panels matching all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, is equal to or greater than $1,000,000, the jackpot prize(s) will be paid under the annuity option unless a cash option was selected by the winner(s), as follows:

(a) **Cash option:** When a player claims a jackpot prize or a share of a jackpot prize, the player may elect to be paid a one-time single cash option payment as defined by WAC 315-38-020(3), provided:

(i) The player must elect this cash option within ((~~sixty~~)) 60 days of the presentation of his or her winning ticket, by following the procedure required by the lottery;

(ii) If the federal tax code is interpreted by federal authorities to require that this cash option be exercised within ((~~sixty~~)) 60 days of the drawing for the prize, then (a)(i) of this subsection will not apply and instead, the player must elect this cash option within ((~~sixty~~)) 60 days of the date of the drawing for the prize;

(iii) The player's choice of payment method as designated by signing the appropriate lottery form is final and may not be changed by the player at a later date;

(iv) Cash option jackpot prizes shall be paid in a single payment in accordance with the internal validation procedures and settlement procedures pursuant to the multistate agreement and the Washington state lottery. At the director's discretion, an initial payment of a portion of the cash option prize may be paid to the winner at the time the prize is claimed.

(b) **Annuity:** A player who chooses not to elect the cash option or who does not elect the cash option within the ((~~sixty~~)) 60-day limit will be paid ((~~his or her prize~~)) in ((~~thirty~~)) 30 graduated annual installment payments. The initial payment shall be paid in accordance with the internal validation procedures and settlement procedures established by the multistate agreement and the Washington state lottery. The subsequent ((~~twenty-nine~~)) 29 payments shall be paid annually to coincide with the month of the federal auction date at which the bonds were purchased to fund the annuity. All such payments shall be made within seven days of the anniversary of the actual auction date. This date of payment of the subsequent payments is subject to the discretion of the director of the Washington state lottery, acting in the best interest of the lottery.

(4) After the player has made ((~~his or her~~)) the choice of payment method, the lottery will validate the claim, including a debt check pursuant to WAC 315-06-125, and pay the prize as appropriate.

(5) In the event multiple Mega Millions panels match all five of the five Mega Millions winning numbers for Field 1 and the one Mega Millions winning number for Field 2, and the annuitized Mega Millions

jackpot prize divided by the number of winning game panels is less than $1,000,000, each Mega Millions jackpot prize winner shall be paid an amount equal to the "cash equivalent grand/jackpot prize," as defined by the multistate agreement, divided equally by the number of jackpot prize winners. Each such jackpot prize winner will be paid in a single cash payment.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

WAC 315-38-150 Ticket responsibility. (1) A winning official Mega Millions ticket is a bearer instrument and is deemed to be owned by the person or entity named on the ticket or, in the case of a ticket not completed with name, the ticket is deemed to be owned by the claimant.

(2) The Washington state lottery shall not be responsible for lost or stolen official Mega Millions tickets, including tickets lost in the mail, unless otherwise provided in the laws and regulations governing the lottery.

(3) The purchaser of an official Mega Millions ticket has the sole responsibility for verifying the accuracy and condition of the data printed on the ticket at the time of purchase.

(4) The Washington state lottery shall not be responsible to the claimant for official Mega Millions tickets redeemed in error by a Mega Millions agent or retailer.

(5) Winners are determined by the numbers drawn and not the numbers reported. The party lotteries shall not be responsible for Mega Millions winning numbers reported in error.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

WAC 315-38-170 Validations. An official Mega Millions ticket submitted for validation that fails any of the preceding validation conditions shall be considered void, subject to the following determinations:

(1) In all cases of doubt, the determination of the director of the party lottery which sold the official Mega Millions ticket shall be final and binding; however, the director may, at ((~~his/her~~)) the director's option, replace an invalid ticket with an official Mega Millions ticket of equivalent sales price;

(2) In the event a defective ticket is purchased or in the event the director determines to adjust an error, the sole and exclusive remedy shall be the replacement of such defective or erroneous ticket(s) with an official Mega Millions ticket of equivalent sales price;

(3) In the event an official Mega Millions ticket is not paid by the Washington state lottery and a dispute occurs as to whether the ticket is a winning ticket, the Washington state lottery may, at its option, replace the ticket as provided in WAC 315-06-120((~~(17)~~)) (18).

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

WAC 315-38-180 Procedures for claiming and payment of prizes. (1) Prizes shall be redeemed or claimed only in the state where the official Mega Millions ticket was purchased and only through Mega Millions agents or retailers or other authorized claim centers, effective upon determination of prize payouts.

(2) A Mega Millions prize claimed in Washington state must be claimed no later than ((~~one hundred eighty~~)) 180 days after the Mega Millions drawing for which the ticket was purchased. Pursuant to WAC 315-02-230 a "claim" means the actual physical receipt of a ticket, and claim form, if necessary under these rules, by a location authorized to pay the prize sought. Placement of the ticket, and claim form, if necessary, in the United States mail or another mail service does not constitute receipt.

(3) Claimants of a winning official Mega Millions ticket must comply with the prize claim requirements of the party lottery which issued the winning ticket.

(4) In the event that a single official Mega Millions ticket contains two or more winning game panels, the cumulative prize amount shall be claimed or redeemed in accordance with the specified prize payment limits for the party lottery ((~~which~~)) that issued the winning ticket.

(5) Federal withholding taxes, and any other applicable taxes, shall be withheld from Mega Millions prizes in such amounts as may be required by law.

(6) Mega Millions prizes shall not be paid to any persons prohibited from playing Mega Millions in a particular party lottery state by Mega Millions rules or by the governing law or rules of that party lottery or any contract executed by that party lottery.

(7) Mega Millions prizes shall not be paid to any person who purchased or acquired the winning ticket through an unauthorized source including, but not limited to, internet sales or lottery courier services.

(8) The name and city or other location of the winner of a jackpot prize, or second prize, will be disclosed in a news conference or in a news release and the winner may be requested to participate in a news conference.

((~~(8)~~)) (9) If the winner claims a Mega Millions jackpot or second prize as a legal entity pursuant to WAC 315-06-120, the entity shall provide the name of a natural person who is a principal of the legal entity. This natural person shall be available for appearance at any news conference regarding the prize and shall be featured in any lottery's news releases.

AMENDATORY SECTION (Amending WSR 02-15-122, filed 7/19/02, effective 8/19/02)

WAC 315-38-200 Governing law. (1) In purchasing a ticket issued for Mega Millions, the purchaser agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of the individual state in which the ticket is issued, and by directives, instructions, conditions, policies, and determinations of the director of that state's lottery. The purchaser agrees, as

((~~its~~)) the sole and exclusive remedy, that claims arising out of this ticket can be pursued only against the state of ticket purchase. Litigation, if any, shall only be maintained against the party lottery of the state of ticket purchase and within the state of ticket purchase.

(2) In the event of conflict between the multistate agreement and the statutes, rules, or regulations of any party lottery, the party lottery's statutes, rules, and regulations shall control.

(3) All decisions made by ((~~the directors of the party lotteries~~)) a director of a party lottery, including the declaration of prizes and the payment thereof and the interpretation of Mega Millions rules, shall be final and binding on all purchasers and on every person making a claim in respect thereof in the state where the official Mega Millions ticket was issued.

WSR 24-22-054
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 28, 2024, 1:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-078.

Title of Rule and Other Identifying Information: Behavioral health agency (BHA) licensing and certification requirements as they relate to opioid treatment programs (OTP). The department of health (department) is proposing updates to WAC 246-341-0200, 246-341-0300, 246-341-0342, 246-341-1000, and 246-341-1100; and repealing WAC 246-341-1005 through 246-341-1025. The proposed amendments and repeals are to address general cleanup, streamline the licensing and certification requirements, remove duplicate requirements, align OTP regulations with C.F.R., and implement 2E2SSB 5536 (chapter 1, Laws of 2023, 1st sp. sess.).

Hearing Location(s): On December 18, 2024, at 1:30 p.m., at the Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_OmrQeTulTxaqbNiaqd9jtA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 27, 2024.

Submit Written Comments to: Michelle Weatherly, P.O. Box 47843, Olympia, WA 98504-7843, email https://fortress.wa.gov/doh/policyreview/, beginning the date and time of this filing, by December 18, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Michelle Weatherly, phone 360-236-2992, TTY 711, email michelle.weatherly@doh.wa.gov, by December 6, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing updates to chapter 246-341 WAC, Behavioral health agency licensing and certification requirements, as related to OTP. The purpose of the proposed rules is to provide greater access to care by streamlining the approval and certification process to operate an opioid treatment program, aligning the state OTP regulations with the recently revised C.F.R., and implementing 2E2SSB 5536. The department is also taking this opportunity to correct two internal citations from a previous rules project in WAC 246-341-0300 and 246-341-1100.

Reasons Supporting Proposal: In 2023, there was legislative focus on behavioral health which included OTPs in Washington state. 2E2SSB 5536 passed, which resulted in a change to licensing and certification of OTPs by allowing OTPs to operate a fixed-site medication unit as an extension of their existing licensed OTP. The proposed rules will provide greater access to opioid use disorder treatment by streamlining the certification process to operate an OTP and aligning state regulations with the C.F.R. The proposed amendments represent the department's efforts to improve the regulations and the delivery of OTP services in Washington state. Fixed-site medication units are already allowed under federal regulations. The proposed rules align with federal regulations by reference and do not include additional requirements other than notification to the department.

Statutory Authority for Adoption: RCW 71.24.037 and 2E2SSB 5536 (chapter 1, Laws of 2023, 1st sp. sess.), codified as RCW 71.24.590.

Statute Being Implemented: RCW 71.24.590.

Rule is necessary because of federal law, 42 C.F.R. Part 8, Subpart C (2024).

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michelle Weatherly, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2992.

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 Michelle Weatherly, P.O. Box 47843, Olympia, WA 98504-7843, phone 360-236-2992, fax 360-236-2321, TTY 711, email michelle.weatherly@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions:

WAC Section and Title	Rationale for Exemption
WAC 246-341-0200 Behavioral health —Definitions. (amended)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). Definitions clarify the language of the rule without changing its effect.
WAC 246-341-0300 Agency licensure and certification—General information. (amended)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d) and 34.05.310 (4)(g). The proposed changes clarify language of the rule without changing its effects and establish a process requirement for making application to the department.
WAC 246-341-0342 Agency licensure and certification—Off-site locations.	The proposed rule amendment is exempt under RCW 34.05.310 (4)(d) by providing clarification without changing the effect of the rule, and RCW 34.05.310 (4)(c) by incorporating by reference without changing another Washington state rule.
WAC 246-341-1000 Opioid treatment programs (OTP)—General.	These subsections of rule are exempt from analysis under RCW 34.05.310 (4)(c). The proposed changes incorporate federal statutes without material change. These subsections of rule are exempt from analysis under RCW 34.05.310 (4)(d). The proposed changes clarify the language of the rule without changing its effect.
WAC 246-341-1005 Opioid treatment programs (OTP)—Agency certification requirements. (repealed)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The proposed changes clarify language of the rule without changing its effect.
WAC 246-341-1010 Opioid treatment programs (OTP)—Agency staff requirements. (repealed)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The proposed changes clarify the language of the rule without changing its effect.
WAC 246-341-1015 Opioid treatment programs (OTP)—Individual service record content and documentation requirements. (repealed)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The proposed changes clarify the language of the rule without changing its effect.

WAC Section and Title	Rationale for Exemption
WAC 246-341-1020 Opioid treatment programs (OTP)—Medical director responsibility. (repealed)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The proposed changes clarify language of the rule without changing its effect.
WAC 246-341-1025 Opioid treatment programs (OTP)—Medication management. (repealed)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d). The proposed changes clarify the language of the rule without changing its effect.
WAC 246-341-1100 Withdrawal management—Certification standards. (amended)	This section of rule is exempt from analysis under RCW 34.05.310 (4)(d), as the proposed change corrects a typographical error without changing its effect.

Scope of exemption for rule proposal:
Is partially exempt:
Explanation of partial exemptions: See explanation above.

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

Small Business Economic Impact Statement

A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: The department is proposing to revise BHA OTP licensing and certification regulations in chapter 246-341 WAC to address general cleanup, streamline the licensing and certification requirements, remove duplicate requirements, align with federal certification and treatment standards for OTPs in 42 C.F.R. Part 8, Subpart C (2024), and implement changes enacted by the legislature under 2E2SSB 5536 (chapter 1, Laws of 2023, 1st special session).

Over the last two years, the department has received input from interested parties and partners that has allowed for meaningful engagement to examine, discuss, and consider revisions to OTP licensing and certification requirements.

In the 2023 legislative session, 2E2SSB 5536 was passed and included a clarification that mobile units or fixed-site medication units may be established as part of a licensed OTP. Rules are already in place for mobile units. However, additional rule making is needed to develop a process and standards for licensing and approving fixed-site medication units. Fixed-site medication units will allow licensed OTPs to expand access to the treatment of opioid use disorder, especially in rural areas of the state.

By establishing these standards, the department is in effect adding compliance requirements in rule for businesses that want to operate a fixed-site medication unit, including small businesses. However, a portion of the rule making is to align state requirements with federal certification and treatment standards for OTPs which will dictate the certification and treatment standards that all OTPs must adhere to. Throughout the rule-making process, the department has worked to balance the need for patient safety with the flexibility to determine a successful business model that will work in the best interest for both the business and greater access to care.

Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS):

Table 1. Summary of Businesses Required to

Comply with the Proposed Rule

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
621420	Outpatient Mental Health and Substance Abuse Centers	393	$4,376.75

Analysis of probable costs of businesses in the industry to comply with the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:

Background: To help better understand the costs of the proposed rule, the department conducted a survey of BHAs that operate an opioid treatment program (OTP).

Survey questions were grouped based on those who are already in compliance with the proposed rules, and those that would need to take action to come into compliance with the proposed rules. Survey respondents were asked through a series of questions whether their agency is already in compliance with each section of the proposed rule. If they answered "yes" they were guided to the next applicable question. If they answered "no" they were directed to answer additional questions about how and what they would need to do to come into compliance, and any potential costs.

Throughout each of the WAC sections in this analysis, the department has provided the number of respondents that the answer was applicable to, as well as the number of respondents that answered the question.

The respondents were provided with the following prompt prior to beginning the survey:

The department is primarily interested in additional costs for you to comply with the rule, therefore anything that you already do or already exists (e.g., standards, training, existing equipment, etc.) will be excluded from this analysis and you do not need to provide a response for (the survey questions will guide you).

Respondents: The department received 28 responses. The following response rate is worth noting:

- Eight responses were from one organization, all providing the same answers.
- Two responses were from one organization, both providing the same answers.
- Two responses were submitted by the same person. The answers provided were the same.

For the purposes of analysis, the department will analyze the 19 responses that are not duplicates. Providing contact information as part of the survey was optional. Ten respondents chose not to include any contact information, so it is unknown if any of those responses are also duplicates. All 10 will be included as part of the 19 analyzed responses.

- Six (6/19) respondents identified as a small business[1].
- Eleven (11/19) respondents indicated their agency employs 51 or more people, and therefore do not meet the definition of a small business.
- Two (2/19) respondents indicated they do not know the number of people employed at their agency.

The department considered the costs for several of the requirements of the proposed amendments, which are described below.

WAC 246-341-1000 Opioid treatment programs (OTP)—General.

Description: This section of rule establishes the certification standards for opioid treatment programs.

Subsections (1), (5)-(12), (14), and (15) are exempt from analysis under RCW 34.05.310 (4)(c) and (d).

The remaining subsections of the rule are analyzed as follows:

Subsection (2): The proposed amendments provide a list of policies and procedures that an OTP must develop, maintain, and implement in compliance with:

- Specific requirements in 42 C.F.R. Part 8, Subpart C (2024);
- The OTP's accreditation body standards; and
- After-hours contact service.

Subsection (3): The proposed amendment requires use of the state's "central registry" which is defined under subsection (15) of this rule.

Cost(s): The proposed amendments require OTPs to update their policies and procedures. The department used the following information to produce cost estimates:

Based on guidance from the results from the survey, the department assumes that medical and health services managers ($64.64/hour)[2] or compliance officers ($38.55/hour)[3] would update the policies and procedures as needed.

The department asked OTPs if they would need to hold additional assumed trainings to update staff on the revised policies and procedures and received the following responses.

- Six (6/9) responded yes, they would need to hold an additional training to update staff on the policies and procedures. One respondent commented "As a company we review and revise our P&Ps annually. Or as needed when new rules or regulations are required."
- Three (3/9) responded no, they would not need to hold an additional training to update staff on the policies and procedures. One respondent commented that "Updates would be reported to employees during regularly scheduled meetings for the appropriate groups."

Therefore, the department estimates that in some cases training costs would be negligible as it may be completed in regularly scheduled meetings and that in some cases additional training would be needed. The department did not ask for a cost estimate of the additional training; therefore, the costs of additional training is unknown. It is also of note that the majority of the proposed rule revisions align with federal regulations that are already in place and OTPs are required by their accreditation organization to have policies and procedures for federal requirements. This leads the department to believe that costs will likely be negligible.

The one-time cost estimates for OTPs to update their policies and procedures is outlined in the table below.

	Duration of Hours to Complete	Estimated Hourly Wage	Estimated Cost Range
Update policies[4]	10 - 40	$64.64	$646.40 - $2,585.60
		$38.55	$385.50 - $1,542

	Duration of Hours to Complete	Estimated Hourly Wage	Estimated Cost Range
Additional training costs	Negligible - Unknown	Unknown	Negligible - Unknown
		One-time cost estimate	$385.50 - $2,585.60 + negligible to unknown training costs

The proposed amendments also require OTP to use the central registry which is defined in subsection (15) below. There is no cost to OTP for use of the central registry outside of person time. Registry costs for new and existing OTPs are paid for by the Washington state health care authority (HCA). To the department's knowledge, all OTPs currently use the registry as it is required by HCA.

Description: Proposed amendments to subsection (4): The existing language only requires OTPs to provide education on substance use disorder, relapse prevention, infectious diseases, sexually transmitted infections, and tuberculosis (TB). The proposed amendments require OTPs to offer to each individual admitted, either on-site or by referral, vaccination for hepatitis A and B, and screening, testing and treatment for infectious diseases including HIV, hepatitis B and C, syphilis, and TB.

Screening, testing and treatment for HIV, hepatitis B and C, and syphilis are included in federal regulations and therefore exempt from analysis under RCW 34.05.328 (5)(b)(iii) by incorporating federal statutes without material change. Therefore, the department analyzed the costs of OTPs offering each individual admitted, either on-site or by referral, vaccination for hepatitis A and B, and screening and testing for TB

Cost(s): Hepatitis A vaccination: Nearly half of the respondents (47 percent, 9/19) responded that they are already in compliance with the proposed rule. Of the four (4/19) respondents that answered they do not currently offer hepatitis A vaccination to everyone admitted, two (2/4) indicated they would comply with the proposed rule by offering the vaccine by referral; one (1/4) indicated they would comply by offering the vaccine both on-site and by referral; and one (1/4) respondent indicated they did not know if they would comply with the rule by offering it on-site or by referral.

Should an OTP decide to offer hepatitis A vaccination[5] on site additional costs include staff time to administer the vaccine and supplies and equipment necessary to administer and store the vaccine. The department used data provided by the respondent who indicated that they would comply with the rule by offering the vaccination on-site as well as research from literature and conversations with experts indicated that:

- The person responsible for administering the vaccine would be either a registered nurse (RN)[6] or medical assistant (MA).[7]
- Respondents were asked how long it would take to administer the vaccine; however, no responses were received.
  - The department estimates the time to give a one patient one vaccine at five minutes.[8]
  - The department estimates negligible time (<1 minute) to review patient immunization history and educate the patient.[9]
- Price per Hepatitis A vaccine is listed per dose between $39.55 to $81.32.[10] However this cost is not included in the total estimate as this cost is likely reimbursable to the OTP.

- Equipment they would need to purchase to offer the vaccine on-site would be "*Medication Refrigerator or Pyxis System to store vaccines.*"
  - The department estimates a possible cost of a medication refrigerator at a one-time cost of $490.00.[11]
  - The department estimates a possible one-time cost of a Pyxis System at $19,000 plus a monthly subscription fee of $110.00.[12]

Summary: Nearly half of the respondents (47 percent, 9/19) responded that they are already in compliance with the proposed rule, therefore there are no additional costs.

The cost for OTPs to provide referral is negligible.

The cost for OTPs to provide one vaccine per one patient (in person time) at $2.16 to $4.45. The department is unable to estimate a total annual cost as vaccine volume is unknown. Additional costs would be realized for equipment or supply purchase if needed, however the entire cost of equipment was not added to the estimate because it would likely be a shared costs with other vaccinations and services, which the department was unable to estimate.

Hepatitis B vaccination: More than half of the respondents (58 percent, 11/19) responded that they are already in compliance with the proposed rule. Of the two (2/19) respondents that answered they do not currently offer hepatitis B vaccination to everyone admitted, both indicated they would comply with the proposed rule by offering the vaccine both on-site and by referral.

Should an OTP decide to offer hepatitis B vaccination on site including staff time to administer the vaccine and supplies and equipment necessary to administer and store the vaccine. The department used data provided by the respondent who indicated that they would comply with the rule by offering the vaccination on-site as well as research from literature and conversations with experts.

- The person responsible for administering the vaccine would be either a registered nurse (RN)[13] or medical assistant (MA).[14]
- Respondents were asked how long it would take to administer the vaccine; however, no responses were received.
  - The department estimates the time to give a one patient one vaccine at five minutes.[15]
  - The department estimates negligible time (<1 minute) to review patient immunization history and educate the patient.[16]
- Price per Hepatitis B vaccine is listed per dose between $32.67 to $147.63.[17] However this cost is not included in the total estimate as this cost is likely reimbursable to the OTP.
- Equipment they would need to purchase to offer the vaccine on-site would be "*Medication Refrigerator or Pyxis System to store vaccines.*"
  - The department estimates a possible cost of a medication refrigerator at a one-time cost of $490.00.[18]
  - The department estimates a possible one-time cost of a Pyxis System at $19,000 plus a monthly subscription fee of $110.00.[19]

Summary: More than half of the respondents (58 percent, 11/19) responded that they are already in compliance with the proposed rule, therefore there are no additional costs.

The cost for OTPs to provide referrals is negligible.

The cost for OTPs to provide one vaccine per one patient (in person time) at $2.16 to $4.45. The department is unable to estimate a total annual cost as vaccine volume is unknown. Additional costs would be realized for equipment or supply purchase if needed; however, the entire cost of equipment was not added to the estimate because it would likely be a shared costs with other vaccinations and services, which the department was unable to estimate.

TB Screening: More than half of the respondents (58 percent, 11/19) responded that they are already in compliance with the proposed rule. Of the two (2/19) respondents that answered they do not currently offer TB screening to everyone admitted, one (1/2) respondent indicated they would comply with the proposed rule by offering the screening on-site, and one (1/2) respondent indicated they would comply with the proposed rule by offering the screening both on-site and by referral.

One (1/2) respondent indicated that they would need to purchase supplies, and one (1/2) indicated they would not need to purchase any supplies. One (1/2) respondent indicated that they would not need to purchase any equipment to offer on-site TB screening, and one (1/2) did not provide a response.

Should an OTP decide to add TB screening on-site there will be additional costs.

- The person responsible for administering the vaccine would be either a registered nurse (RN)[20] or medical assistant (MA).[21]
- Respondents were asked how long it would take to screen a patient; however, no estimates were given, however one respondent highlighted the difference in screening for latent or active TB. Because no estimates were given the department estimates this to be negligible.
- No respondents included information about what equipment or supplies would need to be purchased to conduct TB screening.

It is of note that one respondent said this service is currently "*available through the Health District*."

Summary: More than half of the respondents (58 percent, 11/19) responded that they are already in compliance with the proposed rule, therefore there are no additional costs.

The cost for OTPs to provide referral is negligible.

The cost for OTPs to provide one screening per one patient (in person time) is estimated at negligible. The department is unable to estimate a total annual cost as screening volume is unknown. Additional costs would be realized for equipment or supply purchase if needed.

TB Testing[22]: More than half of the respondents (53 percent, 10/19) responded that they are already in compliance with the proposed rule. Of the one (1/19) respondent that answered they do not currently offer TB testing to everyone admitted, they did not know if they would comply with the rule by offering it on-site or by referral.

Should an OTP decide to add TB testing on site there will be additional costs but the department was unable to estimate additional costs because no survey respondents provided details about additional costs. A potential cost estimate for an overall cost for providing one test to one patient is $149.00.[23] Additional costs to provide services could include person time, syringes, alcohol wipes, etc.

It is of note that one respondent said this service is currently "*available at the Health District.*"

Summary: More than half of the respondents (53 percent, 10/19) responded that they are already in compliance with the proposed rule, therefore no additional costs.

The cost for OTPs to provide referral is negligible.

The cost for OTPs to provide one test per one patient (in person time) is unknown. The department is unable to estimate a total annual cost as testing volume is unknown. Additional costs would be realized for equipment or supply purchase if needed.

The survey asked respondents if there were any other costs to you that the department missed to comply with the proposed rule and to not include anything already included in the cost survey.

Four (4/19) provided the following comments:

- Not that I'm aware of additional costs. Process of P&P updates and training are a part of our responsibilities.
- Are these additional services expected to be offered as part of the bundled rate? Or is there funding for the additional requirements? Staff time to update policy, develop training, quality control around supply ordering, management of refrigerated medication, staff time to report vaccine administration to state database and appropriate support as well as auditing records to ensure compliance. There could also be additional costs to configure our EHR software to accommodate additional services.
- Administrative time, increased time to train, document, and monitor for compliance.
- Unknown.

The department did not produce any estimates based on these additional comments although it acknowledges these as potential additional costs to comply.

It is of note that the department believes many of OTPs are already in compliance with the proposed rule (as confirmed by the survey). Additionally, for those that are not in compliance, they have an option to come into compliance with the proposed rule by referring out for services and across the board, the department estimates referral for services is negligible. Should an OTP elect to provide services on-site, costs will be incurred.

Description: Proposed amendment to subsection (13).

The proposed amendment establishes that the "critical incidents" reported to the department by the BHA must include the number of deaths that occur on the OTP's campus.

Cost(s): The department does not anticipate any additional costs. All licensed BHAs already report critical incidents to the department.

Summary of all Cost(s):

Table 2. Summary of Section 3 Probable Cost(s)

WAC Section and Title	Probable Cost(s)
WAC 246-341-1000 Opioid treatment programs (OTP)—General.	Subsections (2) and (3) Estimate ranges between $385.50 to $2,585.60 to update policies and procedures plus negligible to unknown cost of staff training on the updated policies and procedures.
WAC 246-341-1000 Opioid treatment programs (OTP)—General.	Subsection (4) **Hepatitis A Vaccination:** Nearly half of the OTP survey respondents are already in compliance with the proposed rule, therefore there are no additional costs.

WAC Section and Title	Probable Cost(s)
	The cost for OTPs to provide referrals is negligible. The cost for OTPs to provide one vaccine per one patient at $2.16 to $4.45. The department is unable to estimate a total cost as vaccine volume is unknown. Additional costs would be realized for equipment or supply purchase if needed. **Hepatitis B Vaccination:** More than half of the OTPsurvey respondents are already in compliance with the proposed rule, therefore there are no additional costs. The cost for OTPs to provide referral is negligible. The cost for OTPs to provide one vaccine per one patient at $2.16 to $4.45. The department is unable to estimate a total cost as vaccine volume is unknown. Additional costs would be realized for equipment or supply purchase if needed. **Tuberculosis Screening:** More than half of the OTP survey respondents are already in compliance with the proposed rule, therefore there are no additional costs. The cost for OTPs to provide referral is negligible. The cost for OTPs to provide one screening per one patient is estimated at negligible. The department is unable to estimate a total cost as screening volume is unknown. Additional costs would be realized for supply or equipment or supply purchase if needed. **Tuberculosis Testing:** More than half of the survey respondents are already compliant with the proposed rule, therefore there are no additional costs. The cost for OTPs to provide referrals is negligible. The cost for OTPs to provide one test per one patient (in person time) is unknown. The department is unable to estimate a total annual cost as testing volume is unknown. Additional costs would be realized for equipment or supply purchase if needed. Many OTPs are already in compliance with the proposed rule (as confirmed by the survey). Additionally, for those that are not in compliance, they have an option to come into compliance with the proposed rule by referring out for services, and referral for services is estimated as negligible. Should an OTP elect to provide services on-site costs will be incurred.
WAC 246-341-1000 Opioid treatment programs (OTP)—General.	Subsection (13) The department does not anticipate any additional costs. The BHA already has to include critical incidents in their report to the department.

Analysis on if the proposed rule may impose more than minor costs for businesses in the industry: Because some costs of the proposed rule changes are unknown the department assumes that the costs may exceed the minor cost threshold.

Summary of how the costs were calculated: The minor cost threshold for outpatient mental health and substance abuse centers as of 2022 is $4,376.75, based on 0.3 percent of average annual gross business income as calculated by data collected by the United States Bureau of Labor Statistics (Table 1).

For updating policies and procedures, survey data indicated a one-time cost range to the OTP of $385.50 - $2,585.60 plus negligible to unknown training costs. It is of note that this estimate alone (not including training costs) does fall under the minor cost threshold. The proposed amendment requires OTPs to offer vaccinations for hepatitis A and B and screening and testing for TB either on-site or by referral. Should an OTP elect to provide services on-site, additional costs will be incurred; however, patient volume for such services is unknown and therefore a total cost is unable to be calculated. The department believes many OTPs are already in compliance with the proposed rule (as confirmed by the survey) and for those that are not in compliance, they have an option to come into compliance with the proposed rule by referring out for services. Across the board, the department estimates referral for services is negligible.

However, based on the inability to estimate due to patient volume, the department has selected that costs may exceed the minor cost threshold of $4,376.75.

Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: The department assumes the proposed rules do not have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

Explanation of the determination: The proposed requirements align OTP regulations with 42 C.F.R. Part 8, Subpart C (2024) which the OTPs must already comply with. OTPs are not required to establish a fixed-site medication unit. For those who do, the only additional requirement is notifying the department prior to offering services. There is no fee associated with the required notification.

All OTPs will have to update their policies and procedures and may need to train staff on the updated policies and procedures to comply with the new requirements. Information yielded by the survey indicates a one-time cost range to the OTP of $385.50 - $2,585.60 plus negligible to unknown training costs. The only place in the proposed rule that the department believes could potentially provide a disproportionate impact to small businesses would be updating policies and procedures, but as this estimate falls under the minor cost threshold, the department does not believe this is enough to determinate a disproportionate impact on small business. For training, as the number of staff is proportional to the size of a business the department does not expect training, as a cost component, to have a disproportionate impact on small businesses.

The department believes many OTPs are already in compliance with the proposed rule (as confirmed by the survey) regarding the provision of services (vaccination, screening, testing) and for those that are not in compliance they have an option to come into compliance with the proposed rule by referring out for services and across the board the department estimates referral for services is negligible. For those that decide to offer on-site services, there will be additional costs. However, because of the option to provide referrals to services, the department does not believe there to be a disproportionate impact on small businesses.

Additionally, the department has taken steps to mitigate the burden of costs to small businesses while recognizing the benefit of these services to opioid use disorder patients, particularly in rural areas. Therefore, while the overall cost is unknown, it is the department's assumption that there will not be a disproportionate impact on small businesses when considering cost by category.

1 RCW 19.85.020: Definitions "(3) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty of fewer employees."

2 2023 mean wage - $64.64/hour for Medical and Health Services Managers, National Estimate (bls.gov) | Accessed on August 9, 2024

3 2023 mean wage - $38.55/hour for Compliance Officers, National Estimate (bls.gov) | Accessed on August 9, 2024

4 One outlier response, more than 2.4 standard deviations from the mean, was removed (Reference: Aquinis et.al, Best-Practice Recommendations for Defining, Identifying and Handling Outliers; Organizational Research Methods, pg. 270-301, 2013.)

5 CDC Vaccine price list | Accessed August 9, 2024

6 Washington State Mean Hourly Wage of Registered Nurses, $53.38. Washington - May 2023 OEWS State Occupational Employment and Wage Estimates (bls.gov) | Accessed on August 22, 2024

7 Washington State Mean Hourly Wage of Medical Assistants, $25.86. Washington - May 2023 OEWS State Occupational Employment and Wage Estimates (bls.gov) | Accessed on August 22, 2024

8 Shen A, Khavjou O, King G, Bates L, Zhou F, Leidner AJ, Yarnoff B. Provider time and costs to vaccinate adult patients: Impact of time counseling without vaccination. Vaccine. 2019 Feb 4;37(6):792-797. doi: 10.1016/j.vaccine.2018.12.045. Epub 2019 Jan 11. PMID: 30639460; PMCID: PMC6848970. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6848970/

9 Shen A, Khavjou O, King G, Bates L, Zhou F, Leidner AJ, Yarnoff B. Provider time and costs to vaccinate adult patients: Impact of time counseling without vaccination. Vaccine. 2019 Feb 4;37(6):792-797. doi: 10.1016/j.vaccine.2018.12.045. Epub 2019 Jan 11. PMID: 30639460; PMCID: PMC6848970. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6848970/
10 Current CDC Vaccine Price List | VFC Program | CDC. Accessed on October 8, 2024.
11 Previously approved, compact, affordable refrigerators average cost is $490 | Home Depot | Lowes | Information provided by department vaccine coordinator on April 11, 2024
12 Cost data pulled from a cost survey previously conducted by the department in 2024 on WAC 246-341-0110, 246-341-0200, 246-341-0365, 246-341-0515, 246-341-0901, 246-341-0912, 246-341-1140 and new WAC 246-341-0903, a Rule Concerning 23-Hour Crisis Relief Centers in Washington State
13 Washington State Mean Hourly Wage of Registered Nurses, $53.38. Washington - May 2023 OEWS State Occupational Employment and Wage Estimates (bls.gov) | Accessed on August 22, 2024
14 Washington State Mean Hourly Wage of Medical Assistants, $25.86. Washington - May 2023 OEWS State Occupational Employment and Wage Estimates (bls.gov) | Accessed on August 22, 2024
15 Shen A, Khavjou O, King G, Bates L, Zhou F, Leidner AJ, Yarnoff B. Provider time and costs to vaccinate adult patients: Impact of time counseling without vaccination. Vaccine. 2019 Feb 4;37(6):792-797. doi: 10.1016/j.vaccine.2018.12.045. Epub 2019 Jan 11. PMID: 30639460; PMCID: PMC6848970. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6848970/
16 Shen A, Khavjou O, King G, Bates L, Zhou F, Leidner AJ, Yarnoff B. Provider time and costs to vaccinate adult patients: Impact of time counseling without vaccination. Vaccine. 2019 Feb 4;37(6):792-797. doi: 10.1016/j.vaccine.2018.12.045. Epub 2019 Jan 11. PMID: 30639460; PMCID: PMC6848970. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6848970/
17 Current CDC Vaccine Price List | VFC Program | CDC. Accessed on October 8, 2024.
18 Previously approved, compact, affordable refrigerators average cost is $490 | Home Depot | Lowes | Information provided by department vaccine coordinator on April 11, 2024
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20 Washington State Mean Hourly Wage of Registered Nurses, $53.38. Washington - May 2023 OEWS State Occupational Employment and Wage Estimates (bls.gov) | Accessed on August 22, 2024
21 Washington State Mean Hourly Wage of Medical Assistants, $25.86. Washington - May 2023 OEWS State Occupational Employment and Wage Estimates (bls.gov) | Accessed on August 22, 2024
22 TB Blood Test | Quest® (questhealth.com) | Accessed on September 9, 2024
23 TB Blood Test | Quest® (questhealth.com) | Accessed on September 9, 2024

A copy of the statement may be obtained by contacting Michelle Weatherly, P.O. Box 47843, Olympia, WA 98504-7843, phone 360-236-2992, TTY 711, email michelle.weatherly@doh.wa.gov.

October 28, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5853.2

AMENDATORY SECTION (Amending WSR 24-17-003, filed 8/8/24, effective 9/8/24)

WAC 246-341-0200 Behavioral health—Definitions. The definitions in this section and RCW 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "23-hour crisis relief center" has the same meaning as under RCW 71.24.025.

(2) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed behavioral health agency, or certified treatment service, or both.

(3) "Adult" means an individual 18 years of age or older. For purposes of the medicaid program, adult means an individual 21 years of age or older.

(4) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

(5) "Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

(6) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and gambling disorders.

(7) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

(8) "Behavioral health service" means the specific service(s) that may be provided under an approved certification.

(9) "Branch site" means a physically separate licensed site, governed by the same parent organization as the main site, where qualified staff provides certified treatment services.

(10) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

(11) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

(12) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific types of behavioral health services included under the certification category.

(13) "Child," "minor," and "youth" mean:

(a) An individual under the age of 18 years; or

(b) An individual age 18 to 21 years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

(14) "Clinical supervision" means regular and periodic activities performed by a mental health professional, co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW. Clinical supervision may include review of assessment, diagnostic formulation, individual service plan development, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care. In the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward fulfilling requirements related to professional licensure under Title 18 RCW.

(15) <u>"Community relations plan" means a plan to inform and educate the community about the opioid treatment program, which documents strategies used to obtain community input regarding the proposed location and address any concerns identified by the community.</u>

(16) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

((~~(16)~~)) (17) "Consent" means agreement given by an individual after being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the individual can reasonably be expected to understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

((~~(17)~~)) (18) "Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

((~~(18)~~)) (19) "Co-occurring disorder" means the coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

((~~(19)~~)) (20) "Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

((~~(20)~~)) (21) "Deemed" means a status that is given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

((~~(21)~~)) (22) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

(a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

((~~(22)~~)) (23) "Face-to-face" means either in person or by way of synchronous video conferencing.

((~~(23)~~)) (24) "Individual service record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent behavioral health, medical, and clinical information for each individual served.

((~~(24)~~)) (25) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and gambling disorder treatment programs under RCW 43.70.080(5) and 41.05.750.

((~~(25)~~)) (26) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practition-

er (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW.

((~~(26)~~)) (27) "Medication unit" means either:

(a) A fixed-site brick and mortar entity that is established as part of, but geographically separate from, an opioid treatment program from which appropriately licensed opioid treatment program practitioners, contractors working on behalf of the opioid treatment program, or community pharmacists may dispense or administer medication for opioid use disorder, collect samples for drug testing or analysis, or provide other opioid treatment program services; or

(b) A mobile medication unit which is a component of an opioid treatment program that the United States Drug Administration has approved to operate as a mobile narcotic treatment program pursuant to 21 C.F.R. § 1301.13(e)(4).

(28) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

((~~(27)~~)) (29) "Mental health professional" or "MHP" means a person who meets the definition in RCW 71.05.020.

((~~(28)~~)) (30) "Opioid treatment program" means the same as defined in RCW 71.24.590.

(31) "Peer" means a peer counselor as defined in WAC 182-538D-0200 or a certified peer specialist certified under chapter 18.420 RCW.

((~~(29)~~)) (32) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide substance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

((~~(30)~~)) (33) "Problem gambling and gambling disorder" means one or more of the following disorders:

(a) "Gambling disorder" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

((~~(31)~~)) (34) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment or support services, progress in recovery, and progress toward intended outcomes.

((~~(32)~~)) (35) "Secretary" means the secretary of the department of health.

((~~(33)~~)) (36) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

((~~(34)~~)) (37) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

((~~(35)~~)) (38) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

((~~(36)~~)) (39) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

((~~(37)~~)) (40) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

((~~(38)~~)) (41) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-0300 Agency licensure and certification—General information. The department licenses behavioral health agencies and certifies them to provide behavioral health services. To obtain and maintain licensure and certification, an applicant shall meet the requirements of this chapter, applicable local and state rules, and applicable state and federal statutes and regulations. Licensure and certification under this chapter does not exempt a behavioral health agency from obtaining any other applicable state or federal licenses or registrations that are necessary to operate and provide services.

(1) The ((~~following~~)) behavioral health agency licensure process described in this section does not apply to a tribe that is licensed or seeking licensure via attestation as described in WAC 246-341-0367.

(2) Initial licensure of a behavioral health agency - Main site. The applicant shall submit a licensing application for a main site to the department that is signed by the agency's designated official. The application must include the following:

(a) The physical address of the agency;

(b) The type of certification(s) the agency is requesting, including the behavioral health services the agency will provide under the type of certification(s);

(c) A statement assuring the location where the services will be provided meets the Americans with Disabilities Act (ADA) standards and that any agency-operated facility where behavioral health services will be provided is:

(i) Suitable for the purposes intended, including having adequate space for private personal consultation with an individual and individual service record storage that adheres to confidentiality requirements;

(ii) Not a personal residence; and

(iii) Approved as meeting all local and state building and safety requirements, as applicable.

(d) Payment of associated fees according to WAC 246-341-0365;

(e) A copy of the applicant's master business license that authorizes the organization to do business in Washington state;

(f) A copy of the disclosure statement and report of findings from a background check of the administrator completed within the previous three months of the application date; and

(g) A copy of the policies and procedures specific to the agency and the certifications and behavioral health services for which the applicant is seeking approval that address all of the applicable requirements of this chapter.

(3) The department may issue a single agency license when the applicant identifies behavioral health treatment services will be provided in multiple buildings and either:

(a) The applicant operates the multiple buildings on the same campus as a single integrated system with governance by a single authority or body over all staff and buildings; or

(b) All behavioral health treatment services will be provided in buildings covered under a single hospital license.

(4) Initial licensure of a behavioral health agency - Branch site. To add a branch site, an existing behavioral health agency shall meet the application requirements in subsection ((~~(1)~~)) (2)(a) through (c) of this section and submit to the department:

(a) A written declaration that a current copy of agency policies and procedures that address all of the applicable requirements of this chapter are accessible to the branch site;

(b) A copy of policies and procedures for any behavioral health certifications and services that are unique to the branch site location, if applicable; and

(c) A copy of the disclosure statement and report of findings from a background check of the administrator completed within the previous three months of the application date, if the administrator of the branch site is different than the administrator of the main site location.

(5) In addition to the information required by subsections (2) through (4) of this section, an applicant seeking certification as an opioid treatment program must submit the following information with their application:

(a) Documentation that the applicant has communicated with the county legislative authority and, if applicable, the city legislative authority or tribal legislative authority, in order to secure a location that meets county, tribal, or city land use ordinances when proposing to open a new, or move an existing, opioid treatment program;

(b) A community relations plan developed and completed in consultation with the county, city, or tribal authority or their designee when proposing to open a new, or move an existing opioid treatment program; and

(c) For new applicants who operate opioid treatment programs in another state, copies of all review reports written by their national accreditation body and state certification, if applicable, within the past six years.

(6) Prior to an opioid treatment program license being issued, the applicant must obtain approval from:

(a) The Washington state department of health pharmacy quality assurance commission;

(b) The United States Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The United States Drug Enforcement Administration (DEA).

(7) A mobile or fixed-site medication unit may be established as part of an opioid treatment program. Opioid treatment programs may establish a mobile or fixed-site medication unit and must notify the department on forms provided by the department. Department approval must

be given before services can be provided from a mobile or fixed-site medication unit.

(8) License renewal. To renew a main site or branch site license and certification, an agency shall submit to the department a renewal request signed by the agency's designated official. The renewal request must:

(a) Be received by the department before the expiration date of the agency's current license; and

(b) Include full payment of the specific renewal fee according to WAC 246-341-0365.

((~~(6)~~)) (9) Amending a license. A license amendment is required when there is a change in the administrator, when adding or removing a certification or behavioral health service, or when closing a location. To amend a license the agency shall submit to the department a licensing application requesting the amendment that is signed by the agency's designated official. The application shall include the following requirements as applicable to the amendment being requested:

(a) Change of the administrator. The application must include a copy of the disclosure statement and report of findings from a background check of the new administrator completed within the previous three months of the application date and within 30 calendar days of the change;

(b) Adding a certification. The agency must submit an application for certification before providing the behavioral health services listed under the certification. The application must include:

(i) The physical address or addresses of the agency-operated facility or facilities where the new type of certified service(s) will be provided;

(ii) A copy of the agency's policies and procedures relating to the new certification and behavioral health service(s) that will be provided; and

(iii) Payment of fees according to WAC 246-341-0365.

(c) Adding a behavioral health service. The agency may add a behavioral health service that is included under its existing certification by submitting the notification of the added service to the department within 30 calendar days of beginning the service. The notification must include:

(i) The physical address or addresses of the agency-operated facility or facilities where the new behavioral health service(s) will be provided; and

(ii) A copy of the agency's policies and procedures relating to the new behavioral health service(s) that will be provided.

(d) Canceling a behavioral health service or certification.

(i) The agency must provide notice to individuals who receive the service(s) to be canceled. The notice shall be provided at least 30 calendar days before the service(s) are canceled and the agency must assist individuals in accessing services at another location.

(ii) The application must include the physical address or addresses of the agency-operated facility or facilities where the service(s) will no longer be provided.

(e) Closing a location.

(i) The application must include the name of the licensed agency or entity storing and managing the records, including:

(A) The method of contact, such as a telephone number, electronic address, or both; and

(B) The mailing and street address where the records will be stored.

(ii) When a closing agency that has provided substance use disorder services arranges for the continued storage and management of individual service records by a qualified service organization (QSO), the closing agency must enter into a written agreement with the QSO that meets the requirements of 42 C.F.R. Part 2.

(iii) In the event of an agency closure the agency must provide each individual currently being served:

(A) Notice of the agency closure at least 30 calendar days before the date of closure;

(B) Assistance with accessing services at another location; and

(C) Information on how to access records to which the individual is entitled.

((~~(7)~~)) (10) Change of ownership.

(a) Change of ownership means one of the following:

(i) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

(ii) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or

(iii) The current ownership takes on a new owner of five percent or more of the organizational assets.

(b) When a licensed behavioral health agency changes ownership, the agency shall submit to the department:

(i) An initial license application from the new owner in accordance with subsection (2) of this section. The new agency must receive a new license under the new ownership before providing any behavioral health service; and

(ii) A statement from the current owner regarding the disposition and management of individual service records in accordance with applicable state and federal statutes and regulations.

((~~(8)~~)) (11) Change in location. A licensed behavioral health agency must receive a new license under the new location's address before providing any behavioral health service at that address. The agency shall submit to the department a licensing application requesting a change in location that is signed by the agency's designated official. The application must include:

(a) The new address;

(b) A statement assuring the location meets the Americans with Disabilities Act (ADA) standards and that any agency-operated facility where behavioral health services will be provided is:

(i) Suitable for the purposes intended, including having adequate space for private personal consultation with an individual and individual service record storage that adheres to confidentiality requirements;

(ii) Not a personal residence; and

(iii) Approved as meeting all local and state building and safety requirements, as applicable.

(c) Payment of initial licensure fees according to WAC 246-341-0365.

((~~(9)~~)) (12) Granting a license. A new or amended license or certification will not be granted to an agency until:

(a) All of the applicable notification and application requirements of this section are met; and

(b) The department has reviewed and approved the policies and procedures for initial licensure or addition of new certifications that demonstrate that the agency will operate in compliance with the licensure and certification standards.

((~~(10)~~)) (13) Effective date. An agency's license and any behavioral health services certification is effective for up to 12 months from the date of issuance, subject to the agency maintaining compliance with the minimum license and certification standards in this chapter.

((~~(11)~~)) (14) After receiving the license. The agency shall post the department-issued license and certification(s) in a conspicuous place on the agency's premises, and, if applicable, on the agency's branch site premises.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 12/10/22)

WAC 246-341-0342 Agency licensure and certification—Off-site locations. (1) A behavioral health agency may provide certified services at an off-site location or from a mobile unit under the existing behavioral health agency license.

(2) For the purposes of this section:

(a) "Off-site" means the provision of services by a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

(b) "Established off-site location" means a location that is regularly used and set up to provide services rather than a location used on an individual, case-by-case basis.

(c) "Mobile unit" means a vehicle, lawfully used on public streets, roads, or highways with more than three wheels in contact with the ground, from which behavioral health services are provided at a nonpermanent location(s).

(3) A behavioral health agency that provides off-site services at an established off-site location(s) shall:

(a) Maintain a list of each established off-site location where services are provided on a regularly scheduled ongoing basis and include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location;

(b) Maintain an individual's confidentiality at the off-site location; and

(c) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable.

(4) In addition to meeting the requirements in subsection (3) of this section, an agency providing services to an individual in their place of residence or services in a public setting that is not an established off-site location where services are provided on a regularly scheduled ongoing basis must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual, staff member, and community safety; and

(b) For the purpose of emergency communication and as required by RCW 71.05.710, provide access to a wireless telephone or comparable device to any employee, contractor, student, or volunteer when making home visits to individuals.

(5) Before operating a mobile unit, agencies providing behavioral health services from a mobile unit must notify the department in writing in a manner outlined by the department. The notification must include that a mobile unit is being added under the agency license and indicate what services will be provided from the mobile unit((~~, including whether it is operating as a mobile narcotic treatment program as defined in 21 C.F.R. Part 1300.01.~~

~~(6) An opioid treatment program operating a mobile narcotic treatment program must:~~

~~(a) Submit a copy of the Drug Enforcement Administration (DEA) approval for the mobile narcotic treatment program; and~~

~~(b) Comply with 21 C.F.R. Parts 1300, 1301, and 1304 and any applicable rules of the pharmacy quality assurance commission~~)). Opioid treatment programs must also comply with WAC 246-341-0300(7) before operating a mobile unit.

AMENDATORY SECTION (Amending WSR 21-12-042, filed 5/25/21, effective 7/1/21)

WAC 246-341-1000 Opioid treatment programs (OTP)—((~~General~~)) Certification standards. ((~~(1) Opioid treatment programs (OTP) may order, possess, dispense, and administer medications approved by the United States Food and Drug Administration for the treatment of opioid use disorder, alcohol use disorder, tobacco use disorder, and reversal of opioid overdose. OTP services include withdrawal management and maintenance treatment along with evidence-based therapy.~~

~~(2) An agency providing opioid treatment program services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder, alcohol use disorder, tobacco use disorder, and reversal of opioid overdose.~~

~~(3) An agency must:~~

~~(a) Use evidence-based therapy in addition to medication in the treatment program;~~

~~(b) Identify individual mental health needs during assessment process and refer them to appropriate treatment if not available on-site;~~

~~(c) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:~~

~~(i) Alcohol, other drugs, and substance use disorder;~~

~~(ii) Relapse prevention;~~

~~(iii) Infectious diseases including human immunodeficiency virus (HIV) and hepatitis A, B, and C;~~

~~(iv) Sexually transmitted infections; and~~

~~(v) Tuberculosis (TB);~~

~~(d) Provide information to each individual on:~~

~~(i) Emotional, physical, and sexual abuse;~~

~~(ii) Nicotine use disorder;~~

~~(iii) The impact of substance use during pregnancy, risks to the developing fetus before prescribing any medications to treat opioid~~

~~use disorder, the risks to both the expecting parent and fetus of not treating opioid use disorder, and the importance of informing medical practitioners of substance use during pregnancy; and~~

~~(iv) Family planning.~~

~~(c) Create and implement policies and procedures for:~~

~~(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff members for carrying out the described diversion control measures and functions;~~

~~(ii) Urinalysis and drug testing, to include:~~

~~(A) Obtaining specimen samples from each individual, at least eight times within twelve consecutive months;~~

~~(B) Documentation indicating the clinical need for additional urinalysis;~~

~~(C) Random samples, without notice to the individual;~~

~~(D) Samples in a therapeutic manner that minimizes falsification;~~

~~(E) Observed samples, when clinically appropriate; and~~

~~(F) Samples handled through proper chain of custody techniques.~~

~~(iii) Laboratory testing;~~

~~(iv) The response to medical and psychiatric emergencies; and~~

~~(v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.~~

~~(4) An agency must ensure that an individual is not admitted to opioid treatment withdrawal management services more than two times in a twelve-month period following admission to services.~~

~~(5) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.~~

~~(6) An agency providing youth opioid treatment program services must:~~

~~(a) Ensure that before admission the youth has had two documented attempts at short-term withdrawal management or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term withdrawal management treatment; and~~

~~(b) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.~~

~~(7) An agency providing opioid treatment program services must ensure:~~

~~(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor as defined in 42 C.F.R. Part 8, or medical director;~~

~~(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8;~~

~~(c) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder; and~~

~~(d) The death of an individual enrolled in an opioid treatment program is reported to the department within forty-eight hours.~~)) An

agency providing opioid treatment program services must comply with the following:

(1) All applicable requirements, including those specific to medication units, of 21 C.F.R. §§ 1300, 1301, 1304, and 1306, and 42 C.F.R. Part 8, in effect as of April 2024. Copies of the incorporated version of 21 C.F.R. Part 1301 and 42 C.F.R. Part 8 are available at www.doh.wa.gov/otp or by contacting the department at 360-236-4700 and are available for public inspection at the department's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

(2) Develop, maintain, and implement policies and procedures for:

(a) Requirements in 42 C.F.R. Part 8.12 to include:

(i) Administrative and organizational structure;

(ii) Continuous quality improvement;

(iii) Staff credentials;

(iv) Patient admission criteria;

(v) Required services;

(vi) Recordkeeping and patient confidentiality;

(vii) Medication administration, dispensing, and use;

(viii) Unsupervised or take-home use; and

(ix) Interim maintenance treatment.

(b) The opioid treatment program's accreditation body standards;

(c) After-hours contact service to confirm patient dose amounts, seven days a week, 24 hours a day;

(d) Urinalysis and drug testing, to include:

(i) Documentation indicating the clinical need for additional urinalysis;

(ii) Observed samples, when clinically indicated; and

(iii) Samples handled through proper chain of custody techniques.

(e) The response to medical and psychiatric emergencies; and

(f) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.

(3) Use the state's central registry, as defined in subsection (15) of this rule, for, but not limited to, emergencies and dual enrollment, including submitting and maintaining all required data and tasks within the central registry;

(4) Offer on-site, or by referral, to each individual admitted:

(a) Hepatitis A and Hepatitis B vaccine;

(b) Screening, testing, and treatment for infectious diseases including:

(i) Human immunodeficiency virus (HIV);

(ii) Hepatitis B and C;

(iii) Syphilis; and

(iv) Tuberculosis (TB).

(5) Provide the following information to each individual admitted:

(a) Information and education, as appropriate, on:

(i) Emotional, physical, and sexual abuse;

(ii) The impact of opioid use and opioid use disorder medications during pregnancy as required by RCW 71.24.560 to all pregnant individuals before they are prescribed medications as part of their treatment, and to all individuals who become pregnant while receiving services; and

(iii) Reproductive health.

(b) Information about, and access to, opioid overdose reversal medication in accordance with RCW 71.24.594.

(6) Have at least one staff member on duty at all times who has documented training in:

(a) Cardiopulmonary resuscitation (CPR); and

(b) Management of opioid overdose.

(7) The medical director ensures that:

(a) There is a documented review of the department prescription drug monitoring program data on the individual:

(i) At admission;

(ii) Annually after the date of admission; and

(iii) Subsequent to any incidents of concern.

(b) For each individual admitted to withdrawal management services an approved withdrawal management schedule that is medically appropriate is developed; and

(c) For each individual administratively discharged from services an approved withdrawal management schedule that is medically appropriate is developed.

(8) All exceptions to take-home requirements are submitted and approved by the state opioid treatment authority and Substance Abuse and Mental Health Services Administration (SAMHSA).

(9) An agency providing opioid treatment program services may accept, possess, and administer patient-owned medications.

(10) Notify the federal SAMHSA and the department within three weeks of any replacement or other change in the status of the program, program sponsor, or medical director as defined in 42 C.F.R. Part 8.

(11) An agency operating a medication unit must comply with 21 C.F.R. Parts 1300, 1301, 1304, 1306, 42 C.F.R. Part 8, and any applicable rules of the pharmacy quality assurance commission.

(12) Report to the department deaths of individuals enrolled in an opioid treatment program, that do not occur on campus, within 48 hours upon learning of the death.

(13) Report to the department deaths that occur on the campus of an opioid treatment program as a critical incident according to WAC 246-341-0420(12).

(14) Develop an ongoing community relations plan to address new concerns expressed by the community.

(15) For the purposes of this section, "central registry" means the software system used to determine whether the patient is enrolled in any other opioid treatment program and to provide a continuum of care in times of disaster.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

WAC 246-341-1100 Withdrawal management—Certification standards.

(1) Substance use disorder withdrawal management services are provided to assist in the process of withdrawal from psychoactive substances in a safe and effective manner that includes medical management or medical monitoring. Substance use disorder withdrawal management services under this certification include:

(a) Adult withdrawal management; and

(b) Youth withdrawal management.

(2) An agency certified for withdrawal management services must:

(a) Ensure the individual receives a substance use disorder screening before admission;

(b) Provide counseling to each individual that addresses the individual's:

(i) Substance use disorder and motivation; and

(ii) Continuing care needs and need for referral to other services.

(c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services; and

(d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.

(3) Ensure that each staff member providing withdrawal management services to an individual, with the exception of substance use disorder professionals, substance use disorder professional trainees, physicians, physician assistants, advanced registered nurse practitioners, or person with a co-occurring disorder specialist enhancement, completes a minimum of 40 hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

(b) Infectious diseases, to include hepatitis and tuberculosis (TB); and

(c) Withdrawal screening, admission, and signs of trauma.

(4) An agency certified for withdrawal management services must meet the certification standards for residential and inpatient behavioral health services in WAC ((~~246-341-1104~~)) 246-341-1105 and the individual service requirements for inpatient and residential substance use disorder services in WAC 246-341-1108.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-341-1005	Opioid treatment programs (OTP)—Agency certification requirements.
WAC 246-341-1010	Opioid treatment programs (OTP)—Agency staff requirements.
WAC 246-341-1015	Opioid treatment programs (OTP)—Individual service record content and documentation requirements.
WAC 246-341-1020	Opioid treatment programs (OTP)—Medical director responsibility.
WAC 246-341-1025	Opioid treatment programs (OTP)—Medication management.

WSR 24-22-056
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
[Filed October 28, 2024, 2:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-042.

Title of Rule and Other Identifying Information: WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising.

Hearing Location(s): On December 12, 2024, at 9:30 a.m., at the Public Disclosure Commission (PDC) Office, 711 Capitol Way South, Olympia, WA 98504. Remote access available. Contact pdc@pdc.wa.gov.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Sean Flynn, 711 Capitol Way South, Olympia, WA 98504, email pdc@pdc.wa.gov, fax 360-753-1112, by November 30, 2023 [2024].

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, fax 360-753-1112, email pdc@pdc.wa.gov, by December 5, 2023 [2024].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule would be updated to reflect recent changes in statute regarding the exemption of sponsor identification for political yard signs. The rule would also alter the measurements for the exemption of sponsor identification on campaign paraphernalia in order to account for the variety of different shapes.

Reasons Supporting Proposal: Rule making is necessary to update reference to the newly enacted law, HB 2032 (2024), which requires sponsor identification on previously exempted political yard signs. The new dimensions for the exemption of sponsor identification on campaign paraphernalia is intended to clarify scope of the exemption and avoid overly technical application of the exemption.

Statutory Authority for Adoption: RCW 42.17A.110.

Statute Being Implemented: RCW 42.17A.320.

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

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sean Flynn, 711 Capitol Way South, Olympia, WA 98504, pdc@pdc.wa.gov.

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. PDC is not required to prepare a cost-benefit analysis under RCW 34.05.328 (5)(b).

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; and 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.

Scope of exemption for rule proposal:

Is fully exempt.

October 28, 2024
Sean Flynn

General Counsel

OTS-5956.1

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising. (1) RCW 42.17A.320 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," "top three donors to PAC contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) and 42.17A.350:

(a) Campaign paraphernalia, including novelty or sundry items intended for individual distribution and use, with a printing surface area smaller than ((~~4" x 15"~~)) 60 square inches, including expandable surface area such as a balloon when expanded, or where such identification is otherwise impractical to provide a readable text;

(b) Newspaper ads of one column inch or less (excluding online ads);

(c) Reader boards where a message is affixed in movable letters, or skywriting;

(d) State or local voter's pamphlets published pursuant to law; and

(e) Yard signs ((~~- size 4' x 8' or smaller.~~)) must include sponsor identification, but need not include "top five contributors" or "top three donors to PAC contributors."

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW 42.17A.320 in a manner that is compatible with the device and technology used to display the advertising.

(4) Political advertising created and distributed by an individual using their own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends in the aggregate less than ((~~one hundred dollars~~)) $100 to produce and distribute the advertising or less than ((~~fifty dollars~~)) $50 to produce and distribute online advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 (16)(a)(ii) or (iii) or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

(i) A letter, flier, handbill, text, email or other digital communications from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(4)); or

(ii) Disseminated on the individual's social media site, personal website, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

WSR 24-22-066
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed October 29, 2024, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-032 and 24-17-080.

Title of Rule and Other Identifying Information: WAC 182-550-1900 Transplant coverage, 182-550-2100 Requirements—Transplant hospitals, 182-550-2200 Transplant requirements—COE, 182-531-0650 Hospital physician-related services not requiring authorization when provided in agency-approved centers of excellence or hospitals authorized to provide the specific services, and 182-531-1750 Transplant coverage for physician-related services.

Hearing Location(s): On December 10, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_dmXkI7-gTwKhW_NX54cdmA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than December 11, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning October 30, 2024, 8:00 a.m., by December 10, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email Johanna.Larson@hca.wa.gov, by November 22, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-550-1900 and 182-550-2100 to update which transplant procedures are covered and where the transplants can be performed. HCA is also repealing WAC 182-550-2200 Transplant requirements—COE, as this section will no longer be necessary due to the changes being proposed to WAC 182-550-1900 and 182-550-2100. As a result of these changes, HCA is also amending WAC 182-531-0650 and 182-531-1750.

HCA is also removing diabetes education from WAC 182-531-0650 as a COE is not required. This rule making was filed under WSR 22-16-032 on July 26, 2022.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Joan Chappell, P.O. Box 42716, Olympia, WA 98504, 360-725-1071.

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(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 29, 2024
Wendy Barcus
Rules Coordinator

OTS-5910.1

AMENDATORY SECTION (Amending WSR 17-04-039, filed 1/25/17, effective 2/25/17)

WAC 182-531-0650 Hospital physician-related services not requiring authorization when provided in agency-approved centers of excellence or hospitals authorized to provide the specific services. The medicaid agency covers the following services without prior authorization when provided in agency-approved centers of excellence. The agency issues periodic publications listing centers of excellence. These services include ((~~the following:~~

~~(1) All transplant procedures specified in WAC 182-550-1900;~~

~~(2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC 182-550-2400. See also WAC 182-531-0700;~~

~~(3)~~)) sleep studies including, but not limited to, polysomnograms for clients one year of age and older. The agency allows sleep studies only in outpatient hospital settings as described under WAC 182-550-6350. See also WAC 182-531-1500((~~; and~~

~~(4) Diabetes education, in a DOH-approved facility, per WAC 182-550-6300~~)).

AMENDATORY SECTION (Amending WSR 17-04-039, filed 1/25/17, effective 2/25/17)

WAC 182-531-1750 Transplant coverage for physician-related services. The medicaid agency covers transplants when performed in ((~~an agency-approved center of excellence~~)) a facility, as defined in WAC 247-04-020, that has a transplant certificate of need (CON) issued by the department of health. See WAC 182-550-1900 for information regarding transplant coverage.

OTS-5911.2

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-1900 Transplant coverage. (1) The medicaid agency pays for medically necessary transplant procedures only for eligible Washington apple health clients who are not otherwise subject to a managed care organization (MCO) plan. Clients eligible under the alien emergency medical (AEM) program are not eligible for transplant coverage.

(2) The agency covers the following transplant procedures when the transplant procedures are performed in a ((~~hospital designated by the agency as a "center of excellence" for transplant procedures and meet that hospital's criteria for establishing appropriateness and the medical necessity of the procedures~~)) health care facility, as defined in WAC 247-04-020, that has a transplant certificate of need from the department of health:

(a) ((~~Solid organs involving the heart, kidney, liver, lung, heart-lung, pancreas, kidney-pancreas, and small bowel~~)) Bone marrow;

(b) ((~~Bone marrow and peripheral stem cell (PSC)~~)) Cornea;

(c) Skin grafts; ((~~and~~))

(d) ((~~Corneal transplants~~)) Stem cell, autologous and allogeneic;

(e) Intestine;

(f) Kidney;

(g) Liver or combination liver-kidney;

(h) Heart or combination heart-lung;

(i) Lung, single or bilateral;

(j) Pancreas or combination pancreas-kidney; and

(k) Other transplant services determined to be medically necessary. See WAC 182-501-0165 and 182-500-0070.

(3) The agency pays for procedures covered under subsection (2)(a) through (d) of this section, performed at qualified facilities, subject to the limitations in this chapter.

(4) For procedures covered under subsection((~~s~~)) (2)((~~(a) and (b)~~)) (e) through (k) of this section, the agency pays facility charges only to those ((~~hospitals~~)) facilities that meet the standards and conditions:

(a) Established by the agency; and

(b) Specified in WAC 182-550-2100 ((~~and 182-550-2200.~~

~~(4) The agency pays for skin grafts and corneal transplants to any qualified hospital, subject to the limitations in this chapter~~)).

(5) The agency ((~~deems~~)) considers organ procurement fees as being included in the payment to the transplant ((~~hospital~~)) facility. The agency may make an exception to this policy and pay these fees separately to a transplant ((~~hospital~~)) facility when an eligible ((~~medical~~)) apple health client is covered by a third-party payer that will pay for the organ transplant procedure itself but not for the organ procurement.

(6) The agency, without requiring prior authorization, pays for up to ((~~fifteen~~)) 15 matched donor searches per client approved for a bone marrow transplant. The agency requires prior authorization for matched donor searches in excess of ((~~fifteen~~)) 15 per bone marrow transplant client.

(7) The agency does not pay for experimental transplant procedures. ((~~In addition, the agency considers as experimental those services including, but not limited to, the following:~~

~~(a) Transplants of three or more different organs during the same hospital stay;~~

~~(b) Solid organ and bone marrow transplants from animals to humans; and~~

~~(c) Transplant procedures used in treating certain medical conditions for which use of the procedure has not been generally accepted by the medical community or for which its efficacy has not been documented in peer-reviewed medical publications.~~))

(8) The agency pays for ((~~a solid~~)) an identical organ transplant procedure only once ((~~per client's lifetime, except in cases of organ rejection by the client's immune system during the original hospital stay~~)) for the duration of the specific organ's established viability or as determined medically necessary (see WAC 182-501-0165).

(9) ((~~The agency pays for bone marrow, PSC, skin grafts, and corneal transplants when medically necessary.~~

~~(10)~~)) The agency may conduct a postpayment retrospective utilization review as described in WAC 182-550-1700, and may adjust the payment if the agency determines the criteria in this section are not met.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-2100 Requirements—Transplant ((~~hospitals~~)) facilities. This section applies to requirements for ((~~hospitals~~)) facilities that perform the medicaid agency-approved transplants described in WAC 182-550-1900(2).

(1) The agency requires instate transplant ((~~hospitals~~)) facilities to meet the following requirements to be paid for transplant services provided to Washington apple health clients. A ((~~hospital~~)) facility must have:

(a) An approved certificate of need (CON) from the state department of health (DOH) for the type of transplant procedure to be performed((~~, except that the agency does not require CON approval for a hospital that provides peripheral stem cell (PSC), skin graft or corneal transplant services~~)); and

(b) Approval ((~~from the United Network of Organ Sharing (UNOS) to perform transplants, except that the~~)) as a medicare-certified transplant facility.

(c) The agency does not require ((~~UNOS~~)) medicare or department of health approval as a transplant facility for a ((~~hospital~~)) facility that provides ((~~PSC~~)) stem cell, skin graft, or corneal transplant services((~~; and~~

~~(c) Been approved by the agency as a center of excellence transplant center for the specific organ or procedure the hospital proposes to perform~~)).

(2) The agency requires an out-of-state transplant ((~~center~~)) facility, including bordering city and critical border ((~~hospitals~~)) facilities, to be a medicare-certified transplant ((~~center in a hospital~~)) facility and participating in that state's medicaid program. All out-of-state transplant services((~~, excluding those provided in agency-approved centers of excellence (COE) in bordering city and critical border hospitals,~~)) must be prior authorized.

(3) ((~~The agency considers a hospital for approval as a transplant center of excellence when the hospital submits to the agency a~~

~~copy of its DOH-approved CON for transplant services, or documentation that it has, at a minimum:~~

~~(a) Organ-specific transplant physicians for each organ or transplant team. The transplant surgeon and other responsible team members must be experienced and board-certified or board-eligible practitioners in their respective disciplines, including, but not limited to, the fields of cardiology, cardiovascular surgery, anesthesiology, hemodynamics and pulmonary function, hepatology, hematology, immunology, oncology, and infectious diseases. The agency considers this requirement met when the hospital submits to the agency a copy of its DOH-approved CON for transplant services;~~

~~(b) Component teams which are integrated into a comprehensive transplant team with clearly defined leadership and responsibility. Transplant teams must include, but not be limited to:~~

~~(i) A team-specific transplant coordinator for each type of organ;~~

~~(ii) An anesthesia team available at all times; and~~

~~(iii) A nursing service team trained in the hemodynamic support of the patient and in managing immunosuppressed patients.~~

~~(c) Other resources that the transplant hospital must have include:~~

~~(i) Pathology resources for studying and reporting the pathological responses of transplantation;~~

~~(ii) Infectious disease services with both the professional skills and the laboratory resources needed to identify and manage a whole range of organisms; and~~

~~(iii) Social services resources.~~

~~(d) An organ procurement coordinator;~~

~~(e) A method ensuring that transplant team members are familiar with transplantation laws and regulations;~~

~~(f) An interdisciplinary body and procedures in place to evaluate and select candidates for transplantation;~~

~~(g) An interdisciplinary body and procedures in place to ensure distribution of donated organs in a fair and equitable manner conducive to an optimal or successful patient outcome;~~

~~(h) Extensive blood bank support;~~

~~(i) Patient management plans and protocols; and~~

~~(j) Written policies safeguarding the rights and privacy of patients.~~

~~(4) In addition to the requirements of subsection (3) of this section, the transplant hospital must:~~

~~(a) Satisfy the annual volume and survival rates criteria for the particular transplant procedures performed at the hospital, as specified in WAC 182-550-2200(2).~~

~~(b) Submit a copy of its approval from the United Network for Organ Sharing (UNOS), or documentation showing that the hospital:~~

~~(i) Participates in the national donor procurement program and network; and~~

~~(ii) Systematically collects and shares data on its transplant programs with the network.~~

~~(5)~~)) The agency applies the following specific requirements to a ((~~PSC~~)) stem cell transplant ((~~hospital~~)) facility:

(a) A ((~~PSC~~)) stem cell transplant ((~~hospital~~)) facility must be ((~~an agency-approved COE~~)) in compliance with 21 C.F.R. § 1271 to perform any of the following ((~~PSC~~)) stem cell services:

(i) Harvesting, if it has its own apheresis equipment which meets federal or American Association of Blood Banks (AABB) requirements;

(ii) Processing, if it meets AABB quality of care requirements for human tissue/tissue banking; and

(iii) Reinfusion, if it meets the criteria established by the Foundation for the Accreditation of ((~~Hematopoietic Cell~~)) Cellular Therapy.

(b) A ((~~PSC~~)) stem cell transplant ((~~hospital~~)) facility may purchase ((~~PSC~~)) stem cell processing and harvesting services from other agency-approved processing providers.

((~~(6)~~)) (4) The agency does not pay a ((~~PSC~~)) stem cell transplant ((~~hospital~~)) facility for AABB inspection and certification fees related to ((~~PSC~~)) stem cell transplant services.

(5) The agency does not pay for any service that requires consent under RCW 18.130.420.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-2200 Transplant requirements——COE.

WSR 24-22-075
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed October 30, 2024, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-089.

Title of Rule and Other Identifying Information: WAC 392-157-125 Time for meals.

Hearing Location(s): On January 14, 2025, at 11:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page Ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity. For participation questions, please email sirena.wu@k12.wa.us.

Date of Intended Adoption: January 16, 2025.

Submit Written Comments to: Leanne Eko, OSPI, P.O. Box 47200, Olympia, WA 98504, email child.nutrition@k12.wa.us, beginning November 20, 2024, 8:00 a.m., by January 14, 2025, no later than 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email sirena.wu@k12.wa.us, by January 7, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to revise WAC 392-157-125 to better align with state auditor performance audit results, leading research, and national best practices by requiring a minimum seated lunchtime of 20 minutes in K-12 public schools.

Reasons Supporting Proposal: Requiring a minimum seated lunchtime of 20 minutes in K-12 public schools under WAC 392-157-125 would allow for specific guidance that aligns with recommendations from education and nutrition groups, national best practices, and state auditor performance audit results. Additionally, adopting a minimum seated lunchtime requirement would ensure uniform standards across Washington state schools.

Statutory Authority for Adoption: RCW 28A.235.100.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Leanne Eko, OSPI, 600 South Washington Street, Olympia, WA; and Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

October 30, 2024
Chris P.S. Reykdal

OTS-5961.1

AMENDATORY SECTION (Amending WSR 94-04-097, filed 2/1/94, effective 3/4/94)

WAC 392-157-125 Time for meals. ((~~The~~)) (1) **School mealtime.** School breakfast and school lunch periods ((~~shall~~)) must allow a reasonable amount of time for each child to take care of personal hygiene and enjoy a complete meal.

(2) **Seated lunchtime.** Beginning in the 2025-26 school year, each school must provide a lunch period that allows all students a minimum of 20 minutes to eat lunch once the students have received their food through the meal service line.

WSR 24-22-080
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 30, 2024, 1:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-093.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2024, 458-40-610 Timber excise tax—Definitions, and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On December 10, 2024, at 11:00 a.m., internet/phone via Zoom. Please contact Cathy Holder at CathyH@dor.wa.gov or Barbara Imperio at BarbaraI@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: December 11, 2024.

Submit Written Comments to: Tiffany Do, P.O. Box 47453, Olympia, WA 98504-7453, email TiffanyD@dor.wa.gov, fax 360-534-1606, beginning November 1, 2024, 12:00 a.m., by December 10, 2024, 11:59 p.m.

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 84.33.091 requires the department of revenue (department) to revise the stumpage value tables every six months. The department establishes the stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax, WAC 458-40-660. The values in the proposed rule will apply January 1, 2025, through June 30, 2025. The department also proposes a reference change to thinning section within Table 9 and Table 10 of WAC 458-40-660. The "Thinning" within Table 9 and Table 10 of the rule currently reference WAC 458-40-610(28); those tables should reference "Thinning" as described in WAC 458-40-610(29).

RCW 84.33.140 requires that forest land values be adjusted annually according to the statutory formula contained in RCW 84.33.140(3). The department proposes amending the forest land values rule, WAC 458-40-540, to adjust the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2025.

RCW 84.33.096 requires the department to provide administrative definitions. The department proposes amending WAC 458-40-610 to fix an incorrect reference in the rule. WAC 458-40-610(7) currently references WAC 458-40-610(14); it should reference WAC 458-40-610(13).

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for January 1, 2025, through June 30, 2025, and the forest land values for 2025. The proposal also corrects the previous incorrect reference to subsection (7) within WAC 458-40-610.

Statutory Authority for Adoption: RCW 82.01.060(2), 84.33.096.

Statute Being Implemented: RCW 84.33.091, 84.33.140.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Tiffany Do, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1558; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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 Tiffany Do, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98501-7453, phone 360-534-1558, fax 360-534-1606.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 it does not propose any new requirements not already provided in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

October 30, 2024
Brenton Madison
Rules Coordinator

OTS-5950.1

AMENDATORY SECTION (Amending WSR 24-01-027, filed 12/8/23, effective 1/1/24)

WAC 458-40-540 Forest land values—((~~2024~~)) 2025. The forest land values, per acre, for each grade of forest land for the ((~~2024~~)) 2025 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((~~2024~~)) 2025 VALUES PER ACRE
1	1	((~~$227~~)) $226
	2	((~~225~~)) 224
	3	((~~211~~)) 210
	4	((~~154~~)) 153
2	1	((~~194~~)) 193
	2	((~~187~~)) 186
	3	((~~180~~)) 179
	4	127
3	1	150
	2	146
	3	144
	4	111
4	1	117
	2	112
	3	111
	4	84
5	1	84
	2	74
	3	73
	4	52
6	1	43
	2	41
	3	41
	4	39

LAND GRADE	OPERABILITY CLASS	((~~2024~~)) 2025 VALUES PER ACRE
7	1	19
	2	19
	3	17
	4	17
8	1	1

AMENDATORY SECTION (Amending WSR 23-14-011, filed 6/22/23, effective 7/1/23)

WAC 458-40-610 Timber excise tax—Definitions. (1) **Introduction.** The purpose of WAC 458-40-610 through 458-40-680 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-680. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection ((~~(14)~~)) (13) of this section.

(8) **Forest-derived biomass.** Forest-derived biomass consists of tree limbs, tops, needles, leaves, and other woody debris that are residues from such activities as timber harvesting, forest thinning, fire suppression, or forest health. Forest-derived biomass does not include scalable timber products or firewood (defined in WAC 458-40-650).

(9) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to

the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(10) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

(11) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting merchantable timber from the land and delivering it to the buyer. The term includes the costs of piling logging residue on site, and costs to abate extreme fire hazard when required by the department of natural resources. Harvesting and marketing costs do not include the costs of other consideration (for example, reforestation, permanent road construction), treatment to timber or land that is not a necessary part of a commercial harvest (for example, precommercial thinning, brush clearing, land grading, stump removal), costs associated with maintaining the option of land conversion (for example, county fees, attorney fees, specialized site assessment or evaluation fees), or any other costs not directly and exclusively associated with the harvesting and marketing of merchantable timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, or when harvesting and marketing costs cannot be separated from other costs, the deduction for harvesting and marketing costs is 35 percent of the gross receipts from the sale of the logs.

(12) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

(13) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than 50 percent of the gross scale; and meeting the following minimum requirements:

(a) Minimum gross diameter - Two inches.

(b) Minimum gross length - 12 feet.

(c) Minimum volume - 10 board feet net scale.

(d) Minimum recovery requirements - 100 percent of adjusted gross scale in firm useable chips.

(14) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

(15) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(16) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(17) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

(18) **Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

(19) **Private timber.** All timber harvested from privately owned lands.

(20) **Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

(21) **Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(22) **Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

(23) **Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding 2,000,000 board feet in a calendar year. See RCW 84.33.035.

(24) **Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs excluding redcedar harvested in stumpage value area 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance

with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed 20 feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value area 6, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than 10 board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles* (*Designation*: *D 25*) of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions* (*ANSI 05.1*) of the American National Standards Institute.

(25) **Stumpage.** Timber, having commercial value, as it exists before logging.

(26) **Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

(27) **Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(28) **Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within 24 months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than 24 months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber.

For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

(29) **Thinning.** The total timber volume removed is less than 40 percent of the total merchantable volume of the harvest unit prior to harvest; and

(a) Western Washington stumpage value areas 1, 2, 3, 4, 5, and 9: The harvester leaves a minimum of 100 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof; or

(b) Eastern Washington stumpage value areas 6 and 7: The harvester leaves a minimum of 80 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

AMENDATORY SECTION (Amending WSR 24-14-009, filed 6/21/24, effective 7/1/24)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((~~July 1 through December 31, 2024~~)) January 1 through June 30, 2025:

Washington State Department of Revenue

WESTERN WASHINGTON STUMPAGE VALUE TABLE

((~~July 1 through December 31, 2024~~))
January 1 through June 30, 2025

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir[2]	DF	1	((~~$523~~)) $517
		2	((~~530~~)) 544
		3	((~~598~~)) 586
		4	((~~606~~)) 601
		5	((~~487~~)) 516
		9	((~~509~~)) 503
Western Hemlock and Other Conifer[3]	WH	1	((~~240~~)) 244
		2	((~~291~~)) 294
		3	((~~286~~)) 282
		4	((~~253~~)) 277
		5	((~~302~~)) 295
		9	((~~226~~)) 230
Western Redcedar[4]	RC	1-5	((~~1,013~~)) 1,028
		9	((~~999~~)) 1,014
Ponderosa Pine[5]	PP	1-5	((~~159~~)) 153
		9	((~~145~~)) 139
Red Alder	RA	1-5	((~~383~~)) 355
		9	((~~369~~)) 341
Black Cottonwood	BC	1-5	1
		9	1
Other Hardwood	OH	1-5	92
		9	78
Douglas-fir Poles & Piles	DFL	1-5	((~~964~~)) 959
		9	((~~950~~)) 945
Western Redcedar Poles	RCL	1-5	((~~1,967~~)) 1,968
		9	((~~1,953~~)) 1,954
Chipwood[6]	CHW	1-5	1
		9	1
RC Shake & Shingle Blocks[7]	RCS	1-9	((~~389~~)) 327

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Posts[8]	LPP	1-9	0.35
DF Christmas Trees[9]	DFX	1-9	0.25
Other Christmas Trees[9]	TFX	1-9	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.

(4) Includes Alaska-Cedar.

(5) Includes all Pines in SVA 1-5 & 9.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.

(9) Stumpage value per lineal foot.

Washington State Department of Revenue

EASTERN WASHINGTON STUMPAGE VALUE TABLE

((~~July 1 through December 31, 2024~~))
January 1 through June 30, 2025

Stumpage Values per Thousand Board Feet Net Scribner Log Scale[1]
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir[2]	DF	6	((~~$308~~)) $285
		7	((~~322~~)) 299
Western Hemlock and Other Conifer[3]	WH	6	((~~225~~)) 237
		7	((~~239~~)) 251
Western Redcedar[4]	RC	6	((~~735~~)) 795
		7	((~~749~~)) 809
Ponderosa Pine[5]	PP	6	((~~145~~)) 139
		7	((~~159~~)) 153
Other Hardwood	OH	6	1
		7	9
Western Redcedar Poles	RCL	6	((~~1,538~~)) 1,561
		7	((~~1,552~~)) 1,575
Chipwood[6]	CHW	6	1
		7	1

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Small Logs[6]	SML	6	((~~12~~)) 14
		7	((~~14~~)) 16
RC Shake & Shingle Blocks[7]	RCS	6-7	((~~389~~)) 327
Posts[8]	LPP	6-7	0.35
DF Christmas Trees[9]	DFX	6-7	0.25
Other Christmas Trees[9]	TFX	6-7	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.

(4) Includes Alaska-Cedar.

(5) Includes Western White Pine in SVA 6-7.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.

(9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50 percent) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over two acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of

timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((~~July 1 through December 31, 2024~~)) January 1 through June 30, 2025:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
((~~July 1 through December 31, 2024~~))
January 1 through June 30, 2025

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-$200.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-$50.00
IV. Thinning		
	A limited removal of timber described in WAC 458-40-610 (((~~(28)~~))) (29)	-$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
((~~July 1 through December 31, 2024~~))
January 1 through June 30, 2025

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 8 thousand board feet per acre and less.	-$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-$200.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-$50.00
IV. Thinning		
	A limited removal of timber described in WAC 458-40-610 (((~~(28)~~))) (29)	-$60.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	$0.00
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a $0/ton stumpage value.

WSR 24-22-082
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
[Filed October 31, 2024, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-091.

Title of Rule and Other Identifying Information: Polygraph examination or other truth verification assessment.

Hearing Location(s): On December 11, 2024, at 10:00 a.m., at the Washington State Criminal Justice Training Commission (commission), Commission Room, 19010 1st Avenue South, Burien, WA 98148.

Date of Intended Adoption: December 11, 2024.

Submit Written Comments to: Lacey Ledford, 19010 1st Avenue South, Burien, WA 98148, email lacey.ledford@cjtc.wa.gov, by December 11, 2024.

Assistance for Persons with Disabilities: Contact Lacey Ledford, phone 206-670-5813, email lacey.ledford@cjtc.wa.gov, by December 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revising WAC 139-07-040 to remove the requirement that the commission adopt into policy polygraph examination model questions.

Reasons Supporting Proposal: Model questions are not an industry best practice.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.080.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mike Devine, 19010 1st Avenue South, Burien, WA 98148, 206-741-6200.

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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 31, 2024
Lacey Ledford
Rules Coordinator

OTS-5928.1

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-07-040 Polygraph examination or other truth verification assessment. (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph assessments:

(a) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;

(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;

(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;

(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and

(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.

(3) Polygraph assessments:

(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;

(b) Polygraph examiners shall ask questions including, but not limited to, the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers; and

(c) ((~~Model questions shall be adopted in commission policy; and~~ ~~(d)~~)) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:

(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;

(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and

(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions

asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

(9) Other truth verification assessments must be approved by the commission with additional rules established by the commission's governing body regarding its standards of use in fulfilling RCW 43.101.095.

(10) Polygraph reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

WSR 24-22-090
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 31, 2024, 2:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-024.

Title of Rule and Other Identifying Information: Hospital financial data reporting; reviewing the accounting and reporting manual requirements for the uniform, hospital, financial reporting system. In response to E2SHB 1272 (chapter 162, Laws of 2021), the department of health (department) is proposing amendments to chapter 246-454 WAC to simplify existing rules regarding the uniform system for hospitals for accounting, financial reporting, budgeting, and cost allocation. Also proposed are amendments to update outdated language within chapter 246-454 WAC, and two sections of Hospitals—Assessments and related reports, WAC 246-451-010 and 246-451-050.

Hearing Location(s): On December 18, 2024, at 11:00 a.m., at the Washington State Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_OXLqv4rZTCCrqDX_R-ZHYA. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a hybrid public hearing. Participants may attend virtually or in person at the physical location. You may also submit comments in writing.

Date of Intended Adoption: December 27, 2024.

Submit Written Comments to: Carrie Baranowski, Department of Health, P.O. Box 47853, Olympia, WA 98504-7853, email https://fortress.wa.gov/doh/policyreview/, beginning the date and time of this filing, by December 18, 2024 at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Carrie Baranowski, phone 360-236-4210, TTY 711, email hos@doh.wa.gov, by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Instructions for the uniform system for hospital financial reporting are provided to hospitals within the department Accounting and Reporting Manual for Hospitals (accounting manual). Both the accounting manual and requirements in WAC 246-454-020, 246-454-090, and 246-454-110 contain separate, and competing update and distribution processes. To eliminate confusion for hospitals required to report financial data, the department proposes removing references to the accounting manual from rules, including repealing WAC 246-454-020, 246-454-090, and 246-454-110 to eliminate the outdated processes in favor of maintaining the updated, current practice described in the accounting manual.

Additional amendments to WAC 246-451-010, 246-451-050, and chapter 246-454 WAC modernize rules by updating or eliminating RCW and WAC references that have been repealed and bring rules up-to-date with best practice and current practice.

Reasons Supporting Proposal: E2SHB 1272, which initiated this rule making, strives to increase transparency in hospital financial data. The bill requires the department to revise the uniform, hospital financial reporting system to further delineate hospital expenses and revenue, and monies received by federal, state, or local government in response to national or state-declared emergencies. Instructions for hospital financial reporting are provided by the department in the ac-

counting manual, which has been updated to comply with the new requirements.

The intent of hospital financial data is to bring clarity and transparency to costs associated with health care. The proposed amendments eliminate competing processes and update out-of-date references which provides greater clarity and reduces confusion of reporting requirements for hospital financial data reporters. Rule making is necessary to create rules that are clear, accurate, and implement E2SHB 1272.

Statutory Authority for Adoption: RCW 43.70.052 and E2SHB 1272 (chapter 162, Laws of 2021).

Statute Being Implemented: E2SHB 1272.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carrie Baranowski, 111 Israel Road, Tumwater, WA 98504, 360-236-4210.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule proposal is exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv) as the proposed rules only correct typographical errors by fixing outdated citations and clarify language of a rule without changing its effect by removing language that is no longer applicable and including amendments that reflect current practices for hospital financial reporting.

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.

Explanation of exemptions: The proposal is exempt as it clarifies the language of a rule without changing its effect, corrects typographical errors including incorrect citations, and removes language that is no longer applicable or accurate.

Scope of exemption for rule proposal:

Is fully exempt.

October 31, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5860.1

AMENDATORY SECTION (Amending WSR 94-12-089, filed 6/1/94, effective 7/2/94)

WAC 246-451-010 Definitions. As used in this chapter, unless the context requires otherwise,

(1) "Department" shall mean the Washington state department of health created by chapter 43.70 RCW.

(2) "Hospital" shall mean any health care institution which is required to qualify for a license under ((~~RCW 70.41.020(2)~~)) chapter 70.41 RCW; or as a ((~~psychiatric~~)) behavioral health hospital under chapter 71.12 RCW.

(3) "Gross operating costs" shall mean the sum of direct operating expenses required to be reported in ((~~cost centers 6000-8999, as specified in the manual adopted under WAC 246-454-020~~)) the year-end report submitted pursuant to WAC 246-454-050 or, if the year-end report was not submitted, the quarterly report submitted pursuant to WAC 246-454-070 for the same period of time.

AMENDATORY SECTION (Amending WSR 94-12-089, filed 6/1/94, effective 7/2/94)

WAC 246-451-050 Reporting of information. For the purpose of calculating the assessment, the department will use the most recent year-end report submitted pursuant to WAC 246-454-050 or, if the year-end report was not submitted, the quarterly report submitted pursuant to WAC 246-454-070 for the same period of time.

WSR 24-22-091
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 31, 2024, 3:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-101

Title of Rule and Other Identifying Information: Farmers market nutrition program (FMNP); electronic benefits payments. The department of health (department) is proposing amendments to chapter 246-780 WAC to include requirements for the use of electronic benefit payments.

Hearing Location(s): On December 18, 2024, at 10:00 a.m., at the Department of Health, Town Center 2, Room 166-167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_Q9V6Sz3sR1KZ2NYBlr8g6Q. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 26, 2024.

Submit Written Comments to: Me'Kyel Bailey, P.O. Box 47830, Olympia, WA 98504-7830, https://fortress.wa.gov/doh/policyreview/, email Mekyel.bailey@doh.wa.gov, beginning the date and time of filing, by December 18, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Me'Kyel Bailey, phone 360-764-9161, TTY 711, emailmekyel.bailey@doh.wa.gov, by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to chapter 246-780 WAC to allow the use of electronic benefit payments for MNP which is administered by the department. FMNP allows participants of the special supplemental nutrition program for women, infants, and children (WIC) and the senior FMNP to purchase unprocessed fresh fruits, vegetables, and cut herbs directly from growers in farmers markets using their benefits. FMNP is transitioning to the use of electronic benefit payments (e-FMNP). As part of this change, WIC participants can also use their cash value benefits (CVB) for fresh fruits and vegetables at authorized farmers markets and farm stores, in addition to the seasonal FMNP benefits. The department has updated vendor contracts to reflect the use of e-FMNP. The department is proposing amending chapter 246-780 WAC to align the rules with the contract language and reflect the practice of using e-FMNP.

Reasons Supporting Proposal: The proposal will align the rules with the contract language and reflect the practice of using e-FMNP.

FMNP has transitioned to the use of eFMNP. Electronic benefits means the use of a card or QR code to access fruit, vegetable, and cut herb dollar allotments for redemption at participating farmers markets and farm stands. FMNP transitioned to electronic benefits because banks will no longer cash check FMNP benefits. Electronic benefits can be easier for participants to use at markets. They are not limited purchasing to the amount on individual checks, which were often in four dollar increments, and can access the full benefit amount. Growers and farm stores no longer need to cash checks at banks, which can decrease associated administrative burden, bank and check cashing fees, and lost checks. The farmers markets, growers, and farm stores have participated in two benefit seasons using the electronic redemption method, and we have seen steady numbers of vendors participating.

Statutory Authority for Adoption: RCW 43.70.700 and 43.70.120.

Statute Being Implemented: RCW 43.70.700 and 43.70.120.

Rule is necessary because of federal law, 7 C.F.R. Part 248.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Mullen, 111 Israel Road S.E., Tumwater, WA 98501, 360-515-8279; Implementation: Katherine Flores, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3721; and Enforcement: Allen Esparza, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3619.

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 Me'Kyel Bailey, P.O. Box 47830, Olympia, WA 98504-7830, phone 360-764-9161, TTY 711, emailmekyel.bailey@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The following proposed rules are exempt under RCW 34.05.310 (4)(d): WAC 246-780-001, 246-780-010, 246-780-020, and 246-780-022. WAC 246-780-030 is exempt under both RCW 34.05.310 (4)(c) and (d).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: [See below].

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

Small Business Economic Impact Statement

The following is a brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: The department administers the FMNP under the authority of RCW 43.70.700 that allows WIC participants to purchase unprocessed fresh fruits, vegetables, and cut herbs directly from growers in farmers markets using their FMNP benefits. SFMNP, administered by the department of social and health services, and WIC CVB for fruits and vegetables are also included in this proposed rule.

FMNP follows rules set in chapter 246-780 WAC, which includes the process for farmers markets, growers, and farm stores to apply for the program, what products are eligible for benefit redemption, and requirements related to processing benefits. It also explains how the department enforces the rules and how to appeal a department decision.

FMNP has transitioned to the use of eFMNP. Electronic benefits means the use of a card or QR code to access fruit, vegetable, and cut

herb dollar allotments for redemption at participating farmers markets and farm stands. FMNP transitioned to electronic benefits because banks will no longer cash check FMNP benefits. Electronic benefits can be easier for participants to use at markets. They are not limited purchasing to the amount on individual checks, which were often in four dollar increments, and can access the full benefit amount. Growers and farm stores no longer need to cash checks at banks, which can decrease associated administrative burden, bank and check cashing fees, and lost checks. The farmers markets, growers, and farm stores have participated in two benefit seasons using the electronic redemption method, and the department has seen steady numbers of vendors participating.

The department has updated vendor contracts to reflect the use of eFMNP. The proposed rules would amend chapter 246-780 WAC to align the rules with the contract language and reflect the practice of using eFMNP. This ensures consistency between the rule language and the grower or market agreements. The proposed rules will update existing rules to reflect current practice and represent the least burdensome means to ensure compliance with FMNP requirements and ensuring that access to fresh fruit and vegetables is expanded.

New costs incurred due to these proposed rule changes are related to the requirement for contracted growers and farm stands to be able to process electronic benefit transactions. The electronic benefit transactions require a smart device and internet connection to process the transactions.

The following is identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS):

Table 1. Summary of Businesses Required to Comply to the Proposed Rule

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
1112	Vegetable and Melon Farming	104	$11,448.46
1113	Fruit and Tree Nut Farming	191	$4,059.52
1114	Greenhouse, Nursery, and Floriculture Production	635	$2,619.02
112910	Apiculture	97	$1,445.21
445230	Fruit and Vegetable Retailers	563	$2,435.71

The following is an analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:

WAC 246-780-025 Grower application requirements.

Description: This section describes the actions growers must take and the criteria growers must meet to become authorized participants in the FMNP. If applicant growers are unable to meet the criteria, then they are unable to participate in the program. Criteria includes:

- Training on WIC FMNP, WIC CVB, and SFMNP requirements provided by a farmers market manager or the department. The current rule only requires training on FMNP.
- Requires the ability to accept FMNP transactions at the point of sale. The current rule does not require electronic transactions

and uses checks instead which do not require a point-of-sale system.
- Clarifies the department can determine which applications to authorize based on community need. The current rule does not say this is up to the department to decide.

Cost(s): Growers must have the ability to accept an electronic benefits transaction at the point of sale. In practice, this means they must have a smart device with an internet connection. The cost of a smart device with internet connection to process eFMNP benefits is estimated to be $65-$295 per month which accounts for a range of one to five smart devices. Factors which influence this range include the number of lines needed, data usage, and if a device is included in the plan cost or is an additional charge. Some growers may have stands at multiple markets that operate on the same day and they are more likely to need the additional devices and internet lines. The annual cost is estimated with a range of $0-$3,540 for one to five smart devices with data, with $0 assuming the grower is using a device they already own.

Estimates were obtained from two services providers with multiple smart device types (accessed August 2023):

Verizon Wireless:

- One line with a free phone and unlimited data: $65-$80/month
- Five lines with free phones and unlimited data: $150-$225/month
- Tablet: Apple IPad Air5th Generation with 5g. $749.49 plus $40/month for unlimited data. Averages to $102.45/month over 12 months

T-Mobile (Accessed August 2023):

- One line with a Samsung Galaxy payment and unlimited data: $98/month
- Five lines with a Samsung Galaxy payment and unlimited data: $295.00/month
- Tablet: Apple iPad Air5th Generation with 5g. $749.99 plus $70.00/month for unlimited data with 20 GB hotspot. Averages to $132.50/month over one year.

WAC 246-780-026 Farm store application requirements.

Description: This section describes the actions farm stores must take and the criteria farm stores must meet to become authorized participants in the FMNP. If farm stores are unable to meet the criteria, then they are unable to participate in the program. Criteria includes:

- Training on WIC FMNP, WIC CVB, and SFMNP requirements provided by a farmers market manager or the department. The current rule only requires training on FMNP.
- Requires the ability to accept FMNP transactions at the point of sale. The current rule does not require electronic transactions and uses checks instead which do not require a point of sale system.
- Clarifies the department can determine which applications to authorize based on community need. The current rule does not say this is up to the department to decide.

Cost(s): Costs for a smart device are estimated for WAC246-780-025 above and are likely to be within the same range. Some farm stores may have multiple locations that operate on the same day and they are more likely to need the additional devices and internet lines. Some farm stores may need to upgrade their internet or purchase

signal boosters depending on the type and speed of internet available in their area.

Estimates for Xfinity internet are $55/month for 400 mbps, $65 for 800mbps and $75/month for 1 GB per second (Accessed August 2023).

A WiFi signal booster is a one-time purchase and costs $40-$100 (Accessed July 2024).

WAC 246-780-028 Authorized grower or authorized farm store—Minimum requirements.

Description: This section includes compliance information for growers and farm stores to participate in FMNP. The changes in this section include:

- Removing the current rule requirement that growers accept FMNP checks. Checks are no longer in use for the FMNP program.
- Updates the section to clarify that it applies to WIC FMNP, WIC CVB, and SFMNP. The current rule only references "FMNP."
- Not allowing tokens to be given for WIC FMNP, WIC CVB, and SFMNP benefits.
- Updating terms to reflect current practice.
- Requirements to ensure the business model promotes business integrity.

The expectations in the proposed rule are updated to reflect WIC FMNP, WIC CVB, and SFMNP rather than only FMNP. The expectations which would apply to WIC FMNP, WIC CVB, and SFMNP are:

- Compliance with requirements, terms and conditions of the contract.
- Accept training and technical assistance on requirements.
- Be held accountable for purchases and requirements for all the actions of people working or volunteering with the authorized grower or farm store.
- Only accept benefits for eligible foods.
- Only accept benefits at authorized farmers markets or farm stores at the location in their contract.
- Display the "WIC Farmers Market Benefits Welcome Here" sign.
- Provide participants with the full product for the value of the program transaction.
- Cooperate with department staff in monitoring for compliance with WIC FMNP, WIC CVB, and SFMNP requirements.
- Reimburse the department for mishandled benefits.
- Not collecting sales tax on benefits.
- Allowing the department to investigate the business. integrity of any WIC vendor or applicant.

Cost(s): The department does not anticipate any costs to growers or farm stores to comply with the changes in this section.

WAC 246-780-040 Noncompliance with FMNP requirements by an authorized farmers market, authorized grower, or authorized farm store.

Description: Updates terms and removes subsections regarding the use of FMNP paper checks. No new compliance rules are in the draft but they are updated to reflect WIC FMNP, WIC CVB, and SFMNP. Authorized farmers markets, growers and farm stores would be considered noncompliant with the following as they relate to WIC FMNP, WIC CVB, and SFMNP:

- Not displaying the "WIC Farmers Market Benefits Welcome Here Sign."

- Providing unauthorized food or nonfood items to participants in exchange for benefits.
- Providing change to participants for purchases made with benefits.
- Accepting benefits at unauthorized farmers markets and farm stores.
- Collecting sales tax on purchases made with benefits
- Seeking reimbursement from the participant for benefits not paid by the department.

The current rule requires the department to notify the farmers markets, growers and farmer stores of noncompliance. The proposed rule updates apply current rule to WIC FMNP, WIC CVB, and SFMNP, including:

- Mailing written notice of a pending adverse action at least 15 days in advance.
- Denying payment for mishandling benefits.
- Seeking reimbursement for payments made on ineligible transactions.
- Disqualification for trafficking benefits.

Cost(s): The department does not anticipate any new costs associated with the changes in this section.

WAC 246-780-060 Appealing a department decision.

Description: This section establishes the right of FMNP authorized farmers markets, authorized growers, authorized farm stores, or applicants to appeal departmental decisions, and the process by which they may appeal. The changes in this sectionupdate terms and remove subsections regarding the use FMNP paper checks.

Cost(s): The Department does not anticipate any new costs associated with the changes in this section.

Table 2. Summary of Section 3 Probable Cost(s)

WAC Section and Title	Probable Cost(s)
WAC 246-780-001 Purpose of the farmers market nutrition program.	Exempt
WAC 246-780-010 Definitions.	Exempt
WAC 246-780-020 Farmers Market Application Requirements.	Exempt
WAC 246-780-022 Authorized farmers market minimum requirements.	Exempt
246-780-025 Grower application requirements.	The annual cost is estimated with a range of $0-$3,540 for one to five smart devices with data, with $0 assuming the grower is using a device they already own (data accessed August 2023).
WAC 246-780-026 Farm store application requirements.	Costs for a smart device are estimated for WAC 246-780-025 above and are likely to be within the same range. Estimates for Xfinity internet are $55/month for 400 mbps, $65 for 800 mbps and $75/month for 1 GB per second (accessed August 2023). A WiFi signal booster is a one-time purchase and costs $40-$100 (accessed July 2024).
WAC 246-780-028 Authorized grower or authorized farm store—Minimum requirements.	None
WAC 246-780-030 Farmers market nutrition program eligible foods.	Exempt
WAC 246-780-040 Noncompliance with FMNP requirements by an authorized farmers market, authorized grower, or authorized farm store.	None

WAC Section and Title	Probable Cost(s)
WAC 246-780-060 Appealing a department decision.	None

The following is an analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated:

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Minimum Probable Cost to Comply with the Rule	Minor Cost Threshold
1112	Vegetable and Melon Farming	$3,540 per year • Up to five phone lines with free phones and unlimited data at $65-98 month (accessed from Verizon and T-Mobile in August 2023) Assumes retailer does not currently have a smart device with internet connection, which would bring the minimum cost to $0.	No, the costs of the proposed rule $3,540 are less than the minor cost threshold of $11,448.46.
1113	Fruit and Tree Nut Farming	$3,540 per year • Up to five phone lines with free phones and unlimited data at $65-98 month (accessed from Verizon and T-Mobile in August 2023) Assumes retailer does not currently have a smart device with internet connection, which would bring the minimum cost to $0.	No, the costs of the proposed rule $3,540 are less than the minor cost threshold of $4,059.52.
1114	Greenhouse, Nursery, and Floriculture Production	$3,540 per year • Up to five phone lines with free phones and unlimited data at $65-98 month (accessed from Verizon and T-Mobile in August 2023) Assumes retailer does not currently have a smart device with internet connection, which would bring the minimum cost to $0.	Yes, the costs of the proposed rule, $3,540 are greater than the minor cost threshold of $2,619.02.
112910	Apiculture	$3,540 per year • Up to five phone lines with free phones and unlimited data at $65-98 month (Accessed from Verizon and T-Mobile in August 2023) Assumes retailer does not currently have a smart device with internet connection, which would bring the minimum cost to $0.	Yes, the costs of the proposed rule, $3,540 are greater than the minor cost threshold of $1,445.20.
445230	Fruit and Vegetable Retailers	$3,700 per year • Up to five phone lines with free phones and unlimited data at $65-98 month (Accessed from Verizon and T-Mobile in August 2023) • Internet plan costing $55-$75/month (Accessed from Xfinity in August 2023) • Wifi booster costing $40-$100 (Accessed July 2024) Assumes retailer does not currently have a smart device with internet connection, which would bring the minimum cost to $0.	Yes, the costs of the proposed rule, $3,700 are greater than the minor cost threshold of $2,435.71.

Summary of how the costs were calculated: The cost of smart devices with a data plan was gathered from Verizon Wireless and T-Mobile's websites in July 2023. Plans included either free or low-cost devices, unlimited data, and between one and five lines and devices. It is anticipated that smaller growers or farm stores will only need one or two devices and larger growers and farm stores will need one to five devices. An estimate for purchasing a tablet with a data plan was also done based on feedback the department heard from interested parties that smartphones are too small for some people to easily use. The department also included an estimate of upgrading the internet and adding signal boosters for farm stores in rural areas. Based on the estimated expense range of $0-$3,700 per year, the proposed rule is expected to impose a more-than-minor cost on some businesses within the industry.

Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: Yes, the department believes the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent

of businesses that are the largest businesses required to comply with the proposed rule.

Explanation of the determination: This requirement may disproportionately impact smaller growers and farm stores who wish to participate in FMNP, SFMNP, and CVB benefits, and need to purchase devices or additional internet capacity, due to economies of scale.[1]

Many growers and farm stores already use smart devices to process transactions, especially smaller growers and apiculture (honey) vendors. While apiculture has a minor threshold of $322.19, which is below the lower range of probable costs for the proposed rule, the department anticipates that most of them will use an existing device and data plan. This would minimize additional costs for these vendors. Also to note, honey is an allowed item for purchase only with SFMNP benefits and there are about 25 honey-only vendors who participate in SFMNP.

1 Larger businesses typically experience higher economies of scale as opposed to smaller businesses because investment costs are spread over higher production resulting in lower average costs.

Greenhouse, Nursery, and Floriculture Production: The minor cost threshold for greenhouse, nursery, and floriculture production is $2,619.02. Estimated costs for this business range from $0-$3,540. The department anticipates, based off feedback received from the 2023 Farmers Market season, that some vendors will bring their own device, which would create an effect cost of $0. Smaller operations may only need one or two devices, which would cost about $780-$1,560 per year. The business, which may have a disproportionate impact, would be those operating stands at multiple farmers markets or those which have multiple employees who each need a smart device. Those may reach the estimated higher end cost of $3,540 per year for five smart devices with internet.

Apiculture: The minor cost threshold for apiculture production is $1,445.20. Estimated costs for this business range from $0-$3,540. The department anticipates, based off feedback received from the 2023 Farmers Market season, that many apiculture vendors will bring their own device, which would create an effect cost of $0. Smaller operations may only need one or two devices, which would cost about $780-$1560 per year. Most of the apiculture vendors are not large operations, and the department anticipates it would be infrequent that they would need five smart devices at the $3,540 per year cost. Also to note, honey is an allowed item for purchase only with SFMNP benefits and there are about 25 honey-only vendors who participate in SFMNP.

Fruit and Vegetable Retailers: The minor cost threshold for fruit and vegetable retailers is $2,435.71. Estimated costs for this business range from $0-$3,700. These businesses may be located in more rural areas without good internet access available. Their costs may reach the higher range of $3,700 if upgraded or fast internet access is needed, and if multiple smart devices are needed.

The following steps have been identified and taken to reduce the costs of the rule on small businesses: The cost of the smart device and internet connection cannot be reduced. These are the minimum necessary to process electronic benefit transactions. The department has taken the following steps to reduce costs elsewhere, or to mitigate device and connectivity costs where possible, including:

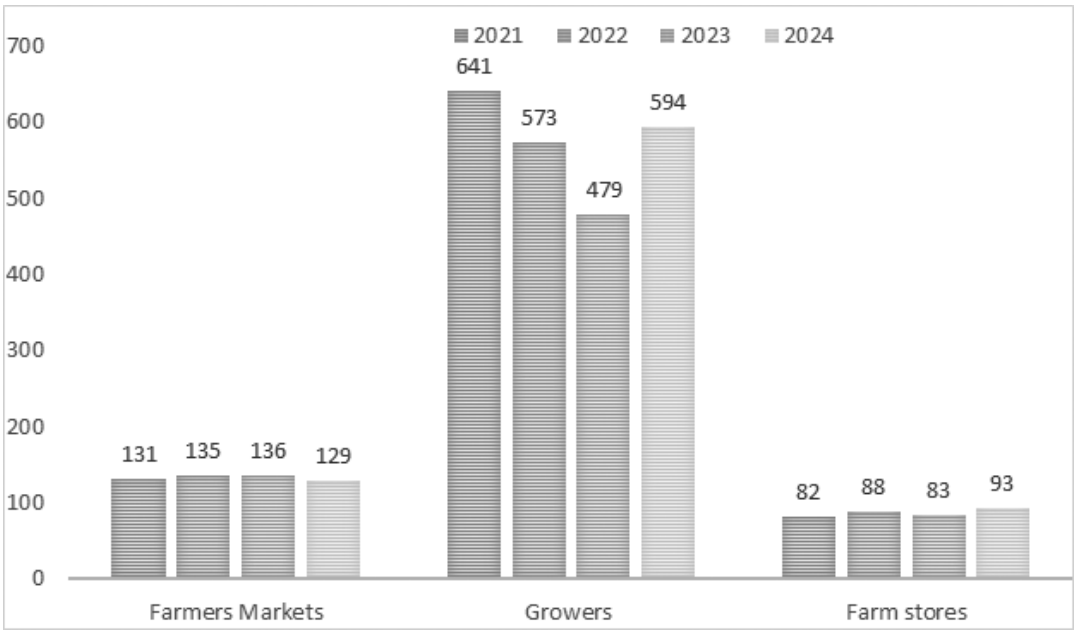
- Not charging a service or usage fee for the FMNP benefit transaction application.
- Making check deposits weekly into growers and farm stand bank accounts. This reduces the risk of growers and farm stands incur-

ring excessive banking fees related to high volumes of check deposits. Payments from electronic benefits are direct deposited instead and usually incur fewer banking fees.

- A benefit of electronic deposits is they are more likely to have lower associated banks costs and fees. For example, when benefits were on checks, growers reported experiencing rejected check fees of $5-$25 per check. FMNP checks were issued in $4 increments, and so a rejection fee could be more than the value of the check.

Description of how small businesses were involved in the development of the proposed rule: The FMNP program used feedback from growers and farm stands during prior FMNP seasons to mitigate costs. This feedback was communicated to program staff during routine interactions such as monitoring visits and technical assistance calls. Common issues raised were related to processing of benefit checks such as check deposit fees, rejected check fees being higher than check value, fees for depositing large batches of checks, and issues with incorrectly completed checks. For example, when benefits were on checks, growers reported experiencing rejected check fees of $5-$25 per check. FMNP checks were issued in $4 increments, and so a rejection fee could be more than the value of the check.

The estimated number of jobs that will be created or lost in result of the compliance with the proposed rule: No job loss is anticipated. The farmers markets, growers, and farm stores have participated in two benefit seasons using the electronic redemption method, and the department has seen steady numbers of vendors participating. In 2023, some markets closed which impacted the number of growers available. However, in 2024 five new markets opened and the growers returned to pre-2023 levels. Two markets that closed in 2023 will reopen in 2025. The trend overall has been that vendor participation looks very similar to 2021 and 2022 levels, which was prior to the shift to electronic benefits.



Many growers also already use electronic payment methods for other benefit programs like the Supplemental Nutrition Assistance Program, and for people who choose to pay with a credit card. This is a change in business operations and could take some time for growers to

set up the electronic benefits transactions. The FMNP program will offer technical assistance, training, and frequent communication to support growers, farm stands, and farmers markets.

A copy of the statement may be obtained by contacting Me'Kyel Bailey, P.O. Box 47830, Olympia, WA 98504-7830, phone 360-764-9161, TTY 711, email Mekyel.bailey@doh.wa.gov.

October 31, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5278.2

Chapter 246-780 WAC
FARMERS((')) MARKET NUTRITION PROGRAM

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-001 ((~~What is the purpose of the farmers' market nutrition program?~~)) Purpose of the farmers market nutrition program. (1) The purpose of the farmers((')) market nutrition program (FMNP) is to:

(a) Provide access to:

(i) Locally grown, fresh, nutritious, unprepared fruits and vegetables, and fresh cut herbs to women, infants over five months of age, and children, who participate in the special supplemental nutrition program for women, infants, and children (WIC); ((~~and~~))

(ii) The WIC fruit and vegetable cash value benefit (CVB); and

(iii) The senior farmers market nutrition program (SFMNP) which includes locally grown, fresh, nutritious, unprepared fruits, vegetables, and fresh cut herbs.

(b) Expand the awareness and use of farmers((')) markets where consumers can buy directly from the grower.

(2) The FMNP is administered by the Washington state department of health.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly implies otherwise.

(1) "Authorized" or "authorization" means an applicant has met the selection criteria and has been issued a signed contract with the department allowing participation in the FMNP.

(2) "Authorized farm store" means a ((~~store or stand authorized by the department which is located~~)) sale location at the site of agricultural production and is owned, leased, rented, or sharecropped and operated by an authorized grower where the grower sells produce ((~~is sold~~)) directly to consumers.

(3) "Authorized farmers((~~'~~)) market" means a farmers((~~'~~)) market authorized by the department that has ((~~a minimum~~)) an assembly of five or more authorized growers ((~~who assemble~~)) at a defined location ((~~for the purpose of selling their~~)) who sell produce directly to consumers.

(4) "Authorized grower" means an individual authorized by the department who grows at least a portion of the produce that they sell at a Washington state authorized farmers((~~'~~)) market or authorized farm store.

(5) "Benefit" means a negotiable financial instrument issued by the WIC, WIC FMNP, or SFMNP to participants to purchase eligible foods in each of these programs at farmers markets.

(6) "Broker" or "wholesale distributor" means an individual or business who exclusively sells produce grown by others. There is an exception for an individual employed by an authorized grower or nonprofit organization to sell produce on behalf of authorized growers.

((~~(6) "Check" means a negotiable financial instrument issued by the FMNP to clients to purchase eligible foods.~~))

(7) "Business and financial documentation" means all documents required to own and operate a business as a grower which may include, but is not limited to, banking and financial records; property sales; accounting; and product sales.

(8) "Civil monetary penalty" means a sum of money imposed by the FMNP program for noncompliance with program requirements for WIC FMNP and SFMNP.

(9) "Contract" or "agreement" means a written legal document binding the contractor and the department to designated terms and conditions.

((~~(8)~~)) (10) "Cut herbs" means fresh herbs with no medicinal value that are not potted.

((~~(9)~~)) (11) "WIC CVB" means a monthly cash value benefit which is a WIC food instrument used by a participant to obtain fresh fruits and vegetables.

(12) "Department" means the Washington state department of health.

((~~(10)~~)) (13) "Disqualification" means terminating the contract or agreement of an authorized farmers((~~'~~)) market, authorized grower or authorized farm store for noncompliance with ((~~FMNP~~)) WIC CVB, WIC FMNP, or SFMNP requirements.

((~~(11)~~)) (14) "Eligible foods" means locally grown, unprocessed (except for washing), fresh, nutritious fruits, vegetables, and cut herbs.

((~~(12)~~)) (15) "Electronic farmers market nutrition program (e-FMNP)" means the electronic benefits providing access to fresh fruits, vegetables, and cut herbs for WIC and senior participants.

(16) "FMNP" means the farmers((~~'~~)) market nutrition program.

((~~(13)~~)) (17) "Food instrument" means an e-WIC card or QR code used to obtain eligible foods.

(18) "Grower" means an individual who grows at least a portion of the produce that they sell at a farmers market or farm store that entered into an agreement with the department.

(19) "Local WIC agency" means the contracted agency or clinic where a ((~~client~~)) participant receives WIC services and farmers((~~'~~)) market ((~~checks~~)) benefits.

((~~(14)~~)) (20) "Locally grown" means Washington grown or grown in an adjacent county of Idaho or Oregon.

((~~(15)~~)) (21) "Market manager" means an individual designated by the farmers((~~'~~)) market management or board ((~~member~~)) who is responsible for overseeing the market's participation in the FMNP.

((~~(16)~~)) (22) "Notice of violation" means a written document given to an authorized grower or market when the department determines the vendor has not complied with program requirements, federal WIC regulations, this chapter, or a contract or agreement.

(23) "Participant" means a senior, woman, infant, or child receiving WIC CVB, WIC FMNP, or SFMNP.

(24) "Point of sale" means the location the transaction occurred between the participant and the grower.

(25) "QR code" means a quick response code used to read a participant's benefits on the senior FMNP card or WIC card, or a sticker added to the e-WIC card for WIC participants, or a quick response code available on a mobile device.

(26) "Selection criteria" means the approved standards the department uses to select growers, markets, and farm stores for WIC FMNP, CVB, and SFMNP authorization.

(27) "SFMNP" means the senior farmers market nutrition program administered by the department of social and health services.

(28) "Suspension" means the immediate stoppage of WIC FMNP, CVB, and SFMNP payments to a grower or market as a result of ongoing compliance activities or lack of federal funding.

(29) "Trafficking" means the buying or exchanging of farmers((~~'~~)) market ((~~checks~~)) benefits for cash, drugs, or alcohol.

((~~(17)~~)) (30) "WIC" ((~~or "WIC nutrition program"~~)) means the federally funded special supplemental nutrition program for women, infants, and children ((~~administered in Washington state by the department of health~~)).

((~~(18) "Client" means a woman, infant, or child receiving FMNP benefits.~~)) (31) "WIC FMNP" means the WIC farmers market nutrition program administered by the department.

(32) "WIC FMNP & SFMNP benefits" means a negotiable financial instrument issued by the FMNP to participants to purchase eligible foods. Also known as "WIC & SFMNP benefits."

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-020 ((~~How does an applicant farmers' market become authorized to participate in the farmer's market nutrition program?~~)) Farmers market application requirements. (1) To become authorized to participate in the FMNP, an applicant must:

(a) Apply as a farmers((~~'~~)) market on a form provided by the department;

(b) Meet the selection criteria in subsection (2) of this section;

(c) Complete training on FMNP requirements; and

(d) Receive a contract or agreement from the department signed by both the department and the applicant.

(2) Farmers((~~'~~)) market selection criteria. The applicant must:

(a) Have a designated market manager on-site during operating hours;

(b) Have been in operation at least one year. The one-year requirement may be waived by the department based on capacity and need;

(c) Be located within ((~~twenty~~)) 20 miles of the local WIC agency;

(d) Have at least five authorized growers participating in the farmers((~~'~~)) market each year;

(e) ((~~Agree to~~)) Comply with training sessions and monitor visits; and

(f) ((~~Agree to~~)) Comply with all terms and conditions specified in the contract.

(3) The department is not required to authorize all applications. Selection is also based on community need.

(4) An authorized farmers((~~'~~)) market must reapply at the end of the current contract; however, neither the department nor the participant has an obligation to renew a contract.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-022 ((~~What is expected of an authorized farmers' market?~~)) Authorized farmers market minimum requirements. The authorized farmers' market must:

(1) Comply with the FMNP requirements and the terms and conditions of their contract;

(2) Accept training and technical assistance on FMNP requirements from department staff;

(3) Provide in person training to authorized growers, market employees and volunteers on FMNP requirements including, but not limited to: Eligible foods, ((~~check~~)) electronic benefits redemption procedures, civil rights requirements, and the complaint process;

(4) Be accountable for the actions of employees and volunteers;

(5) Keep a current list of authorized growers, including the authorized grower's name((~~,~~)) and business address((~~, telephone number, and crops to be sold during the farmers' market season. The authorized farmers' market must provide this list to the department on request~~));

(6) Ensure that WIC FMNP ((~~checks~~)), SFMNP benefits, and WIC CVBs are accepted only ((~~by authorized growers~~)) for locally grown eligible foods;

(7) ((~~Report to the department anyone that accepts FMNP checks without authorization from the department;~~

~~(8) Refuse to process any FMNP checks taken by unauthorized individuals;~~

~~(9) Ensure FMNP checks are stamped with the appropriate market and authorized grower identification numbers;~~

~~(10)~~)) Ensure authorized growers have and display the "WIC Farmers((~~'~~)) Market ((~~Checks~~)) Benefits Welcome Here" sign each day;

((~~(11)~~)) (8) Comply with federal and state nondiscrimination laws;

((~~(12)~~)) (9) Ensure that ((~~clients~~)) participants receive the same courtesies as other customers;

((~~(13)~~)) (10) Provide the department, upon request, with any information it has available regarding its participation in the WIC FMNP, WIC CVB, and SFMNP;

((~~(14)~~)) (11) Keep ((~~client~~)) participant information confidential;

((~~(15)~~)) (12) Allow the department to monitor the authorized farmers((~~'~~)) market for compliance with FMNP requirements;

((~~(16)~~)) (13) Notify the department immediately if authorized farmers((~~'~~)) market operations cease; and

((~~(17)~~)) (14) Notify the department immediately of any authorized farmers((~~'~~)) market, authorized grower or authorized farm store suspected of noncompliance with WIC FMNP, WIC CVB, and SFMNP requirements.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-025 ((~~How does an applicant grower become authorized to participate in the farmers' market nutrition program?~~)) Grower application requirements. (1) To become authorized to participate in the WIC FMNP, WIC CVB, and WIC SFMNP an applicant ((~~must~~)) shall:

(a) Apply as a grower on a form provided by the department;

(b) Meet the grower selection criteria in subsection (2) of this section;

(c) Complete training on WIC FMNP, WIC CVB, and SFMNP requirements provided by either an authorized farmers((~~'~~)) market manager or the department; and

(d) Receive a contract from the department signed by both the department and the applicant.

(2) Grower selection criteria. The applicant ((~~must~~)) shall:

(a) Grow a portion of the produce they have for sale;

(b) Have the ability to accept e-FMNP transactions at the point of sale;

(c) Sell locally grown produce at either the authorized farmers((~~'~~)) market or the authorized farm store, or both as identified on the completed application; and

((~~(c)~~)) (d) Agree to follow the terms and conditions of the grower contract.

(3) The department is not required to authorize all applications. Selection ((~~is also~~)) may be based on community need as determined by the department.

(4) An authorized grower ((~~must~~)) shall reapply at the end of the current contract; however, neither the department nor the participant has an obligation to renew a contract.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-026 ((~~How does an applicant farm store become authorized to participate in the farmers' market nutrition program?~~)) Farm store application requirements. (1) To become authorized to participate in the WIC FMNP, WIC CVB, and SFMNP an applicant must:

(a) Apply as a farm store on a form provided by the department;

(b) Meet the farm store selection criteria in subsection (2) of this section;

(c) Complete training on WIC FMNP, WIC CVB, and SFMNP requirements provided by either an authorized farmers((~~'~~)) market manager or the FMNP; and

(d) Receive a contract from the department signed by both the department and the applicant.

(2) Farm store selection criteria. The applicant must:

(a) Be located at the site of agricultural production and grow, at that location, a portion of the produce they have for sale;

(b) Have the ability to accept WIC FMNP, WIC CVB, and SFMNP transactions at the point of sale;

(c) Sell locally grown produce; and

((~~(c)~~)) (d) Agree to follow the terms and conditions of the contract.

(3) An authorized farm store must reapply at the end of the current contract; however, neither the department nor the participant has an obligation to renew a contract.

(4) The department is not required to authorize all applicants. Priority for authorization will be given to applicants located in areas defined by the department without an authorized farmers((~~'~~)) market.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-028 ((~~What is expected of an authorized grower or an authorized farm store?~~)) Authorized grower or authorized farm store—Minimum requirements. The authorized grower or authorized farm store must:

(1) Comply with the WIC FMNP, WIC CVB, and SFMNP requirements and the terms and conditions of the contract;

(2) Accept training and technical assistance on WIC FMNP, WIC CVB, and SFMNP requirements and ensure that all persons working or volunteering with the authorized grower or at the authorized farm store at the location(s) specified in the contract are trained as well. Training may be provided by either a farmers((~~'~~)) market manager or the department and includes, but is not limited to: Eligible foods, ((~~check~~)) benefit processing and redemption procedures, civil rights requirements, and the complaint process;

(3) Be held accountable regarding WIC FMNP, WIC CVB, and SFMNP purchases and requirements for the actions of all persons working or volunteering with the authorized grower or at the authorized farm store at the location(s) specified in the contract;

(4) Accept ((~~FMNP checks~~)) WIC FMNP, WIC CVB, and SFMNP benefits only for eligible foods;

(5) Accept ((~~FMNP checks~~)) WIC FMNP, WIC CVB, and SFMNP benefits only at authorized farmers((~~'~~)) markets or at authorized farm stores at the location(s) specified in the contract;

(6) ((~~Accept FMNP checks within the valid dates of the FMNP and redeem checks by the date imprinted on the check;~~

~~(7)~~)) Display the "WIC Farmers((~~'~~)) Market ((~~Checks~~)) Benefits Welcome Here" sign when selling eligible foods at authorized farmers((~~'~~)) markets and authorized farm stores;

((~~(8)~~)) (7) Provide ((~~clients~~)) participants with the full amount of product for the value of ((~~each FMNP check~~)) the program transaction;

((~~(9)~~)) (8) Charge ((~~clients~~)) participants the same prices as other customers;

((~~(10)~~)) (9) Make produce available to ((~~clients~~)) participants that is the same quality as that offered to other customers;

((~~(11)~~)) (10) Comply with federal and state nondiscrimination laws;

((~~(12)~~)) (11) Treat ((~~clients~~)) participants as courteously as other customers;

((~~(13)~~)) (12) Cooperate with department staff in monitoring for compliance with WIC FMNP, WIC CVB, and SFMNP requirements and provide information on request;

((~~(14)~~)) (13) Reimburse the department for mishandled ((~~FMNP checks~~)) WIC FMNP, WIC CVB, and SFMNP benefits;

((~~(15)~~)) (14) Not collect sales tax on ((~~FMNP check~~)) WIC FMNP, WIC CVB, and SFMNP benefit purchases;

((~~(16) Not seek reimbursement from clients for checks not paid by the department;~~

~~(17)~~)) (15) Not give cash back or tokens for purchases ((~~less than the value of the~~)) with WIC FMNP ((~~checks~~)), WIC CVB, and SFMNP benefits; and

((~~(18)~~)) (16) Not trade, barter, or otherwise use farmers((~~'~~)) market ((~~checks~~)) benefits to purchase foods from other growers or pay for market fees or other business costs.

(17) Maintain a business model that promotes business integrity. The department may investigate the business integrity of a WIC vendor or applicant at any time. In its determination of business integrity, the department's considerations will include, but are not limited to, the following:

(a) Providing complete and truthful information in the application, correspondence, and other documents requested by the department.

(b) Cooperating with department requests to complete WIC authorization or compliance activities.

(c) Providing business and financial documentation to the department upon request.

(d) Having no uncorrected violation(s) from a previous contracting period, current disqualification, or outstanding claims owed to the department.

(e) Disclosure of any third party, agent, or broker involved in any part of the application process.

(f) Disclosure of any broker of third parties.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-030 ((~~What kind of foods can clients buy with farmers' market nutrition program checks?~~)) Farmers market nutrition program eligible foods. (1) ((~~Clients~~)) Participants can use WIC FMNP ((~~checks~~)), WIC CVB, and SFMNP benefits to buy locally grown, unprocessed (except for washing), fresh fruits, vegetables, and cut herbs. SFMNP participants may purchase honey.

(2) Federal regulations do not allow ((~~clients~~)) participants to buy the following items with WIC FMNP ((~~checks~~)), WIC CVB, and SFMNP benefits:

(a) Baked goods;
(b) Cheeses;
(c) Cider;
(d) Crafts;
(e) Dairy products;
(f) Dried fruits;
(g) Dried herbs;
(h) Dried vegetables;
(i) Edible flowers;
(j) Eggs;
((~~(j)~~)) (k) Flowers((~~,~~));
((~~(k)~~)) (l) Fruit juices;
((~~(l)~~)) (m) Honey (allowed for SFMNP);
((~~(m)~~)) (n) Jams;
((~~(n)~~)) (o) Jellies;
((~~(o)~~)) (p) Meats;
((~~(p)~~)) (q) Nuts;
((~~(q)~~)) (r) Potted herbs;
((~~(r)~~)) (s) Seafood;
((~~(s)~~)) (t) Seeds; and
((~~(t)~~)) (u) Syrups.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-040 ((~~What happens if an authorized farmers' market, authorized grower or authorized farm store does not comply with FMNP requirements?~~)) Noncompliance with FMNP requirements by an authorized farmers market, authorized grower, or authorized farm store. (1) Authorized farmers((~~'~~)) markets, authorized growers or authorized farm stores who do not comply with ((~~FMNP requirements~~)) federal WIC regulations, including those at 7 C.F.R. 248.16, this chapter, or a contract or agreement with the department are subject to sanctions, such as suspensions, civil monetary penalties, or disqualification. Prior to disqualification, the department must consider whether the disqualification would create undue hardships for ((~~clients~~)) participants.

(2) Noncompliance includes, but is not limited to:

(a) Failing to display the "WIC Farmers((~~'~~)) Market ((~~Checks~~)) Benefits Welcome Here" sign each day when selling at authorized farmers((~~'~~)) markets or authorized farm stores;

(b) Providing unauthorized food or nonfood items to ((~~clients~~)) participants in exchange for the WIC FMNP ((~~checks~~)), WIC CVB, and SFMNP benefits;

(c) Charging the department for foods not received by the ((~~client~~)) participant;

(d) Providing rain checks or credit to ((~~clients~~)) participants in ((~~an~~)) a WIC FMNP, WIC CVB, and SFMNP transaction;

(e) Giving change to ((~~clients if the purchase is less than the value of the FMNP check~~)) participants for purchases made with WIC FMNP, WIC CVB, and SFMNP benefits;

(f) Accepting WIC FMNP ((~~checks without having a signed contract with the department;~~

~~(g) Accepting FMNP checks~~)), WIC CVB, and SFMNP benefits at unauthorized farmers((~~'~~)) markets or unauthorized farm stores;

((~~(h)~~)) (g) Collecting sales tax on ((~~FMNP~~)) WIC FMNP, WIC CVB, and SFMNP purchases;

((~~(i)~~)) (h) Seeking reimbursement after the transaction from ((~~clients~~)) participants for ((~~checks~~)) benefits not paid by the department; and

((~~(j)~~)) (i) Violating the rules of this chapter or the provisions of the contract.

(3) Authorized farmers((~~'~~)) markets, authorized growers, and authorized farm stores found in noncompliance will be notified by the department in writing.

(4) If an authorized farmers((~~'~~)) market, authorized grower or authorized farm store is subsequently found in noncompliance for the same or a similar reason, the department may impose sanctions, such as civil monetary penalties or disqualification, without giving the opportunity to correct the problem.

(5) Denials of authorizations and disqualifications are effective upon receipt of the notice of violation. When the department notifies an authorized farmers((~~'~~)) market, authorized grower or authorized farm store of ((~~a~~)) any other pending adverse action that affects their authorization status in the ((~~FMNP~~)) WIC FMNP, WIC CVB, and SFMNP, the department must mail written notice of violation at least ((~~fifteen~~)) 15 days before the effective date of the action. The notice of violation must state what action is being taken, the effective date of the action, and the procedure for requesting an appeal hearing.

(6) The department may deny payment to an authorized grower or an authorized farm store for mishandling ((~~FMNP checks~~)) WIC FMNP, WIC CVB, and SFMNP benefits.

(7) The department may seek reimbursement from an authorized grower or authorized farm store for payments made on ((~~mishandled FMNP checks~~)) ineligible transactions.

(8) Civil monetary penalties must be paid to the department within the time period specified in the notice of violation. The department may refer an authorized grower or authorized farm store who fails to pay within the specified time period to a commercial collection agency.

(9) An authorized farmers((~~'~~)) market, authorized grower or authorized farm store that has been disqualified from the ((~~FMNP~~)) program may reapply at the end of the disqualification period.

(10) Any trafficking in ((~~FMNP checks~~)) WIC FMNP, WIC CVB, and SFMNP benefits in any amount must result in disqualification.

(11) An authorized farmers((~~'~~)) market, authorized grower or authorized farm store who commits fraud or other unlawful activities ((~~are~~)) is liable for prosecution according to ((~~FMNP~~)) federal program regulations((~~. (~~)) at 7 C.F.R. 248.10(k).((~~)~~))

(12) The department may sanction growers for violations of WIC CVB, FMNP, and SFMNP requirements in accordance with the sanction table in the grower agreement. A violation occurs when a grower does not comply with WIC CVB, FMNP, and SFMNP requirements during the course of a single transaction involving one or more WIC CVB, FMNP, and SFMNP transactions. Sanctions may include vendor disqualification, civil monetary penalties, or both.

AMENDATORY SECTION (Amending WSR 10-21-068, filed 10/15/10, effective 11/15/10)

WAC 246-780-060 ((~~How does an authorized farmers' market, authorized grower, an authorized farm store or an applicant appeal a department decision?~~)) Appealing a department decision. (1) Proceedings under this chapter shall be in accordance with chapter 246-10 WAC. If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.

(2) An authorized farmers((~~'~~)) market, authorized grower, authorized farm store or an applicant has a right to appeal denial of payment, denial of an application, civil monetary penalty or disqualification from the ((~~FMNP. Expiration or nonrenewal of a contract is not subject to appeal~~)) program.

((~~(2)~~)) (3) If the action being appealed is a disqualification of an authorized farmers((~~'~~)) market, the authorized farmers((~~'~~)) market must cease processing farmers((~~'~~)) market ((~~checks~~)) benefits for all authorized growers effective the date specified in the ((~~sanction~~)) notice of violation.

((~~(3) If the action being appealed is a disqualification of an authorized grower or authorized farm store, the authorized grower or authorized farm store must cease accepting FMNP checks effective the date specified in the sanction notice. In addition, the authorized farmers' market must cease processing checks for the affected authorized grower. Payments must not be made for any FMNP checks submitted for payment during a period of disqualification.~~))

(4) The department may, at its discretion, permit the authorized farmers((~~'~~)) market, authorized grower, or authorized farm store to continue participating in the ((~~FMNP~~)) program pending the appeal hearing outcome. The ((~~authorized farmers' market,~~)) authorized grower or authorized farm store may be required to repay funds for ((~~FMNP checks~~)) WIC FMNP, WIC CVB, and SFMNP benefits redeemed while waiting for the outcome of the hearing, depending on the hearing outcome.

(5) A request for an appeal hearing must be in writing and must:

(a) State the issue raised;

(b) Contain a summary of the authorized farmers((~~'~~)) market's, authorized grower's, authorized farm store's or applicant's position on the issue, ((~~indicating~~)) and indicate whether each charge is admitted, denied, or not contested;

(c) State the name and address of the authorized farmers((~~'~~)) market, authorized grower, authorized farm store or applicant requesting an appeal hearing;

(d) State the name and address of the attorney representing the authorized farmers((~~'~~)) market, authorized grower, authorized farm store or applicant if any;

(e) State the need for an interpreter or other special accommodations, if necessary; and

(f) Have a copy of the notice of violation from the department attached.

(6) A request for an appeal must be filed at the Department of Health, Adjudicative Clerk's Office, P.O. Box 47879, Olympia, WA 98504-7879. The request must be made within ((~~twenty-eight~~)) 28 days of the date the authorized farmers((~~'~~)) market, authorized grower, authorized farm store or applicant received the department's notice of violation.

(7) The decision concerning the appeal must be made within ((~~sixty~~)) 60 days from the date the request for an appeal hearing was re-

ceived by the adjudicative clerk's office. The time may be extended if all parties agree.

OTS-5697.1

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-130 Board member limitations—Contract selection. (1) When a member of the board of registration for professional engineers and land surveyors (board) is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member must:

(a) Exclude ((~~him or herself~~)) themselves from the board discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Exclude ((~~him or herself~~)) themselves from the board vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) may not prohibit the member of the board from using ((~~his or her~~)) their general expertise to educate and provide general information on the subject area to the other members.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-131 Board member limitations—Board actions. (1) When a member of the board of registration for professional engineers and land surveyors (Board) either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual, which is subject to a board action, the member must:

(a) Recuse ((~~him or herself~~)) themselves from the board discussion regarding the specific action;

(b) Recuse ((~~him or herself~~)) themselves from the board vote on the specific action; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific action.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) may not prohibit the member of the board from using ((~~his or her~~)) their general expertise to educate and provide general information on the subject area to the other members.

(3) "Board action" may include any of the following:

(a) An investigation or adjudicative proceeding;

(b) Application or submission;

(c) Request for a ruling or other determination decision, finding, ruling, or order; or

(d) Monetary grant, payment, or award.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-135 Reporting of board member recusal. If exclusion or recusal occurs pursuant to WAC 196-09-130 or 196-09-131, the member of the board should disclose to the public the reasons for ((~~his or her~~)) their exclusion or recusal from any board action whenever it occurs. The board staff should record each instance of exclusion or recusal and the basis for it in the minutes of the board meetings.

AMENDATORY SECTION (Amending WSR 21-22-092, filed 11/2/21, effective 12/3/21)

WAC 196-09-150 Public records. All public records of the board are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) Inspection of records. Public records are available for inspection and copying during normal business hours of the office of the Washington state board of registration for professional engineers and land surveyors. Records may be inspected at the board's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) Records index. An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the board's office.

(3) Organization of records. The board maintains its records in a reasonably organized manner. The board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the board's office. A variety of records are also available on the board's website at https://brpels.wa.gov/. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request using the board's public records request form available on the board's website or in writing by letter or email addressed to the public records officer. Written request must include the following information:

(i) Date of the request.

(ii) Name of the requestor.

(iii) Address of the requestor and other contact information, including telephone number and any email addresses.

(iv) Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, ((~~he or she~~)) they

will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, ((~~he or she~~)) they should make that preference clear in the request. Copies will be made by the board's public records officer or designee.

(e) When fulfilling public records requests, the board will perform its public records responsibilities in the most expeditious manner consistent with the board's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the board's anticipated installment delivery timetable.

(h) In certain instances, the board may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within ((~~fifteen~~)) 15 days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the ((~~fifteen~~)) 15-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations: In order to obtain a list of individuals under the provisions of RCW 42.56.070(8), educational organizations and professional associations must provide sufficient information to satisfy the board that the requested list of individuals is primarily for educational and professionally related uses.

Board forms are available on the board's website or upon request.

WSR 24-22-100
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed November 2, 2024, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-096.

Title of Rule and Other Identifying Information: Medical assistant medication administration requirements and apprenticeship programs. The department of health (department) is proposing rule amendments to WAC 246-827-0010, 246-827-0200, and 246-827-0240 to align with statutes updated by ESHB 1073 (chapter 134, Laws of 2023) and ESSB 5983 (chapter 248, Laws of 2024) and to ensure that the rules are current and align with best practices. The department is also proposing new WAC 246-827-0340 to address the medication administration requirements for the medical assistant-registered (MA-R) credential.

Hearing Location(s): On December 18, 2024, at 9:00 a.m., at the Washington State Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or via Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_-tzxOMYUR3yDXF7vp1jrqg. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a hybrid public hearing. Participants may attend virtually or in person at the physical location. You may also submit comments in writing.

Date of Intended Adoption: December 26, 2024.

Submit Written Comments to: Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2850, beginning the date and time of this filing, by December 18, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2901, TTY 711, email medical.assistants@doh.wa.gov, by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2023, the legislature passed ESHB 1073 which updated the supervision requirements and the scope of practice for medical assistants in RCW 18.360.050. The department is proposing amendments to medical assistant rules to align with the updates in RCW 18.360.050 and establish requirements for medication administration by an MA-R credential. The ESHB 1073 amendments to RCW 18.360.050 significantly expanded the scope of practice for the MA-R credential, specifically for medication administration. A new rule section is necessary to provide guidance regarding routes and supervision levels related to these tasks. The department is also proposing updates to the medical assistant-certified (MA-C) medication administration rules to align with ESHB 1073.

In 2024, the legislature passed ESSB 5983 which amended RCW 18.360.050 and lowered the supervision level required for MA-Cs and MA-Rs to provide treatment for known or suspected syphilis infections from "immediate or direct" visual supervision to "telemedicine" supervision. The department is proposing updates to the medication administration rules for MA-C and adding rule language in the new MA-R section to align with this supervision requirement change.

The department is also proposing an update to the MA-C training and certification requirements that clarify the types of apprenticeship programs that are accepted to meet training requirements.

Reasons Supporting Proposal: The proposal aligns rules with RCW 18.360.050 and provides clarity to licensees and the public regarding requirements for medication administration, supervision, and training requirements for medical assistants.

Statutory Authority for Adoption: RCW 18.360.030, ESHB 1073 (chapter 134, Laws of 2023), and ESSB 5983 (chapter 248, Laws of 2024).

Statute Being Implemented: RCW 18.360.010, 18.350.040, and 18.360.050.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

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 Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2850, TTY 711, email medical.assistants@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules impact individual licensees and not small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

November 1, 2024
Kristen Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-4184.8

AMENDATORY SECTION (Amending WSR 23-16-004, filed 7/19/23, effective 8/19/23)

WAC 246-827-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) **"Controlled substance"** has the same meaning as RCW 69.50.101.

(2) **"Direct visual supervision"** means the supervising health care practitioner is physically present and within visual range of the medical assistant.

((~~(2)~~)) (3) **"Forensic blood draw"** means a blood sample drawn at the direction of a law enforcement officer for the purpose of determining its alcoholic or drug content by a person holding one of the credentials listed in RCW 46.61.506, including a medical assistant-certified, medical assistant-phlebotomist, or forensic phlebotomist.

((~~(3)~~)) (4) **"Health care practitioner"** means a physician licensed under chapter 18.71 RCW; an osteopathic physician and surgeon licensed under chapter 18.57 RCW; or acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, or an optometrist licensed under chapter 18.53 RCW.

((~~(4)~~)) (5) **"Hemodialysis"** is a procedure for removing metabolic waste products or toxic substances from the human body by dialysis.

((~~(5)~~)) (6) **"Immediate supervision"** means the supervising health care practitioner is on the premises and available for immediate response as needed.

((~~(6)~~)) (7) **"Immediately available"** means the supervising health care practitioner is available to arrive on the premises in a reasonable amount of time or for an immediate audio or video telephone consultation.

(8) **"Legend drug"** means any drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by health care practitioners only.

((~~(7)~~)) (9) **"Medical assistant"** without further qualification means a person credentialed under chapter 18.360 RCW as a:

(a) Medical assistant-certified;

(b) Medical assistant-registered;

(c) Medical assistant-hemodialysis technician; and

(d) Medical assistant-phlebotomist.

((~~(8)~~)) (10) **"Medical assistant-hemodialysis technician"** means a patient care dialysis technician trained in compliance with federal requirements for end stage renal dialysis facilities.

((~~(9)~~)) (11) **"Medication"** means a legend drug, over-the-counter drug, vaccine, or Schedule III through V controlled substance.

(12) **"Secretary"** means the secretary of the department of health or the secretary's designee.

((~~(10)~~)) (13) **"Telemedicine supervision"** means the delivery of direct patient care under supervision by a health care practitioner provided through the use of interactive audio and video technology, permitting real-time communication between a medical assistant at the originating site and a health care practitioner off premises. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

"Telemedicine supervision" also includes supervision of a medical assistant-certified or medical assistant registered through telemedicine technology for administering intramuscular injections for the purpose of treating a known or suspected syphilis infection in accordance with RCW 18.360.050.

AMENDATORY SECTION (Amending WSR 23-16-004, filed 7/19/23, effective 8/19/23)

WAC 246-827-0200 Medical assistant-certified—Training and examination. An applicant for a medical assistant-certified credential must meet the following requirements:

(1) Successful completion of one of the following medical assistant training programs:

(a) Postsecondary school or college program accredited by the Accrediting Bureau of Health Education Schools (ABHES) or the Commission of Accreditation of Allied Health Education Programs (CAAHEP);

(b) Postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education, which includes a minimum of 720 clock hours of training in medical assisting skills, including a clinical externship of no less than 160 hours;

(c) ((~~A registered~~)) An apprenticeship program ((~~administered by a department of the state of Washington~~)) registered and approved by the Washington state apprenticeship and training council unless the secretary determines that the apprenticeship program training or experience is not substantially equivalent to the standards of this state. The apprenticeship program shall ensure a participant who successfully completes the program is eligible to take one or more examinations identified in subsection (2) of this section;

(d) The secretary may approve an applicant who submits documentation that they completed postsecondary education with a minimum of 720 clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than 160 hours; or

(e) The secretary may approve an applicant who submits documentation that they completed a career and technical education program approved by the office of the superintendent of public instruction with a minimum of 720 clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than 160 hours.

(2) Pass a medical assistant certification examination, approved by the secretary, within the preceding five years of submitting an initial application or currently hold a national medical assistant certification with a national examining organization approved by the secretary. A medical assistant certification examination approved by the secretary means an examination that:

(a) Is offered by a medical assistant program that is accredited by the National Commission for Certifying Agencies (NCCA); and

(b) Covers the clinical and administrative duties under RCW 18.360.050(1).

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0240 Medical assistant-certified—Administering medications and injections. A medical assistant-certified shall be deemed competent by the delegating health care practitioner prior to administering any ((~~drug~~)) medication authorized in this section. ((~~Drugs~~)) Medications must be administered under a valid order from the delegating health care practitioner and shall be within the delegating health care practitioner's scope of practice. The order must be in written form or contained in the patient's electronic health care record.

(1) ((~~Drug~~)) Medication administration shall not be delegated when:

(a) The ((~~drug~~)) medication may cause life-threatening consequences or the danger of immediate and serious harm to the patient;

(b) Complex observations or critical decisions are required;

(c) A patient is unable to physically ingest or safely apply a medication independently or with assistance; or

(d) A patient is unable to indicate awareness that ((~~he or she is~~)) they are taking a medication.

(2) To administer medications, the delegator shall ensure a medical assistant-certified receives training concerning: Dosage, technique, acceptable route(s) of administration, appropriate anatomic sites, expected reactions, possible adverse reactions, appropriate intervention for adverse reaction, and risk to the patient. The delegator must ensure a medical assistant-certified is competent to administer the medication.

(3) A medical assistant-certified is prohibited from administering:

(a) Schedule II controlled substances, chemotherapy agents, or experimental drugs; or

(b) Medications through a central intravenous line.

(4) Except as provided in subsection (1) of this section, a medical assistant-certified may administer controlled substances in schedules III, IV, and V or other ((~~legend drugs~~)) medications when authorized by the delegating health care practitioner. ((~~Drugs~~)) Medications shall be administered only by unit or single dosage or by a dosage calculated and verified by a health care practitioner. For the purposes of this section, a combination or multidose vaccine shall be considered a unit dose. A medical assistant-certified shall only administer ((~~drugs by~~)) medications under the level of supervision based on the route as described in subsection (5) of this section.

(5) A medical assistant-certified may only administer medications by the following ((~~drug~~)) medication category, route and level of supervision:

((~~Drug~~)) Medication Category	Routes Permitted((*))	Level of Supervision Required
Controlled substances, schedule III, IV, and V	Oral, topical, rectal, otic, ophthalmic, or inhaled routes	Immediate supervision
	Intramuscular injections	Immediate supervision
	Subcutaneous, intradermal, ((~~intramuscular,~~)) or peripheral intravenous injections	Direct visual supervision
((~~Other~~)) Legend drugs (excluding those prohibited by subsection (3)(a) of this section)	((~~All other routes~~)) Peripheral intravenous injections	((~~Immediate~~)) Direct visual supervision
	All other routes	Immediate supervision
Over-the-counter medications	All routes per manufacturer's instructions	Immediate supervision
	((~~Peripheral intravenous injections~~	~~Direct visual supervision~~))
Vaccines	Oral, inhaled, subcutaneous, or intramuscular routes	Immediately available or telemedicine supervision

((* ~~A medical assistant-certified is prohibited from administering medications through a central intravenous line.~~

~~(6) A medical assistant-certified may not start an intravenous line. A medical assistant-certified may interrupt an intravenous line, administer an injection, and restart at the same rate.~~))

(6) A medical assistant-certified may:

(a) Start an intravenous line for diagnostic or therapeutic purposes under the immediate supervision of a health care practitioner.

(b) Interrupt an intravenous line and restart at the same rate under the immediate supervision of a health care practitioner.

(c) Administer intravenous injections for diagnostic or therapeutic agents under the direct visual supervision of a health care practitioner.

(d) Administer intramuscular injections for the purposes of treating a known or suspected syphilis infection without immediate supervision if a health care practitioner is providing supervision through interactive audio or video telemedicine technology in accordance with RCW 18.360.010 (12)(c)(ii).

NEW SECTION

WAC 246-827-0340 Medical assistant-registered—Administering medications and injections. A medical assistant-registered shall be deemed competent by the delegating health care practitioner prior to administering any medication authorized in this section. Medications must be administered under a valid order from the delegating health care practitioner and shall be within the delegating health care practitioner's scope of practice. The order must be in written form or contained in the patient's electronic health care record.

(1) Medication administration shall not be delegated when:

(a) The medication may cause life-threatening consequences or the danger of immediate and serious harm to the patient;

(b) Complex observations or critical decisions are required;

(c) A patient is unable to physically ingest or safely apply a medication independently or with assistance; or

(d) A patient is unable to indicate awareness that they are taking a medication.

(2) To administer medications, the delegator shall ensure a medical assistant-registered receives training concerning: Dosage, technique, acceptable route(s) of administration, appropriate anatomic sites, expected reactions, possible adverse reactions, appropriate intervention for adverse reaction, and risk to the patient. The delegator must ensure a medical assistant-registered is competent to administer the medication.

(3) A medical assistant-registered is prohibited from administering:

(a) Schedule II controlled substances, chemotherapy agents, or experimental drugs; or

(b) Medications through a central intravenous line.

(c) Medications through an intravenous line.

(d) Medications through intravenous injection.

(4) Except as provided in subsection (1) of this section, a medical assistant-registered may administer controlled substances in schedules III, IV, and V or other medications when authorized by the delegating health care practitioner. Medications shall be administered only by unit or single dosage or by a dosage calculated and verified by a health care practitioner. For the purposes of this section, a combination or multidose vaccine shall be considered a unit dose. A medical assistant-registered shall only administer medications under

the level of supervision based on the route as described in subsection (5) of this section.

(5) A medical assistant-registered may only administer medications by the following medications category, route, and level of supervision:

Medication Category	Routes Permitted	Level of Supervision Required
Controlled substances, schedule III, IV, and V	Intramuscular injections	Immediate supervision
Legend drugs (excluding those prohibited by subsection (3)(a) of this section)	Intramuscular injections	Immediate supervision
Over-the-counter medications	All routes per manufacturer's instructions	Immediate supervision
Vaccines	Oral, inhaled, subcutaneous, or intramuscular routes	Immediately available or telemedicine supervision

(6) A medical assistant-registered is prohibited from starting an intravenous line. A medical assistant-registered may interrupt an intravenous line.

(7) A medical assistant-registered may administer intramuscular injections for the purposes of treating a known or suspected syphilis infection without immediate supervision if a health care practitioner is providing supervision through interactive audio or video telemedicine technology in accordance with RCW 18.360.010 (12)(c)(ii).

WSR 24-22-101
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed November 2, 2024, 2:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-044.

Title of Rule and Other Identifying Information: Creating new agency affiliated counselor credentials and making other updates to chapter 246-810 WAC, Counselors.

The department of health (department) is proposing amendments to chapter 246-810 WAC to implement E2SHB 1504 (chapter 170, Laws of 2021), 2SHB 1724 (chapter 425, Laws of 2023), and E2SHB 2247 (chapter 371, Laws of 2024).

The proposed amendments: (1) Establish requirements for new agency affiliated counselor (AAC) credentials, including supervised experience, education, and coursework requirements; (2) establish that student interns are eligible for the registered AAC credential; (3) add federally qualified health centers as an approved practice setting for AACs after January 1, 2028; and (4) clarify credential requirements for the certified counselor, certified adviser, and hypnotherapist professions, consistent with recommendations made by the certified counselors and hypnotherapists advisory committee; and make other updates to the chapter.

Hearing Location(s): On January 7, 2025, at 3:00 p.m., virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_AfWSgv5AQ0e8uOavlS_H6Q.

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

Date of Intended Adoption: January 14, 2025.

Submit Written Comments to: Carmen Leso, P.O. Box 47850, Olympia, WA 98504-7850, email https://fortress.wa.gov/doh/policyreview/, carmen.leso@doh.wa.gov, beginning the date and time of this filing, by January 7, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Carmen Leso, phone 360-742-1463, TTY 711, email carmen.leso@doh.wa.gov, by December 17, 2025 [2024].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are necessary to implement legislation and resolve conflicts between statutory authority and chapter 246-810 WAC. The department is required to implement the following bills:

- 2SHB 1724, which created two new credentials, the AAC certification and AAC license, and requires the department to create coursework standards and adopt other rules necessary to administer the professions;
- E2SHB 1504, which added that student interns, "as defined by the department," are eligible to become registered AACs; and
- E2SHB 2247, which added a new practice setting to the AAC professions.

The main purpose of the proposed rules is to implement the legislation listed above. This includes the following amendments to chapter 246-810 WAC:

- Establishing coursework requirements for the new AAC credentials;
- Establishing supervised experience requirements for the new AAC credentials;

- Updating the AAC fee schedule to include the new AAC credentials;
- Updating rules to allow student interns to be credentialed as registered AACs; and
- Adding federally qualified health centers to the list of practice settings for AACs.

Additionally, the proposed rules make additional changes to the chapter, including:

- Clarifying and updating language throughout the whole chapter;
- Removing unnecessary barriers to certified counselor and certified adviser applicants by updating coursework requirements;
- Requiring applicants to have their foreign transcripts translated and evaluated by a credential evaluation service;
- Rearranging the chapter so that rules applicable to all professions in this chapter appear near the beginning of the chapter;
- Adding rule sections that clarify the application process;
- Amending document retention requirements;
- Updating and clarifying continuing education standards; and
- Making other amendments as appropriate.

Reasons Supporting Proposal: In addition to fulfilling the intent of 2SHB 1724, E2SHB 1504, and E2SHB 2247, the proposed rules for these professions will allow the department to consistently uphold professional standards that protect patient safety.

Statutory Authority for Adoption: RCW 18.19.050 and 18.19.090.

Statute Being Implemented: E2SHB 1504 (chapter 170, Laws of 2021), 2SHB 1724 (chapter 425, Laws of 2023), E2SHB 2247 (chapter 371, Laws of 2024), and RCW 18.19.020.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carmen Leso, 111 Israel Road S.E., Tumwater, WA 98501, 360-742-1463.

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 Carmen Leso, P.O. Box 47850, Olympia, WA 98504-7850, phone 360-742-1463, TTY 711, email carmen.leso@doh.wa.gov, www.doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules impact only individual behavioral health providers or applicants, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

November 1, 2024
Todd Mountin, PMP
Deputy Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5814.6

AMENDATORY SECTION (Amending WSR 11-22-087, filed 11/1/11, effective 12/2/11)

WAC 246-810-010 Definitions. The definitions in RCW 18.19.020 and this section apply throughout this chapter unless the ((~~content~~)) context clearly requires otherwise.

(1) "Agency" means:

(a) An agency or facility operated, licensed, or certified by the state of Washington to provide a specific counseling service or services;

(b) A federally recognized Indian tribe located within the state; ((~~or~~))

(c) A county as listed in chapter 36.04 RCW; or

(d) After January 1, 2028, a federally qualified health center as defined in WAC 182-548-1100 that is located in Washington state.

(2) "Agency affiliated counselor" means a person registered, certified, or licensed under chapter 18.19 RCW, and this chapter, who is engaged in counseling and employed by, or a student intern working in, an agency listed in WAC 246-810-016 or an agency recognized under WAC 246-810-017 to provide a specific counseling service or services.

(3) "Approved educational program" means any college or university accredited by an accreditation body recognized by the Council for Higher Education Accreditation (CHEA) or the United States Department of Education (USDOE).

(4) "Certified adviser" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-021.

((~~(4)~~)) (5) "Certified agency affiliated counselor" means an individual certified under chapter 18.19 RCW, and this chapter, who is practicing counseling with a recognized agency.

(6) "Certified counselor" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-0201.

((~~(5)~~)) (7) "Client" means an individual who receives or participates in counseling or group counseling.

((~~(6)~~)) (8) "Consultation" means the professional assistance and practice guidance that a certified counselor receives from a counseling-related professional credentialed under chapter 18.130 RCW and listed in WAC 246-810-026(2). ((~~This may include:~~

~~(a) Helping the certified counselor focus on counseling practice objectives;~~

~~(b) Refining counseling modalities;~~

~~(c) Providing support to progress in difficult or sensitive cases;~~

~~(d) Expanding the available decision-making resources; and~~

~~(e) Assisting in discovering alternative approaches.~~

~~(7)~~)) (9) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist, or attempt to assist, an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purpose of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

((~~(8)~~)) (10) "Counselor" means an individual who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, agency affiliated counselors, certified counselors, certified advisers, and hypnotherapists((~~, and until July 1, 2010, registered counselors~~)).

((~~(9)~~)) (11) "Department" means the Washington state department of health.

((~~(10) "Fee" as referred to in RCW 18.19.030 means compensation received by the counselor for counseling services provided, regardless of the source.~~

~~(11)~~)) (12) "Hypnotherapist" means a person registered under chapter 18.19 RCW, and this chapter, who is practicing hypnosis as a modality.

((~~(12)~~)) (13) "Licensed agency affiliated counselor" means an individual licensed under chapter 18.19 RCW, and this chapter, who is practicing counseling with a recognized agency.

(14) "Licensed health care practitioner" means a licensed practitioner under the following chapters:

(a) Physician licensed under chapter 18.71 RCW((~~.~~))~~;~~

(b) Osteopathic physician licensed under chapter 18.57 RCW((~~.~~))~~;~~

(c) Psychiatric advanced practice registered nurse ((~~practitioner~~)) licensed under chapter 18.79 RCW((~~.~~))~~;~~

(d) Naturopathic physician licensed under chapter 18.36A RCW((~~.~~))~~;~~

(e) Psychologist licensed under chapter 18.83 RCW((~~.~~))~~;~~ or

(f) Independent clinical social worker, marriage and family therapist, mental health counselor, or advanced social worker licensed under chapter 18.225 RCW.

((~~(13) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in WAC 246-810-0201 or 246-810-021.~~

~~(14)~~)) (15) "Mental health professional" has the same meaning as defined in RCW 71.05.020.

(16) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

((~~(15) "Recognized" means acknowledged or formally accepted by the secretary.~~

~~(16)~~)) (17) "Recognized agency or facility" means an agency or facility that has requested and been ((~~recognized~~)) authorized under WAC 246-810-017 to employ agency affiliated counselors to perform a specific counseling service, or services for those purposes only.

((~~(17)~~)) (18) "Registered agency affiliated counselor" means any individual registered under chapter 18.19 RCW, and this chapter, who is practicing counseling with a recognized agency. This includes student interns and juvenile probation counselors who are employees of the juvenile court under RCW 13.04.035 and 13.04.040 and juvenile court employees, providing functional family therapy, aggression replacement training, or other evidence-based programs approved by the department of children, youth, and families.

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

((~~(18)~~)) (20) "Student intern" means a person currently completing an internship or practicum as a component of their educational de-

gree program. A student intern may be a registered agency affiliated counselor.

(21) "Supervised experience" means any counseling experience that was attained with an active credential, during or after completion of a qualifying educational program, under the supervision of a credentialed mental health professional who can independently assess and diagnose as part of their scope of practice.

(22) "Supervision" means the oversight that a counseling-related professional credentialed under chapter 18.130 RCW provides.

((~~(19)~~)) (23) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-011 Exempt activities and individuals. ((~~This chapter does not prevent or restrict:~~

~~(1) The practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state and who is performing services within the person's authorized scope of practice, including any attorney admitted to practice law in this state when providing counseling incidental to and in the course of providing legal counsel;~~

~~(2) The practice of counseling by an employee or trainee of any federal agency, or the practice of counseling by a student of a college or university, if the employee, trainee, or student is practicing solely under the supervision of and accountable to the agency, college, or university, through which he or she performs such functions as part of his or her position for no additional fee other than ordinary compensation;~~

~~(3) The practice of counseling by a person for no compensation;~~

~~(4) The practice of counseling by persons offering services for public and private nonprofit organizations or charities not primarily engaged in counseling for a fee when approved by the organizations or agencies for whom they render their services;~~

~~(5) Evaluation, consultation, planning, policymaking, research, or related services conducted by social scientists for private corporations or public agencies;~~

~~(6) The practice of counseling by a person under the auspices of a religious denomination, church, or organization, or the practice of religion itself;~~

~~(7) The practice of counseling by peer counselors who use their own experience to encourage and support people with similar conditions or activities related to the training of peer counselors; and~~

~~(8) Counselors who reside outside Washington state from providing up to ten days per quarter of training or workshops in the state, as long as they do not hold themselves out to be registered or certified in Washington state.~~)) Nothing in this chapter may be construed to prohibit or restrict the activities and individuals outlined in RCW 18.19.040.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-012 Application process. (1) ((~~Applicants~~)) An applicant for an agency affiliated counselor, certified counselor, or certified adviser((~~, or hypnotherapist must apply~~)) credential shall submit to the department:

(a) An application on forms ((~~established~~)) provided by the ((~~secretary~~)) department under RCW 18.19.090;

(b) Official transcripts to verify completion of any coursework and degrees necessary for the credential;

(c) Documentation to verify completion of any supervised experience necessary for the credential;

(d) Employment verification if necessary for the credential;

(e) Applicable fee(s) required under WAC 246-810-990; and

(f) Any additional supporting documentation requested by the department.

(2) ((~~The application for agency affiliated counselor, certified counselor, or certified adviser, must include a description of the applicant's orientation, discipline, theory, or technique.~~

~~(3) The secretary may require additional documentation to determine whether an applicant meets the qualifications for the credential and if there are any grounds for denial of the credential.~~

~~(4) Each applicant must pay the applicable fee as identified in WAC 246-810-990.~~)) A student intern may choose to practice:

(a) With a credential as a registered agency affiliated counselor, after applying under subsection (1) of this section; or

(b) Without a credential, under the student exemption in RCW 18.19.040.

NEW SECTION

WAC 246-810-0121 Foreign transcript evaluation requirements. (1) For degree(s) obtained outside the United States and its territories, the applicant must have the transcript translated and evaluated by:

(a) An organization that is a current member of the National Association of Credential Evaluation Services (NACES); or

(b) An organization that is a current member of the Association of International Credential Evaluators, Inc. (AICE).

(2) The evaluating organization must validate the degree to determine its equivalence to an academic program approved by the Council for Higher Education Accreditation (CHEA) or the United States Department of Education (USDOE). The department shall determine if the degree satisfies the educational requirements of this chapter, depending on the degree's United States equivalent.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-013 State agency employee credentialing requirements. (1) ((~~Until July 1, 2010, an employee of a state agency who is practicing counseling, as part of his or her position, must be creden-~~

~~tialed as a registered counselor or an agency affiliated counselor unless they are exempt under WAC 246-810-011.~~

~~(2) On and after July 1, 2010,~~)) An employee of a state agency((~~,~~ ~~practice~~)) who is practicing counseling((~~,~~)) as part of ((~~his or her position,~~)) their employment must be credentialed as an agency affiliated counselor unless they are exempt under WAC 246-810-011.

((~~(3)~~)) (2) A person may not, for a fee or as a part of ((~~his or her position as an employee of~~)) their employment with a state agency, practice hypnotherapy without being registered to practice as a hypnotherapist unless they are exempt under WAC 246-810-011.

NEW SECTION

WAC 246-810-0131 Requirements to report suspected abuse or neglect of a child or vulnerable adult. (1) As required by chapter 26.44 RCW, all counselors shall immediately report abuse or neglect of a child if the counselor has reasonable cause to believe that an incident has occurred.

(2) As required by chapter 74.34 RCW, all counselors must report suspected abandonment, abuse, neglect, or financial exploitation of a vulnerable adult when there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect has occurred.

NEW SECTION

WAC 246-810-0132 Sexual misconduct regulations. A counselor shall not engage, or attempt to engage, in sexual misconduct with a current or former patient, client, or key party, inside or outside the practice setting. The definitions and prohibitions on sexual misconduct described in WAC 246-16-100 apply to counselors, with the exception of (4) and (5) in WAC 246-16-100. A counselor shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100(1).

NEW SECTION

WAC 246-810-0133 Mandatory reporting. An individual credentialed under this chapter and other mandatory reporters under chapter 246-16 WAC must report unprofessional conduct in compliance with the Uniform Disciplinary Act in chapter 18.130 RCW and the standards of professional conduct in chapter 246-16 WAC.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-810-015 Agency affiliated counselor: Scope of practice and ((~~credentialing~~)) application requirements. (1) An agency affiliated counselor may only provide counseling services ((~~as part of his or her employment as an agency affiliated counselor for a recognized agency~~)) within an agency and as defined in RCW 18.19.215.

(2) An applicant ((~~for an agency affiliated counselor must be employed by, or have an offer of employment from, an agency or facility identified in WAC 246-810-016.~~

~~(3)(a) Applicants must~~)) shall submit an application to the department within the first ((~~thirty~~)) 30 days of employment, or student internship placement, at an agency in order to continue working while the application is processed.

((~~(b) Applicants must complete any outstanding deficiencies within ninety days of the date the department issues a deficiency letter. If the applicant does not satisfy the outstanding licensure requirements within ninety days, the applicant must stop working.~~)) (3) If the department requests additional information or documentation, the applicant shall resolve the request to continue working. If the credential is not issued within 90 days of the department's request, the applicant shall stop working.

NEW SECTION

WAC 246-810-0151 Registered agency affiliated counselor credentialing requirements. An applicant for a registered agency affiliated counselor credential must:

(1) Be employed by, or have a current offer of employment from, an agency or facility identified in WAC 246-810-016; or

(2) Be a student intern working in an agency for the duration of their student internship or practicum under RCW 18.19.090.

NEW SECTION

WAC 246-810-0152 Certified agency affiliated counselor credentialing requirements. (1) An applicant for a certified agency affiliated counselor credential must:

(a) Be employed by, or have a current offer of employment from, an agency or facility identified in WAC 246-810-016;

(b) Have a bachelor's degree in counseling or one of the social sciences from an accredited college or university as specified in RCW 18.19.090;

(c) Meet the minimum coursework requirements in WAC 246-810-0153; and

(d) Have a minimum of five years' supervised experience gained in accordance with subsection (2) of this section.

(2) Supervised experience must be:

(a) In direct treatment of persons with a mental disorder;

(b) Gained under the supervision of a mental health professional who can independently assess and diagnose within the scope of practice of their credential;

(c) Obtained after the completion of their degree or through an internship or practicum that is part of their degree program requirements; and

(d) Obtained under a credential to practice counseling or through a supervised internship or practicum.

(3) For an applicant whose experience was obtained prior to January 1, 2025, the department accepts supervised experience provided by

a registered agency affiliated counselor who was designated as a mental health professional.

(4) For an applicant who obtains supervised experience in private practice, supervision must be provided by a mental health professional as defined in RCW 71.05.020.

(5) Experience earned out-of-state may be considered if:

(a) The applicant held a credential in that state that was substantially equivalent to a counselor as defined in this chapter or a mental health professional as defined in RCW 71.05.020; and

(b) Supervised experience met the requirements described in subsection (2) of this section.

NEW SECTION

WAC 246-810-0153 Coursework requirements for certified agency affiliated counselors. (1) An applicant for agency affiliated counselor certification shall complete a counseling or social science degree from an approved educational program. The degree must have included four courses from at least two knowledge areas listed in this subsection and shown in Table 1. The knowledge areas include:

(a) Human behavior and counseling, which includes, but is not limited to:

(i) Counseling;
(ii) Psychology;
(iii) Applied behavior science;
(iv) Social work;
(v) Social welfare;
(vi) Behavioral health care; and
(vii) Human development;

(b) Justice in society, which includes, but is not limited to:

(i) Ethics;
(ii) Political science;
(iii) Philosophy;
(iv) Criminal justice; and
(v) Social justice;

(c) Cultural competence, which includes, but is not limited to:

(i) Communications;
(ii) Gender studies;
(iii) Human services;
(iv) Ethnic studies;
(v) History of culture(s); and
(vi) Sociology.

Table 1

Knowledge Areas	**Examples of Course Topics.** Requirements may be met by courses in topic areas including, but not limited to, those listed below.
Human Behavior and Counseling	Counseling, psychology, applied behavior science, social work, social welfare, behavioral health care, human development
Justice in Society	Ethics, political science, philosophy, criminal justice, social justice
Cultural Competence	Communications, gender studies, human services, ethnic studies, history of culture(s), sociology

(2) An applicant who has a bachelor's degree in psychology, social work, or behavioral health care is considered to have met the coursework requirements outlined in this section.

(3) An applicant is deemed to have met coursework requirements under RCW 18.19.090(6) if they:

(a) Satisfy the requirements of RCW 18.19.090(3) by the effective date of this rule; and

(b) Apply for certification by July 1, 2027.

NEW SECTION

WAC 246-810-0154 Licensed agency affiliated counselor credentialing requirements. (1) An applicant for a licensed agency affiliated counselor credential must:

(a) Be employed by, or have a current offer of employment from, an agency or facility identified in WAC 246-810-016;

(b) Have an advanced degree in counseling or one of the social sciences from an accredited college or university as specified in RCW 18.19.090;

(c) Meet the minimum coursework requirements in WAC 246-810-0155; and

(d) Have a minimum of two years of supervised experience gained under subsection (2) of this section.

(2) Supervised experience must be:

(a) In direct treatment of persons with a mental disorder;

(b) Gained under the supervision of a mental health professional who can independently assess and diagnose within the scope of practice of their credential;

(c) Obtained after the completion of their degree or through an internship or practicum that is part of their degree program requirements; and

(d) Obtained under a credential to practice counseling or through a supervised internship or practicum.

(3) For an applicant whose supervised experience was obtained prior to January 1, 2025, the department accepts supervised experience provided by a registered agency affiliated counselor who was designated as a mental health professional.

(4) For an applicant who obtains supervised experience in private practice, the supervision must be provided by a mental health professional as defined in RCW 71.05.020.

(5) Supervised experience earned out-of-state may be considered if:

(a) The applicant held a credential in that state that was substantially equivalent to a counselor or a mental health professional as defined in RCW 71.05.020; and

(b) Supervised experience met the requirements described in subsection (2) of this section.

NEW SECTION

WAC 246-810-0155 Coursework requirements for licensed agency affiliated counselors. An applicant for the agency affiliated counselor license shall meet one of the following coursework pathways by completing graduate-level classes, for credit, from an approved educational program:

(1) Completion of a course(s) that includes assessment and diagnosis in addition to one of the following courses:
(a) Counseling couples and families;
(b) Counseling groups; or
(c) Counseling individuals; or
(2) Completion of at least five of the following courses:
(a) Assessment and diagnosis;
(b) Career development counseling;
(c) Chronic mental illness;
(d) Counseling couples and families;
(e) Counseling groups;
(f) Counseling individuals;
(g) Developmental disabilities;
(h) Developmental psychology (including child, adolescent, adult, or life span);
(i) Domestic violence;
(j) Ethics and law;
(k) Group dynamics;
(l) Learning disabilities;
(m) Mental health consultation;
(n) Multicultural considerations in counseling;
(o) Organizational psychology;
(p) Physiological psychology;
(q) Psychopathology or abnormal psychology;
(r) Research and evaluation;
(s) Sexuality and lifestyle choices;
(t) Social and cultural foundations;
(u) Substance use disorders; or
(v) Treating special populations.
(3) An applicant is deemed to have met coursework requirements under RCW 18.19.090(4) if they:
(a) Qualified as a mental health professional under RCW 18.19.090(6) by the effective date of this rule; and
(b) Apply for licensure by July 1, 2027.

AMENDATORY SECTION (Amending WSR 11-22-087, filed 11/1/11, effective 12/2/11)

WAC 246-810-016 Agencies, facilities, federally recognized Indian tribes located within the state, or counties that can employ agency affiliated counselors. Agencies or facilities that may employ an agency affiliated counselor are:
(1) Washington state departments and agencies ((~~listed in the Agency, Commission & Organization Directory available on the state of Washington website.~~))_;_
(2) Federally recognized Indian tribes located within the state((~~.~~))_;_
(3) Counties as listed in chapter 36.04 RCW((~~.~~))_;_
(4) Community and technical colleges governed by the Washington state board for community and technical colleges((~~.~~))_;_
(5) Colleges and universities governed by the Washington state ((~~higher education coordinating board.~~)) student achievement council;
(6) Hospitals licensed under chapter 70.41 RCW((~~.~~))_;_
(7) Home health care agencies, home care agencies, and hospice care agencies licensed under chapter 70.127 RCW((~~.~~))_;_

(8) Agencies and facilities licensed or certified under chapters 71.05 or 71.24 RCW((~~.~~));

(9) Psychiatric hospitals, residential treatment facilities, hospitals, and alcohol and ((~~chemical dependency~~)) substance use disorder treatment entities licensed under chapter 71.12 RCW((~~.~~));

(10) After January 1, 2028, federally qualified health centers located in Washington state; and

(11) Other agencies or facilities recognized by the secretary as provided in WAC 246-810-017.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-017 Process to become a recognized agency or facility. (1) To become a recognized agency or facility, an agency or facility must demonstrate to the satisfaction of the secretary that it is operated, licensed, or certified by the state of Washington to provide specific counseling services.

(2) When reviewing requests for recognition, the secretary may:

(a) Require an agency or facility to complete forms and documentation as provided by the secretary; and

(b) Consult with other state agencies and entities.

(3) In determining whether or not to recognize the agency or facility, the secretary may consider multiple criteria, including, but not limited to:

(a) Counseling quality assurance standards and requirements that are applicable to the agency or facility;

(b) Protections for ensuring patient safety in the delivery of supervised counseling services by counselors employed by the agency or facility; and

(c) Mechanisms for receiving and reporting complaints regarding counselors, investigating counselor conduct and practices, and taking corrective and disciplinary actions against counselors.

(4) The department will maintain a list of recognized agencies and facilities that may employ agency affiliated counselors to perform a specific counseling service or services under this section.

(5) Recognized agencies or facilities that cease to be operated, licensed, or certified by the state of Washington will no longer be recognized ((~~and will be removed from the list of recognized agencies~~)).

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-018 ((~~An agency affiliated counselor must report an employment change.~~)) Reporting changes in employment or internship. (1) An agency affiliated counselor((~~s must~~)) shall notify the department within ((~~thirty~~)) 30 calendar days if they are no longer employed by the agency identified on their application, are now employed with another agency, or both. An agency affiliated counselor((~~s~~)) may not practice counseling unless they are employed by, or a student intern working in, an agency.

(2) A student intern practicing as a registered agency affiliated counselor shall notify the department within 30 days of the completion of their internship or practicum.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-810-019 Co-occurring disorder enhancement specialist eligibility. An agency affiliated counselor((~~s licensed under chapter 18.19 RCW and this chapter~~)) who meets the conditions of RCW 18.205.105 (1)(e) ((~~are~~)) is eligible to apply for a co-occurring disorder specialist enhancement to their existing credential according to the conditions of RCW 18.205.160 and chapter 246-804 WAC.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-0201 Practice scope and limits for certified counselors. The scope of practice ((~~of~~)) for a certified counselor((~~s~~)) is found in RCW 18.19.200 and consists exclusively of the following:

(1) Appropriate screening of the client's level of functional impairment using the global assessment of functioning as described in the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*. Recognition of a mental or physical disorder or a global assessment of functioning score of ((~~sixty~~)) 60 or less requires that the certified counselor refer the client for diagnosis and treatment to a licensed health care practitioner unless otherwise permitted in this section.

(2) If the client has a global assessment of functioning score greater than ((~~sixty~~)) 60, a certified counselor may counsel and guide the client in adjusting to life situations, developing new skills, and making desired changes, in accordance with the theories and techniques of a specific counseling method and established practice standards.

(3) If the client has a global assessment of functioning score of ((~~sixty~~)) 60 or less, a certified counselor may counsel and guide the client in adjusting to life situations, developing new skills, and making desired changes, in accordance with the theories and techniques of a specific counseling method and established practice standards if:

(a) The client has been referred to the certified counselor by a licensed health care practitioner and care is provided as part of a plan of treatment developed by the referring practitioner who is actively treating the client. The certified counselor must adhere to any conditions related to the certified counselor's role as specified in the plan of care; or

(b) The certified counselor referred the client to a licensed health care practitioner for diagnosis and treatment ((~~from a licensed health care practitioner~~)) and the client refused, in writing, to seek diagnosis and treatment from the other provider. The certified counselor may provide services to the client consistent with a treatment plan developed by the certified counselor and ((~~the~~)) their consultant or supervisor ((~~with whom the certified counselor has a written consultation or supervisory agreement~~)).

(4) A certified counselor must not be the sole treatment provider for a client with a global assessment of functioning score of less than ((~~fifty~~)) 50.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-021 Practice scope and limits for certified advisers. The scope of practice ((~~of~~)) for a certified adviser((~~s~~)) is outlined in RCW 18.19.200 and consists exclusively of the following:

(1) Appropriate screening of the client's level of functional impairment using the global assessment of functioning as described in the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*. Recognition of a mental or physical disorder or a global assessment of functioning score of ((~~sixty~~)) 60 or less requires that the certified adviser refer the client to a licensed health care practitioner.

(2) If the client has a global assessment of functioning score greater than ((~~sixty~~)) 60, a certified adviser may counsel and guide the client in adjusting to life situations, developing new skills, and making desired changes, in accordance with the theories and techniques of a specific counseling method and established practice standards.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-0221 Qualifications to become a certified counselor. (1) ((~~Until July 1, 2010, an applicant for certified counselor who has been a registered counselor for a minimum of five years must:~~

~~(a) Hold a valid, active registration that is in good standing or be in compliance with any disciplinary process and orders;~~

~~(b) Show evidence of having completed at least six clock hours of course work that included risk assessment, ethics, appropriate screening using the global assessment of functioning scale, client referral, and Washington state law;~~

~~(c) Pass an examination in risk assessment, ethics, appropriate screening using the global assessment of functioning scale, client referral, and Washington state law; and~~

~~(d) Have a written consultation agreement which meets the requirements in WAC 246-810-025 with a credential holder who meets the qualifications to be a consultant in WAC 246-810-026.~~

~~(2) Unless eligible for certification under subsection (1)(a) of this section, applicants~~)) An applicant for a certified counselor ((~~must~~)) credential shall:

(a) Have a bachelor's degree in a counseling-related field, as defined in WAC 246-810-024;

(b) Pass an examination in risk assessment, ethics, and appropriate screening using the global assessment of functioning scale, client referral, and Washington state law; and

(c) Have a written supervisory agreement which meets the requirements in WAC 246-810-025 with a credential holder who meets the qualifications to be a supervisor in WAC 246-810-026.

(2) An individual who obtained a certified counselor credential prior to July 1, 2010, may practice under a consultation agreement as described in WAC 246-810-025.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-023 Qualifications to become a certified adviser. ((~~Applicants~~)) An applicant for a certified adviser ((~~must~~)) credential shall:

(1) Have an associate degree which included a supervised internship in a counseling-related field as defined in WAC 246-810-024;

(2) Pass an examination in risk assessment, ethics, and appropriate screening using the global assessment of functioning scale, client referral, and Washington state law; and

(3) Have a written supervisory agreement which meets the requirements in WAC 246-810-025 with a credential holder who meets the qualifications to be a supervisor in WAC 246-810-026.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-024 Counseling-related degrees that meet the requirements for certified counselor and certified adviser. (1) An applicant for a certified counseling credential shall have a counseling-related bachelor's degree ((~~must be from a recognized~~)) in a field specified in subsection (3) of this section from an approved educational program or institution. The degree must have required the equivalent of at least four years of full-time study ((~~and at least one third of the courses must have included one or more of subjects listed in subsection (4) of this section~~)).

(2) An applicant for a certified adviser credential shall have a counseling-related associate degree ((~~must be from a recognized~~)) in a field specified in subsection (3) of this section from an approved educational program or institution. The degree must have the equivalent of at least two years of full-time study and include a supervised internship. ((~~At least one fourth of the required courses must have included one or more of the subjects listed in subsection (4) of this section.~~))

(3) ((~~An advanced or graduate degree from a recognized educational program or institution in any of the subject areas listed in subsection (4) of this section will meet the education requirements for certified counselor or certified adviser.~~

~~(4) Counseling-related subjects:~~

~~(a) Addiction counseling;~~

~~(b) Adolescent and child counseling;~~

~~(c) Anger management counseling;~~

~~(d) Applied behavioral science;~~

~~(e) Behavior management or behavior modification;~~

~~(f) Biofeedback;~~

~~(g) Child development;~~

~~(h) Clinical social work;~~

~~(i) Community mental health;~~

~~(j) Counseling persons with developmental or intellectual disabilities;~~
~~(k) Counseling ethics;~~
~~(l) Developmental psychology;~~
~~(m) Domestic violence counseling;~~
~~(n) Elder counseling;~~
~~(o) Grief counseling;~~
~~(p) Human development;~~
~~(q) Human services counseling;~~
~~(r) Learning disabilities counseling;~~
~~(s) Marriage and family counseling;~~
~~(t) Mental health counseling;~~
~~(u) Ministerial or pastoral counseling;~~
~~(v) Multicultural counseling;~~
~~(w) Organizational psychology;~~
~~(x) Personality theory;~~
~~(y) Physiological psychology;~~
~~(z) Psychiatry and psychiatric nursing;~~
~~(aa) Psychological measurement and research;~~
~~(bb) Psychology;~~
~~(cc) Psychopathology and abnormal psychology;~~
~~(dd) Sexual disorder counseling;~~
~~(ee) Social work;~~
~~(ff) Special education;~~
~~(gg) Stress disorder counseling;~~
~~(hh) Substance and chemical abuse counseling; and~~
~~(ii) Transpersonal psychology.~~

~~(5) The secretary may accept other equivalent counseling-related education or training programs in the subjects listed in subsection (4) of this section.~~)) Fields recognized as related to counseling include, but are not limited to:

(a) Behavioral science;
(b) Counseling;
(c) Psychiatry and psychiatric nursing;
(d) Psychology;
(e) Social work;
(f) Special education;
(g) Substance use disorders; and
(h) Other counseling-related fields as determined by the department under WAC 246-810-0241, based on coursework completed.

NEW SECTION

WAC 246-810-0241 Counseling-related coursework that meets the requirements for certified counselor and certified adviser. When a certified counselor applicant or certified adviser applicant's counseling-related degree is not listed in WAC 246-810-024, the department uses the following coursework standards to determine whether the degree contained enough counseling coursework to qualify the applicant for certification.

(1) For certified counselors, an applicant's degree must be considered as counseling-related if the degree contains at least 45 quarter, or 30 semester, college credits in counseling-related subjects listed in subsection (3) of this section.

(2) For certified advisers, an applicant's degree must be considered as counseling-related if the degree contains at least 23 quarter, or 15 semester, college credits in counseling-related subjects listed in subsection (3) of this section.

(3) Counseling-related subjects include:

(a) Addictive behavior counseling;
(b) Anger management counseling;
(c) Applied behavioral science;
(d) Behavior management or behavior modification;
(e) Biofeedback;
(f) Career counseling;
(g) Child development;
(h) Clinical social work;
(i) Community mental health;
(j) Counseling children and adolescents;
(k) Counseling ethics;
(l) Crisis counseling and abuse;
(m) Developmental disability counseling;
(n) Developmental psychology;
(o) Elder counseling;
(p) Grief counseling;
(q) Human growth and development;
(r) Human services counseling;
(s) Marriage and family counseling;
(t) Mental health counseling;
(u) Ministerial or pastoral counseling;
(v) Multicultural considerations in counseling;
(w) Organizational psychology;
(x) Personality theory;
(y) Physiological psychology;
(z) Psychiatry and psychiatric nursing;
(aa) Psychological measurement and research;
(bb) Psychology;
(cc) Psychopathology and abnormal psychology;
(dd) Sexuality and counseling;
(ee) Social work;
(ff) Special education;
(gg) Stress disorder counseling;
(hh) Substance use disorder counseling; and
(ii) Transpersonal psychology.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-025 Supervision and consultation requirements for certified counselors and supervision requirements for certified advisers. ((~~(1) Supervision.~~)) Certified counselors ((~~who do not meet the requirements in WAC 246-810-0221(1)~~)) and certified advisers ((~~must~~)) shall meet the following supervision or consultation requirements:

((~~(a)~~)) (1) Written agreement. A certified counselor or certified adviser shall have a written agreement ((~~between~~)) with a qualified supervisor ((~~and the certified counselor or certified adviser is required and must be reviewed and renewed~~)) or, for a certified counselor eligible under WAC 246-810-0221(2), a qualified consultant. Both

parties shall review, update, and renew the agreement at least every two years. The agreement must address:

((~~(i)~~)) (a) The agreement duration;

((~~(ii)~~)) (b) Expectations of both parties;

((~~(iii) Frequency and modalities of supervision~~)) (c) Client confidentiality;

((~~(iv) Recordkeeping~~)) (d) Potential conflict of interest;

((~~(v)~~)) (e) Financial arrangements;

((~~(vi) Client confidentiality; and~~

~~(vii) Potential conflict of interest.~~

~~(b) Frequency of supervision.~~

~~(i) During the first five years of practice, a minimum of two hours of supervision is required in any calendar month in which the certified counselor or certified adviser has had forty or more client contact hours.~~

~~(ii) After five years of practice, a minimum of one hour of supervision is required in any calendar month in which the certified counselor or certified adviser has forty or more client contact hours.~~

~~(iii) A minimum of two hours of supervision is required in any calendar quarter, regardless of the years in practice or number of client contact hours.~~

~~(iv) Up to half of the required supervision time may be supervision of practice in a group setting.~~

~~(c) Recordkeeping. A written record of supervision hours and topics must be maintained by both the supervisor and the certified counselor or certified adviser.~~

~~(2) Consultation. Certified counselors who meet the requirements of WAC 246-810-0221(1), must meet the following consultation requirements:~~

~~(a) Written agreement. A written agreement between a consultant who meets the requirements in WAC 246-810-026 and the certified counselor is required, and must be reviewed and renewed at least every two years. The agreement must address:~~

~~(i) The agreement duration;~~

~~(ii) Expectations of both parties;~~

~~(iii) Frequency and modalities of consultation;~~

~~(iv) Recordkeeping;~~

~~(v) Financial arrangements;~~

~~(vi) Client confidentiality; and~~

~~(vii) Potential conflict of interest.~~

~~(b) Frequency. The certified counselor will determine the consultation he or she needs. However, a minimum of one hour of consultation is required during any calendar quarter in which the certified counselor has forty or more client contact hours.~~

~~(c) Recordkeeping. A written record of consultation hours and topics must be maintained by the consultant and the certified counselor.~~))

(f) Frequency and modalities of supervision or consultation under subsection (2) of this section; and

(g) Recordkeeping under subsection (3) of this section.

(2) Frequency and modalities of supervision or consultation.

(a) Supervision frequency and modalities:

(i) During the first five years of practice, a minimum of two hours of supervision is required in any calendar month in which the certified counselor or certified adviser has had 40 or more client contact hours.

(ii) After five years of practice, a minimum of one hour of supervision is required in any calendar month in which the certified counselor or certified adviser has 40 or more client contact hours.

(iii) A minimum of two hours of supervision is required in any calendar quarter, regardless of the years in practice or number of client contact hours.

(iv) Up to half of the required supervision time may be supervision of practice in a group setting;

(b) Consultation frequency and modalities for certified counselors eligible under WAC 246-810-0221(2). When a certified counselor has 40 or more direct client contact hours per calendar quarter they must complete at least one hour of consultation. The certified counselor is responsible for determining the appropriate frequency of additional consultation.

(3) Recordkeeping. A certified counselor or certified adviser and supervisor or consultant shall maintain a written record of meeting hours and topics. This written record must be maintained by both the supervisor or consultant and the certified counselor or certified adviser.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-810-026 Qualifications to be a certified counselor supervisor, certified adviser supervisor, or a certified counselor consultant. (1) The following qualifications are required to be a certified counselor supervisor, certified adviser supervisor, or a certified counselor consultant.

((~~(1)~~)) (a) The supervisor or consultant ((~~must~~)) for a certified counselor shall have held a Washington state credential in counseling-related fields for a minimum of five years.

(b) All credentials held by the supervisor or consultant must be in good standing((~~.~~)) and at least one credential must be active.

(2) For purposes of this section, counseling-related fields ((~~means a credential~~)) include the following credentials issued under chapter 18.130 RCW ((~~for~~)):

(a) ((~~Certified counselor~~)) Advanced practice registered nurse;

(b) ((~~Hypnotherapist~~)) Advanced social worker;

(c) ((~~Mental health~~)) Certified counselor;

(d) ((~~Marriage and family therapist~~)) Hypnotherapist;

(e) Independent clinical social ((~~work~~)) worker;

(f) ((~~Advanced social work~~)) Marriage and family therapist;

(g) ((~~Psychologist~~)) Medical physician or physician assistant;

(h) ((~~Substance use disorder professional~~)) Mental health counselor;

(i) ((~~Sex offender treatment provider~~)) Naturopathic physician;

(j) ((~~Sex offender treatment provider affiliate;~~

~~(k) Medical physician;~~

~~(l) Osteopathic physician;~~

~~(m) Advanced registered nurse practitioner;~~

~~(n) Naturopathic physician; and~~

~~(o) Until July 1, 2010, registered counselor~~)) Osteopathic physician;

(k) Psychologist or psychological associate;

(l) Sex offender treatment provider or affiliate; and

(m) Substance use disorder professional.

Additional credentials may be accepted by the secretary as counseling-related.

(3) The supervisor or consultant may not be a blood or legal relative or cohabitant of the credential holder, or someone who has acted as the credential holder's counselor within the past two years. A supervisor or consultant may not have a reciprocal supervisory or consultant arrangement with another credential holder.

(4) Prior to the commencement of any supervision or consultation, the supervisor or consultant ((~~must~~)) shall provide the certified counselor or certified adviser with a declaration on a form provided by the department.

(5) ((~~The~~)) A supervisor ((~~must~~)) shall have completed education and training in:

(a) Supervision or management of individuals who provide counseling or mental health services;

(b) Risk assessment;

(c) Screening using the global assessment of functioning scale;

(d) Professional ethics; and

(e) Washington state law.

(6) ((~~The~~)) A consultant must have completed education and training in:

(a) Risk assessment;

(b) Screening using the global assessment of functioning scale;

(c) Professional ethics; and

(d) Washington state law.

AMENDATORY SECTION (Amending WSR 23-23-033, filed 11/3/23, effective 1/1/24)

WAC 246-810-027 Continuing education requirements for a certified counselor or certified adviser. (1) A certified counselor or a certified adviser ((~~must~~)) shall complete 36 credit hours of continuing education courses every two years.

(2) At least six hours of the 36 credit hours must be in law and professional ethics related to counseling.

(3) At least once every six years a certified counselor or a certified adviser must complete three hours of training in suicide assessment, including screening and referral, as specified in WAC 246-810-0298.

(a) Except as provided in (b) of this subsection, the ((~~first~~)) initial suicide assessment training must be completed during the first full continuing education reporting period after initial ((~~licensure~~)) certification.

(b) An individual applying for initial certification as a certified counselor or a certified adviser may delay completion of the first required training for six years after initial certification if they can demonstrate successful completion of a three-hour training in suicide assessment, screening, and referral that:

(i) Was completed no more than six years prior to the application for initial certification; and

(ii) Meets the requirements listed in WAC 246-810-0298.

(c) The hours spent completing training in suicide assessment count towards the total 36 hours of continuing education.

(4) ((~~Beginning January 1, 2024,~~)) At least once every four years, a certified counselor or certified adviser must complete two hours of health equity training as specified in WAC 246-810-0299.

((~~(5) Nothing in this section is intended to expand or limit the existing scope of practice of a certified counselor or a certified adviser as defined by WAC 246-810-0201 and 246-810-021.~~))

AMENDATORY SECTION (Amending WSR 19-05-020, filed 2/11/19, effective 3/14/19)

WAC 246-810-029 Acceptable continuing education courses for certified counselor and certified adviser. (1) ((~~A~~)) Continuing education ((~~program or~~)) courses must ((~~be relevant~~)):

(a) Be directly related to counseling; and ((~~must~~))

(b) Contribute to the advancement, extension, and enhancement of the professional competence of the credential holder.

(2) Relevant courses include those that are related to counseling theory and practice, modality(ies) of the counseling services the credential holder will provide, professional ethics, courses related to risk assessment, screening using the global assessment of functioning scale, referral of clients, and Washington state law applicable to counseling.

((~~(2)~~)) (3) Acceptable continuing education courses (including distance learning), seminars, workshops, training programs, and institutes ((~~must~~)) are those which have a featured instructor, speaker(s), or panel approved by an ((~~industry-recognized~~)) accredited institution of higher learning((~~,~~)) or ((~~a~~)) an industry-recognized local, state, national, or international organization.

((~~(3)~~)) (4) Distance learning programs approved by an industry-recognized local, state, national, or international organization or accredited educational ((~~organization may meet these requirements. The programs~~)) institution must require a test of comprehension upon completion. ((~~Distance learning programs are limited to twenty hours per reporting period.~~

~~(4)~~)) (5) Other learning experiences, such as serving on a panel, board or council, community service, research, peer consultation, or publishing articles for professional publications are acceptable if the experience contributes to the advancement, extension, and enhancement of the professional competence of the ((~~certified counselor or certified adviser~~)) credential holder. The "learning experience" category is limited to six hours per reporting period.

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

WAC 246-810-0293 ((~~Recognized~~)) Accredited institutions of higher learning and local, state, national, and international organizations approved for continuing education. Activities that meet the requirements of WAC 246-810-029 and are ((~~offered by the following entities are eligible for continuing education credit~~)) eligible for continuing education must be provided by institutions of higher learning or industry-recognized local, state, national, or international organizations. These organizations include, but are not limited to:

(1) ((~~Washington Association for Marriage and Family Therapy~~)) American Association for Marriage and Family Therapy;

(2) ((~~Washington State Society for Clinical Social Work~~)) American Counseling Association;

(3) ((~~Washington Chapter of the National Association of Social Work~~)) American Mental Health Counselors Association;

(4) American ((~~Mental Health Counselors Association~~)) Psychological Association;

(5) ((~~American Association for Marriage and Family Therapy~~)) Association for Humanistic Psychology;

(6) ((~~Clinical Social Work Association~~)) Association for Integrative Psychology;

(7) ((~~National Association of Social Workers~~)) Association of Social Work Boards;

(8) ((~~Washington Mental Health Counselors Association~~)) Clinical Social Work Association;

(9) ((~~National Board for Certified Counselors~~)) Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation;

(10) ((~~Association for Humanistic Psychology~~)) National Association of Social Workers;

(11) ((~~The Association for Integrative Psychology~~)) National Association of Alcohol and Drug Addiction Counselors;

(12) ((~~Society for Social Work Leadership in Health Care~~)) National Board for Certified Counselors;

(13) ((~~Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation~~)) Society for Social Work Leadership in Health Care;

(14) ((~~Washington Professional Counselors Association~~)) State Association and National Association for the Treatment of Sexual Abusers;

(15) ((~~State Association and National Association for the Treatment of Sexual Abusers~~)) Substance Abuse and Mental Health Services Administration;

(16) ((~~National Association of Alcohol and Drug Addiction Counselors~~)) Washington Association for Marriage and Family Therapy; ((~~and~~))

(17) Washington Chapter of the National Association of Social Work;

(18) Washington Mental Health Counselors Association;

(19) Washington Professional Counselors Alliance;

(20) Washington State Society for Clinical Social Work; and

(21) Other organizations recognized by the secretary ((~~and included on a list maintained by the department~~)).

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-0295 Continuing education credit for preparing and presenting a lecture or course. (1) A certified counselor or certified adviser who prepares and presents lectures or education that contributes to the professional competence of other counselors or mental health providers may accumulate the same number of continuing educa-

tion hours obtained ((~~for continuing education purposes~~)) by attendees.

(2) The hours for presenting a lecture or education on a specific topic may only be used for continuing education credit once during each reporting period.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-0297 Continuing education documentation for certified counselor or certified adviser. (1) Acceptable continuing education documentation for a certified counselor or certified adviser includes transcripts, signed letters from course instructors, certificate of completion, or other formal certification, as required in chapter 246-12 WAC((~~, Part 7~~)).

(2) The credential holder ((~~must~~)) shall provide documentation ((~~which demonstrates fulfillment~~)) of completing continuing education requirements if requested by the secretary.

AMENDATORY SECTION (Amending WSR 23-23-033, filed 11/3/23, effective 1/1/24)

WAC 246-810-0298 Suicide assessment training standards. (1) Approved qualifying training in suicide assessment, including screening and referral, must be on the department's model list developed in accordance with RCW 43.70.442.

(2) A certified counselor or certified adviser who is an employee of a state or local government employer is exempt from the requirements of this section if they receive a total of at least three hours of training in suicide assessment including screening and referral from their employer every six years.

(3) A certified counselor or certified adviser who is an employee of a licensed or certified behavioral health agency under chapter 71.05 or 71.24 RCW is exempt from the requirements of this section if they receive a total of at least three hours of training in suicide assessment, including screening and referral from their employer every six years.

(4) For purposes of this section, the training may be provided in one three-hour block or shorter training sessions.

(5) A certified counselor or certified adviser that obtained training under the exemptions listed in subsections (2) and (3) of this section may obtain continuing education credit subject to documentation as defined in WAC 246-810-0297.

AMENDATORY SECTION (Amending WSR 23-23-033, filed 11/3/23, effective 1/1/24)

WAC 246-810-0299 Health equity training standards. (1) ((~~Beginning January 1, 2024,~~)) A certified counselor or certified adviser must complete training in health equity as a part of their continuing education requirements. The certified counselor or certified adviser

must complete at least two hours of health equity trainings every four years. The training may be in person or virtual but must meet the course requirements in WAC 246-12-830, including strategies to reduce implicit bias and assess the providers ability to apply health equity concepts into practice.

(2) The hours spent completing training in health equity education count towards the total of 36 hours of continuing education.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-031 Disclosure statement to be provided to clients by certified counselors and certified advisers. (1) Certified counselors and certified advisers must provide a disclosure statement to each client prior to starting a program of treatment.

(2) The following must appear in the certified counselor's or certified adviser's disclosure statement:

(a) ((~~The name of the certified counselor or certified adviser~~)) Their name and the name of their firm, agency, or business, if any((~~.~~))*;*

(b) ((~~The certified counselor's or certified adviser's~~)) Their business address and telephone number((~~.~~))*;*

(c) ((~~The certified counselor's or certified adviser's~~)) Their Washington state credential number((~~.~~))*;*

(d) ((~~The certified counselor's or certified adviser's~~)) Their education, training, and experience((~~.~~))*;*

(e) The name and description of the types of counseling provided ((~~by the certified counselor or certified adviser~~)), including the therapeutic orientation, methods, and techniques employed in their practice, and a list of resources relevant to the therapeutic orientation((~~.~~))*;*

(f) The type and duration of counseling expected, if known at the time of providing the disclosure information((~~.~~))*;*

(g) Fee information, including:

(i) The cost for each counseling session;

(ii) Billing practices, including any advance payments and refunds;

(iii) A statement that clients are not liable for any fees or charges for services rendered prior to receipt of the disclosure statement((~~.~~))*;*

(h) The limits of confidentiality under RCW 18.19.180((~~.~~))*;*

(i) Disclosure of ((~~the certified counselor's or certified adviser's~~)) their supervisory or consultation agreement as defined in WAC 246-810-025((~~.~~))*;*

(j) Disclosure that ((~~the certified counselor or certified adviser is~~)) they are not credentialed to diagnose mental disorders or to conduct psychotherapy as defined in WAC 246-810-010((~~(14).~~))*;*

(k) ((~~All of the following:~~

~~(i)~~)) That counselors practicing counseling for a fee must be credentialed with the department ((~~of health~~)) for the protection of the public health and safety((~~.~~))*;*

((~~(ii)~~)) (l) That credentialing of an individual with the department ((~~of health~~)) does not include a recognition of any practice standards, nor necessarily imply the effectiveness of any treatment((~~.~~))*;*

((~~(iii)~~)) (m) The purpose of ((~~the Counselor Credentialing Act,~~)) chapter 18.19 RCW((~~,~~)) is to:

((~~(A)~~)) (i) Provide protection for public health and safety; and

((~~(B)~~)) (ii) Empower the citizens of the state of Washington by providing a complaint process against those counselors who would commit acts of unprofessional conduct((~~.~~));

((~~(iv)~~)) (n) That clients have the right to choose counselors who best suit their needs and purposes((~~.~~));

((~~(l)~~)) (o) A copy of the acts of unprofessional conduct in RCW 18.130.180 and the name, address, and contact telephone number within the department ((~~of health~~)) for complaints((~~.~~)); and

((~~(m)~~)) (p) Signature and date blocks for the client, and the certified counselor or certified adviser, including an attestation that the client agrees that the required disclosure statement has been provided and that the client has read and understands the information.

(3) Any changes to the disclosure statement form or information requires all current clients to sign the updated form.

AMENDATORY SECTION (Amending WSR 97-17-113, filed 8/20/97, effective 9/20/97)

WAC 246-810-032 Failure to provide client disclosure information. Failure to provide to the client any of the disclosure information as set forth in WAC ((~~246-810-030 and~~)) 246-810-031, and as required by the law shall constitute an act of unprofessional conduct as defined in RCW 18.130.180(7).

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-035 Record requirements. (1) A counselor providing professional services to a client or providing services billed to a third-party ((~~payor~~)) payee, must document services, except as provided in subsection (2) of this section. The documentation must include:

(a) Client name;

(b) The fee arrangement and record of payments;

(c) Dates counseling was received;

(d) Disclosure form, if required by WAC 246-810-031, signed by the counselor and client;

(e) The presenting problem(s), or purpose of counseling;

(f) Notation and results of formal consults, including information obtained from other persons or agencies through a release of information; and

(g) Progress notes sufficient to support responsible clinical practice for the type of theoretical orientation((~~/~~)) or therapy the counselor uses.

(2) If a client requests that no treatment records be kept, and the counselor agrees to the request, the request must be in writing and only the following must be retained:

(a) Client name;

(b) Fee arrangement and record of payments;

(c) Dates counseling was received;

(d) Disclosure form, if required by WAC 246-810-031, signed by the counselor and client; and

(e) Written request that no records be kept.

(3) The counselor may not agree to the request if maintaining records is required by other state or federal law.

(4) All records must be kept ((~~for a period of five years following the last visit. Within this five-year period, all records must be~~)) secured, with properly limited access.

(5) All records must be kept for a period of six years following the last visit. For minor clients, records must be retained for six years after the date they turned 21 years old.

(6) Special provisions must be made for the retention or transferal of active or inactive records and for continuity of services in the event of a counselor's death, incapacitation, or cessation of practice. Such special provisions may be made by having another counselor review records with a client and recommend a course of action; or other appropriate means as determined by the counselor.

((~~(5)~~)) (7) After the ((~~five~~)) six-year retention period, the counselor may dispose of the record. Disposal must be done in a secure and confidential manner that includes:

(a) Shredding;

(b) Deleting, erasing, or reformatting electronic media; ((~~and~~)) or

(c) ((~~Other readable~~)) Rendering unusable or unreadable any other forms of media ((~~that are defaced or rendered unusable or unreadable~~)).

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-045 Requirements for client fees paid in advance. (1) ((~~The practice of collecting fees in advance and refund policies must be included in the disclosure statement to the client before any funds are collected.~~

~~(2)~~)) Counselors who collect fees in advance of the service provided must separate such funds from operating((~~/~~)) or expense funds. ((~~Failure to properly account for such funds may be a violation of the Securities Act, RCW 21.20.005.~~)) The counselor may not spend the funds until the service is provided. Any funds left in the account((~~,~~)) for services not provided must be returned to the client within ((~~thirty~~)) 30 days of the request.

((~~(3)~~)) (2) Room rental fees or similar expenses, for example, as relating to group therapy, are not considered fees paid in advance.

NEW SECTION

WAC 246-810-090 Application process for hypnotherapists. An applicant for a hypnotherapist credential shall submit to the department:

(1) An application on forms provided by the department under RCW 18.19.090;

(2) Applicable fee(s) required under WAC 246-810-990; and

(3) Any additional supporting documentation requested by the department.

AMENDATORY SECTION (Amending WSR 23-07-057, filed 3/9/23, effective 6/1/23)

WAC 246-810-990 Counselors fees and renewal cycle. (1) ((~~Under chapter 246-12 WAC, a counselor must renew their~~)) Credentials in this chapter must be renewed every year on the practitioner's birthday as provided by chapter 246-12 WAC.

(2) Examination and reexamination fees are the responsibility of the applicant ((~~and are paid directly to the testing company~~)).

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnotherapist:	
Application and registration	$155.00
Renewal	$80.00
Late renewal penalty	$75.00
Expired registration reissuance	$75.00
Duplicate registration	$10.00
Verification of registration	$25.00
Certified counselor:	
Application and certification	$680.00
Examination or reexamination	$85.00
Renewal	$800.00
Late renewal penalty	$300.00
Expired credential reissuance	$100.00
Duplicate credential	$10.00
Verification of credential	$25.00
Certified adviser:	
Application and certification	$620.00
Examination or reexamination	$85.00
Renewal	$745.00
Late renewal penalty	$300.00
Expired credential reissuance	$100.00
Duplicate credential	$10.00
Verification of credential	$25.00
((~~Registered~~)) Agency affiliated counselor:	
Application and ((~~registration~~)) credentialing	$175.00
Renewal	$185.00
Late renewal penalty	$95.00
Expired ((~~registration~~)) credential reissuance	$50.00
Duplicate ((~~registration~~)) credential	$10.00
Verification of ((~~registration~~)) credential	$25.00

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-810-040	Requirements to report suspected abuse or neglect of a child or vulnerable adult.
WAC 246-810-049	Sexual misconduct regulations.
WAC 246-810-060	Mandatory reporting.
WAC 246-810-061	Health care institutions.
WAC 246-810-062	Counselor associations or societies.
WAC 246-810-063	Health care service contractors and disability insurance carriers.
WAC 246-810-064	Professional liability carriers.
WAC 246-810-065	Courts.
WAC 246-810-066	State and federal agencies.
WAC 246-810-089	Transitional dates for a registered counselor credential.

WSR 24-22-108
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed November 4, 2024, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-009, 24-08-101, 23-17-105.

Title of Rule and Other Identifying Information: The licensing division is amending WAC 110-300-0106 Training requirements, 110-300-0331 Prohibited behavior, discipline, and physical removal of children, 110-300-0358 Capacity waiver for family home providers, 110-301-0106 Training requirements, 110-301-0331 Prohibited behavior, discipline, and physical removal of children, and 110-302-0331 Prohibited behavior, discipline, and physical removal of children.

Hearing Location(s): December 10, 2024, telephonic. Comments can be made by calling 360-972-5385 and leaving a voicemail that includes the comment, emailing the rules coordinator, or mailing comments to the department of children, youth, and families' (DCYF) physical mailing address. All comments must be received by the date and time listed below.

Date of Intended Adoption: December 11, 2024.

Submit Written Comments to: DCYF rules coordinator, dcyf.rulescoordinator@dcyf.wa.gov, https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, beginning November 11, 2024, at 8:00 a.m., by December 10, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by December 3, 2024.

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

WAC 110-300-0106 and 110-301-0106: To update health and safety training rules and requirements.

WAC 110-300-0358: To align with state building code WAC 51-51-0331, which limits the capacity of a family home child care to no more than 16 children.

WAC 110-300-0331, 110-301-0331, and 110-302-0331: Informing providers how to prevent harm to children.

Reasons Supporting Proposal: WAC 110-300-0106 and 110-301-0106: The language is being amended to allow a three-month time frame to obtain training requirements for child care and early learning programs, specifically including first-aid and CPR certification.

WAC 110-300-0358 will allow DCYF to: Issue capacity waivers to allow no more than 16 children in a family home child care program, and only after meeting all requirements; require better coordination between DCYF, child care providers, and local building authorities; and revise requirements for emergency preparedness.

WAC 110-300-0331, 110-301-0331, and 110-302-0331: The language of the WAC does not clearly forbid child care providers from harming children. This rule requires an immediate and permanent change to the WAC chapters to protect children from harm.

Statutory Authority for Adoption: RCW 43.216.692, chapter 42.56 RCW; RCW 43.215.070, 43.215.201, 43.216.055, 43.216.065 and 43.216.742, chapter 43.216 RCW; RCW 43.216.020, 43.216.250, chapter 42.56 RCW, 42 U.S.C. §§ 9857 – 9858r, and 45 C.F.R. Part 98.

Statute Being Implemented: RCW 43.216.692, chapter 42.56 RCW; RCW 43.215.070, 43.215.201, 43.216.055, 43.216.065 and 43.216.742, chapter 43.216 RCW; RCW 43.216.020, 43.216.250, chapter 42.56 RCW, 42 U.S.C. §§ 9857 – 9858r, and 45 C.F.R. Part 98.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Radcliffe, 253-341-2325; Implementation and Enforcement: DCYF, statewide.

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. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 4, 2024
Brenda Villarreal
Rules Coordinator

OTS-5018.4

AMENDATORY SECTION (Amending WSR 20-11-026, filed 5/13/20, effective 6/13/20)

WAC 110-300-0106 Training requirements. (1) Early learning providers licensed, working, or volunteering in an early learning program ((~~before the date this section becomes effective~~)) must complete the applicable training requirements of subsections (4) through (11) of this section within three months of the date ((~~this section becomes effective~~)) of hire and prior to working in an unsupervised capacity with children unless otherwise indicated. State or federal rules may require health and safety training described under this chapter to be renewed annually. ((~~Early learning providers hired after the date this section becomes effective must complete the training requirements of subsections (4) through (10) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.~~))

(2) License applicants and early learning providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and aides must

complete the child care basics training as approved or offered by the department:

(a) Prior to being granted a license; or

(b) Prior to working unsupervised with children((~~; or~~

~~(c) Within three months of the date this section becomes effective if already employed or being promoted to a new role~~)).

(4) Early learning providers must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) Early learning providers must complete the emergency preparedness training as approved or offered by the department (applicable to the early learning program where they work or volunteer) according to subsection (1) of this section.

(6) Early learning providers licensed to care for infants must complete the prevention and identifying shaken baby syndrome/abuse head trauma training as approved or offered by the department according to subsection (1) of this section.

(7) Early learning providers must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(8) License applicants and early learning providers licensed to care for infants must complete the safe sleep training as approved or offered by the department. This training must be completed annually and:

(a) Prior to being licensed; or

(b) Prior to caring for infants((~~; or~~

~~(c) According to subsection (1) of this section~~)).

(9) Family home licensees, center directors, assistant directors, program supervisors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(10) Early learning providers who directly care for children must complete the prevention of exposure to blood and body fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(11) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and any other early learning providers counted in staff-to-child ratio, or who could potentially be counted in ratio, must be trained in pediatric first-aid and age-appropriate cardiopulmonary resuscitation (CPR).

(a) At least one early learning provider counted in staff-to-child ratio for each group of children must have a current pediatric first-aid and age-appropriate CPR certificate.

(b) Proof of training can be shown with a certification card, certificate, or instructor letter.

((~~(b)~~)) (c) The pediatric first-aid and age-appropriate CPR training and certification must:

(i) ((~~Be delivered in person and~~)) Include a live, hands-on component for pediatric first-aid and age-appropriate CPR demonstrated in front of an instructor either in-person or remotely who is certified by the American Red Cross, American Heart Association, ((~~American~~

~~Safety and~~)) Health and Safety Institute, or other nationally recognized certification program;

(ii) Include child and adult first-aid ((~~and~~));

(iii) Include pediatric and adult CPR; and

((~~(iii) Infant first-aid and~~)) (iv) Include infant CPR, if applicable.

(12) Early learning providers who prepare or serve food to children at an early learning program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

(a) Be obtained through the local health jurisdiction, in person or online; and

(b) Be renewed prior to expiring.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0331 Prohibited behavior, discipline, and physical ((~~removal~~)) separation of children. (1) An early learning provider ((~~must take steps to prevent and, once aware of, must not tolerate~~)), staff member, or household member is prohibited from using the following behaviors and discipline of children:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) ((~~Prevent~~)) Sexual abuse, pursuant to RCW 26.44.020;

(g) Preventing a child from or ((~~punish~~)) punishing a child for exercising religious rights; ((~~or~~

~~(g) Anyone to:~~

~~(i) Restrict~~)) (h) Restricting a child's breathing;

((~~(ii) Bind or restrict~~)) (i) Binding or restricting a child's movement unless permitted under WAC 110-300-0335;

((~~(iii) Tape~~)) (j) Taping a child's nose, mouth, or other body part;

((~~(iv) Deprive~~)) (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

((~~(v) Force~~)) (l) Forcing a child to ingest something as punishment such as hot sauce or soap;

((~~(vi) Interfere~~)) (m) Interfering with a child's ability to take care of ((~~his or her~~)) their own hygiene and toileting needs;

((~~(vii) Use~~)) (n) Using toilet learning or training methods that punish, demean, or humiliate a child;

((~~(viii) Withhold~~)) (o) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for ((~~himself or herself~~)) themselves;

((~~(ix) Expose~~)) (p) Exposing a child to extreme temperatures as punishment;

((~~(x) Demand~~)) (q) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

((~~(xi) Place~~)) (r) Placing the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

((~~(xii) Use~~)) (s) Using high chairs, car seats, or other confining space or equipment to punish a child or restrict movement.

(2) An early learning provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) An early learning provider may separate a preschool age or school age child from other children when that child needs to regain control of ((~~him or herself~~)) themself.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, center director, assistant director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, an early learning provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of ((~~his or her~~)) their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If an early learning provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, center director, assistant director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical removal of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk ((~~him or her~~)) the child away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and remove ((~~him or her~~)) the child to a quiet place where the child cannot hurt themselves or others.

AMENDATORY SECTION (Amending WSR 22-03-016, filed 1/7/22, effective 2/7/22)

WAC 110-300-0358 Capacity waiver for family home providers. (1) Pursuant to ((~~section 313, chapter 199, Laws of 2021~~)) RCW 43.216.692, the department may waive the limit established in RCW 43.216.010 (1)(c) that restricts family home providers from serving more than 12 children.

(2) ((~~Family home~~)) Providers must apply to the department in writing to request waivers to serve more than 12 but not more than 16 children. To apply in writing, family home providers must use the process prescribed by the department.

(3) The department will consider the following criteria to determine whether to grant, continue, or rescind waivers to family home providers' total capacity of 12 children:

(a) **The licensee's years' of experience providing early learning services.** A ((~~family home~~)) provider must have at least three years' of experience to be eligible for a waiver under this section. To satisfy the three years' experience requirement, the family home provider must have served for a total of three years or more in one or more of the following child care roles: Center director, program supervisor, family home licensee, or other similar role in a child care setting.

(b) **The providers licensing history.** The licensee must be operating under a full, nonexpiring family home license to be approved for a waiver under this section.

(c) **Available square footage:**

(i) There must be at least 35 square feet of licensed, accessible indoor space for each child included in the total capacity.

(ii) There must be an additional 15 square feet of licensed, accessible indoor space for each ((~~infant or toddler~~)) child under the age of 24 months included in the total capacity.

(iii) There must be at least 75 square feet of licensed, accessible outdoor space for each child included in the total capacity. Alternatively, a family home provider may develop a plan to rotate groups of children to play outdoors or a department-approved plan to use an off-site play area.

((~~(c)~~)) (d) **Staffing qualifications when operating with the 13 to 16 children present:**

(i) The licensee must have an ECE short certificate or equivalent, as approved and verified in the electronic workforce registry by the department.

(ii) When the licensee is not on-site, they must designate a person on-site who meets the requirements of this subsection to manage the early learning program.

(iii) Additionally, at least one staff person or volunteer working on-site must have an ECE initial certificate or equivalent.

(e) **Staff-to-child ratios and age group limits.** When operating with 13 ((~~or more children. When the licensee is not on-site, they must designate a person on-site who meets the requirements of this subsection to manage the early learning program.~~

~~(ii) In addition to the requirements in (c)(i) of this subsection, at least one staff person or volunteer working on-site must have an ECE initial certificate or equivalent when operating with 13 or more children.~~

~~(d) **Staff-to-child ratios and age group limits:**~~

~~(i) A family home provider licensed to care for children ages~~)) to 16 children:

A provider licensed to care for children ages:

(i) Two years old and above must not exceed a maximum staff-to-child ratio of 1:8 ((~~when operating with 13 or more children.~~));

(ii) ((~~A family home provider licensed to care for children~~)) Under two years of age must not exceed a maximum staff-to-child ratio of 1:6 ((~~when operating with 13 or more children.~~

~~(iii) A family home provider licensed to care for children under two years of age may have up to six children under two years of age~~)); and

(iii) Under two years of age may have up to six children attend at any one time under the following conditions:

(A) Five children under two years of age may attend at any one time if at least one of those children can walk independently((~~;~~)).

(B) Six children under two years of age may attend at any one time if at least two of those children can walk independently.

((~~(iv) A family home provider licensed to care for children under two years of age must not have more than six children under two years of age attend at any one time;~~

~~(e)~~)) (f) **The intended use of licensed space.** Plans to use the space must include details regarding napping, supervision, and diapering, if applicable. A waiver granted under this section does not allow a licensee to provide overnight care for more than 12 children.

((~~(f)~~)) (g) **The emergency preparedness plan.** ((~~The emergency plan must account for the total capacity of children requested.~~

~~(g) **The number of working, accessible toilets and sinks.**~~)) Licensees granted a waiver under this section must follow:

(i) WAC 110-300-0470.

(ii) The emergency plan must account for the total capacity of children requested.

(iii) The early learning program space must have emergency lighting for interior stairs that automatically turns on when electrical power goes out. Such emergency lighting may include, but is not limited to, battery operated overhead lights.

(iv) Any kitchen within the early learning program space or used by and connected to the early learning program space must have:

(A) At least one fire extinguisher or one can of fire extinguisher aerosol spray; and

(B) A heat detector.

(v) The early learning program staff must be able to demonstrate, at least annually to licensing staff, the ability to evacuate all early learning staff and children from inside the home to a safe location outside the home in two minutes or less.

(h) **The number of working, accessible toilets and sinks.**

(i) There must be a ratio of at least one working flush toilet and one handwashing sink for every 15 household members, staff, and requested capacity of children.

((~~There must be a ratio of at least one working flush toilet and one handwashing sink for every 15 household members, staff, and requested capacity of children.~~))

(A) A child in diapers does not count for purposes of toilet calculations until the child begins toilet training.

(B) Staff persons and household members may use toilets and handwashing sinks located outside of licensed space on the premises.

(ii) A ((~~family home~~)) provider whose facility relies on a private septic system must provide to the department verification from the local health jurisdiction the system can accommodate the total number of household members, staff, and requested capacity of children.

((~~(h) **The provider's licensing history.**~~))

(i) **The number and variety of early learning materials.** For the total capacity requested there must be a sufficient number and variety of materials to engage children in the early learning program.

(j) **The total capacity the provider is requesting.**

(4) A waiver granted under this section may be time specific or may remain in effect for as long as the family home provider continues to comply with the waiver's conditions. If the waiver is time-limited, the provider must not exceed the time frame established by the department.

(5) Before the ((~~family home~~)) provider ((~~implements~~)) begins providing care for 13 to 16 children pursuant to a waiver under this section((~~,~~)):

(a) The waiver must be approved in writing by the department secretary or the secretary's designee; and

(b) The licensee must provide documentation to the department from the city or county within which the early learning program operates (or a third party approved by the city or county) that states the early learning program space and structures meet local building codes and the requirements of the department's Family Home Child Capacity Waiver inspection checklist.

(6) A denial of a waiver request is not an enforcement action as described in RCW 43.216.010 and is not subject to an appeal by a provider.

(7) The department may rescind a waiver granted under this section at any time including, but not limited to, the following reasons:

(a) The provider no longer meets the criteria described in this section;

(b) The department issues an enforcement action against the provider;

(c) The department and the provider enter into a facility licensing compliance agreement;

(d) The department determines that continued operation under the waiver does or may harm the health, safety, or well-being of enrolled children;

(e) A licensing rule that was considered in granting the waiver is repealed or amended; or

(f) A license is transferred pursuant to RCW 43.216.305 and WAC 110-300-0011 and the conditions of the waiver can no longer be met.

(8) A family home provider granted a waiver under this section must inform the parents and guardians of enrolled children of the approved waiver:

(a) Prior to operating with 13 ((~~or more~~)) to 16 children for the first time; and

(b) When a new child or new family is enrolled.

OTS-5019.3

AMENDATORY SECTION (Amending WSR 21-10-035, filed 4/27/21, effective 6/1/21)

WAC 110-301-0106 Training requirements. (1) A school-age provider licensed, working, or volunteering in a school-age program ((~~before the date this section becomes effective~~)) must complete the applicable training requirements of subsections (3) through (9) of this section within three months of the date ((~~this section becomes effective~~)) of hire and prior to working in an unsupervised capacity with children unless otherwise indicated. State or federal rules may re-

quire health and safety training described under this chapter to be renewed annually. ((~~A school-age provider hired after the date this section becomes effective must complete the training requirements of subsections (4) through (8) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.~~))

(2) License applicants and school-age providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, program directors, site directors, lead teachers, and assistant teachers must complete the school-age basics training as approved or offered by the department:

(a) Prior to being granted a license; or

(b) Prior to working unsupervised with children((~~; or~~

~~(c) Within three months of the date this section becomes effective if already employed or being promoted to a new role~~)).

(4) A school-age provider must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) A school-age provider must complete the emergency preparedness training as approved or offered by the department according to subsection (1) of this section.

(6) A school-age provider must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(7) Program directors, site directors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(8) A school-age provider who directly cares for children must complete the prevention of exposure to blood and bodily fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(9) Program directors, site directors, lead teachers, assistant teachers and any other school-age provider counted in staff-to-child ratio, or who could potentially be counted in ratio, must be trained in pediatric first-aid and age-appropriate cardiopulmonary resuscitation (CPR).

(a) At least one school-age provider counted in staff-to-child ratio for each group of children must have a current pediatric first-aid and age-appropriate CPR certificate.

(b) Proof of training can be shown with a certification card, certificate, or instructor letter.

((~~(b)~~)) (c) The pediatric first-aid and age-appropriate CPR training and certification must:

(i) ((~~Be delivered in person and include~~)) A live hands-on component for first aid and CPR demonstrated in front of an instructor either in-person or remotely who is certified by the American Red Cross, American Heart Association, ((~~American Safety and~~)) Health and Safety Institute, or other nationally recognized certification program; ((~~and~~))

(ii) ((~~Include child~~)) Pediatric and adult first aid; and

(iii) Pediatric and adult CPR.

(10) A school-age provider who prepares or serves food to children at a school-age program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

(a) Be obtained through the local health jurisdiction, in-person or online; and

(b) Be renewed prior to expiring.

AMENDATORY SECTION (Amending WSR 21-10-035, filed 4/27/21, effective 6/1/21)

WAC 110-301-0331 Prohibited behavior, discipline, and physical ((~~removal~~)) separation of children. (1) A school-age provider must take steps to prevent and, once aware of, must not tolerate:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) ((~~Prevent~~)) Sexual abuse, pursuant to RCW 26.44.020;

(g) Preventing a child from or ((~~punish~~)) punishing a child for exercising religious rights; ((~~or~~

~~(g) Anyone to:~~

~~(i) Restrict~~)) (h) Restricting a child's breathing;

((~~(ii) Bind or restrict~~)) (i) Binding or restricting a child's movement unless permitted under WAC 110-301-0335;

((~~(iii) Tape~~)) (j) Taping a child's nose, mouth, or other body part;

((~~(iv) Deprive~~)) (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

((~~(v) Force~~)) (l) Forcing a child to ingest something as punishment such as hot sauce or soap;

((~~(vi) Interfere~~)) (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;

((~~(vii) Withhold~~)) (n) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

((~~(viii) Expose~~)) (o) Exposing a child to extreme temperatures as punishment;

((~~(ix) Demand~~)) (p) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

((~~(x) Place~~)) (q) Placing the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

((~~(xi) Use~~)) (r) Using a confining space or equipment to punish a child or restrict movement.

(2) A school-age provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) A school-age provider may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, program director, site director, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, a school-age provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If a school-age provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, program director, site director, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child.

OTS-5958.1

AMENDATORY SECTION (Amending WSR 23-10-059, filed 5/1/23, effective 6/1/23)

WAC 110-302-0331 Prohibited behavior, discipline, and physical ((~~removal~~)) separation of children. (1) ONB providers must take steps to prevent and, once aware of, must not tolerate:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) ((~~Prevent~~)) Sexual abuse, pursuant to RCW 26.44.030 and 26.44.020;

(g) Preventing a child from or ((~~punish~~)) punishing a child for exercising religious rights; ((~~or~~

~~(g) Anyone to:~~

~~(i) Restrict~~)) (h) Restricting a child's breathing;

((~~(ii) Bind or restrict~~)) (i) Binding or restricting a child's movement unless permitted under WAC 110-302-0335;

((~~(iii) Tape~~)) (j) Taping a child's nose, mouth, or other body part;

((~~(iv) Deprive~~)) (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

((~~(v) Force~~)) (l) Forcing a child to ingest something as punishment such as hot sauce or soap;

((~~(vi) Interfere~~)) (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;

((~~(vii) Use~~)) (n) Using toilet learning or training methods that punish, demean, or humiliate a child;

((~~(viii) Withhold~~)) (o) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

((~~(ix) Expose~~)) (p) Exposing a child to extreme temperatures as punishment;

((~~(x) Demand~~)) (q) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

((~~(xi) Place~~)) (r) Placing the separated child in a closet, bathroom, locked room, out of visual range in an approved tent, cabin, yurt or other structure; or in an unlicensed space; and

((~~(xii) Use~~)) (s) Using confining space or equipment to punish a child or restrict movement.

(2) ONB providers must supervise to protect children from the harmful acts of other children. ONB providers must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) ONB providers may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, director, program director, assistant director, site director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, ONB providers must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If ONB providers follow all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, director, program director, assistant director, site director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical

((~~removal~~)) separation of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk them away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and ((~~remove~~)) separate them to a quiet place where the child cannot hurt themselves or others.

WSR 24-22-119
PROPOSED RULES
PENINSULA COLLEGE
[Filed November 5, 2024, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-012.

Title of Rule and Other Identifying Information: Code of student rights and responsibilities.

Hearing Location(s): On December 10, 2024, at 2:00 p.m., at Peninsula College, 1502 East Lauridsen Boulevard, Port Angeles, WA 98382 [98362], Cornaby Center, A-12.

Date of Intended Adoption: December 17, 2024.

Submit Written Comments to: Trisha Haggerty, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, email thaggerty@pencol.edu, by December 4, 2024, 5:00 p.m. PST.

Assistance for Persons with Disabilities: Contact Garrett Thompson, phone 360-417-6373, email ssd@pencol.edu, by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. An emergency update was filed to be compliant with federal regulations. Chapter 132A-126 WAC was repealed in its entirety and new chapter 132A-127 WAC was submitted.

These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Reasons Supporting Proposal: Required by federal law to update. Clarification of Title IX and conduct processes for students.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: 34 C.F.R. Part 106.

Rule is necessary because of federal law, 34 C.F.R. Part 106.

Name of Proponent: Peninsula College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Krista Francis, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, 360-417-6225.

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(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 5, 2024
Trisha Haggerty
Rules Coordinator

OTS-5713.3

Chapter 132A-127 WAC
PENINSULA COLLEGE STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 132A-127-005 Authority. The Peninsula College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in the chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132A-127-010 Statement of jurisdiction. (1) The Peninsula College student rights and responsibilities shall apply to conduct by students or student groups that occurs:

(a) On college premises;

(b) At or in connection with college programs or activities; or

(c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132A-127-015 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and student affairs, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sex discrimination.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132A-127-020 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) **"Business day"** means a weekday, excluding weekends and college holidays.

(2) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) **"Complainant"** means the following individuals who are alleged to have been subjected to conduct that would constitute discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(4) **"Conduct review officer"** is the vice president of student services or other college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(5) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

(6) **"Disciplinary appeal"** is the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Academic dishonesty and disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the college are heard by the student conduct appeals committee. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

(7) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email or first class mail to the specified college official's office or college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) **"Instructional day"** is a day identified in the academic calendar and quarterly schedule as a classroom instruction day.

(9) **"Pregnancy or related conditions"** means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(10) **"President"** is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(11) **"Program"** or **"programs and activities"** means all operations of the college.

(12) **"Relevant"** means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(13) **"Remedies"** means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(14) **"Respondent"** is a student who is alleged to have violated the student conduct code.

(15) **"Service"** is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date that the document is emailed and deposited in the mail, whichever is first.

(16) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered a "student" for purposes of this chapter.

(17) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(18) **"Student employee"** means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(19) **"Student group"** is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(20) **"Supportive measures"** measures means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(21) **"Title IX coordinator"** is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

NEW SECTION

WAC 132A-127-025 Prohibited student conduct. The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) **Academic dishonesty.** Any act of academic dishonesty, including:

(a) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writings, work of another person, or artificial intelligence, in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication - Falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

(4) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee;

(c) Tampering with an election conducted by or for college students; or

(d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(6) **Cannabis, drug, and tobacco violations.**

(a) Cannabis. The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive com-

pounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) Drugs. The use, possession, production, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(c) Tobacco, electronic cigarettes and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(7) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

(10) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(11) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media, and electronic communications not otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(13) **Hazing.** Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing.

(14) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(15) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(16) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(17) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies.

(18) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) **Incest** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(20) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(21) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.

(22) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus and during college programming and activities, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

NEW SECTION

WAC 132A-127-030 Corrective action, disciplinary sanctions, terms and conditions. (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon

college sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.

(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the suspension is imposed.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the dismissal is imposed.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(c) **Not in good standing.** A student deemed "not in good standing" with the college shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with

recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(f) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

NEW SECTION

WAC 132A-127-035 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(2) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(3) Any student group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(4) Any student group found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

NEW SECTION

WAC 132A-127-040 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to at-

tend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

(11) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132A-127-030; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

NEW SECTION

WAC 132A-127-045 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132A-127-040(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The student conduct committee shall hear appeals from:

(a) Disciplinary suspensions in excess of 10 instructional days;
(b) Dismissals;
(c) Sex discrimination, including sex-based harassment cases;
(d) Academic dishonesty cases; and
(e) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

NEW SECTION

WAC 132A-127-050 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132A-127-055 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(2) The president shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be re-

ferred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132A-127-060 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president or designee;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee.

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole and exclusive discretion, for sex discrimination or other conduct cases, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

NEW SECTION

WAC 132A-127-065 Student conduct committee—Prehearing. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

(a) A copy of the student conduct code;

(b) The basis for jurisdiction;

(c) The alleged violation(s);

(d) A summary of facts underlying the allegations;

(e) The range of possible sanctions that may be imposed; and

(f) A statement that retaliation is prohibited.

(3) The chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The chair may provide to the committee members in advance of the hearing copies of:

(a) The student conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so; however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.

(10) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney at their expense, to assist them during the hearing; and

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing. The college shall not pay for another party's attorney.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must, conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

NEW SECTION

WAC 132A-127-070 Student conduct committee—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions

deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

NEW SECTION

WAC 132A-127-075 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the committee wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 20 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's decision shall also include a determination of appropriate sanctions, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of its decision to be served on the parties and their attorney, if any. The notice will inform all parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

NEW SECTION

WAC 132A-127-080 Student conduct committee—Review of initial decision. (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely

appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

(7) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132A-127-085 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law(s) allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

OTS-5712.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WSR 24-22-125
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 5, 2024, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-125.

Title of Rule and Other Identifying Information: WAC 308-77-102 Appeals and 308-77-114 Unauthorized use of dyed diesel; new WAC 308-78-102 Appeals; new chapter 308-79A WAC, Fuel tax and proration—Investigation procedures; and WAC 308-91-172 Appeals.

Hearing Location(s): On December 11, 2024, at 2:00 p.m., Meeting ID 235 657 432 848, Passcode nwth5d; or dial in by phone +1 564-999-2000,,140744215# United States, Olympia, Phone conference ID 140 744 215#. If you are having trouble accessing the virtual meeting, please call 360-902-3486 at the time of the hearing to request assistance. Please email rulescoordinator@dol.wa.gov if you would like to request an interpreter, or other accommodations, at least one week in advance of the public hearing.

PLEASE NOTE: Hearing participants are encouraged to attend in person or be prepared to use the telephonic option (call in) if they experience technical difficulties. In-person attendance will take place at the Black Lake Department of Licensing, 405 Black Lake Boulevard, Olympia, WA 98502, in Building 2, Room 2108.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98501, email rulescoordinator@dol.wa.gov, beginning November 6, 2024, by December 11, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, 360-902-3846, email rulescoordinator@dol.wa.gov by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules implement the fuel tax discovery team, by defining records request parameters and other investigation requirements for licensees under chapters 46.87, 82.38, and 82.42 RCW. The rules reflect changes to dyed diesel penalties by allowing assessment based on storage capacity and adding repeater penalties for violations within a five-year period. The rules make several technical changes: Verbiage-only change by removing "informal hearing" for "Review by Department," and adding an appeals chapter under aircraft fuel WAC.

Reasons Supporting Proposal: The proposed change implements HB 1964, passed during the 2024 legislative session with an effective date of July 1, 2024. HB 1964 removes informal hearing verbiage from RCW, establishes the prorate fuel tax discovery team at RCW 82.38.390, and changes dyed diesel assessments.

Statutory Authority for Adoption: RCW 82.38.260 Administration and enforcement, 82.41.120 Implementing rules required, and 82.42.130 Administration and enforcement.

Statute Being Implemented: RCW 46.87.080 Credentials—Design, procedures—Issuance, denial, suspension, revocation, 82.38.072 Dyed special fuel—Penalties, 82.38.120 Issuance of license—Refusal, suspension, revocation, 82.38.170 Civil and statutory penalties and interest—Deficiency assessments, 82.38.390 Prorate and fuel tax discovery team, 82.42.118 Civil and statutory penalties and interest—Deficiency assessments, and 82.42.210 Denial—Refusal—Suspension—Revocation.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Debbie Sanders, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1481; Implementation: Lynn Briscoe, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-480-1717; and Enforcement: JD Smith, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 564-464-5740.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the department of licensing is not imposing additional costs. The rules do not create a new filing or reporting requirement for existing licensees that is not already established in law

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.

Scope of exemption for rule proposal:

Is fully exempt; and is not exempt.

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. A cost-benefit analysis is not required because the department of licensing is not imposing additional costs. The rules do not create a new filing or reporting requirement for existing licensees that is not already established in law.

November 5, 2024
Ellis Starrett
Rules and Policy Manager

OTS-5964.1

AMENDATORY SECTION (Amending WSR 16-13-049, filed 6/9/16, effective 7/10/16)

WAC 308-77-102 Appeals. (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, or interest may contest the notice by petitioning the department for ((~~an informal hearing in lieu~~)) a department review instead of proceeding directly to a formal hearing. This written petition must be received by the department within ((~~thirty~~)) 30 days of the mailing date of the notice of assessment and list the specific reasons for reassessment. Include the amount of tax, interest, or penalties believed to be due.

(2) **What happens after the department receives the petition for ((~~an informal hearing~~)) a department review?** Upon receipt of a petition for ((~~an informal hearing~~)) a department review, the department will establish the time and place for the ((~~hearing~~)) review and notify you by mail or email at least ((~~ten~~)) 10 days prior to the scheduled date. If ((~~you are~~)) the petitioner is unable to attend the

((~~hearing~~)) review on the date or time scheduled, ((~~you~~)) they may request that the department reschedule the ((~~hearing~~)) review.

(3) **What happens if I fail to appear for my ((~~informal hearing~~)) department review without prior notification?** Failure to appear may result in the loss of your ((~~informal administrative~~)) department review appeal rights.

(4) **What happens following my ((~~informal hearing~~)) department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's ((~~informal hearing~~)) review determination?** ((~~You may,~~)) Within ((~~thirty~~)) 30 days after the date of the mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination you feel are in error and list the reasons for believing the decision should be amended. ((~~The department will establish a time and place for a formal hearing and give you at least ten days' notice.~~))

(6) **When does my reassessment become final?** The department's decision ((~~of the department upon a petition~~)) for reassessment ((~~shall~~)) becomes final, due and payable ((~~thirty~~)) 30 days after service ((~~upon you unless you appeal~~)) unless further appealed.

OTS-5965.1

AMENDATORY SECTION (Amending WSR 16-13-049, filed 6/9/16, effective 7/10/16)

WAC 308-77-114 Unauthorized use of dyed diesel. (1) **What is the minimum dye concentration allowed for on-road use?** None. The department may assess on any dye concentration found in licensed vehicles, vehicles required to be licensed, or in bulk storage tanks used to fuel licensed or required to be licensed vehicles.

(2) **Who can be assessed a penalty for unlawful use of dyed diesel or dyed biodiesel?**

(a) The operator of the vehicle;

(b) The registered owners of the vehicle;

(c) Any person responsible for the operation, maintenance, or fueling of the vehicle.

(3) **If dyed diesel or dyed biodiesel is discovered in the fuel supply tanks of a vehicle, when must the fuel be removed?** The dyed fuel must be removed from the vehicles within ((~~twenty-four~~)) 24 hours from the time of discovery. Detection of dyed fuel in the same vehicles after the ((~~twenty-four~~)) 24-hour period will be treated as a separate violation.

(4) **Will I be assessed penalties for dyed fuel in bulk storage tanks?** Yes, if any dyed fuel from the bulk storage tanks has been used for unlawful purposes.

(5) **How ((~~is~~)) are the dyed diesel fuel ((~~in a bulk storage tank~~)) penalties assessed?** ((~~The assessment is based on the capacity or estimated quantity of dyed fuel in the bulk storage tanks without regard to how this fuel will be used. A review by the Department or Appeal may be requested to provide evidence supporting a lower quanti-~~

~~ty of dyed special fuel within bulk storage in violation.~~)) Dyed diesel found in the fuel supply tank of a vehicle required to be licensed will be penalized $10.00 for each gallon placed in the supply tank or $1,000.00 whichever is greater.

Dyed diesel found in bulk storage tanks when used for unlawful purposes will be penalized $10.00 per gallon based on the capacity of the tank or $1,000.00 whichever is greater.

(6) **What if I refuse the department or authorized representative access to inspect the vehicles or bulk storage tanks?** The penalty in RCW 82.38.072(2) will be calculated on the capacity of the bulk storage tanks and the number of vehicles subject to the refusal.

(7) **Are there additional penalties for separate or repeated dyed diesel violations?** Yes. Any separate violation of unlawful use of dyed diesel within a five-year period increases with each repeat violation. Any violation for either, or both the fuel supply tank of a motor vehicle and bulk storage tank are included in the repeat violation assessment.

(8) **How are repeat violation assessments calculated?** Each separate violation is multiplied by the prior number of violations, plus one.

OTS-5969.1

NEW SECTION

WAC 308-78-102 Appeals. (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, or interest may contest the notice by petitioning the department for a department review instead of proceeding directly to a formal hearing. This written petition must be received by the department within 30 days of the mailing date of the notice of assessment and list the specific reasons for reassessment. Include the amount of tax, interest, or penalties believed to be due.

(2) **What happens after the department receives the petition for a department review?** Upon receipt of a petition for a department review, the department will establish the time and place for the review and notify you by mail at least 10 days prior to the scheduled date. If the petitioner is unable to attend the review on the date or time scheduled, they may request that the department reschedule the review.

(3) **What happens if I fail to appear for my department review without prior notification?** Failure to appear may result in the loss of your department review appeal rights.

(4) **What happens following my department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's review determination?** Within 30 days after the date of the mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination you feel are in error and list the reasons for believing the decision should be amended.

(6) **When does my reassessment become final?** The department's decision for reassessment becomes final, due, and payable 30 days after service unless further appealed.

OTS-5970.1

Chapter 308-79A WAC
FUEL TAX AND PRORATION—INVESTIGATION PROCEDURES

NEW SECTION

WAC 308-79A-010 Introduction. (1) Chapters 46.87, 82.38, and 82.42 RCW establish the department's authority for ensuring that all statutory requirements related to fuel transactions, licensure, and/or proportional registration are met and that tax obligations are reported to the state accurately and timely. The department is also responsible for ensuring that all fuel taxes and fees are collected appropriately.

(2) Persons must cooperate with the department during investigations conducted to confirm compliance with statutory requirements.

(3) These rules are designed to promote efficiency and consistency in conducting investigations and to give persons notice of what is required of them with respect to investigations and producing records to the department.

NEW SECTION

WAC 308-79A-020 Records. (1) Pursuant to chapters 46.87, 82.38, and 82.42 RCW, persons must comply with department requests to inspect any record or document related to fuel transactions, licensure, and/or proportional registration.

(2) Persons must comply with department requests to examine items such as storage facilities, equipment, books, papers, correspondence, memoranda, agreements, or other documents and records which are deemed by the department to be relevant or material to the investigation. The department will make these requests during normal business hours, or during the hours of an appointment agreed to by the parties involved.

(3) It is unlawful for a person to refuse to provide books, records, etc., if requested by the department.

NEW SECTION

WAC 308-79A-030 Investigation. (1) During an investigation, persons may be required to provide records or written statements and/or explanations relating to any potential violations.

(2) The department may administer oaths and affirmations, subpoena witnesses, compel their attendance, and take evidence.

(3) All requests will be issued by an authorized representative, such as investigators, auditors, program staff, or other designee.

(4) Requests for records, documents or detailed explanations shall be in writing, by regular mail, facsimile, electronic mail, or in person pursuant to an investigation.

(5) Persons are advised that failure to cooperate or refusal to permit access may result in further action as authorized by statute or rule, and may include civil or criminal penalties.

OTS-5966.1

AMENDATORY SECTION (Amending WSR 16-03-071, filed 1/19/16, effective 2/19/16)

WAC 308-91-172 Appeals. (1) **What are the appeal procedures?** Any person issued a notice of assessment for taxes, fees, penalties or interest who chooses to appeal the notice, may petition the department for ((~~an informal hearing~~)) a department review instead of proceeding directly to a formal hearing. A petition for a ((~~hearing~~)) review must be in writing and must be received by the department within ((~~thirty~~)) 30 days ((~~after~~)) of the ((~~receipt~~)) mailing date of the notice of assessment. The appeal must include the specific reasons why reassessment is wanted and the amount of tax, fees, penalties or interest believed to be due.

(2) **What happens after the department receives the request for ((~~an informal hearing~~)) a department review?** The department will establish the time and place for the ((~~hearing~~)) review and notify the petitioner by mail or email at least ((~~ten~~)) 10 days prior to the scheduled date. If the petitioner is unable to attend the ((~~hearing~~)) review on the date or time scheduled, they may request the department to reschedule the ((~~hearing. The petitioner may appear in person or a representative authorized to present the case~~)) review.

(3) **What happens if I fail to appear for my ((~~hearing~~)) department review without prior notification?** Failure may result in the loss of your ((~~administrative~~)) department review appeal rights.

(4) **What happens following my ((~~informal hearing~~)) department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's ((~~informal hearing~~)) review determination?** Within thirty days after the date of mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination that the petitioner believes are in error and provide the reasons the decision should be amended. ((~~The department will establish a time and place for a formal hearing within at least ten days notice.~~))

(6) **When does my reassessment become final?** The department's decision for reassessment becomes final, due, and payable ((~~thirty~~)) 30 days after service unless further appealed.

WSR 24-22-126
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 5, 2024, 12:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-082.

Title of Rule and Other Identifying Information: Creating a new chapter in Title 308 WAC to define business rules, guidelines, and the process for conducting administrative reviews and interviews.

Hearing Location(s): On December 11, 2024, at 10:00 a.m., via Microsoft Teams, Meeting ID 248 845 176 769, Passcode s2n6ec; or dial in by phone +1 564-999-2000,,650370153# United States, Olympia, 833-22-1218,,650370153# United States (Toll-free), Phone Conference ID 650 370 153#. For organizers, [contact agency for links]. Please note that there is both an in-person and a virtual option. If you are not able to sign in using Teams, your only option may be phone. Please plan on attending in person if the call-in option is not a preferred method of participating.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by December 11, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: While administrative reviews/interviews are defined in RCW 46.20.245, the specifics of conducting the document review or interview must be defined by the department of licensing and applicable business area. Standard procedures include eligibility, evidence to be reviewed, authority of the review, and other legal remedies available post-review.

Reasons Supporting Proposal: The creation of this new chapter in WAC will provide greater clarity by defining business rules, guidelines, and the process for conducting administrative reviews and interviews.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Statute Being Implemented: RCW 46.20.245 Mandatory revocation—Persons subject to suspension, revocation, or denial who are eligible for certain full credit—Notice—Administrative, judicial review—Rules—Application.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Colton Myers, 1125 Washington Street S.E., Olympia, WA 98504, 564-464-5716; Implementation and Enforcement: Marta Reinhold, 1125 Washington Street S.E., Olympia, WA 98504, 360-664-1488.

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 vio-

lation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:
Is fully exempt.

November 5, 2024
Ellis Starrett
Rules and Policy Manager

OTS-5954.1

Chapter 308-111 WAC
RULES OF PROCEDURES FOR ADMINISTRATIVE REVIEWS AND INTERVIEWS UNDER RCW 46.20.245

NEW SECTION

WAC 308-111-010 Applicability. (1) This chapter applies to all adjudicative proceedings under the jurisdiction of the department of licensing or the director of the department of licensing with respect to the following types of cases:

(a) The mandatory suspension, revocation, cancellation, and disqualification or denial of a license or identicard based on court action or actions of any other reporting agency or entity (RCW 46.20.245 and 46.20.291);

(b) Violation of the terms of probation under the Habitual Traffic Offenders Act (chapter 46.65 RCW);

(c) Violation of probation under effect of accumulation of traffic offenses (RCW 46.20.2892 and WAC 308-104-027);

(d) Violation of probation for continuing offenses (RCW 46.20.291);

(e) Failure to submit to or provide documentation in support of relicensing based on medical condition, examination of driving skills, or treatment concerns (RCW 46.20.031, 46.20.041, 46.20.291,46.20.305, and 46.61.5056);

(f) Failure to respond to a traffic infraction for a moving violation, failure to appear at a hearing for a moving violation, or failure to comply with the terms of a criminal complaint or criminal citation for a moving violation (RCW 46.20.289); and

(g) Violation of the Uniform Commercial Driver's License Act (RCW 46.25.090).

(2) Unless otherwise specified, this chapter does not apply to administrative interviews conducted under RCW 46.20.322 through 46.20.328.

NEW SECTION

WAC 308-111-020 Administrative review referees. All adjudicative proceedings under this chapter shall be conducted by a paralegal appointed by the director. The director retains the discretion to revoke or limit the appointment at any time.

NEW SECTION

WAC 308-111-030 Computation of time. (1) In computing any period of time prescribed or allowed by any applicable statute or rule, RCW 1.12.040 shall apply.

(2) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(3) Whenever a person has the right to request an administrative review or interview within a prescribed period after notice is provided by the department under Title 46 RCW or 308 WAC, such notice is deemed to be given on the third day after the notice is deposited into the state mailing service or immediately when the notice is sent via electronic mail.

(4) A request for an administrative review or interview, under Title 46 RCW or 308 WAC, is deemed received by the department on the third day after the request is postmarked. A request for an administrative review or interview, under Title 46 RCW or 308 WAC, sent via electronic mail is deemed received by the department on the date filed.

NEW SECTION

WAC 308-111-040 Eligibility for administrative review or interview. (1) A person is eligible for an administrative review whenever the department proposes an adverse action against the driving privilege under this chapter and the request for an administrative review is received timely by the department.

(2) Upon timely request for an administrative review, the action subject to the department's notification shall be stayed pending the conclusion of the administrative review.

(3) A person who fails to submit the request for administrative review in the prescribed period or according to the department's instructions shall be denied an administrative review. The department shall notify the petitioner, in writing, of the reason for denial of the administrative review, and the department's sanction will go into effect as stated on the original notice.

(a) The department referee may set aside a denial of the administrative review if the petitioner establishes good cause.

(b) Good cause, which is defined as extending the administrative review or interview request deadline may include, but is not limited to:

(i) Military deployment;

(ii) Medical treatment or hospitalization;

(iii) Housing instability;

(iv) Language barriers;

(v) Domestic violence; or
(vi) Incarceration.

NEW SECTION

WAC 308-111-080 Requests for administrative review or interview. (1) A request for administrative review or interview shall be in writing.

(2) When no deadline for requesting the review or interview is provided in Title 46 RCW, or other law or rule of the department, a review or interview request must be postmarked or received by the administrative law office within 15 days after notice is given.

(3) The administrative review or interview request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where the petitioner may identify the language and/or nature of the interpretive services needed.

(4) The request for review or interview shall include the following information with respect to the petitioner:
(a) Full name;
(b) Mailing address;
(c) Daytime telephone number, including area code;
(d) Date of birth; and
(e) Driver's license number.

(5) The written request must be submitted on a form approved by the department. The request for a review or interview may also be submitted online if the petitioner meets the qualifications described on the website at www.dol.wa.gov.

NEW SECTION

WAC 308-111-090 Scheduling review—Notice of interview. (1) The department's referee shall conduct the administrative review on the department's electronic record and any documentation filed by the petitioner.

(2) A petitioner submitting the request for administrative review may request an administrative interview. The department may, in its discretion, grant the petitioner an administrative interview, which shall be conducted by telephone or other electronic means.

(3) The department shall send a notice to the petitioner, either deposited into the state mailing service or through electronic mail, no less than 10 days before the date set for the administrative interview.

(4) The notice of the administrative interview shall include:
(a) The date and time of the administrative interview;
(b) The assigned referee's name and contact information;
(c) The case name and reference number of the proceeding;
(d) The legal authority and jurisdiction under which the interview is to be conducted; and

(e) A statement that a petitioner who fails to participate in the administrative interview may be held in default.

NEW SECTION

WAC 308-111-100 Scope of administrative review or interview. (1) The administrative review or interview shall solely address:

(a) Whether the records relied on by the department identify the correct person; and

(b) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

(2) A person requesting administrative review or interview has the burden of showing by a preponderance of evidence that the person is not subject to the withholding of the driving privilege.

NEW SECTION

WAC 308-111-110 Notice of appearance. (1) If a petitioner has legal representation for the administrative review or interview, the petitioner shall provide the department with the legal representative's name, address, email address, and telephone number. The legal representative shall file a written notice of appearance with the department and, if applicable, shall file a notice of withdrawal.

(2) When a legal representative has appeared in a matter, documents related to the review or interview, including final orders, will be served upon the legal representative. Documents may be provided to a petitioner's legal representative via electronic mail, with the legal representative's agreement.

(3) For the purposes of this section, a "legal representative" means an attorney licensed to practice law in the state of Washington and in good standing with the Washington state bar association.

NEW SECTION

WAC 308-111-120 Continuances. (1) If, at the discretion of the department, an administrative interview has been scheduled, the petitioner may request a continuance or reschedule.

(2) The petitioner shall file the request for continuance or reschedule:

(a) In writing at least 48 hours prior to the scheduled appointment;

(b) Directed to the assigned referee and describe why the request is being made; and

(c) Include at least two replacement interview dates.

(3) Continuance or reschedule requests beyond the first request require the petitioner establish good cause, which is defined as justification for extending the interview date and may include, but are not limited to:

(a) Military deployment;

(b) Medical treatment or hospitalization;

(c) Housing instability;
(d) Language barriers;
(e) Domestic violence; or
(f) Incarceration.

(6) The petitioner shall not consider an administrative interview continued or rescheduled until notified affirmatively by the assigned referee. The referee may, on its own motion, continue or reschedule the interview at any time, including on the date of the interview.

(7) The referee may require the petitioner who requests a continuance or reschedule beyond the first request to submit documentary evidence that substantiates the reason for the request.

(8) If the petitioner elects to cancel their request for an interview, the petitioner must notify the department of their intent to do so in writing.

NEW SECTION

WAC 308-111-155 Evidence. (1) A petitioner may submit any exhibit or document for consideration by the referee in an administrative review or interview. Submittals may be made via any one of the following methods:

(a) U.S. mail addressed to: Department of Licensing, Administrative Law Office, P.O. Box 9031, Olympia, WA 98507-9031.
(b) Facsimile transmission to the assigned department referee.
(c) An internet portal made available by the department.
(d) Email to: Hearings@dol.wa.gov.

(2) Exhibits or documents submitted electronically must be submitted in pdf format.

(3) The petitioner shall submit any exhibits or documents on or before the deadline listed in the notice of administrative review or administrative interview.

(4) The department's referee shall rule on the admissibility and weight to be accorded to all evidence submitted. Evidence, including hearsay evidence, is admissible if in the judgment of the referee it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The referee may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

NEW SECTION

WAC 308-111-190 Interpreters. (1) When the petitioner in an administrative interview has a hearing or speech impairment, cannot readily understand or communicate in a spoken language or is a non-English speaking person, the department shall appoint an interpreter to assist the petitioner during the administrative interview.

(2) The department is responsible for the cost of the interpreter pursuant to RCW 2.43.040.

(3) The department shall use interpreters certified by the administrative office of the courts unless good cause is found and noted on the record by the referee. Good cause includes, but is not limited to, the determination that:

(a) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved,

the services of a certified interpreter are not reasonably available to the department; or

(b) The current list of certified interpreters maintained by the administrative office of the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(4) If good cause is found for using a qualified interpreter, the referee shall make a preliminary determination on the record, that the proposed interpreter:

(a) Is capable of communicating with the referee and the petitioner; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

NEW SECTION

WAC 308-111-220 Default. (1) In the event that the person who requested an administrative interview does not participate by telephone at the time it is scheduled, an order of default shall be entered, and the department's proposed action shall be sustained.

(2) Within seven days after service of a default order, the petitioner may file a written motion requesting that the order of default be vacated and stating the reasons why petitioner did not participate in the administrative interview. In determining whether the default should be set aside, the referee shall consider whether there was good cause for the nonappearance.

NEW SECTION

WAC 308-111-230 Final result. (1) The referee shall enter a final result when completing the administrative review or interview.

(2) The judicial review of the final result in an administrative review or interview shall be available in the same manner as provided in RCW 46.20.308(8).

(3) A petition for judicial review of a final result under this section shall be served on the department and the attorney general within 30 days after service of the final result.

WSR 24-22-130
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2024-03—Filed November 5, 2024, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-131.

Title of Rule and Other Identifying Information: Prior authorization modernization, implementation of E2SHB 1357 (2023).

Hearing Location(s): On Wednesday, December 11, 2024, at 10:00 a.m. Pacific Time Zone, virtual meeting (Zoom). Interested parties can register for public hearing at this link https://wa-oic.zoom.us/meeting/register/tZEuc-mhqTIsHt0sz93C8uQu8rYDXPfK9AcU. Written comments are due to the office of the insurance commissioner (OIC) by 12:00 p.m. Pacific Time Zone on December 12, 2024. Written comments can be emailed to rulescoordinator@oic.wa.gov.

Date of Intended Adoption: December 13, 2024.

Submit Written Comments to: Rules Coordinator, 302 Sid Snyder Avenue S.W., Olympia, WA 98501, email rulescoordinator@oic.wa.gov, fax 360-586-3109, beginning November 6, 2024, at 12:00 a.m. Pacific Time Zone, by December 12, 2024, at 12:00 p.m. Pacific Time Zone.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by Tuesday, December 10 at 12:00 p.m. Pacific Time Zone.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2023, the legislature passed a prior authorization modernization bill, E2SHB 1357 (RCW 48.43.830), to prevent delays in care and improve health outcomes. To implement the new law, several WAC provisions within chapter 284-43 WAC, Subchapter D, need amendments. This proposed rule updates prior authorization time frames for health care services and prescription drugs and clarifies health plan applicability standards. It ensures that all affected health care entities and carriers understand their rights and obligations under the new law.

Reasons Supporting Proposal: WAC revisions are needed to implement the new prior authorization law and to ensure that all affected entities understand their rights and obligations under RCW 48.43.830.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.0161, and 48.43.520.

Statute Being Implemented: RCW 48.43.830.

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Joyce Brake, P.O. Box 40258, Olympia, WA 98504-0258, 360-725-7171; Implementation: John Hayworth and Ned Gaines, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule incorporates existing statute by reference and clarifies existing regulatory language without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule incorporates existing statute by reference, clarifies existing rules to comply with a new statute, and does not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting Simon Casson, P.O. Box 40258, Olympia, WA 98504-0258, phone 360-725-7171, email rulescoordinator@oic.wa.gov.

November 5, 2024
Mike Kreidler
Insurance Commissioner

OTS-5967.1

AMENDATORY SECTION (Amending WSR 20-24-105, filed 12/1/20, effective 1/1/21)

WAC 284-43-2020 Drug utilization review—Generally. (1) These definitions apply to ((~~this section only~~)) the prescription drug utilization management timelines covered in this section only, excluding prescription drug prior authorization timelines, which are covered in WAC 284-43-2050:

(a) "Nonurgent review request" means any request for approval of care or treatment ((~~where the request is made in advance of the patient obtaining medical care or services~~)), or a renewal of a previously approved request((~~, and~~)) that is not an urgent care request.

(b) "Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously jeopardize the patient's ability to regain maximum function or, in the opinion of a provider with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.

(2) Each issuer must maintain a documented drug utilization review program that meets the definitions and requirements of RCW

48.43.400 and 48.43.410. "Utilization review" has the same meaning as defined in RCW 48.43.005. The program must include a method for reviewing and updating criteria. Issuers must make drug review criteria available upon request to a participating provider. Beginning January 1, 2021, an issuer must post its clinical review criteria for prescription drugs and the drug utilization management exception process on its website. An issuer must also require any entity performing prescription drug benefit administration on the issuer's behalf to post the drug utilization management exception process and clinical review criteria used for the issuer's enrollees on the entity's website. The review criteria must be accessible to both providers and enrollees and presented in plain language that is understandable to both providers and enrollees. The clinical review criteria must include all rules and criteria related to the prescription drug utilization management exception process including the specific information and documentation that must be submitted by a health care provider or enrollee to be considered a complete exception request.

(3) The drug utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(4) The drug utilization review program must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

(5) Each issuer must have written procedures to assure that reviews are conducted in a timely manner.

(a) If the review request from a provider or enrollee is not accompanied by all necessary information, the issuer must tell the provider or enrollee what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for issuer determination and notification must be no less favorable than United States Department of Labor standards, and are as follows:

(i) For urgent care review requests:

(A) Must approve the request within ((~~forty-eight~~)) 48 hours if the information provided is sufficient to approve the claim ((~~and include the authorization number, if a prior authorization number is required, in its approval~~));

(B) Must deny the request within ((~~forty-eight~~)) 48 hours if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within ((~~twenty-four~~)) 24 hours, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the ((~~prior authorization~~)) utilization management determination:

(I) The issuer must give the provider ((~~forty-eight~~)) 48 hours to submit the requested information;

(II) The issuer must then approve or deny the request within ((~~forty-eight~~)) 48 hours of the receipt of the requested additional information and include the authorization number in its approval;

(ii) For nonurgent care review requests:

(A) Must approve the request within five calendar days if the information is sufficient to approve the claim and include the authorization number in its approval;

(B) Must deny the request within five calendar days if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or

(C) Within five calendar days, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the ((~~prior authorization~~)) utilization management determination:

(I) The issuer must give the provider five calendar days to submit the requested additional information;

(II) The issuer must then approve or deny the request within four calendar days of the receipt of the additional information and include the authorization number in its approval.

(b) Notification of the ((~~prior authorization~~)) utilization management determination must be provided as follows:

(i) Information about whether a request was approved must be made available to the provider;

(ii) Whenever there is an adverse determination resulting in a denial the issuer must notify the requesting provider by one or more of the following methods; phone, fax and/or secure electronic notification, and the covered person in writing or via secure electronic notification. Status information will be communicated to the billing pharmacy, via electronic transaction, upon the issuer's receipt of a claim after the request has been denied. The issuer must transmit these notifications within the time frames specified in (a)(i) and (ii) of this subsection in compliance with United States Department of Labor standards.

(6) When a provider or enrollee requests an exception to an issuer's drug utilization program, the urgent and nonurgent time frames established in RCW 48.43.420, WAC 284-43-2021 and 284-43-2022 shall apply.

(7) No issuer may penalize or threaten a pharmacist or pharmacy with a reduction in future payment or termination of participating provider or participating facility status because the pharmacist or pharmacy disputes the issuer's determination with respect to coverage or payment for pharmacy service.

AMENDATORY SECTION (Amending WSR 20-24-120, filed 12/2/20, effective 1/2/21)

WAC 284-43-2050 Prior authorization processes. (1) This section applies to health benefit plans as defined in RCW 48.43.005, contracts for limited health care services as defined in RCW 48.44.035, and stand-alone dental and stand-alone vision plans. This section applies to plans issued or renewed on or after January 1, 2018. Unless stated otherwise, this section does not apply to prescription drug services. For health plans as defined in RCW 48.43.005, carriers must meet the requirements of RCW 48.43.830 in addition to the requirements in this section.

(2) A carrier or its designated or contracted representative must maintain a documented prior authorization program description and use evidence-based clinical review criteria. A carrier or its designated or contracted representative must make determinations in accordance with the carrier's current clinical review criteria and use the medical necessity definition stated in the enrollee's plan. The prior authorization program must include a method for reviewing and updating

clinical review criteria. A carrier is obligated to ensure compliance with prior authorization requirements, even if they use a third-party contractor. A carrier is not exempt from these requirements because it relied upon a third-party vendor or subcontracting arrangement for its prior authorization program. A carrier or its designated or contracted representative is not required to use medical evidence or standards in its prior authorization of religious nonmedical treatment or religious nonmedical nursing care.

(3) A prior authorization program must meet standards set forth by a national accreditation organization including, but not limited to, National Committee for Quality Assurance (NCQA), URAC, Joint Commission, and Accreditation Association for Ambulatory Health Care in addition to the requirements of this chapter. A prior authorization program must have staff who are properly qualified, trained, supervised, and supported by explicit written, current clinical review criteria and review procedures.

(4) Effective November 1, 2019, a carrier or its designated or contracted representative must have a current and accurate online prior authorization process. All parts of the process that utilize personally identifiable information must be accessed through a secure online process. The online process must be accessible to a participating provider and facility so that, prior to delivering a service, a provider and facility will have enough information to determine if a service is a benefit under the enrollee's plan and the information necessary to submit a complete prior authorization request. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system. The online process must provide the information required for a provider or facility to determine for an enrollee's plan for a specific service:

(a) If a service is a benefit;

(b) If a prior authorization request is necessary;

(c) What, if any preservice requirements apply; and

(d) If a prior authorization request is necessary, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(5) Effective November 1, 2019, in addition to other methods to process prior authorization requests, a carrier or its designated or contracted representative that requires prior authorization for services must have a secure online process for a participating provider or facility to complete a prior authorization request and upload documentation if necessary. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system.

(6) Except for an integrated delivery system, a carrier or its designated or contracted representative must have a method that allows an out-of-network provider or facility to:

(a) Have access to any preservice requirements; and

(b) Request a prior authorization if prior authorization is required for an out-of-network provider or facility.

(7) A carrier or its designated or contracted representative that requires prior authorization for any service must allow a provider or facility to submit a request for a prior authorization at all times, including outside normal business hours.

(8) A carrier or its designated or contracted representative is responsible for maintaining a system of documenting information and supporting evidence submitted by a provider or facility while requesting prior authorization. This information must be kept until the claim has been paid or the appeals process has been exhausted.

(a) Upon request of the provider or facility, a carrier or its designated or contracted representative must remit to the provider or facility written acknowledgment of receipt of each document submitted by a provider or facility during the processing of a prior authorization request.

(b) When information is transmitted telephonically, a carrier or its designated or contracted representative must provide written acknowledgment of the information communicated by the provider or facility.

(9) A carrier or its designated or contracted representative must have written policies and procedures to assure that prior authorization determinations for a participating provider or facility are made within the appropriate time frames.

(a) Time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the prior authorization request.

(b) If the request from the participating provider or facility is not accompanied by all necessary information, the carrier or its designated or contracted representative must inform the provider or facility what additional information is needed and the deadline for its submission as set forth in this section.

(10) For health plans as defined in RCW 48.43.005, the prior authorization time frames for health care services and prescription drugs in RCW 48.43.830 apply.

(a) For purposes of the prior authorization time frames in RCW 48.43.830 and this subsection, the following definitions apply:

(i) "Electronic prior authorization request" means a prior authorization request that is delivered through a two-way communication system that meets the requirements of a secure online prior authorization process or an interoperable electronic process or prior authorization application programming interface.

(ii) "Nonelectronic prior authorization request" means a prior authorization request other than an electronic prior authorization request including, but not limited to, requests delivered through email, a phone call, a text message, a fax, or U.S. mail.

(b) If insufficient information has been provided to the carrier to make a prior authorization determination and the carrier requests additional information from the provider or facility under RCW 48.43.830, the initial prior authorization request time frames in RCW 48.43.830 apply once the carrier has the necessary information to make a determination. Those time frames are as follows:

(i) For electronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within three calendar days, excluding holidays, of receiving the necessary information needed to make the determination.

(ii) For electronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within one calendar day of receiving the necessary information needed to make the determination.

(iii) For nonelectronic standard prior authorization requests, the carrier shall make a decision and notify the provider or facility

of the results of the decision within five calendar days of receiving the necessary information needed to make the determination.

(iv) For nonelectronic expedited prior authorization requests, the carrier shall make a decision and notify the provider or facility of the results of the decision within two calendar days of receiving the necessary information needed to make the determination.

(11) For limited health care services contracts as defined in RCW 48.44.035, stand-alone dental plans, and stand-alone vision plans, the time frames for carrier prior authorization determination and notification to a participating provider or facility are as follows:

(a) For standard prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within five calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has five calendar days to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility five calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within four calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(b) For expedited prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within two calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has one calendar day to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility two calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within two calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(iii) If the time frames for the approval of an expedited prior authorization are insufficient for a provider or facility to receive approval prior to the preferred delivery of the service, the prior authorization should be considered an extenuating circumstance as defined in WAC 284-43-2060.

((~~(11)~~)) (12) A carrier or its designated or contracted representative when conducting prior authorization must:

(a) Accept any evidence-based information from a provider or facility that will assist in the authorization process;

(b) Collect only the information necessary to authorize the service and maintain a process for the provider or facility to submit such records;

(c) If medical records are requested, require only the section(s) of the medical record necessary in that specific case to determine medical necessity or appropriateness of the service to be delivered, to include admission or extension of stay, frequency or duration of service; and

(d) Base review determinations on the medical information in the enrollee's records and obtained by the carrier up to the time of the review determination.

((~~(12)~~)) (13) When a provider or facility makes a request for the prior authorization, the response from the carrier or its designated or contracted representative must state if it is approved or denied. If the request is denied, the response must give the specific reason for the denial in clear and simple language. If the reason for the denial is based on clinical review criteria, the criteria must be provided. Written notice of the decision must be communicated to the provider or facility, and the enrollee. A decision may be provided orally, but subsequent written notice must also be provided. A denial must include the department and credentials of the individual who has the authorizing authority to approve or deny the request. A denial must also include a phone number to contact the authorizing authority and a notice regarding the enrollee's appeal rights and process.

Whenever the prior authorization relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

((~~(13)~~)) (14) A prior authorization approval notification for all services must inform the requesting provider or facility, and the enrollee, whether the prior authorization is for a specific provider or facility. The notification must also state if the authorized service may be delivered by an out-of-network provider or facility and if so, disclose to the enrollee the financial implications for receiving services from an out-of-network provider or facility.

Whenever the notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

((~~(14)~~)) (15) A provider or facility may appeal a prior authorization denial to the carrier or its designated or contracted representative.

((~~(15)~~)) (16) Prior authorization determinations shall expire no sooner than ((~~forty-five~~)) 45 days from date of approval. This requirement does not supersede RCW 48.43.039.

((~~(16)~~)) (17) In limited circumstances when an enrollee has to change plans due to a carrier's market withdrawal as defined in RCW 48.43.035 (4)(d) and 48.43.038 (3)(d), the subsequent carrier or its designated or contracted representative must recognize the prior authorization of the previous carrier until the new carrier's prior authorization process has been completed and its authorized treatment plan has been initiated. The subsequent carrier or its designated or contracted representative must ensure that the enrollee receives the previously authorized initial service as an in-network service. Enrollees must present proof of the prior authorization.

(a) For medical services, a carrier or its designated or contracted representative must recognize a prior authorization for at least ((~~thirty~~)) 30 days or the expiration date of the original prior authorization, whichever is shorter.

(b) For pharmacy services, a carrier or its designated or contracted representative must recognize a prior authorization for the initial fill, or until the prior authorization process of the new car-

rier or its designated or contracted representative has been completed.

((~~(17)~~)) (18) Prior authorization for a facility-to-facility transport that requires prior authorization can be performed after the service is delivered. Authorization can only be based on information available to the carrier or its designated or contracted representative at the time of the prior authorization request.

((~~(18)~~)) (19) A carrier or its designated or contracted representative must have a prior authorization process that allows specialists the ability to request a prior authorization for a diagnostic or laboratory service based upon a review of medical records in advance of seeing the enrollee.

((~~(19)~~)) (20) A carrier or its designated or contracted representative must have a method that allows an enrollee, provider or facility to make a predetermination request when provided for by the plan.

((~~(20)~~)) (21) Predetermination notices must clearly disclose to the enrollee and requesting provider or facility, that the determination is not a prior authorization and does not guarantee services will be covered. The notice must state "A predetermination notice is not a prior authorization and does not guarantee services will be covered." Predetermination notices must be delivered within five calendar days of receipt of the request. Predetermination notices will disclose to a provider or facility for an enrollee's plan:

(a) If a service is a benefit;

(b) If a prior authorization request is necessary;

(c) If any preservice requirements apply;

(d) If a prior authorization request is necessary or if a medical necessity review will be performed after the service has been delivered, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(e) Whenever a predetermination notice relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

WSR 24-22-132
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed November 6, 2024, 8:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-081.

Title of Rule and Other Identifying Information: WAC 458-20-305 Sales and use tax deferral——Conversion of underutilized commercial property into affordable housing.

Hearing Location(s): On December 18, 2024, at 11:00 a.m., internet/phone via Zoom. Please contact Cathy Holder at CathyH@dor.wa.gov or Barbara Imperio at BarbaraI@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: December 27, 2024.

Submit Written Comments to: Tim Danforth, P.O. Box 47453, Olympia, WA 98504-7453, email TimD@dor.wa.gov, fax 360-534-1606, beginning November 7, 2024, 12:00 a.m., by December 26, 2024, 11:59 p.m.

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: The department of revenue proposes a new rule to explain the retail sales and use tax deferral created by E2SSB 6175 (2024) (chapter 82.59 RCW), for the conversion of underutilized commercial property to multifamily housing with a minimum affordable housing component within cities that adopt a resolution for the deferral program. Specifically, the rule is intended to clarify eligibility requirements and program administration standards.

Reasons Supporting Proposal: Provides guidance on requirements for eligibility and application for the deferral program.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.59.010.

Statute Being Implemented: Chapter 82.59 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Danforth, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1538; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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 is not a significant legislative rule as defined by RCW 34.05.328

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is fully exempt.

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 it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or documentation requirements that are not already established in statute.

November 6, 2024
Brenton Madison

Rules Coordinator

OTS-5971.1

NEW SECTION

WAC 458-20-305 Sales and use tax deferral—Conversion of underutilized commercial property into affordable housing. (1) **Introduction.** Chapter 82.59 RCW establishes a limited sales and use tax deferral program. The purpose of the program is to encourage the conversion of underutilized commercial property to multifamily housing units in targeted urban areas to increase affordable housing.

(a) **Deferral program.** This deferral program allows the legislative authorities of cities under chapter 82.59 RCW to authorize a sales and use tax deferral for an investment project within the city if that legislative authority finds that there are significant areas of underutilized commercial property and a lack of affordable housing within that city.

(b) **Administration.** This rule provides guidance regarding how the department will determine whether and to what extent an applicant qualifies for a state and local sales and use tax deferral under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project. The department may not accept applications for deferral after June 30, 2034.

(c) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **Definitions.** For the purposes of this rule, the following definitions will apply:

(a) **"Affordable housing"** means:

(i) Homeownership housing intended for owner occupancy to low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income;

(ii) **"Rental housing"** for low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(b) **"Applicant"** means an owner of commercial property.

(c) **"City"** means any city or town, including a code city.

(d) **"Conditional recipient"** means an owner of commercial property granted a conditional certificate of program approval under chapter 82.59 RCW, which includes any successor owner of the property.

(e)(i) **"Eligible investment project"** means an investment project that is located in a city and receiving a conditional certificate of program approval from the legislative authority of that city.

(ii) To qualify as an "eligible investment project" under this program, the property in question must be an "underutilized commercial property" that will be converted to primarily multifamily housing units, with at least 10 percent of the units rented or sold as affordable housing to low-income households.

(iii) In a mixed-use project, only the ground floor of a building may be used for commercial purposes with the remainder dedicated to multifamily housing units.

(iv) Chapter 82.59 RCW contemplates only investment projects that convert existing underutilized commercial properties into multifamily housing to be eligible for deferral. The demolition of an existing structure to be replaced by a new building for multifamily housing does not qualify for the deferral.

(f) **"Governing authority"** means the local legislative authority of a city having jurisdiction over the property for which a deferral may be granted under chapter 82.59 RCW. The governing authority implements the sales and use tax deferral program for its city.

(g) **"Household"** means a single person, family, or unrelated persons living together.

(h)(i) **"Initiation of construction"** means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the qualified building if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral.

(ii) **"Initiation of construction"** does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(i)(i) **"Investment project"** means an investment in multifamily housing, including labor, services, and materials incorporated in the planning, installation, and construction of the project. "Investment project" includes investment in related facilities such as playgrounds and sidewalks as well as facilities used for business use for mixed-use development.

(ii) Related facilities of investment projects may also include, but are not limited to, the following:

- Driveways, parking lots, covered parking structures;
- Fitness facilities for residents (e.g., gyms, pools, recreational courts, bicycle storage areas);
- Laundry areas;
- Landscaping (does not include activities initiated prior to issuance of a building permit);
- Dining facilities for residents;
- Cooking facilities for residents;
- Event spaces for use by residents;
- Lobbies and/or elevators to access residences and commercial spaces;
- Conference rooms and other business facilities (e.g., leasing office, communal office space for use by residents);
- Dog runs/parks;
- Residential storage areas;
- Electric vehicle charging stations for residents;
- Permanent security fencing and/or gates for the project;
- Mailbox stations;
- Spaces used to manage and maintain the project (e.g., tool shed);
- Facilities used for business use in mixed-use development; or
- Other facilities approved by the department on a case-by-case basis.

(j) **"Low-income household"** means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States Department of Housing and Urban Development.

(k) **"Multifamily housing"** means a building or group of buildings having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from the rehabilitation or conversion of vacant, underutilized, or substandard buildings to multifamily housing. To be eligible for deferral under chapter 82.59 RCW, multifamily housing units must be part of an "eligible investment project" per subsection (2)(e) of this rule.

(l) **"Owner"** means the property owner of record.

(m)(i) **"Underutilized commercial property"** means an entire property, or portion thereof, currently used or intended to be used by a business for retailing or office-related or administrative activities. If the property is used partly for a qualifying use and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under this rule.

(ii) Areas of the property that are outside of the building or structure defined as an "underutilized commercial property" may qualify only if they are used for retailing, office-related, or administrative activities.

(iii) The department will generally presume that vacant land does not qualify. To rebut this presumption, the applicant must provide adequate, material substantiation to show that the property was used or was intended to be used for a qualifying use.

(3) **What types of property may be classified as "underutilized commercial property" eligible for the sales and use tax deferral program?**

(a) An "underutilized commercial property" must currently be used or "intended to be used" for one or more of the following "qualifying uses": Retailing activities, office-related activities, or administrative activities.

(i) "Qualifying use" means the use or intended use of property, or portions thereof, for retailing, office-related, and administrative activities, collectively referred to in this rule as "qualifying activities."

(ii) "Qualifying activities" include selling goods and services to customers for their consumption, and professional, clerical, or administrative activities such as human resources, accounting, legal, sales and marketing, or executive management activities.

(A) Examples of qualifying activities that are eligible for deferral include, but are not limited to: The use of copy rooms, employee offices, reception areas, office libraries, storage rooms, conference rooms, call centers, and/or sales activities.

(B) The following nonexclusive list of activities are not considered to be qualifying activities and are, therefore, not eligible for deferral: Manufacturing, wholesaling, warehousing, and similar activities.

(b)(i) "Intended to be used" means that the underutilized commercial property is expected to be used for "qualifying uses" (i.e., retailing, office-related and administrative activities), at the time of application to the city for conditional approval. For an applicant to establish that a property is intended to be used for a "qualifying

use," the applicant must include adequate substantiation with their application to the department that shows this intent. Adequate substantiation may include, but is not necessarily limited to, the following: Blueprints or site plans, current or historical zoning, building permits, marketing materials, leasing agreements, sales agreements, promotional materials, or similar documents showing the intended use of the property is for a "qualifying use." Some documents may be insufficient by themselves to show intent, but in combination with other documentation may be sufficient to adequately substantiate intent.

(ii) For property with existing structures and property already under commercial development, the department will review the substantiation provided to determine if it adequately shows intent to use the property for a qualifying purpose.

Example 1: Underutilized commercial property currently used for qualifying activities.

Facts: Applicant currently leases commercial property to a tenant that uses the entire property for their restaurant business. The property has a kitchen, dining area, and an office area used for accounting and other managerial activities of the restaurant. The applicant's lease with the tenant establishes that the property will be used for this purpose.

Result: Presuming all other requirements of the statute are met, applicant's property qualifies as underutilized commercial property as the applicant has provided adequate substantiation that the entire property is being used for a qualifying use. Restaurant activities are qualifying activities as they involve the sale of services to an ultimate consumer. The tenant uses the remaining areas of the property to conduct or manage its restaurant business, so these other areas also qualify because the space is being used for eligible qualifying activities.

Example 2: Underutilized commercial property intended to be used for qualifying activities.

Facts: Applicant has a commercial building that is currently vacant, but applicant has previously leased the entire property to other businesses for use as office space. Applicant's marketing materials for the property promote the building as containing numerous offices, meeting areas, storage rooms, and a call center.

Result: Presuming all other requirements of the statute are met, applicant's building qualifies as underutilized commercial property as the applicant has provided adequate substantiation that the entire property is intended to be used for eligible qualifying activities.

Example 3: Underutilized commercial property under construction to be used for qualifying activities.

Facts: Applicant is in the process of constructing a commercial property. While construction is not complete, original blueprints and marketing materials used for promotion purposes demonstrate that the property is entirely comprised of meeting rooms, space for cubicles and offices, a mail room, and a reception area.

Result: Presuming all other requirements of the statute are met, applicant's property qualifies as underutilized commercial property as the applicant has provided adequate substantiation that the entire property is intended to be used for eligible qualifying activities.

Example 4: Vacant land marketed as being usable for qualifying activities.

Facts: Applicant owns a vacant lot and plans to sell the entire property to a developer. The marketing and promotional materials for

the vacant lot provide that the site may be used for qualifying activities.

Result: Applicant's property does not qualify as underutilized commercial property because it is a vacant lot. The marketing and promotional materials do not adequately substantiate the intent that the property will be used for one or more eligible "qualifying activities."

(4) **Application to the department is required.** After receiving a conditional certificate from the local jurisdiction, but before the initiation of the construction of the investment project, recipients of a conditional certificate must submit an initial application to the department.

(a) **How does a conditional recipient obtain an application?** Application forms may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-534-1443. Applications approved by the department under chapter 82.59 RCW are not confidential and are subject to disclosure.

(b) **What information does an application to the department need to include?** Applicants must include the following information and materials with their application to the department:

(i) The property owner's information;

(ii) The contact person for the investment project;

(iii) The location of the investment project (including the address and parcel number);

(iv) A detailed description of the property as it currently exists and the square footage of the property that is currently used, or intended to be used, for a "qualifying use" prior to conversion to multifamily housing. The description should include the building or buildings to be remodeled, other structures, parking, and other related facilities. The department may request a schematic of the site, including square footage, and may tour the property;

(v) A detailed description of the planned investment project (which must be multifamily housing and affordable housing), including estimated square footage;

(vi) A copy of the conditional certificate of approval issued by the local jurisdiction;

(vii) Substantiation that the applicant has a current active business license for both the city and the state (as applicable);

(viii) Estimated investment project construction costs (both qualifying and nonqualifying);

(ix) Estimated time schedules for initiation of construction, completion, and operation;

(x) Waiver of the four-year limitation under RCW 82.32.100 by the conditional recipient; and

(xi) Any additional information requested by the department.

(c) **What if the project involves multiple qualified buildings?** For an investment project that involves multiple buildings, a conditional recipient must submit a separate application before the initiation of construction for each building.

(d) **When will a conditional recipient receive a response from the department?** The department has 60 days to approve or deny a complete application that has been submitted to the department for approval.

(e) **What happens if the conditional recipient's application is approved?** If approved, the department will issue a tax deferral certificate for each eligible investment project and notify the conditional recipient of the documentation that the conditional recipient must retain to substantiate the amount of sales and use tax actually

deferred. Such documentation may include, but is not limited to: Purchase invoices such as accounts payable and receipts, the sales and use tax deferral certificate(s), other supporting documentation such as building permits and construction contracts, and any other documentation the department may advise the conditional recipient to retain.

(f) **What happens if the conditional recipient's application is denied?** If denied, a conditional recipient may request a review of the department's denial of their tax deferral application through the department's informal administrative review process within 30 days of the date of the denial notice. See WAC 458-20-100. The review of a denied deferral application under WAC 458-20-100 is not appealable to the board of tax appeals under RCW 82.03.190.

Example 5: Application requirements prior to initiation of construction.

Facts: Applicant owns a three-story building where the ground floor is being used as a coffee shop and the second and third floors are being used as office space. Applicant plans to convert the second and third floors of the building into multifamily housing, but intends to renovate the coffee shop on the ground floor. Applicant has divided the project into phases with the first being the renovation work on the coffee shop. The applicant requests guidance from the department as to whether they may apply for building permits for the coffee shop renovation before submitting their deferral application to convert the second and third floors into multifamily housing units.

Result: Applicant's renovation of the coffee shop does not qualify for deferral under chapter 82.59 RCW as applicant is not converting the existing retail space into multifamily housing units. However, presuming all other requirements of the statute are met, converting the second and third floors to multifamily housing units may be eligible for deferral as this space is currently being used for "qualifying activities."

To maintain eligibility for the potentially qualifying portions of the project, applicant cannot initiate construction on any eligible portion of the project (including what may be considered related facilities) until the applicant has submitted their application to the department. However, because "initiation of construction" applies to each phase of a project separately, the applicant may initiate construction for the coffee shop renovation phase of the project before submitting their application to the department without invalidating the potentially qualifying portions of the project that will occur in a separate phase of construction.

(5) **What happens after the department approves the conditional recipient's application?** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW for each eligible investment project. The department will state on the certificate the estimated amount of qualifying taxable purchases eligible for deferral and the time period for which the certificate is valid.

(6) **How should a tax deferral certificate be used?** A tax deferral certificate issued under this program is only valid during active construction of a qualified investment project and expires the day the local jurisdiction issues a certificate of occupancy for the investment project for which a deferral certificate was issued. A conditional recipient may only use the deferral certificate to defer sales and use taxes due on eligible investment projects.

(7) **When is apportionment of underutilized commercial properties appropriate?** A deferral of sales or use tax under this program is only

allowable for underutilized commercial properties that are currently used or are intended to be used for a "qualifying use." If a portion of an applicant's property is not used, or intended to be used, for a qualifying use at the time of application to the governing authority for conditional approval, that portion does not qualify for tax deferral treatment and the underutilized commercial property must be apportioned.

(a) **How does the department apportion qualifying and nonqualifying underutilized commercial property?** The apportionment method used depends on the status of the eligible investment project.

(i) **Deferral estimate (required before issuance of deferral certificate):** The department will use the estimated figures in the conditional recipient's application to the department to provide a preliminary estimate of the amount of costs for which taxes may be deferred. The department will use the following ratio to apportion an eligible investment property:

$$\left(\frac{\text{Square feet of investment property with qualifying use}}{\text{Total square feet of investment property}}\right) \times \text{Estimated total costs of investment project}$$

= Estimated purchases eligible for the deferral program

(ii) **Final deferred tax amount (required after investment project is operationally complete):** The department will calculate the final deferred tax amount using the conditional recipient's actual construction costs for eligible purposes (multifamily housing) in the investment project. The department will determine the actual costs eligible for deferral by touring the operationally complete investment project and auditing the conditional recipient's records. The final deferral figure will supersede the department's preliminary deferral estimate.

Example 6: Apportionment of qualifying and nonqualifying activities.

Facts: An applicant seeks a deferral to convert a church into multifamily housing. Of the total 5,000 square feet of space in the church, a 4,000 square foot area is used for religious activities and a 1,000 square foot area is used by staff for administrative activities, such as accounting, organizing community events, and other administrative activities. The applicant estimates that the project will cost about $1,000,000. The combined sales/use tax rate at this location is 9%.

Result: Presuming all other requirements of the statute are met, the 1,000 square feet of space used for "qualifying activities" is eligible for deferral, but the remaining 4,000 square feet are not because space used for religious services is not an eligible qualifying use. In approving the application, the department will estimate the costs that may be deferred as follows:

$$\left(\frac{\text{1,000 square feet of investment property with qualifying use}}{\text{5,000 total square feet of investment property}}\right) \times \text{\$1M estimated total costs of investment project}$$

= $200,000 estimated cost eligible for the deferral program

1,000 square feet of the investment property with a qualifying use is divided by the 5,000 total square footage of the property (which equals 20%). 20% is multiplied against the estimated cost of $1,000,000 to equal $200,000. When the department issues the deferral certificate to the applicant, the certificate will state an estimated amount of $200,000 for qualifying purchases. Although it will not appear on the deferral certificate, the estimated tax eligible for the deferral will be $18,000 (9% tax rate multiplied by $200,000 of estimated costs).

(b) **When will the department certify the final amount of sales and use taxes that qualify for deferral?** Within 30 days after the local jurisdiction issues the conditional recipient with a certificate of occupancy for the eligible investment project, the conditional recipient must notify the department in writing that the eligible investment project is operationally complete. The project is operationally complete once it can be used for its intended purpose as described in the application (primarily multifamily housing with at least 10 percent affordable housing). Upon receiving such notification, the department will certify the project and determine the final amount of sales and use taxes that qualify for deferral. As a part of the certification process, the department will independently verify the areas of the property that qualify for deferral and qualifying purchases. The governing authority of the city is not required to notify the department that the investment project is operationally complete, but this communication is encouraged to facilitate timely administration.

(c) **What happens if the department determines that purchases are not eligible for deferral?** If the department determines that purchases are not eligible for deferral, the conditional recipient is required to pay the sales and use tax on purchases made for the project and the department is required to assess interest, but not penalties, on ineligible purchases. Conditional recipients who are denied the tax deferral may pursue an informal administrative review of the department's decision, as provided in WAC 458-20-100.

(8) **What types of projects are eligible for deferral?**

(a) **Certain mixed-use projects may be eligible for deferral.** Local jurisdictions may approve certain mixed-use projects (i.e., projects that have both a commercial and residential component). However, commercial activity must be restricted to the ground floor of the building and the remainder of the building must be used for multifamily housing units. "Ground floor" means the building floor that is level with the street. Points of access to both the commercial and residential components of a mixed-use project that are not on the ground floor may qualify as "related facilities" to an eligible investment project. Applicants are encouraged to request a letter ruling from the department prior to submitting their application to determine if the facilities in their investment project may qualify for deferral.

Example 7: Related facilities in mixed-use development projects.

Facts: Applicant applies for a conditional certificate of program approval for an existing mixed-use building. The ground floor of the building currently has several shops and a day care facility while the remainder of the building is used entirely for office-related activities. The day care facility has a fenced outdoor playground for the children. The applicant plans to convert the ground floor to a restaurant and renovate the outdoor playground to be used by the multifamily housing residents. The applicant reaches out to the department to clarify whether purchases for the outdoor playground qualify for deferral.

Result: Presuming all other requirements of the statute are met, purchases for the outdoor playground qualify for tax deferral. This is because the term "investment project" also includes investment in related facilities. In this case, the fenced outdoor playground would be related to the multifamily housing as it is for the use of the residents, and any renovation costs for the outdoor playground would be deferrable.

(b) **Are additions eligible for deferral?** The eligibility of an addition will depend on the facts and circumstances at issue. All areas of an investment project must qualify for the deferral, including any addition. Otherwise, areas that do not qualify for the deferral will be apportioned out under subsection (7) of this rule. If an applicant is unsure whether their project qualifies for the deferral, they may contact the department at 360-534-1443, or email at DORdeferrals@dor.wa.gov.

Example 8: Addition to previously renovated commercial building.

Facts: Applicant applies for a conditional certificate of program approval for a renovated commercial building that previously qualified for tax deferral under this program. The building, previously used for office-related activities, is now fully comprised of several multifamily housing units. However, the applicant would like to expand the current building to add additional units. Applicant reaches out to the department to clarify whether purchases for an addition to this property may qualify for deferral.

Results: Purchases for an addition to this property do not qualify for deferral. This is because the property is no longer used or intended to be used for a "qualifying use" as it has already been fully converted to multifamily housing units. As such, this building no longer qualifies as an underutilized commercial property for the purposes of tax deferral under this program.

(9) **What should a conditional recipient do if its investment project reaches the estimated costs but the project is not yet operationally complete?** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. The conditional recipient must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on their tax deferral certificate. If, at that time, the project is not operationally complete, the conditional recipient may request from the department an amended certificate stating a revised estimated cost, along with an explanation for the estimated cost increase. Requests must be mailed or emailed to the department at DORdeferrals@dor.wa.gov.

(10) **What should a conditional recipient do if their investment project reaches the completion date but the project is not yet operationally complete?** If an investment project has reached the completion date and the project is not operationally complete, the conditional recipient may request from the city an amended conditional certificate

of program approval stating a revised completion date along with an explanation for the new completion date. City approved extensions must be mailed or emailed by the city to the department prior to the expiration date on the conditional recipient's sales and use tax deferral certificate. The conditional recipient must then request from the department an amended sales and use tax deferral certificate stating the revised completion date. Requests must be mailed or emailed to the department at DORdeferrals@dor.wa.gov.

(11) **What should a certificate holder do when its investment project is operationally complete?** Within 30 days after the local jurisdiction issues the conditional recipient with a certificate of occupancy for the eligible investment project, the conditional recipient must notify the department in writing that the eligible investment project is operationally complete. The project is operationally complete once it can be used for its intended purpose as described in the application. The department will certify the qualifying areas and costs and the date when the project became operationally complete. It is important to remember that annual tax performance report reporting requirements begin the year following the operationally complete date, even though the audit certification may not be complete. If a conditional recipient maintains the property for qualifying purposes for at least 10 years after issuance of a certificate of occupancy, the conditional recipient is not required to repay the deferred sales and use taxes.

(12) **Is a recipient of a tax deferral required to submit an annual tax performance report?** RCW 82.32.534 requires each recipient of a tax deferral to complete an annual tax performance report by May 31st following the year in which the project is operationally complete, and each year thereafter for 10 years, regardless of whether the department has audited the project. For example, if the certificate of occupancy is issued July 31, 2024, then the first annual tax performance report is due May 31, 2025. The reports need to be submitted for tax years 2024-2034. For more information on the requirements to file annual tax performance reports refer to WAC 458-20-267.

(13) **What happens if the conditional recipient is no longer in compliance with the requirements of this program?** If a conditional recipient voluntarily opts to discontinue compliance with the requirements of chapter 82.59 RCW, the conditional recipient must notify the city and the department within 60 days of the change in use or intended discontinuance. After the department has issued a deferral certificate, and the conditional recipient has been issued a certificate of occupancy by the city, if the city finds that the conditional recipient is no longer in compliance with program requirements, the city must notify the department and all deferred sales and use taxes are immediately due and payable. Interest will be assessed retroactively to the date of deferral. Note that within 30 days after the issuance of the certificate of occupancy, the conditional recipient must file with the city statements and information attesting to the qualification of the project as described in RCW 82.59.070(1). Within 30 days of the city's receipt of these statements from the conditional recipient, the city must determine and notify the conditional recipient as to whether the work completed and the affordable housing to be offered are consistent with the application and the contract approved by the city and may be eligible for tax deferral under chapter 82.59 RCW. If at any point the city finds that the investment project no longer qualifies for tax deferral, the city must notify the department of the noncompliance in writing and all deferred sales and use taxes are im-

mediately due and payable. The department is required to assess interest, but not penalties, retroactively to the deferral date on the conditional recipient's tax certificate. Conditional recipients who are denied the tax deferral may pursue an informal administrative review of the department's decision, as provided in WAC 458-20-100.

(14) **How long must a conditional recipient stay in compliance to avoid repayment of deferred taxes?** If a conditional recipient maintains the property for qualifying purposes for at least 10 years after issuance of the certificate of occupancy, the conditional recipient is not required to repay the deferred sales and use taxes.

(15) **Is debt extinguishable because of insolvency or sale?** Insolvency or other failure of the conditional recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the conditional recipient's business extinguish the debt for deferred taxes.

(16) **Does transfer of ownership terminate the tax deferral?** Transfer of ownership does not terminate the deferral. The deferral is transferable, subject to the successor meeting the eligibility requirements of chapter 82.59 RCW. The transferor of an eligible property must promptly notify the department of the transfer and must provide all information necessary for the department to transfer the deferral. If the transferor fails to notify the department, then all deferred sales and use taxes are immediately due and payable with interest, which will be calculated retroactively back to the date of the deferral. Any person who becomes a successor to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral. For additional information on successorship or quitting business refer to WAC 458-20-216.

(17) **Can a conditional applicant also apply for other tax exemptions for multifamily housing?** Yes. The owner of an underutilized commercial property may also apply for the multiple-unit housing property tax exemption program under chapter 84.14 RCW. Applicants who are receiving a property tax exemption under chapter 84.14 RCW should note that the amount of affordable housing units required for eligibility under this program is in addition to the affordability conditions in chapter 84.14 RCW.

WSR 24-22-133
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed November 6, 2024, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-058.

Title of Rule and Other Identifying Information: Testing requirements for proprietary treatment products in WAC 246-272A-0110. The department of health (department) is proposing to add NSF/ANSI 40 testing to WAC 246-272A-0110, Table I for Category 2 products.

Hearing Location(s): On December 18, 2024, at 3:00 p.m., at the Department of Health, Town Center 2, Rooms 166 and 167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_5IpueQKRQ-kOpH4hNHTED5g. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 27, 2024.

Submit Written Comments to: Peter Beaton, P.O. Box 47820, Olympia, WA 98504-7820, email peter.beaton@doh.wa.gov, https://fortress.wa.gov/doh/policyreview, beginning date and time of filing, by December 18, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Andrea Hall, phone 360-236-3351, TTY 771 [711], email andrea.hall@doh.wa.gov, by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Category 2 products treat high-strength sewage from restaurants and other facilities that generate high levels of oil and grease. WAC 246-272A-0110 states manufacturers of proprietary treatment products used in on-site sewage systems must test their products with an Environmental Protection Agency (EPA) testing method. In the current rule Table I, Category 2 products must test for EPA Method 1664, Revision B (February 2010) to treat oil and grease. However, this test does not treat for $CBOD_5$ (organic sewage strength) and suspended solids (TSS). The department is proposing to amend the rule to add a requirement for NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) testing for Category 2 products to determine their efficacy to treat $CBOD_5$ and TSS. Prior to the recent rule revision, the rule required testing for Category 2 products under the EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies/EPA Environmental Technology Verification (April 2001). This protocol tested for $CBOD_5$, TSS, and oil and grease. EPA archived this testing protocol in 2013. During the recent rule revision, the EPA Method 1664, Revision B (February 2010) testing was adopted for Category 2 systems to treat oil and grease. This recommendation, however, neglected to assure that Category 2 products are also tested for $CBOD_5$ and TSS. A manufacturer provided formal comment highlighting this oversight and recommended Category 2 products instead be tested with NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021). To ensure Category 2 products are tested for $CBOD_5$, TSS, and oil and grease, the department determined that Category 2 products should be tested by both EPA Method 1664, Revision B (February 2010) and NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021).

Reasons Supporting Proposal: The state board of health (board) has rule-making authority for on-site sewage systems with design flows less than 3,500 gallons per day. Chapter 246-272A WAC, On-site sewage systems, sets standards for the siting, design, installation, use, care, and management of these small on-site sewage systems. At the March 2024 board meeting, the board delegated rule making to the department under RCW 43.20.050(4). The proposed rule protects public health by minimizing both the potential for exposure to sewage and the adverse effects of discharges on ground and surface waters. The proposed rule meets the intent of RCW 43.20.50 by revising the current on-site sewage system rule to maintain enforceable standards for the design, construction, installation, operation, maintenance, and monitoring to ensure properly functioning Category 2 on-site sewage systems. Without NSF/ANSI 40 testing, there would be a higher risk of on-site sewage systems failing to properly treat wastewater, potentially leading to the release of untreated wastewater into the environment

Statutory Authority for Adoption: RCW 43.20.50 [43.20.050].

Statute Being Implemented: RCW 43.20.50 [43.20.050].

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E. Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Jeremy Simmons, 111 Israel Road S.E. Tumwater, WA 98501, 360-236-3346.

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 Peter Beaton, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-4031, TTY 771 [711], email peter.beaton@doh.wa.gov.

Scope of exemption for rule proposal:

Is not exempt.

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

Small Business Economic Impact Statement (SBEIS)

A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule: The department is proposing amending WAC 246-272A-0110, Table 1, Category 2, to add NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) testing for Category 2 products.

WAC 246-272A-0110 states manufacturers of proprietary treatment products used in on-site sewage systems must test their products with an EPA testing method. Manufacturers must register their products with the department based on test results before the product is allowed to be permitted or installed in Washington. This allows the department to ensure that products used in on-site sewage systems can provide the appropriate level of treatment needed to protect public health and the environment such as drinking water sources and shellfish sites. Proprietary treatment products are required to be installed and operated as they were tested and registered to ensure they continue to perform as needed.

Category 2 products treat high-strength sewage from restaurants and other facilities that generate high levels of oil and grease. Prior to the recent rule revision, the rule required testing for Category 2 products under the EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies/EPA Environmental Technology Verification (April 2001). This protocol tested for $CBOD_5$, TSS, and oil and grease. EPA archived this testing protocol in 2013. During the recent rule revision, the EPA Method 1664, Revision B (February 2010) testing was adopted for Category 2 systems to treat oil and grease. This recommendation, however, neglected to assure that Category 2 products are also tested for $CBOD_5$ and TSS. A manufacturer provided formal comment highlighting this oversight and recommended Category 2 products instead be tested with NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021). The department determined Category 2 products should be tested by both EPA Method 1664, Revision B (February 2010) and NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021).

The state board of health (board) has rule-making authority for on-site sewage systems with design flows less than 3,500 gallons per day. Chapter 246-272A WAC, On-site sewage systems, sets standards for the siting, design, installation, use, care, and management of on-site sewage systems of this size. At the March 2024 board meeting, the board delegated rule making to the department under RCW 43.20.050(4).

As a result of the rule, only manufacturers of Category 2 products will face the compliance cost ($130,000) for the NSF/ANSI 40 test when developing new products. Businesses who purchase and install a Category 2 product from the manufacturers do not pay for the NSF/ANSI 40 test. The department does not expect businesses to need any professional services to comply with the rule.

Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS):

Table 1. Summary of Businesses Required to comply to the Proposed Rule

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
562991	Septic Tank and Related Services	237	$2,951
238910	Site Preparation Contractors	2,498	$4,226
423390	Other Construction Material Merchant Wholesalers	954	$5,616
326199	All Other Plastics product Manufacturing	120	$18,869
333318	Other Commercial and Service Industry Machinery Manufacturing	42	$9,214

Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:

WAC 246-272A-0110 Proprietary treatment products—Eligibility for registration.

Description: WAC 246-272A-0110 states manufacturers of proprietary treatment products used in on-site sewage systems must test their

products with an EPA testing method. Table I, Category 2 products must test for EPA Method 1664, Revision B (February 2010) to treat oil and grease. However, this test does not treat for $CBOD_5$ and TSS. The department is proposing to add NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) testing for Category 2 products to treat for $CBOD_5$ and TSS.

Cost(s): Unit cost for NSF/ANSI 40 testing estimated cost: $130,000[1]**:**

• The performance classification is based on the evaluation of system influent and effluent samples collected over a six-month period. Evaluation of influent and effluent samples over time allows the system's treatment efficacy to be characterized.

• Influent Samples: TSS and biochemical oxygen demand (BOD_5), collected five times per week; alkalinity, collected once per week.

• Effluent Samples: TSS and $CBOD_5$, collected five times per week.

[1] Email correspondence from NSF, a firm recognized internationally for developing robust standards and tests, audits and certifying products for food, water, and dietary supplements.

Summary of all Cost(s):

Table 2. Summary of Section 3 probable cost(s)

WAC Section and Title	Probable Cost(s)
246-272A-0110 Proprietary treatment products—Eligibility for registration.	$130,000 for each device tested

Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated: Yes, the costs of the proposed rule (unit cost for NSF/ANSI 40 - Residential Wastewater Treatment Systems, versions dated between January 2009 and May 31, 2021) = $130,000 **are greater than** the minor cost thresholds.

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
562991	Septic Tank and Related Services	237	$2,951
238910	Site Preparation Contractors	2,498	$4,226
423390	Other Construction Material Merchant Wholesalers	954	$5,616
326199	All Other Plastics product Manufacturing	120	$18,869
333318	Other Commercial and Service Industry Machinery Manufacturing	42	$9,214

Summary of how the costs were calculated: The department contacted the NSF laboratory and asked for the price NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) testing and the laboratory responded with the quote of $130,000.

Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: Yes, the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

Explanation of the determination: The proposed rule may have a disproportionate impact on small businesses because all businesses will face the same cost of $130,000 for the NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and

May 31, 2021) test, so by any standard used the costs will be disproportionate.

If the proposed rule has a disproportionate impact on small businesses, the following steps have been identified and taken to reduce the costs of the rule on small businesses:

1. Reducing, modifying, or eliminating substantive regulatory requirements;

2. Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

3. Reducing the frequency of inspections;

4. Delaying compliance timetables;

5. Reducing or modifying fine schedules for noncompliance; or

6. Any other mitigation techniques including those suggested by small businesses or small business advocates.

If costs cannot be reduced an explanation has been provided below about why the costs cannot be reduced: The cost of the proposed rule cannot be reduced because it is a unit cost the laboratory charges for performing the test, which is governed by the laboratory. There was no option to reduce or eliminate this test. Delaying compliance time lines would endanger public health. All recordkeeping components and inspections are intrinsic in the laboratory test and are controlled by the laboratory and manufacturer. Category 2 products that have not been tested with NSF/ANSI 40 would not be permitted to be sold in Washington. Noncompliance with this proposed rule, similar to noncompliance to the rest of chapter 246-272A WAC, is subject to the enforcement and penalties outlined in chapter 246-272A WAC.

Description of how small businesses were involved in the development of the proposed rule: The department surveyed all known on-site sewage system component manufacturers about the proposed rule. Several small businesses responded. The manufacturers were generally neutral on the proposal. None proposed an alternative to requiring NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021).

The estimated number of jobs that will be created or lost in result of the compliance with the proposed rule: The department does not believe the proposed rule will result in having businesses create or lose jobs as the result of the purposed rule.

A copy of the statement may be obtained by contacting Peter Beaton, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-4031, TTY 771 [711], email peter.beaton@doh.wa.gov.

November 6, 2024
Kristin Petersen, JD
Chief of Policy
For Umair A. Shah, MD, MPH
Secretary of Health

OTS-5909.1

AMENDATORY SECTION (Amending WSR 24-06-046, filed 3/1/24, effective 4/1/24)

WAC 246-272A-0110 Proprietary treatment products—Eligibility for registration. (1) Manufacturers shall register a proprietary treatment product with the department using the process described in WAC 246-272A-0120 before a local health officer may permit use of the product.

(2) To be eligible for product registration, manufacturers desiring to sell or distribute proprietary treatment products in Washington state shall:

(a) Verify product performance through testing using the testing protocol established in Table I of this section;

(b) Report product test results of influent and effluent sampling obtained throughout the testing period (including normal and stress loading phases) for evaluation of constituent reduction according to the requirements in Table II of this section;

(c) Demonstrate product performance according to the requirements in Table III of this section. All 30-day averages and geometric means obtained throughout the test period must meet the identified threshold values to qualify for registration at that threshold level; and

(d) Verify bacteriological reduction according to WAC 246-272A-0130 for product registration utilizing bacterial levels BL1, BL2, and BL3.

(3) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility accredited by ANSI:

(a) NSF/ANSI 40: Residential Wastewater Treatment Systems;

(b) NSF/ANSI 41: Non-Liquid Saturated Treatment Systems;

(c) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation;

(d) NSF/ANSI 245: Residential Wastewater Treatment Systems - Nitrogen Reduction; or

(e) NSF/ANSI 385: Residential Wastewater Treatment Systems – Disinfection Mechanics for Bacteriological Reduction described in WAC 246-272A-0130.

(4) Manufacturers verifying product performance through testing according to EPA Method 1664, Revision B and using a wastewater laboratory certified by the Washington department of ecology shall provide supporting information, including flow data, and influent and effluent quality sampling results from a minimum of three installations with similar design loading to demonstrate product performance to Category 2 standards.

(5) Treatment levels established in Table III of this section are intended to establish treatment product performance in a product testing setting under established protocols by qualified testing entities. Field compliance standards for proprietary treatment products shall follow the requirements in WAC 246-272A-0120(5).

(6) Manufacturers may submit a written request to substitute components of a registered product's construction in cases of supply chain shortage or similar manufacturing disruptions impacting installations, operation, or maintenance. The substitution request must include a report stamped, signed, and dated by a professional engineer demonstrating the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and

maintenance of the original registered product. If approved, substitution is authorized until rescinded by the department.

Table I

Testing Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Required Testing Protocol**
Category 1 Designed to treat septic tank effluent anticipated to be equal to or less than treatment level E.	NSF/ANSI 40—Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021)
Category 2 Designed to treat effluent or sewage with sewage quality parameters anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	EPA Method 1664, Revision B (February 2010) and NSF/ANSI 40—Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021)
Category 3 Black water component of residential sewage (such as composting* and incinerating** toilets).	NSF/ANSI 41: Non-Liquid Saturated Treatment Systems (Versions dated between February 2011 and May 31, 2021) **NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation (April 2000)
Total Nitrogen Reduction in Categories 1 & 2 (Above)	NSF/ANSI 245: Residential Wastewater Treatment Systems – Nitrogen Reduction (Versions dated between January 2018 and May 31, 2021)

Table II

Test Results Reporting Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Testing Results Reported**
Category 1 Designed to treat septic tank effluent anticipated to be equal to or less than treatment level E.	Report the following test results of influent and effluent sampling obtained throughout the testing period for evaluation of reduction of $CBOD_5$[2], and TSS: □ Average □ Standard Deviation □ Minimum □ Maximum □ Median □ Interquartile Range □ 30-day Average (for each month) For evaluation of bacteriological reduction performance. Report complete treatment component sequence testing as described in Table III, Category 1. For evaluation of performance meeting treatment level BL1: (1) Report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period. See WAC 246-272A-0130. (2) Report complete testing results for supplemental bacteriological reduction technology[1] when the required treatment levels for fecal coliform in Table III, Category 1 are not met by the primary proprietary treatment product. For evaluation of performance meeting treatment level BL2 or BL3: (1) Report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period as described in WAC 246-272A-0130; or (2) Report complete testing results for supplemental bacteriological reduction technology[1] when the required treatment levels for fecal coliform in Table III, Category 1 are not met by the primary proprietary treatment product. For all options, test report must also include the individual results of all samples drawn throughout the test period.

Test Results Reporting Requirements for Proprietary Treatment Products	
Category 2 Designed to treat effluent or sewage with sewage quality parameters anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, atypical residences, etc.)	Report all individual test results and full test average values of influent and effluent sampling obtained throughout the testing period for the evaluation of reduction of: $CBOD_5$, TSS and O&G. Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	Report test results on all required performance criteria according to the format prescribed in the NSF test protocol described in Table I.
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Report test results on all required performance criteria according to the format prescribed in the test protocol described in Table I.

[1] Test results for BOD_5 may be submitted in lieu of test results for $CBOD_5$. In these cases numerical values for $CBOD_5$ will be determined using the following formula: ($BOD_5 \times 0.83 = CBOD_5$).

[2] Supplemental bacteriological reduction technology must be tested for influent/effluent fecal coliform or *E. coli* per WAC 246-272A-0130 (bacteriological reduction testing protocol). Supplemental fecal coliform or *E. coli* reducing technologies will be rated for log base 10 removal of fecal coliform or *E. coli*. The lowest 30-day geometric mean will be used to rate reduction level. The highest monthly geometric mean for treatment technology fecal coliform or *E. coli* reduction will be used as the baseline value for review.

Table III

Product Performance Requirements for Proprietary Treatment Products							
Treatment Component/Sequence Category	**Product Performance Requirements**						
Category 1 Designed to treat effluent anticipated to be equal to or less than treatment level E.	**Treatment System Performance Testing Levels**						
	Level	**Parameters**					
		$CBOD_5$ mg/L	**TSS mg/L**	**O&G mg/L**	**FC cfu/100 mL**	**TN mg/L**	***E. coli* cfu/100 mL**
	A	10	10	—	—	—	—
	B	15	15	—	—	—	—
	C	25	30	—	—	—	—
	BL1			—	200	—	126
	BL2	—	—	—	1,000	—	—
	BL3	—	—	—	50,000	—	—
	E	228	80	20	—	—	—
	N	—	—	—	—	30 (or 50% reduction based on mass loading as required in WAC 246-272A-0320)	—
	Values for Levels A - C are 30-day values (averages for $CBOD_5$, TSS, and geometric mean for FC.) All 30-day averages throughout the test period must meet these values in order to be registered at these levels. Values for Levels E and N are derived from full test averages.						
Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.	All of the following requirements must be met: (1) All full test averages must meet Level E; and (2) Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.						

Product Performance Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Product Performance Requirements**
(Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	Test results must meet the performance requirements established in the NSF test protocol.
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Test results must establish product performance effluent quality meeting Level N, when presented as the full test average.

WSR 24-22-134
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed November 6, 2024, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-092.

Title of Rule and Other Identifying Information: Chapter 365-196 WAC, Procedural criteria for adopting comprehensive plans and development regulations; and chapter 365-199 WAC, Procedures for making determinations of compliance for jurisdictions seeking voluntary reversion to partial planning status, certification of an empirical parking study, and certification and approval of alternative pathways to comply with density requirements found in RCW 36.70A.635(1).

Hearing Location(s): On January 6, 2025, at 11:00 a.m., virtual (Zoom), register https://wastatecommerce.zoom.us/meeting/register/tZUvd-6rrDksGdIcUM3NLIGrf7B-ctsOPnMk.

Date of Intended Adoption: March 3, 2025.

Submit Written Comments to: Deborah Jacobs, 1011 Plum Street S.E., Olympia, WA 98504, email gmarulemaking@commerce.wa.gov, beginning November 20, 2024, at 8:00 a.m. PST, by January 13, 2025, at 5:00 p.m. PST.

Assistance for Persons with Disabilities: Contact Deborah Jacobs, phone 360-725-2719, email Deborah.Jacobs@commerce.wa.gov, by December 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates are necessary to implement 24 bills passed between 2019 and 2024 relating to housing, urban growth areas, and rural planning. This includes changes in how local governments plan for affordable housing, increases in residential density, accessory dwelling units, tiny houses, design review, local project review, urban growth area swaps, and infill development in limited areas of more intensive rural development.

Reasons Supporting Proposal: These revisions will assist jurisdictions to plan for and achieve affordable housing goals. The proposed rules will assist counties and cities to further implementing the Growth Management Act requirements through local comprehensive plans and development regulations. Effective land use planning is critical to sustainable economic development, conservation of natural resource lands and industries, supporting a healthy natural environment, fiscally responsible infrastructure investments, and providing predictability to communities and developers.

Statutory Authority for Adoption: RCW 36.70A.050, 36.70A.190.

Statute Being Implemented: Chapters 36.70A and 36.70B RCW.

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

Name of Proponent: Washington state department of commerce (commerce), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Andersen, 601 East Riverside Avenue, Suite 470, Spokane, WA 98202, 509-818-1029; Enforcement: Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-664-9160.

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. Commerce is not explicitly listed in subsection (5)(b)(i) and does not

intend to make this section voluntarily applicable to this rule update per subsection [(5)(b)](ii). One of the primary purposes for the rule amendments is to clarify language, consistent with the provisions of RCW 34.05.328 (5)(b)(iv). Therefore, unless subsection [(5)(b)](ii) is invoked by the joint administrative rules review committee after filing the CR-102, no cost-benefit analysis 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 relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 6, 2024
Amanda Hathaway
Legislative Coordinator

OTS-5874.2

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-030 Applicability. (1) Where these guidelines apply.

(a) This chapter applies to all counties ((~~and~~)), cities, and towns that are required to plan or choose to plan under RCW 36.70A.040.

(b) WAC 365-196-830 addressing protection of critical areas applies to all counties and cities, including those that do not fully plan under RCW 36.70A.040.

(c) As of May 1, 2009, the following counties and cities within them are not required to fully plan under RCW 36.70A.040: Adams, Asotin, Cowlitz, Ferry, Grays Harbor, Klickitat, Lincoln, Okanogan, Wahkiakum, Skamania, and Whitman.

(2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for

meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches.

(3) How the growth management hearings board use these guidelines. The growth management hearings board must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, board must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself.

(4) When a county or city should consider the procedural criteria. Counties and cities should consider these procedural criteria when amending or updating their comprehensive plans, development regulations or countywide planning policies. Since adoption of the act, counties and cities and others have adopted a variety of agreements and frameworks to collaboratively address issues of local concern and their responsibilities under the act. The procedural criteria do not trigger an independent obligation to revisit those agreements. Any local land use planning agreements should, where possible, be construed as consistent with these procedural criteria. Changes to these procedural criteria do not trigger an obligation to review and update local plans and regulations to be consistent with these criteria.

AMENDATORY SECTION (Amending WSR 17-20-100, filed 10/4/17, effective 11/4/17)

WAC 365-196-200 Statutory definitions. The following definitions are contained in chapters 36.70A and 36.70B RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030 and 36.70B.020. ((~~Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.~~))

(1) "Administrative design review" means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on objective design and development standards without a public meeting or hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance. A city may utilize public meetings, hearings, or voluntary review boards to consider, recommend, or approve requests for variances from locally established design review standards.

(2) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

((~~(2)~~)) (3) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed 30 percent of the monthly income of a household whose income is:

(a) For rental housing, 60 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development; or

(b) For owner-occupied housing, 80 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

(4) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

((~~(3)~~)) (5) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

((~~(4)~~)) (6) "City" means any city or town, including a code city.

((~~(5)~~)) (7) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

(8) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

((~~(6)~~)) (9) "Cottage housing" means residential units on a lot with a common open space that either:

(a) Is owned in common; or

(b) Has units owned as condominium units with property owned in common and a minimum of 20 percent of the lot size as open space.

(10) "Courtyard apartments" means attached dwelling units arranged on two or three sides of a yard or court.

(11) "Critical areas" include the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable water;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

"Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

((~~(7)~~)) (12) "Department" means the department of commerce.

((~~(8)~~)) (13) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

((~~(9) "Essential public facilities" includes those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as de-~~

~~fined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.~~

~~(10)~~)) (14) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

(15) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

(16) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 30 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

(17) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

((~~(11)~~)) (18) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

((~~(12)~~)) (19) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

((~~(13)~~)) (20) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

(21) "Major transit stop" means:

(a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems, including transitways; or

(d) Stops on bus rapid transit routes, including those stops that are under construction.

(22) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

((~~(14)~~)) (23) "Middle housing" means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.

(24) "Minerals" include gravel, sand, and valuable metallic substances.

((~~(15)~~)) (25) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 120 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

(26) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

(27) "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

(28) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action including, but not limited to, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones which do not require a comprehensive plan amendment, but excluding the adoption or amendment of a comprehensive plan, subarea

plan, or development regulations except as otherwise specifically included in this subsection.

(29) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

((~~(16)~~)) (30) "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

(31) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

((~~(17)~~)) (32) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

((~~(18)~~)) (33) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

((~~(19)~~)) (34) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

((~~(20)~~)) (35) "Single-family zones" means those zones where single-family detached housing is the predominant land use.

(36) "Stacked flat" means dwelling units in a residential building of no more than three stories on a residential zoned lot in which each floor may be separately rented or owned.

(37) "Townhouses" means buildings that contain three or more attached single-family dwelling units that extend from foundation to roof and that have a yard or public way on not less than two sides.

(38) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

((~~(21)~~)) (39) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

((~~(22)~~)) (40) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

((~~(23)~~)) (41) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States Department of Housing and Urban Development.

(42) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-210 Definitions of terms as used in this chapter. The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) "Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(2) "Achieved density" means the density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) "Adequate provisions" in the context of RCW 36.70A.070 (2)(d) means adopting plans, policies, programs, regulations, and incentives to accommodate and encourage housing affordable to each economic segment of the county or city, and documenting programs and actions needed to overcome barriers and limitations to achieve housing availability.

(4) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

((~~(4) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.~~))

(5) "All economic segments" means, at a minimum, low, very low, extremely low, and moderate-income household segments, and those who occupy emergency housing, emergency shelters, and permanent supportive housing.

(6) "Allowed densities" means the density, expressed in dwelling units per acre, units per lot, or other measure of intensity allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

((~~(6)~~)) (7) "Assumed densities" means the density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

((~~(7)~~)) (8) "Concurrency" or "concurrent with development" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above.

((~~(8)~~)) (9) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

((~~(9)~~)) (10) "Contiguous development" means development of areas immediately adjacent to one another.

((~~(10)~~)) (11) "Coordination" means consultation and cooperation among ((~~jurisdictions~~)) counties and cities.

((~~(11)~~)) (12) "Cultural resources" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

((~~(12)~~)) (13) "Demand management strategies" or "transportation demand management strategies" means strategies designed to change

travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that:

(a) Shift demand outside of the peak travel time;

(b) Shift demand to other modes of transportation;

(c) Increase the average number of occupants per vehicle;

(d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

((~~(13)~~)) (14) "Displacement" in the context of RCW 36.70A.070 means the process by which a household is forced to move from its community because of conditions beyond its control.

(15) "Displacement risk" means the likelihood that a household will be forced to move from its community.

(16) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

((~~(14)~~)) (17) "Ecosystem functions" are the products, physical and biological conditions, and environmental qualities of an ecosystem that result from interactions among ecosystem processes and ecosystem structures. Ecosystem functions include, but are not limited to, sequestered carbon, attenuated peak streamflows, aquifer water level, reduced pollutant concentrations in surface and ground waters, cool summer in-stream water temperatures, and fish and wildlife habitats.

((~~(15)~~)) (18) "Ecosystem values" are the cultural, social, economic, and ecological benefits attributed to ecosystem functions.

((~~(16)~~)) (19) "Essential public facilities" include those facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, opioid treatment programs including both mobile and fixed-site medication units, recovery residences, harm reduction programs excluding safe injection sites, and inpatient facilities including substance use disorder treatment facilities, mental health facilities, group homes, community facilities as defined in RCW 72.05.020, and secure community transition facilities as defined in RCW 71.09.020.

(20) "Exclusion" means the act or effect of shutting or keeping certain populations out of a specified area, in a manner that may be intentional or unintentional.

(21) "Family day-care provider" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than 12 children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide their services in the family living quarters of the day care provider's home.

((~~(17)~~)) (22) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

((~~(18)~~)) (23) "Growth Management Act" - See definition of "act."

((~~(19)~~)) (24) "Historic preservation" or "preservation" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization,

maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

((~~(20)~~)) (25) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the tangible and material evidence of the human past, aged 50 years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

((~~(21)~~)) (26) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

((~~(22)~~)) (27) "Local government" means a county, city, or town.

(28) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

((~~(23)~~)) (29) "Mitigation" or "mitigation sequencing" means a prescribed order of steps taken to reduce the impacts of activities on critical areas. As defined in WAC 197-11-768, mitigation means:

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

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

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

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

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

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

((~~(24)~~)) (30) "Must," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

((~~(25)~~)) (31) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

((~~(26)~~)) (32) "Planning period" means the 20-year period starting on the relevant due date for the most recent periodic update specified in RCW 36.70A.130(5).

((~~(27)~~)) (33) "Public benefit," as referenced in RCW 39.33.015, means affordable housing, which can be rental housing or permanently affordable homeownership for low, very low, and extremely low-income households, and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons.

(34) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

((~~(28)~~)) (35) "Racially disparate impacts" means disproportionate impacts on one or more racial groups as a result of policies, practices, rules, or other systems.

(36) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

((~~(29)~~)) (37) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a region containing one or more counties which have common transportation interests.

((~~(30)~~)) (38) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

((~~(31)~~)) (39) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

((~~(32)~~)) (40) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

((~~(33)~~)) (41) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

((~~(34)~~)) (42) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

((~~(35)~~)) (43) "Sufficient land capacity for development" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the countywide planning policies.

((~~(36)~~)) (44) "Surplus public property" means excess real property that is not required for the needs of or the discharge of the responsibilities of the state agency, municipality, or political subdivision. Note that RCW 39.33.015 applies a specific definition for affordable housing in the context of surplus public property.

(45) "Transitional housing" means a project that provides housing and supportive services to homeless persons or families for up to two years, or longer, and that has as its purpose facilitating the movement of homeless persons and families into independent living.

(46) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

((~~(37)~~)) (47) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

((~~(38)~~)) (48) "Transportation system management" means the use of low cost solutions to increase the performance of the transportation system. Transportation system management (TSM) strategies include, but are not limited to, signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

((~~(39)~~)) (49) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are

systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

((~~(40)~~)) (50) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-300 Urban density. (1) The role of urban areas in the act. The act requires counties and cities to direct new growth to urban areas to allow for more efficient and predictable provision of adequate public facilities, to promote an orderly transition of governance for urban areas, to reduce development pressure on rural and resource lands, and to encourage redevelopment of existing urban areas.

(2) How the urban density requirements in the act are interrelated. The act involves a consideration of density in three contexts:

(a) Allowed densities: The density, expressed in dwelling units per acre, units per lot, or other measure of intensity, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(b) Assumed densities: The density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(c) Achieved density: The density at which new development occurred in the period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) Determining the appropriate range of urban densities. Within urban growth areas, counties and cities must permit urban densities and provide sufficient land capacity suitable for development. The requirements of RCW 36.70A.110 and 36.70A.115 apply to the densities assumed in the comprehensive plan and the densities allowed in the implementing development regulations.

(a) Comprehensive plans. Under RCW 36.70A.070(1) and in RCW 36.70A.110(2), the act requires that the land use element identify areas and assumed densities sufficient to accommodate the 20-year ((~~population~~)) allocation of population and countywide housing needs by economic segment. The land use element should clearly identify the densities, or range of densities, assumed for each land use designation as shown on the future land use map. When reviewing the urban growth area, the assumed densities in the land capacity analysis must be urban densities.

(b) Development regulations. Counties and cities must provide sufficient capacity of land suitable for development.

(i) Development regulations must allow development at the densities assumed in the comprehensive plan.

(ii) Counties and cities need not force redevelopment in urban areas not currently developed at urban densities, but the development regulations must allow, and should not discourage redevelopment at urban densities. If development patterns are not occurring at urban densities, counties and cities should review development regulations for potential barriers or disincentives to development at urban densities.

Counties and cities should revise regulations to remove any identified barriers and disincentives to urban densities, and may include incentives.

(4) Factors to consider for establishing urban densities. The act does not establish a uniform standard for minimum urban density. Counties and cities may establish a specified minimum density in countywide or multicounty planning policies. Counties and cities should consider the following factors when determining an appropriate range of urban densities:

(a) An urban density is a density for which cost-effective urban services can be provided. Higher densities generally lower the per capita cost to provide urban governmental services.

(b) Densities should be higher in areas with a high local transit level of service. Generally, a minimum of seven to eight dwelling units per acre is necessary to support local urban transit service. Higher densities are preferred around high capacity transit stations.

(c) The areas and densities within an urban growth area must be sufficient to accommodate the portion of the 20-year population and housing needs by economic segment that is allocated to the urban area. Urban densities should allow accommodation of the population allocated within the area that can be provided with adequate public facilities during the planning period.

(d) Counties and cities should establish significantly higher densities within regional growth centers designated in RCW 47.80.030; in growth and transportation efficiency centers designated under RCW 70.94.528; and around high capacity transit stations in accordance with RCW 47.80.026. Cities may also designate new or existing downtown centers, neighborhood centers, or identified transit corridors as focus areas for infill and redevelopment at higher densities.

(e) Densities should allow counties and cities to accommodate new growth predominantly in existing urban areas and reduce reliance on either continued expansion of the urban growth area, or directing significant amounts of new growth to rural areas.

(f) The densities chosen should accommodate a variety of housing types and sizes to meet the needs of all economic segments of the ((~~community~~)) county or city. The amount and type of housing accommodated at each density and in each land use designation should be consistent with the ((~~need for~~)) allocation of countywide housing needs by economic segment and the various housing types and densities necessary to provide housing for those economic segments as identified in the housing element of the comprehensive plan.

(g) Counties and cities may designate some urban areas at less than urban densities to protect a network of critical areas, to avoid further development in frequently flooded areas, or to prevent further development in geologically hazardous areas. Counties or cities should show that the critical areas are present in the area so designated and that area designated is limited to the area necessary to achieve these purposes.

(5) Addressing development patterns that occurred prior to the act.

(a) Prior to the passage of the act, many areas within the state developed at densities that are neither urban nor rural. Inside the urban growth area, local comprehensive plans should allow appropriate redevelopment of these areas. Newly developed areas inside the urban growth area should be developed at urban densities.

(b) Local capital facilities plans should include plans to provide existing urban areas with adequate public facilities during the

planning period so that available infrastructure does not serve as a limiting factor to redevelopment at urban densities.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-305 Countywide planning policies. (1) Purpose of countywide planning policies. The act requires counties and cities to collaboratively develop countywide planning policies to govern the development of comprehensive plans. The primary purpose of countywide planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of countywide planning policies is to facilitate the transformation of local governance in the urban growth area, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.

(2) Relationship to the act. Countywide planning policies must comply with the requirements of the act. Countywide planning policies may not compel counties and cities to take action that violates the act. Countywide planning policies may not permit actions that the act prohibits nor include exceptions to such prohibitions not contained in the act. If a countywide planning policy can be implemented in a way that is consistent with the act, then it is consistent with the act, even if its subsequent implementation is found to be out of compliance. RCW 36.70A.210(4) requires state agencies to comply with countywide planning policies.

(3) Relationship to comprehensive plans. The comprehensive plans of counties and cities must comply with both the countywide planning policies and the act. Any requirements in a countywide planning policy do not replace requirements in the act or any other state or federal law or regulation.

(4) Required policies. Consistent with RCW 36.70A.210(3) and 36.70A.215, countywide planning policies must cover the following subjects:

(a) Policies to implement RCW 36.70A.110, including:

(i) Designation of urban growth areas;

(ii) Selection of population projections, employment forecasts, and growth allocations between ((~~cities and~~)) counties and cities as part of the review of an urban growth area;

(iii) Allocation of housing needs by economic segment between counties and cities and the factors to guide their distribution, such as proximity to jobs, transit, and supportive services, consistent with WAC 365-196-410 (2)(c)(ii) and (iii) and projections of housing need provided by the department;

(iv) Procedures governing amendments to urban growth areas, including the review required by RCW 36.70A.130(3);

((~~(iv)~~)) (v) Consultation between ((~~cities and~~)) counties and cities regarding urban growth areas; and

((~~(v)~~)) (vi) If desired, policies governing the establishment of urban service boundaries or potential annexation areas.

(b) Promoting contiguous and orderly development and provision of urban services to such development;

(c) Siting public facilities of a countywide or statewide nature, including transportation facilities of statewide significance;

(d) Countywide transportation facilities and strategies;

(e) The need for affordable housing such as housing for all economic segments of the population and parameters for its distribution;

(f) Joint city/county planning in urban growth areas;

(g) Countywide economic development and employment;

(h) An analysis of fiscal impact; and

(i) Where applicable, policies governing the buildable lands review and evaluation program.

(5) Recommended policies. Countywide planning policies should also include policies addressing the following:

(a) Procedures by which the countywide planning policies will be reviewed and amended; and

(b) A process for resolving disputes regarding interpretation of countywide planning policies or disputes regarding implementation of the countywide planning policies.

(6) Framework for adoption of countywide planning policies. Prior to adopting countywide planning policies, counties and cities must develop a framework. This framework should be in written form and agreed to by the county and the cities within those counties. The framework may be in a memorandum of understanding, an intergovernmental agreement, or as a section of the countywide planning policies. This framework must include the following provisions:

(a) Desired policies;

(b) Deadlines;

(c) Ratification of final agreements and demonstration; and

(d) Financing, if any, of all activities associated with developing and adopting the countywide planning policies.

(7) Forum for ongoing coordination. Counties and cities should establish a method for ongoing coordination of issues associated with implementation of the countywide planning policies and comprehensive plans, which should include both a forum for county and city elected officials and a forum for county and city staff responsible for implementation. ((~~Cities and counties should review adopted countywide policies to determine whether they are effectively achieving their objectives.~~)) These forums may also include special purpose districts, transit districts, port districts, federal agencies((~~,~~)) and state agencies((~~, and tribes~~)). Jurisdictions must invite federally recognized Indian tribal government to participate in these forums, or provide a parallel process for collaboration and participation for tribal government in the regional planning process.

(8) Ongoing review recommended. Counties and cities should review adopted countywide policies to determine whether they are effectively achieving their objectives.

(9) Multicounty planning policies.

(a) Multicounty planning policies must be adopted by two or more counties, each with a population of 450,000 or more, with contiguous urban areas. They may also be adopted by other counties by a process agreed to among the counties and cities within the affected counties.

(b) Multicounty planning policies are adopted by two or more counties and establish a common region-wide framework that ensures consistency among county and city comprehensive plans adopted pursuant to RCW 36.70A.070, and countywide planning policies adopted pursuant to RCW 36.70A.210.

(c) Multicounty planning policies provide a framework for regional plans developed within a multicounty region, including regional transportation plans established under RCW 47.80.023, as well as plans

of cities, counties, and others that have common borders or related regional issues as required under RCW 36.70A.100.

(d) Multicounty planning policies should address, at a minimum, the same topics identified for countywide planning as identified in RCW 36.70A.210(3), except for those responsibilities assigned exclusively to counties. Other issues may also be addressed.

(e) Because of the regional nature of multicounty planning policies, counties or cities should use an existing regional agency with the same or similar geographic area, such as a regional transportation planning organization, pursuant to RCW 47.80.020, to develop, adopt, and administer multicounty planning policies.

(f) In order to provide an ongoing multicounty framework, a schedule for reviewing and revising the multicounty planning policies may be established. This schedule should relate to the review and revision deadlines for county and city comprehensive plans pursuant to RCW 36.70A.130.

(10) Tribal coordination.

(a) Federally recognized tribes may voluntarily participate in local governments' comprehensive planning processes. Upon receipt of notice in the form of a tribal resolution from a federally recognized Indian tribe whose reservation or ceded lands lie within the county, which indicates the tribe has a planning process or intends to initiate a parallel planning process, the county, cities, and other local governments conducting the planning under this chapter shall enter into good faith negotiations to develop a mutually agreeable memorandum of agreement with such tribes in regard to collaboration and participation in the planning process. If a mutually agreeable memorandum of agreement cannot be reached, the parties must enter mediation as provided in RCW 36.70A.040 (8)(a).

(b) Counties must invite federally recognized tribes whose reservation or ceded land lie within the county to participate in developing countywide planning policies as provided in RCW 36.70A.210.

(c) Counties must develop policies for the protection of tribal cultural resources in collaboration with federally recognized tribes, provided that they choose to participate as provided in RCW 36.70A.210.

(d) Local jurisdictions must work with tribes to coordinate urban growth. At the earliest possible date prior to the revision of an urban growth area authorized under RCW 36.70A.110(8), the county must engage in meaningful consultation with any federally recognized Indian tribe that may be potentially affected by the proposed revision. Meaningful consultation must include discussion of the potential impacts to cultural resources and tribal treaty rights. A county must notify the affected federally recognized Indian tribe of the proposed revision using at least two methods, including by mail. Upon receiving a notice, the federally recognized Indian tribe may request a consultation to determine whether an agreement can be reached related to the revision of an urban growth area. If an agreement is not reached, the parties must enter mediation pursuant to RCW 36.70A.040.

(e) Cities with a port element must collaborate development with the city, port, and tribe(s) as provided in RCW 36.70A.085.

(f) The department shall forward comprehensive plan review submittals with federally recognized tribes upon request. Tribes will indicate to the department which jurisdiction's submittals they wish to receive as provided in RCW 36.70A.106.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-310 Urban growth areas. (1)((~~(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the 100-year flood plain of any river or river segment that:~~

~~(i) Is located west of the crest of the Cascade mountains; and~~

~~(ii) Has a mean annual flow of 1,000 or more cubic feet per second as determined by the department of ecology.~~

~~(b) Subsection (1)(a) of this section does not apply to:~~

~~(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;~~

~~(ii) Urban growth areas where expansions are precluded outside flood plains because:~~

~~(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or~~

~~(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or~~

~~(iii) Urban growth area expansions where:~~

~~(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;~~

~~(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or~~

~~(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:~~

~~(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; stormwater facilities; flood control facilities; or underground conveyances; and~~

~~(II) The development and use of such facilities or projects will not decrease flood storage, increase stormwater runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.~~

~~(c) Under (a)(i) of this subsection, "100-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.~~

~~(2)~~)) Requirements.

(a) Each county planning under the act must designate an urban growth area or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Each county must designate an urban growth area in its comprehensive plan.

(b) Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city.

(c) An urban growth area may include territory that is located outside a city if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.

(d) Based upon the growth management planning population projection selected by the county from within the range provided by the office of financial management, and based on a countywide employment forecast developed by the county at its discretion, the urban growth areas shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding 20-year period. Counties and cities may provide the office of financial management with information they deem relevant to prepare the population projections, and the office shall consider and comment on such information and review projections with ((~~cities and~~)) counties and cities before they are adopted. Counties and cities may petition the office to revise projections they believe will not reflect actual population growth.

(e) The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. ((~~Cities and~~)) Counties and cities have discretion in their comprehensive plans to make many choices about accommodating growth. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.

(f) Counties and cities should facilitate urban growth as follows:

(i) Urban growth should be located first in areas already characterized by urban growth that have existing public facilities and service capacities adequate to serve urban development.

(ii) Second, urban growth should be located in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

(iii) Third, urban growth should be located in the remaining portions of the urban growth area.

(g) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development. Recommendations governing the extension of urban services into rural areas are found in WAC 365-196-425.

(h) Each county that designates urban growth areas must review, according to the time schedule specified in RCW 36.70A.130(5), periodically its designated urban growth areas, the patterns of development, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (see WAC 365-196-610).

(i) If, during the county's review under (h) of this subsection, the county determines expansion of the urban growth area is not required to accommodate the urban growth projected to occur in the county for the succeeding 20-year period, but does determine that patterns of development have created pressure in areas that exceed available, developable lands within the urban growth area, the urban growth area or areas may be revised to accommodate identified patterns of development and likely future development pressure for the succeeding 20-year period if the following requirements are met:

(i) The revised urban growth area may not result in an increase in the total surface areas of the urban growth area or areas;

(ii) The areas added to the urban growth area are not or have not been designated as agricultural, forest, or mineral resource lands of long-term commercial significance;

(iii) Less than 15 percent of the areas added to the urban growth area are critical areas;

(iv) The areas added to the urban growth areas are suitable for urban growth;

(v) The transportation element and capital facility plan element have identified the transportation facilities, and public facilities and services needed to serve the urban growth area and the funding to provide the transportation facilities and public facilities and services;

(vi) The urban growth area is not larger than needed to accommodate the growth planned for the succeeding 20-year planning period and a reasonable land market supply factor;

(vii) The areas removed from the urban growth area do not include urban growth or urban densities; and

(viii) The revised urban growth area is contiguous, does not include holes or gaps, and will not increase pressures to urbanize rural or natural resource lands.

(j) The purpose of the urban growth area review is to assess the capacity of the urban land to accommodate population growth projected for the succeeding 20-year planning period.

((~~(ii)~~)) (i) This review should be conducted jointly with the affected cities.

((~~(iii)~~)) (ii) In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(k) Counties and cities must use the selected population projection identified in subsection (4) of this section to determine the countywide projection of housing need by economic segment provided by the department as prescribed in RCW 36.70A.070 (2)(a). Counties and cities must determine the countywide projected housing need using data and methodology provided by the department. When allocating projected housing needs for each jurisdiction within a county, counties and cities should use the minimum standards described in WAC 365-196-410 (2)(c)(iii).

(2)(a) Except as provided in (b) of this subsection, counties and cities may not expand the urban growth area into the 100-year flood plain of any river or river segment that:

(i) Is located west of the crest of the Cascade mountains; and

(ii) Has a mean annual flow of 1,000 or more cubic feet per second as determined by the department of ecology.

(b) Subsection (1)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a flood plain and lack adjacent buildable areas outside the flood plain;

(ii) Urban growth areas where expansions are precluded outside flood plains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the flood plain; or

(B) Expansions outside the flood plain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the flood plain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the flood plain;

(B) Urban development already exists within a flood plain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects including, but not limited to, habitat enhancement or environmental restoration; stormwater facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase stormwater runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) Under (a)(i) of this subsection, "100-year flood plain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(3) General procedure for designating urban growth areas.

(a) The designation process shall include consultation by the county with each city located within its boundaries. The adoption, review and amendment of the urban growth area should reflect a cooperative effort among jurisdictions to accomplish the requirements of the act on a regional basis, consistent with the countywide planning policies and, where applicable, multicounty planning policies.

(b) Each city shall propose the location of an urban growth area.

(c) The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.

(d) If an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated an urban growth area.

(e) As growth occurs, most lands within the urban growth area should ultimately be provided with urban governmental services by cities, either directly or by contract. Other service providers are appropriate within urban growth areas for regional or countywide services, or for isolated unincorporated pockets characterized by urban growth. Counties and cities should provide for development phasing within each urban growth area to ensure the orderly sequencing of development and that services are provided as growth occurs.

(f) Counties and cities should develop and evaluate urban growth area proposals with the purpose of accommodating projected urban growth through infill and redevelopment within existing municipal boundaries or urban areas. In some cases, expansion will be the logical response to projected urban growth.

(g) Counties, cities, and other municipalities, where appropriate, should negotiate interlocal agreements to coordinate land use management with the provision of adequate public facilities to the urban growth area. Such agreements should facilitate urban growth in a manner consistent with the cities' comprehensive plans and development regulations, and should facilitate a general transformation of governance over time, through annexation or incorporation, and transfer of nonregional public services to cities as the urban area develops.

(h) The initial effective date of an action that expands an urban growth area is the latest of the following dates per RCW 36.70A.067:

(i) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided under RCW 36.70A.290(2); or

(ii) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

(4) Recommendations for meeting requirements.

(a) Selecting and allocating countywide growth forecasts. This process should involve at least the following:

(i) The total countywide population is the sum of the population allocated to each city; the population allocated to any portion of the urban growth area associated with cities; the population allocated to any portion of the urban growth area not associated with a city; and the population growth that is expected outside of the urban growth area. ((~~Cities and~~)) Counties and cities should use consistent growth forecasts, allocations, and planning horizons. The planning horizon should start on the relevant deadline specified in RCW 36.70A.130(5) and encompass ((~~a minimum of~~)) 20 years.

(ii) RCW 43.62.035 directs the office of financial management to provide a reasonable range of high, medium and low 20-year population forecasts for each county in the state, with the medium forecast being most likely. Counties and cities must plan for a total countywide population that falls within the office of financial management range.

(iii) Consideration of other population forecast data, trends, and implications. In selecting population forecasts, counties and cities may consider the following:

(A) Population forecasts from outside agencies, such as regional or metropolitan planning agencies, and service providers.

(B) Historical growth trends and factors which would cause those trends to change in the future.

(C) General implications, including:

(I) Public facilities and service implications. Counties and cities should carefully consider how to finance the necessary facilities and should establish a phasing plan to ensure that development occurs at urban densities; occurs in a contiguous and orderly manner; and is linked with provision of adequate public facilities. These considerations are particularly important when considering forecasts closer to the high end of the range. Jurisdictions considering a population forecast closer to the low end of the range should closely monitor development and population growth trends to ensure actual growth does not begin to exceed the planned capacity.

(II) Overall land supplies. Counties and cities facing immediate physical or other land supply limitations may consider these limitations in selecting a forecast. Counties and cities that identify potential longer term land supply limitations should consider the extent to which current forecast options would require increased densities or slower growth in the future.

(III) Implications of short term updates. The act requires that 20-year growth forecasts and designated urban growth areas be updated at a minimum during the periodic review of comprehensive plans and development regulations (WAC 365-196-610). Counties and cities should consider the likely timing of future updates, and the opportunities this provides for adjustments.

(D) Counties and cities are not required to adopt forecasts for annual growth rates within the 20-year period, but may choose to for

planning purposes. If used, annual growth projections may assume a consistent rate throughout the planning period, or may assume faster or slower than average growth in certain periods, as long as they result in total growth consistent with the 20-year forecasts selected.

(iv) Selection of a countywide employment forecast. Counties, in consultation with cities, should adopt a 20-year countywide employment forecast to be allocated among urban growth areas, cities, and the rural area. The following should be considered in this process:

(A) The countywide population forecast, and the resulting ratio of forecast jobs to persons. This ratio should be compared to past levels locally and other regions, and to desired policy objectives; and

(B) Economic trends and forecasts produced by outside agencies or private sources.

(v) Projections for commercial and industrial land needs. When establishing an urban growth area, counties should designate sufficient commercial and industrial land. Although no office of financial management forecasts are available for industrial or commercial land needs, counties and cities should use a countywide employment forecast, available data on the current and projected local and regional economies, and local demand for services driven by population growth. Counties and cities should consider establishing a countywide estimate of commercial and industrial land needs to ensure consistency of local plans.

Counties and cities should consider the need for industrial lands in the economic development element of their comprehensive plan. Counties and cities should avoid conversion of areas set aside for industrial uses to other incompatible uses, to ensure the availability of suitable sites for industrial development.

(vi) Selection of community growth goals with respect to population, commercial and industrial development and residential development.

(vii) Selection of the densities ((~~the community~~)) a county or city seeks to achieve in relation to its growth goals. Inside the urban growth areas, densities must be urban. Outside the urban growth areas, densities must be rural.

(b) General considerations for determining the need for urban growth areas expansions to accommodate projected population and employment growth.

(i) Estimation of the number of new persons and jobs to be accommodated based on the difference between the 20-year forecast and current population and employment.

(ii) Estimation of the capacity of current cities and urban growth areas to accommodate additional population and employment over the 20-year planning period. This should be based on a land capacity analysis, which may include the following:

(A) Identification of the amount of developable residential, commercial, and industrial land, based on inventories of currently undeveloped or partially developed urban lands.

(B) Identification of the appropriate amount of greenbelt and open space to be preserved or created in connection with the overall growth pattern and consistent with any adopted levels of service. See WAC 365-196-335 for additional information.

(C) Identification of the amount of developable urban land needed for the public facilities, public services, and utilities necessary to support the likely level of development. See WAC 365-196-320 for additional information.

(D) Based on allowed land use development densities and intensities, a projection of the additional urban population and employment growth that may occur on the available residential, commercial and industrial land base. The projection should consider the portion of population and employment growth which may occur through redevelopment of previously developed urban areas during the 20-year planning period.

(E) The land capacity analysis must be based on the assumption that growth will occur at urban densities inside the urban growth area and is consistent with the housing types specified in the analysis of housing need developed pursuant to RCW 36.70A.070(2). In formulating land capacity analyses, counties and cities should consider data on past development, as well as factors which may cause trends to change in the future. For counties and cities subject to RCW 36.70A.215, information from associated buildable lands reports should be considered. If past development patterns have not resulted in urban densities, or have not resulted in a pattern of desired development, counties and cities should use assumptions aligned with desired future development patterns. Counties and cities should then implement strategies to better align future development patterns with those desired.

(F) The land capacity analysis may also include a reasonable land market supply factor, also referred to as the "market factor." The purpose of the market factor is to account for the estimated percentage of developable acres contained within an urban growth area that, due to fluctuating market forces, is likely to remain undeveloped over the course of the 20-year planning period. The market factor recognizes that not all developable land will be put to its maximum use because of owner preference, cost, stability, quality, and location. If establishing a market factor, counties and cities should establish an explicit market factor for the purposes of establishing the amount of needed land capacity. Counties and cities may consider local circumstances in determining an appropriate market factor. Counties and cities may also use a number derived from general information if local study data is not available.

(iii) An estimation of the additional growth capacity of rural and other lands outside of existing urban growth areas compared with future growth forecasted, and current urban and rural capacities.

(iv) If future growth forecasts exceed current capacities, counties and cities should first consider the potential of increasing capacity of existing urban areas through allowances for higher densities, or for additional provisions to encourage redevelopment. If counties and cities find that increasing the capacity of existing urban areas is not feasible or appropriate based on the evidence they examine, counties and cities may consider expansion of the urban growth area to meet the future growth forecast.

(c) Determining the appropriate locations of new or expanded urban growth area boundaries. This process should consider the following:

(i) Selection of appropriate densities. For all jurisdictions planning under the act, the urban growth area should represent the physical area where that jurisdiction's urban development vision can be realized over the next 20 years. The urban growth area should be based on densities which accommodate urban growth, served by adequate public facilities, discourage sprawl, and promote goals of the act. RCW 36.70A.110 requires that densities specified for land inside the urban growth area must be urban densities. See WAC 365-196-300 for recommendations on determining appropriate urban densities.

(ii) The county should attempt to define urban growth areas to accommodate the growth plans of the cities. Urban growth areas should be defined so as to facilitate the transformation of services and governance during the planning period. However, physical location or existing patterns of service make some unincorporated areas which are characterized by urban growth inappropriate for inclusion in any city's potential growth area.

(iii) Identifying the location of any new lands added to the urban growth area. Lands should be included in the urban growth area in the following priority order:

(A) Existing incorporated areas;

(B) Land that is already characterized by urban growth and has adequate public facilities and services;

(C) Land already characterized by urban growth, but requiring additional public facilities and urban services; and

(D) Lands adjacent to the above, but not meeting those criteria.

(iv) Designating industrial lands. Counties and cities should consult with local economic development organizations when identifying industrial lands to identify sites that are particularly well suited for industry, considering factors such as:

(A) Rail access;

(B) Highway access;

(C) Large parcel size;

(D) Location along major electrical transmission lines;

(E) Location along pipelines;

(F) Location near or adjacent to ports and commercial navigation routes;

(G) Availability of needed infrastructure; or

(H) Absence of surrounding incompatible uses.

(v) Consideration of resource lands issues. Urban growth areas should not be expanded into designated agricultural, forest or resource lands unless no other option is available. Prior to expansion of the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance. Designated agricultural or forest resource lands may not be located inside the urban growth area unless a ((~~city or~~)) county or city has enacted a program authorizing transfer or purchase of development rights.

(vi) Consideration of critical areas and wildfires. Although critical areas exist within urban areas, counties and cities should avoid expanding the urban growth areas into areas with known critical areas extending over a large area. Counties and cities should also consider the potential risk of wildland fires when expanding the urban growth area into areas where structures and other development intermingles with undeveloped wildland or vegetative fuels. See RCW 36.70A.110(8) for legislative direction on expansion of urban growth areas into the 100-year flood plain of river segments that are located west of the crest of the Cascade mountains and have a mean annual flow of 1,000 or more cubic feet per second.

(vii) Consideration of patterns of development within urban growth areas required under RCW 36.70A.130 (3)(a). Evaluating patterns of development can help identify growth pressures and the viability of existing and proposed urban growth areas. Recommendations for evaluating patterns of development include:

(A) Based on population, permit data, and a land capacity analysis, identify growth rates and patterns for the preceding 10 years.

Calculate rates separately for the unincorporated urban growth areas, and areas within incorporated cities and towns. Cities and towns may identify subareas within their corporate boundaries for individual analysis. Counties and cities should not rely on an evaluation of averages across the overall urban growth area or city boundary.

(B) Make a determination as to consistency or inconsistency with growth allocation targets between what was envisioned in adopted countywide planning policies, comprehensive plans and development regulations, and actual development that has occurred as determined under (c)(vii)(A) of this subsection.

(C) Make a determination as to consistency or inconsistency with housing targets or capacity as established under WAC 365-196-410 (2)(d).

(D) Determine development capacity within each identified area using the growth rates and patterns established in (c)(vii)(A) of this subsection. Based on this analysis, determine the availability of land to serve projected growth within each identified area for the 20-year planning period.

(E) Compare the identified areas to determine areas of high development pressure, areas of low development pressure, and areas with inadequate capacity to absorb their projected housing need. As applicable, examine "reasonable measures" under the review and evaluation program (buildable lands) RCW 36.70A.215. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215, in that an urban growth area reduction or revision RCW 36.70A.130 (3)(c) may be a reasonable measure.

(F) Make determinations on the viability of urban growth areas experiencing low development pressure by considering barriers to growth such as:

(I) Lack of available or planned infrastructure, including transportation facilities, as determined through the capital facilities plan element and the transportation element.

(II) Lack of adequate development regulations to ensure urban standards and levels of service.

(III) Incompatible uses within or adjacent to the urban growth area. Examples include mining sites, industrial sites, wastewater treatment facilities, brownfields, airports, military bases, and other uses that produce high impacts.

(IV) Parcelization and multiple ownerships that may limit redevelopment.

(V) Site constraints including parcel access, steep slopes, floodplains, and other environmental constraints.

(VI) Market conditions that may deter development.

(viii) Consideration of urban growth area swaps under RCW 36.70A.130 (3)(a). During a periodic update counties may consider removal of a portion of the urban growth area and replacement with a new area location if it is consistent with the requirements of RCW 36.70A.130 (3)(c) and subsection (2)(i) of this section. Areas removed from the urban growth area must not include existing urban development. Areas with public sewer, or other urban governmental services such as public water, transportation, and stormwater facilities should not be removed from the UGA. Counties and cities should consider (c)(vii) of this subsection when conducting an urban growth area swap.

(ix) If there is physically no land available into which a city might expand, it may need to revise its proposed urban densities or population levels in order to accommodate growth on its existing land base.

(d) Evaluating the feasibility of the overall growth plan. Counties and cities should perform a check on the feasibility of the overall plan to accommodate growth. If, as a result of this evaluation, the urban growth area appears to have been drawn too small or too large, the proposal should be adjusted accordingly. Counties and cities should evaluate:

(i) The anticipated ability to finance the public facilities, public services, and open space needed in the urban growth area over the planning period. When conducting a review of the urban growth areas, counties and cities should develop an analysis of the fiscal impact of alternative land use patterns that accommodate the growth anticipated over the succeeding 20-year period. Counties and cities should identify revenue sources and develop a reasonable financial plan to support operation and maintenance of existing facilities and services, and for new or expanded facilities to accommodate projected growth over the 20-year planning period. The plan should ensure consistency between the land use element and the capital facilities plan, and demonstrate that probable funding does not fall short of the projected needs to maintain and operate public facilities, public services, and open space. This provides the public and decision makers with an estimate of the fiscal consequences of various development patterns. This analysis could be done in conjunction with the analysis required under the State Environmental Policy Act.

(ii) The effect that confining urban growth within the areas defined is likely to have on the price of property and the impact thereof on the ability of residents of all economic strata to obtain housing they can afford.

(iii) Whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources and without environmental degradation.

(iv) The extent to which the comprehensive plan of the county and of adjacent counties and cities will influence the area needed.

(e) County actions in adopting urban growth areas.

(i) A change to the urban growth area is an amendment to the comprehensive plan and requires, at a minimum, an amendment to the land use element. Counties and cities should also review and update the transportation, capital facilities, utilities, and housing elements to maintain consistency and show how any new areas added to the urban growth area will be provided with adequate public facilities. A modification of any portion of the urban growth area affects the overall urban growth area size and has countywide implications. Because of the significant amount of resources needed to conduct a review of the urban growth area, and because some policy objectives require time to achieve, frequent, piecemeal expansion of the urban growth area should be avoided. Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.

(ii) Counties and cities that are required to participate in the buildable lands program must first have adopted and implemented reasonable measures as required by RCW 36.70A.215 before considering expansion of an urban growth area.

(iii) Consistent with countywide planning policies, counties and cities consulting on the designation of urban growth areas should consider the following implementation steps:

(A) Establishment of agreements regarding land use regulations and the provision of services in that portion of the urban growth area

outside of an existing city into which it is eventually expected to expand.

(B) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

(C) Provision for an ongoing collaborative process to assist in implementing countywide planning policies, resolving regional issues, and adjusting growth boundaries.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-320 Providing urban services. (1) Urban governmental services.

(a) Urban services are defined by RCW 36.70A.030 as those public services and public facilities at an intensity historically and typically provided in cities. Urban services specifically include:

(i) Sanitary sewer systems;

(ii) Storm drainage systems;

(iii) Domestic water systems;

(iv) Street cleaning services;

(v) Fire and police protection services;

(vi) Public transit services; and

(vii) Other public utilities associated with urban areas and normally not associated with rural areas.

(b) RCW 36.70A.030 defines public facilities and public services, which in addition to those defined as urban services, also include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, parks and recreational facilities, and schools, public health and environmental protection, and other governmental services.

(c) Although some of these services may be provided in rural areas, urban areas are typically served by higher capacity systems capable of providing adequate services at urban densities. Storm and sanitary sewer systems are the only services that are generally exclusively for urban growth areas. Outside of urban growth areas storm and sanitary sewer systems are appropriate in limited circumstances when necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

(d) At a minimum, adequate public facilities in urban areas should include sanitary sewer systems, and public water service from a Group A public water system under chapter 70A.120 or 70A.125 RCW because these services are usually necessary to support urban densities. The services provided must be adequate to allow development at urban densities and serve development at densities consistent with the land use element, and meet all regulatory obligations under state and federal law.

(e) If potable water demand is expected to exceed a public water system's available water rights within the 20-year planning horizon, ((~~cities and~~)) counties and cities should develop strategies to obtain sufficient water to meet anticipated demand. Strategies may include, but are not limited to, decreasing water demand through conservation, securing additional water rights and establishing an intertie agreement with another water purveyor to purchase the necessary water.

(f) The obligation to provide urban areas with adequate public facilities is not limited to new urban areas. Counties and cities must include in their capital facilities element a plan to provide adequate public facilities to all urban areas, including those existing areas that are developed, but do not currently have a full range of urban governmental services or services necessary to support urban densities.

(g) The use of on-site sewer systems within urban growth areas may be appropriate in limited circumstances where there is no negative effect on basic public health, safety and the environment; and the use of on-site sewer systems does not preclude development at urban densities. Such circumstances may include:

(i) Use of on-site sewer systems as a transitional strategy where there is a development phasing plan in place (see WAC 365-196-330); or

(ii) To serve isolated pockets of urban land difficult to serve due to terrain, critical areas or where the benefit of providing an urban level of service is cost-prohibitive; or

(iii) Where on-site systems are the best available technology for the circumstances and are designed to serve urban densities.

(2) Appropriate providers. RCW 36.70A.110(4) states that, in general, cities are the units of government most appropriate to provide urban governmental services. However, counties, special purpose districts and private providers also provide urban services, particularly services that are regional in nature. Counties and cities should plan for a transformation of governance as urban growth areas develop, whereby annexation or incorporation occurs, and nonregional urban services provided by counties are generally transferred to cities. See WAC 365-196-305.

(3) Coordination of planning in urban growth areas.

(a) The capital facilities element and transportation element of the county or city comprehensive plan must show how adequate public facilities will be provided and by whom. If the county or city with land use authority over an area is not the provider of urban services, a process for maintaining consistency between the land use element and plans for infrastructure provision should be developed consistent with the countywide planning policies.

(b) If a city is the designated service provider outside of its municipal boundaries, the city capital facilities element must also show how urban services will be provided within their service area. This should include incorporated areas and any portion of the urban growth area that it is assigned as a service area or potential annexation area designated under RCW 36.70A.110(7). See WAC 365-196-415 for information on the capital facilities element.

(4) Level of financial certainty required when establishing urban growth areas.

(a) Any amendment to an urban growth area must be accompanied by an analysis of what capital facilities investments are necessary to ensure the provision of adequate public facilities.

(b) If new or upgraded facilities are necessary, counties and cities must amend the capital facilities and transportation elements to maintain consistency with the land use element.

(c) Counties and cities must consider the risk of displacement that may result from capital investments and address impacts based on locally adopted antidisplacement policies.

(d) The amended capital facilities and transportation elements must identify those new or expanded facilities and services necessary to support development in new urban growth areas. The elements must

also include cost estimates to determine the amount of funding necessary to construct needed facilities.

((~~(d)~~)) (e) The capital facilities and transportation elements should identify what combination of new or existing funding will be necessary to develop the needed facilities. Funding goals should be based on what can be raised by using existing resources. Use of state and federal grants should be realistic based on past trends unless the capital facilities element identifies new programs or an increased amount of available funding from state or federal sources.

((~~(e)~~)) (f) If funding available from existing sources is not sufficient, counties and cities should use development phasing strategies to prevent the irreversible commitment of land to urban development before adequate funding is available. Development phasing strategies are described in WAC 365-196-330. Counties and cities should then implement measures needed to close the funding gap.

((~~(f)~~)) (g) When considering potential changes to the urban growth area, counties should require that any proposal to expand the urban growth area must include necessary information to demonstrate an ability to provide adequate public facilities to any potential new portions of the urban growth area.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-325 Providing sufficient land capacity suitable for development. (1) Requirements.

(a) RCW 36.70A.115 requires counties and cities to ensure that, taken collectively, comprehensive plans and development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the 20-year population forecast from the office of financial management. For housing capacity, counties and cities must provide sufficient capacity for the allocated share of countywide housing needs for moderate, low, very low, and extremely low-income households, as well as emergency housing, shelters, and permanent supportive housing. To demonstrate this requirement is met, counties and cities must conduct an evaluation of land capacity sufficiency that is commonly referred to as a "land capacity analysis."

(b) Counties and cities must complete a land capacity analysis that demonstrates sufficient land for development or redevelopment to meet their adopted growth allocation targets and allocated share of countywide housing need during the review of urban growth areas required by RCW 36.70A.130 (3)(a). See WAC 365-196-310 for guidance in estimating and providing sufficient land capacity.

(c) Counties and cities subject to RCW 36.70A.215 must determine land capacity sufficiency as part of the buildable lands reporting requirements prior to the deadline for periodic review of comprehensive plans and development regulations required by RCW 36.70A.130, and adopt and implement measures that are reasonably likely to increase the consistency between land capacity and growth allocations. See WAC 365-196-315 for guidance.

(d) A complete land capacity analysis is not required to be undertaken for every amendment to a comprehensive plan or development regulation outside of the act's required periodic reviews. However, when considering amendments to the comprehensive plan or development regulations which increase or decrease allowed densities, counties and cities should estimate the degree of increase or decrease in development capacity on lands subject to the amendments, and estimate if the capacity change may affect its ability to provide sufficient capacity of land suitable for development. If so, the county or city should complete a land capacity analysis.

(2) Recommendations for meeting requirement.

(a) Determining land capacity sufficiency. The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element. In order to achieve sufficiency, the development regulations must allow at least the low end of the range of assumed densities established in the land use element. This assures a ((~~city or~~)) county or city can meet its obligation to accommodate the growth allocated through the countywide population and housing allocation process.

(b) For residential land capacity, development regulations must allow for sufficient capacity at each economic segment. See WAC 365-196-410 (2)(d).

(c) Appropriate area for analysis. The focus of the analysis is on the county or city's ability to meet its obligation to accommodate the growth allocated through the countywide population ((~~or~~)), housing needs and employment allocation process. Providing sufficient land capacity for development does not require a county or city to achieve or evaluate sufficiency for every parcel of a future land use designation provided the area as a whole ensures sufficient land capacity for development.

((~~(c)~~)) (d) The land capacity analysis should evaluate what the development regulations allow, rather than what development has actually occurred. Many factors beyond the control of counties and cities will control the amount and pace of actual development, what density it is built at and what types and densities of development are financially viable for any set of economic conditions. Counties and cities need not ensure that particular types of development are financially feasible in the context of short term market conditions. Counties and cities should, however, consider available information on trends in local markets to inform its evaluation of sufficient land capacity for the 20-year planning period.

((~~(d)~~)) (e) Development phasing. RCW 36.70A.115 does not create an obligation to ensure that all land in the urban growth area is available for development at the same time. When counties or cities establish mechanisms for development phasing, zoned densities in the short term may be established that are substantially lower than called for in the future land use designations. In these cases, a county or city ensures a sufficient land capacity suitable for development by implementing its development phasing policies to allow development to occur within the 20-year planning period. Development phasing is described in greater detail in WAC 365-196-330.

((~~(e)~~)) (f) The department recommends the following means of implementing the requirements of RCW 36.70A.115.

(i) Periodic evaluation. Counties and cities ensure sufficient land capacity for development by comparing the achieved density of development that has been permitted in each zoning category to the as-

sumed densities established in the land use element using existing permitting data. If existing permitting data shows that the densities approved are lower than assumed densities established in the land use element, counties and cities should review their development regulations to determine if regulatory barriers are preventing development at the densities as envisioned. Regulatory evaluation should include barriers to indoor emergency housing and shelter, permanent supportive housing, and transitional housing; such as unreasonable regulations on the occupancy, intensity, and spacing of these housing types. This evaluation must occur as part of the urban growth area review required in RCW 36.70A.130 (3)(a) and as part of the buildable lands review and evaluation program conducted under RCW 36.70A.215.

(ii) Flexible development standards. Counties and cities could ensure sufficient land capacity for development by establishing development regulations to allow development proposals that transfer development capacity from unbuildable portions of a development parcel to other portions of the development parcel so the underlying zoned density is still allowed. This may provide for flexibility in some dimensional standards provided development is consistent with state law and all impacts are mitigated.

(iii) Evaluation of development capacity impacts of proposed development regulation amendments. Counties and cities may also consider evaluation of whether proposed amendments to development regulations will have a significant impact on the ability of a county or city to provide sufficient capacity of land for development.

(iv) Land capacity and supportive housing types. Counties and cities must ensure that comprehensive plans and development regulations allow for the development of sufficient indoor emergency housing, indoor emergency shelter, permanent supportive housing, and transitional housing to meet the county or city allocated share of countywide housing needs. Any locally adopted regulations, including those on occupancy, spacing, and intensity of use, should be evaluated with consideration to land capacity and housing need for extremely low-income housing and emergency housing. These regulations:

(A) Must not prevent the siting of a sufficient number of each housing type to meet the county or city allocated share of countywide housing needs; and

(B) Shall be connected to public health and safety; and

(C) Must be reasonable in aim and scope and appropriate for government regulation. Under substantive due process rules, the regulation must be for a legitimate public purpose, be appropriate to accomplish the purpose, be reasonable, and be clear and easy to apply. This means that the requirements cannot be so restrictive that they make the development economically unfeasible by increasing permitting costs and permitting timelines to an extent they become unreasonable compared to permitting of other allowed housing types.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-340 Identification of lands useful for public purposes. (1) Requirements. Each county and city planning under the act must identify land useful for public purposes such as utility corridors, transportation corridors, landfills, sewage treatment facilities, stormwater management facilities, recreation, schools, and other

public uses. The county must work with the state and with the cities within the county's borders to identify areas of shared need for public facilities. The jurisdictions within the county must prepare a prioritized list of lands necessary for the identified public uses including an estimated date by which the acquisition will be needed. The respective capital acquisition budgets for each jurisdiction must reflect the jointly agreed upon priorities and time schedule. See WAC 365-196-405 (2)(g), Land use element.

(2) Recommendations for meeting requirements. Counties and cities should identify lands useful for public purposes when updating the urban growth area designations and the land use, utilities and transportation elements of comprehensive plans.

(a) Such lands may include surplus public property available for transfer, lease, or other disposal of for a public benefit purpose consistent with and subject to RCW 39.33.015. Any transfer of surplus public property must be consistent with the policies and land use element of the adopted comprehensive plan.

(b) The department recommends that the information derived in meeting this requirement be made generally available only to the extent necessary to meet the requirements of the public disclosure laws.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-345 New fully contained communities. (1) Any county planning under the act may reserve a portion of its ((~~twenty~~)) 20-year population projection for new fully contained communities, located outside of the designated urban growth areas.

(2) Proposals to authorize fully contained communities must be processed according to the locally established policies implementing the criteria set forth in RCW 36.70A.350. Approval of a new fully contained community has the effect of amending the comprehensive plan, therefore it is a legislative action and should follow the procedures associated with comprehensive plan amendments.

(3) The initial effective date of an action that establishes a new fully contained community is the latest of the following dates per RCW 36.70A.067:

(a) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided under RCW 36.70A.290(2); or

(b) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-350 Extension of public facilities and utilities to serve school sited in a rural area authorized. (1) Requirements: The Growth Management Act does not prohibit a county planning under RCW 36.70A.040 from authorizing the extension of public facilities and utilities to serve a school sited in a rural area that serves students

from a rural area and an urban area so long as the following requirements are met:

(a) The applicable school district board of directors has adopted a policy addressing school service area and facility needs and educational program requirements;

(b) The applicable school district has made a finding, with the concurrence of the county legislative authority and the legislative authorities of any affected cities, that the district's proposed site is suitable to site the school and any associated recreational facilities that the district has determined cannot reasonably be collocated on an existing school site, taking into consideration the policy adopted in (a) of this subsection and the extent to which vacant or developable land within the growth area meets those requirements;

(c) The county and any affected cities agree to the extension of public facilities and utilities to serve the school sited in a rural area that serves urban and rural students at the time of concurrence in (b) of this subsection;

(d) If the public facility or utility is extended beyond the urban growth area to serve a school, the public facility or utility must serve only the school and the costs of such extension must be borne by the applicable school district based on a reasonable nexus to the impacts of the school, except as provided in subsection (3) of this section; and

(e) Any impacts associated with the siting of the school are mitigated as required by the State Environmental Policy Act, chapter 43.21C RCW.

(2) The act does not prohibit either the expansion or modernization of an existing school in the rural area or the placement of portable classrooms at an existing school in the rural area.

(3) Where a public facility or utility has been extended beyond the urban growth area to serve a school, the public facility or utility may, where consistent with RCW 36.70A.110(4), serve a property or properties in addition to the school if the property owner so requests, provided that the county and any affected cities agree with the request and provided that the property is located no further from the public facility or utility than the distance that, if the property were within the urban growth area, the property would be required to connect to the public facility or utility. In such an instance, the school district may, for a period not to exceed 20 years, require reimbursement from a requesting property owner for a proportional share of the construction costs incurred by the school district for the extension of the public facility or utility.

(4) Counties and cities must identify lands useful for public purposes, such as schools in their comprehensive plan. (See RCW 36.70A.150.) As part of subdivision approval, permitting jurisdictions must ensure appropriate provisions are made for schools and school grounds. (See RCW 58.17.110.)

(5) Recommendations for meeting requirements.

(a)(i) School sites should be considered as communities are being planned, and specifically considered when permitting large developments. (See RCW 36.70A.110(2) and 36.70A.150.)

(ii) Cities, counties, and school districts should first work together to identify potential school sites within urban growth areas. To facilitate the siting of schools within urban areas, ((~~cities and~~)) counties <u>and cities</u> should work with school districts to assess zoning, height limits, and other factors that may affect the ability of a school to site within an urban growth area, including joint-use fa-

cilities. County policies may address schools in the rural area, and set out locational, buffering or screening policies to protect rural character. As schools are considered in the rural area, the long-term plan for the area should be considered, but new school development should not be used to intentionally drive urban development in a rural area.

(b) Cities, counties and school districts should:

(i) Coordinate enrollment forecasts and projections with the ((~~city and county's~~)) county and city's adopted population projections.

(ii) Identify school siting criteria with the county, cities, and regional transportation planning organizations. Such criteria may be included in countywide planning policies.

(iii) Identify suitable school sites with the county and cities, with priority to siting schools in existing cities and towns in locations where students can safely walk and bicycle to the school from their homes and that can effectively be served by transit.

(iv) Consider playgrounds and fields associated with activities during the normal school day (e.g., recess and physical education) for new, expanded, or modernized school sites. Districts may consider joint use of recreational facilities as part of the proposal.

(c) If school impact fees are collected, a jurisdiction's capital facilities element must address school facility needs related to growth. (See RCW 82.02.050 and 82.02.090(7).) ((~~Cities and~~)) Counties and cities should work with school districts to review the relationship of school district enrollment projections with local population growth projections.

(d) A school district policy adopted pursuant to RCW 36.70A.213 may include criteria for siting schools, school grade configuration, educational programming, recreational facility co-location, feeder schools, transportation routes, or other relevant factors that may affect school siting decisions.

(e) If a county or affected city concurs with the school district's finding, the county and any affected cities should also at that time agree to the extension of public facilities and utilities to serve the school. If a county or affected city finds that it cannot concur with the school district's findings regarding the proposed school, the county or city should document the reasons in their decision.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-405 Land use element. (1) Requirements. The land use element must contain the following features:

(a) Designation of the proposed general distribution and general location and extent of the uses of land, where appropriate, for agricultural, timber, and mineral production, for housing, commerce, industry, recreation, open spaces, public utilities, public facilities, general aviation airports, military bases, rural uses, and other land uses.

(b) Population densities, building intensities, and estimates of future population growth.

(c) Provisions for protection of the quality and quantity of ground water used for public water supplies.

(d) Wherever possible, consideration of urban planning approaches to promote physical activity.

(e) Where applicable, a review of drainage, flooding, and storm-water runoff in the area covered by the plan and nearby jurisdictions, and guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) Recommendations for meeting requirements. The land use assumptions in the land use element form the basis for all growth-related planning functions in the comprehensive plan, including transportation, housing, capital facilities, and, for counties, the rural element. Preparing the land use element is an iterative process. Linking all plan elements to the land use assumptions in the land use element helps meet the act's requirement for internal consistency. The following steps are recommended in preparing the land use element:

(a) Counties and cities should integrate relevant countywide planning policies and, where applicable, multicounty planning policies, into the local planning process, and ensure local goals and policies are consistent.

(b) Counties and cities should identify the existing general distribution and location of various land uses, the approximate acreage, and general range of density or intensity of existing uses.

(c) Counties and cities should estimate the extent to which existing buildings and housing, together with development or redevelopment of vacant, partially used and underutilized land, can support anticipated growth over the planning period. Redevelopment of fully built properties may also be considered.

(i) Estimation of development or redevelopment capacity may include:

(A) Identification of individual properties or areas likely to convert because of market pressure or because they are built below allowed densities; or

(B) Use of an estimated percentage of area-wide growth during the planning period anticipated to occur through redevelopment, based on likely future trends for the local area or comparable jurisdictions; or

(C) Some combination of (c)(i)(A) and (B) of this subsection.

(ii) Estimates of development or redevelopment capacity should be included in a land capacity analysis as part of a countywide process described in WAC 365-196-305 and 365-196-310 or, as applicable, WAC 365-196-315.

(d) Counties and cities should identify special characteristics and uses of the land which may influence land use or regulation. These may include:

(i) The location of agriculture, forest and mineral resource lands of long-term commercial significance.

(ii) The general location of any known critical areas that limit suitability of land for development.

(iii) Influences or threats to the quality and quantity of ground water used for public water supplies. These may be identified from information sources such as the following:

(A) Designated critical aquifer recharge areas that identify areas where potentially hazardous material use should be limited, or for direction on where managing development practices that influence the aquifer would be important;

(B) Watershed plans approved under chapter 90.82 RCW; ground water management plans approved under RCW 90.44.400; coordinated water

system plans adopted under chapter 70A.100 RCW; and watershed plans adopted under chapter 90.54 RCW as outlined in RCW 90.03.386.

(C) Instream flow rules prepared by the department of ecology and limitations and recommendations therein that may inform land use decisions.

(iv) Areas adjacent to general aviation airports where incompatible uses should be discouraged, as required by RCW 36.70A.510 and 36.70.547, with guidance in WAC 365-196-455.

(v) Areas adjacent to military bases where incompatible uses should be discouraged, as required by RCW 36.70A.530 with guidance in WAC 365-196-475.

(vi) Existing or potential open space corridors within and between urban growth areas as required by RCW 36.70A.160 for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Counties and cities may consult WAC 365-196-335 for additional information.

(vii) Where applicable, sites that are particularly well suited for industry. Counties and cities should consult WAC 365-196-310 (3)(c)(iv) for information on industrial land uses. For counties, the process described in WAC 365-196-465 and 365-196-470 may be relevant for industrial areas outside of an urban growth area.

(viii) Other features that may be relevant to this information gathering process may include view corridors, brownfield sites, national scenic areas, historic districts, or other opportunity sites, or other special characteristics which may be useful to inform future land use decisions.

(e) Counties and cities must review drainage, flooding, and stormwater runoff in the area or nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound. Water quality information may be integrated from the following sources:

(i) Planning and regulatory requirements of municipal stormwater general permits issued by the department of ecology that apply to the county or city.

(ii) Local waters listed under Washington state's water quality assessment and any water quality concerns associated with those waters.

(iii) Interjurisdictional plans, such as total maximum daily loads.

(f) Counties and cities must obtain 20-year population and housing needs allocations for their planning area as part of a countywide process described in WAC 365-196-305(4) and 365-196-310. Using information from the housing needs analysis and housing needs allocation, identify the amount of land suitable for development at a variety of densities consistent with the number and type of residential units likely to be needed over the planning period. Densities and type of residential units needed should take into account what housing types can serve housing needs at different potential economic segments as described in WAC 365-196-410(2). At a minimum, cities must plan for the population and housing needs allocated to them, but may plan for additional ((~~population~~)) growth within incorporated areas.

(g) Counties and cities should estimate the level of commercial space, and industrial land needed using information from the economic development element, if available, or from other relevant economic development plans.

(h) Counties and cities should identify the general location and estimated quantity of land needed for public purposes such as utility corridors, landfills or solid waste transfer stations, sewage treatment facilities, stormwater management facilities, recreation, schools, and other public uses. Counties and cities should consider corridors needed for transportation including automobile, rail, and trail use in and between planning areas, consistent with the transportation element and coordinate with adjacent jurisdictions for connectivity.

(i) Counties and cities should select land use designations and implement zoning. Select appropriate commercial, industrial, and residential densities and their distribution based on the total analysis of land features, population and housing needs allocation to be supported, implementation of regional planning strategies, and needed capital facilities.

(i) It is strongly recommended that a table be included showing the acreage in each land use designation, the acreage in each implementing zone, the approximate densities that are assumed, and how this meets the 20-year population and housing needs projection.

(ii) Counties and cities should prepare a future land use map including land use designations, municipal and urban growth area boundaries, and any other relevant features consistent with other elements of the comprehensive plan.

(j) Wherever possible, counties and cities should consider urban planning approaches that promote physical activity. Urban planning approaches that promote physical activity may include:

(i) Higher intensity residential or mixed-use land use designations to support walkable and diverse urban, town and neighborhood centers.

(ii) Transit-oriented districts around public transportation transfer facilities, rail stations, or higher intensity development along a corridor served by high quality transit service.

(iii) Policies for siting or colocating public facilities such as schools, parks, libraries, community centers and athletic centers to place them within walking or cycling distance of their users.

(iv) Policies supporting linear parks and shared-use paths, interconnected street networks or other urban forms supporting bicycle and pedestrian transportation.

(v) Policies supporting multimodal approaches to concurrency consistent with other elements of the plan.

(vi) Traditional or main street commercial corridors with street front buildings and limited parking and driveway interruption.

(vii) Opportunities for promoting physical activity through these and other policies should be sought in existing as well as newly developing areas. Regulatory or policy barriers to promoting physical activity for new or existing development should also be removed or lessened where feasible.

(k) Counties and cities may prepare an implementation strategy describing the steps needed to accomplish the vision and the densities and distributions identified in the land use element. Where greater intensity of development is proposed, the strategy may include a design scheme to encourage new development that is compatible with existing or desired community character.

(l) Counties and cities may prepare a schedule for the phasing of the planned development contemplated consistent with the availability of capital facilities as provided in the capital facilities element.

WAC 365-196-330 provides additional information regarding development phasing.

(m) Counties and cities should reassess the land use element in light of:

(i) The projected capacity for financing the needed capital facilities over the planning period; and

(ii) An assessment of whether the planned densities and distribution of growth can be achieved within the capacity of available land and water resources and without environmental degradation.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-410 Housing element. (1) Requirements. Counties and cities must develop a housing element ensuring vitality and character of established residential neighborhoods. The housing element must contain at least the following features:

(a) An inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, as provided by the department, including units for moderate, low, very low, and extremely low-income households, and emergency housing, emergency shelters, and permanent supportive housing.

(b) A statement of the goals, policies, ((~~and~~)) objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences, and within an urban growth area boundary, moderate density housing options including, but not limited to, duplexes, triplexes, and townhomes.

(c) Identification of sufficient land for housing including, but not limited to, government-assisted housing, housing for moderate, low, very low, and extremely low-income ((~~families~~)) households, manufactured housing, multifamily housing, group homes ((~~and~~)), foster care facilities, emergency housing, emergency shelters, permanent supportive housing, and within an urban growth area boundary, consideration of duplexes, triplexes, and townhomes.

(d) Adequate provisions for existing and projected housing needs of all economic segments of the ((~~community~~)) county or city including:

(i) Incorporating consideration for low, very low, extremely low, and moderate-income households;

(ii) Documenting programs and actions needed to achieve housing availability including gaps in local funding, barriers such as development regulations, and other limitations;

(iii) Consideration of housing locations in relation to employment location; and

(iv) Consideration of the role of accessory dwelling units in meeting housing needs.

(e) Identification of local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, including zoning that may have a discriminatory effect, disinvestment, and infrastructure availability.

(f) Identification and implementation of policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions.

(g) Identification of areas that may be at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments.

(h) Establishment of antidisplacement policies, with consideration given to the preservation of historical and cultural communities as well as investments in low, very low, extremely low, and moderate-income housing; equitable development initiatives; inclusionary zoning; community planning requirements; tenant protections; land disposition policies; and consideration of land that may be used for affordable housing.

(2) Recommendations for meeting requirements. The housing element shows how a county or city will accommodate anticipated growth and the local allocated share of countywide housing needs of all economic segments (low, very low, extremely low, and moderate-income housing, permanent supportive housing, and emergency housing/shelters), provide a variety of housing types at a variety of densities, ((~~provide opportunities for~~)) identify barriers to affordable housing for all economic segments of the ((~~community, and~~)) county or city and actions to address gaps in housing availability, ensure the vitality of established residential neighborhoods, and address racially disparate impacts, exclusion and displacement in housing. The analysis of emergency housing and emergency shelters may be grouped together in the housing element. The following components should appear in the housing element:

(a) ((~~Housing goals and~~)) Statement of goals, policies, and mandatory provisions.

(i) The goals and policies serve as a guide to the creation and adoption of development regulations and may also guide the exercise of discretion in the permitting process.

(ii) The housing goals and policies of counties and cities should be consistent with countywide planning policies and, where applicable, multicounty planning policies.

(iii) Housing goals and policies should address at least the following:

(A) ((~~Affordable housing;~~)) Housing affordable to all economic segments of the population;

(B) ((~~Preservation of neighborhood character; and~~

~~(C) Provision of~~)) A variety of housing types along with a variety of densities;

(C) Preservation of existing housing stock, especially affordable housing;

(D) Consideration of character of established residential neighborhoods;

(E) Improvement and development of housing; and

(F) Within urban growth areas, provision of moderate density housing options including, but not limited to, duplexes, triplexes, and townhomes.

(iv) Housing goals and policies should be written to allow the evaluation of progress toward achieving the housing element's goals and policies.

(v) Mandatory provisions include a summary of required changes to accompany a comprehensive plan for consistency with state law. This includes, but is not limited to, a statement of regulatory changes needed to show sufficient land capacity and regulatory changes needed to meet state law requirements updated since the last periodic update.

(b) Housing inventory.

(i) The purpose of the required inventory is to gauge the availability of existing housing for all economic segments of the ((~~community~~)) county or city.

(ii) The inventory should identify the amount of various types of housing that exist in a ((~~community~~)) county or city. The act does not require that a housing inventory be in a specific form. Counties and cities should consider WAC 365-196-050 (3) and (4) when determining how to meet the housing inventory requirement and may rely on existing data.

(iii) The housing inventory ((~~may~~)) should show the affordability of different types of housing((~~. It may provide~~)), based on available data about the median sales prices of homes and average rental prices.

(iv) The housing inventory ((~~may~~)) should include information about other types of housing available within the county or city ((~~jurisdiction~~)) such as:

(A) The number of beds available in group homes, nursing homes and/or assisted living facilities;

(B) The number of dwelling units available specifically for senior citizens;

(C) The number of government-assisted housing units for lower-income households; and

(D) The number of units of permanent supportive housing and transitional housing, and the number of units or beds of indoor emergency shelter and indoor emergency housing.

(c) Housing needs analysis.

(i) The purpose of the needs analysis is to estimate the type and densities of future housing needed to serve all economic segments of the ((~~community~~)) county or city. The housing needs analysis should compare the number of housing units identified in the housing inventory by economic segment to the ((~~projected growth or other locally identified housing needs~~)) local allocation of projected 20-year countywide housing needs by economic segment to determine the total number of necessary net new units.

(ii) ((~~The definition of housing needs should be addressed~~)) Counties and cities should determine housing needs in a regional context and ((~~may use existing data~~)) base projections on the local share of countywide housing needs provided by the department.

(iii) ((~~The analysis should be based on the most recent 20-year population allocation.~~

~~(iv) The analysis should analyze consistency with countywide planning policies, and where applicable, multicounty planning policies, related to housing for all economic segments of the population.~~)) Counties should determine the local share of countywide housing needs by economic segment by coordinating with their cities and towns based on applicable countywide planning policies and multicounty planning policies, the availability of infrastructure and services, and other locally determined factors. When allocating projected housing needs, counties and cities should use the following minimum standards:

(A) The housing needs for each economic segment, permanent supportive housing, and emergency housing must be consistently derived from the same target population.

(B) Allocations must be consistent with relevant countywide planning policies or multicounty planning policies.

(C) The sum of all allocated housing needs must be no less than the total projected countywide need for each economic segment including permanent supportive housing and emergency housing. Within city

limits, cities may choose to plan for more capacity than the allocated housing need if it is supported by necessary infrastructure and services and coordinated with surrounding jurisdictions.

(D) Counties should not plan for very low- or extremely low-income housing, permanent supportive housing or emergency housing outside of urban growth areas and LAMIRDs. New multifamily housing is generally required to reach these affordability levels, which is not appropriate in rural areas.

(E) Counties' and cities' allocations of projected housing needs by economic segment, permanent supportive housing and emergency housing must be documented and used consistently in their comprehensive plans.

(iv) Counties and cities should analyze housing data by race to determine if there is evidence of racially disparate impacts, displacement and exclusion in housing, as well as identify areas at higher risk of displacement.

(d) Housing ((~~targets or~~)) capacity.

(i) The housing needs analysis should identify the number ((~~and~~))**,** types**, and general densities** of new housing units needed to serve ((~~the projected growth and the income ranges within it. This should be used~~)) the local allocation of housing needs by economic segment.

(ii) To determine the number, types, and general densities needed, counties and cities should identify the types and densities of different housing types that will serve respective economic segments. For example, larger single family housing will likely serve households above moderate economic segments (greater than 120 percent of Area Median Income) and could possibly serve moderate economic segment households (80-120 percent AMI), therefore counties and cities should assume that capacity for those economic segments are met by the residential capacity of zones where this is the predominant housing type constructed.

(iii) Counties and cities should use the number, types, and densities of housing needed in the housing needs analysis to designate sufficient land capacity suitable for development in the land use element. Counties and cities may address accommodating capacity for housing needs at moderate-income levels and below by:

(A) Counting capacity for accessory dwelling units. Counties and cities should only assume a portion of residential parcels will develop an accessory dwelling unit within the planning period, based on market trends, infrastructure constraints, and existing homeownership association covenants. Accessory dwelling units should be counted towards capacity of the economic segment that best represents the costs of renting or purchasing this housing in the county or city.

(B) Increasing variety of housing types allowed, increasing densities, and reducing parking requirements.

(C) Developing local incentives for more affordable housing, such as density bonuses, tax exemptions like the multifamily property tax exemption program, or fee or impact waivers for affordable housing. Counties and cities may also require affordable housing with market rate housing.

((~~(ii)~~)) (iv) Counties and cities may ((~~also~~)) use ((~~other~~)) a variety of considerations to identify appropriate housing types, densities, and location of housing to accommodate housing needs, ((~~which may include~~)) including:

(A) ((~~Workforce housing which is often defined as housing affordable to households earning between 80 to 120 percent of the median~~

~~household income.~~)) Location of low-income housing in proximity to jobs, transportation, services, and infrastructure.

(B) Jobs-to-housing balance, which is the number of jobs in a ((~~city or~~)) county or city relative to the number of housing units.

(C) The location of infrastructure and the costs to upgrade or extend needed infrastructure to serve higher density housing.

(D) Housing policies and regulations that have led to racially disparate impacts, exclusion, displacement, or displacement risk.

(E) Reasonable measures to address inconsistencies found in buildable lands reports prepared under RCW 36.70A.215.

((~~(D)~~)) (F) Housing needed to address an observed pattern of a larger quantity of second homes in destination communities.

((~~(iii)~~)) (v) To demonstrate sufficient land capacity to meet the 20-year housing needs allocation, counties and cities should document in the housing element or an appendix:

(A) Their calculations for determining residential capacity in each zone including the data and assumptions used for acreages, densities, and market factors influencing development. The analysis must also show assumptions for which economic segments can afford the allowed housing types and densities. The calculations must also show the capacity for emergency housing and shelters by zone.

(B) The total capacity of housing units by economic segment compared to the 20-year housing needs allocation by economic segment, presented in a table;

(C) The zoning changes needed to provide a sufficient capacity of housing at all economic segments, including emergency housing and shelters and permanent supportive housing, to illustrate changes needed to address deficiencies; and

(D) Calculations and analysis consistent with the department's technical guidance for performing a land capacity analysis.

(vi) The ((~~targets established~~)) housing needs by economic segment in the housing element will serve as benchmarks to evaluate progress and guide decisions regarding development regulations.

(e) ((~~Affordable housing.~~)) Adequate provisions. RCW 36.70A.070 requires counties and cities, in their housing element, to make adequate provisions for existing and projected needs for all economic segments of the ((~~community~~)) county or city. All economic segments must include moderate, low, very low, and extremely low-income households and emergency housing, emergency shelter, and permanent supportive housing needs. Affordable housing under RCW 36.130.020 includes indoor emergency housing and transitional housing administered through a lease and permanent supportive housing.

(i) When determining what housing units are affordable((~~.~~)), consider:

(A) In the case of dwelling units for sale, affordable housing has mortgages, amortization, taxes, insurance and condominium or association fees, if any, that consume no more than 30 percent of the owner's gross annual household income.

(B) In the case of dwelling units for rent, affordable housing has rent and utility costs, other than telephone, as defined by the county or city, that cost no more than 30 percent of the tenant's gross annual household income.

(C) Income ranges used when considering affordability. When planning for affordable housing, counties or cities should use income ranges consistent with the ((~~applicable countywide or multicounty planning policies. If no such terms exist, counties or cities should consider using~~)) department's model for housing needs and the United

States Department of Housing and Urban Development (HUD) ((~~definitions found in 24 C.F.R. 91.5, which are used to draft consolidated planning documents required by HUD. The following definitions are from 24 C.F.R. 91.5:~~

~~(I) Median income refers to median household income.~~

~~(II) Extremely low-income refers to a household whose income is at or below 30 percent of the median income, adjusted for household size, for the county where the housing unit is located.~~

~~(III) Low-income refers to a household whose income is between 30 percent and 50 percent of the median income, adjusted for household size, for the county where the housing unit is located.~~

~~(IV) Moderate-income refers to a household whose income is between 50 percent and 80 percent of the median income where the housing unit is located.~~

~~(V) Middle-income refers to a household whose income is between 80 percent and 95 percent of the median income for the area where the housing unit is located~~)) county median family income.

(ii) ((~~Affordable housing~~)) Adequate housing for all economic segments within the county or city requires planning from a regional perspective. Countywide planning policies must address ((~~affordable~~)) housing affordable to all economic segments and its distribution among counties and cities. ((~~A county's or city's obligation to plan for affordable housing within a regional context is determined by the applicable countywide planning policies. Counties and cities should review countywide affordable housing policies when developing the housing element to maintain consistency.~~

~~(iii) Counties and cities should consider the ability of the market to address housing needs for all economic segments of the population. Counties and cities may help to address affordable housing by identifying and removing any regulatory barriers limiting the availability of affordable housing.~~

~~(iv) Counties and cities may help to address affordable housing needs by increasing development capacity. In such an event, a county or city affordable housing section should:~~

~~(A) Identify certain land use designations within a geographic area where increased residential development may help achieve affordable housing policies and targets;~~

~~(B) As needed, identify policies and subsequent development regulations that may increase residential development capacity;~~

~~(C) Determine the number of additional housing units these policies and development regulations may generate; and~~

~~(D) Establish a target that represents the minimum amount of affordable housing units that it seeks to generate.~~

~~(f)~~)) Countywide planning policies should include consideration of the distribution of housing needs to begin to undo racially disparate impacts, exclusion, and displacement.

(iii) To make adequate provisions, counties and cities should identify barriers to addressing housing needs for all economic segments of the population, along with, but not limited to, development regulations, process obstacles, and funding gaps. Counties and cities should document the programs and actions needed to achieve housing availability, including the removal of the identified barriers, through changes to development regulations, processes, incentives, and local funding opportunities. Jurisdictions should begin to take actions to address these barriers upon adoption of the plan.

(A) Examples of development regulation barriers include, but are not limited to, unclear or inconsistent development regulations, pro-

hibiting more affordable housing types, large lot sizes, low maximum densities or building heights, large setbacks, and high off-street parking requirements.

(B) Examples of process barriers include, but are not limited to, conditional use permit processes; lengthy or cumbersome design review; lack of clear information on processes and fees; high permitting, impact, or utility connection fees; and long permitting processing times.

(C) Examples of local funding opportunities include, but are not limited to, housing and related services sales tax, affordable housing property tax levy, real estate excise taxes, designating surplus lands for affordable housing projects, impact fee reductions or waivers for affordable housing projects in compliance with RCW 39.33.015, and the multi-family property tax exemption program.

(iv) The actions to address housing availability and barriers to housing production serve as benchmarks to evaluate progress and guide decisions regarding development regulations.

(v) When planning for all economic segments through housing capacity or adequate provisions, counties and cities should consider housing locations in relation to employment. This includes consideration of higher densities and capacities in proximity to employment centers, the location of housing in relation to public transit to employment centers, and consideration of the types of housing that local employees can afford.

(vi) Accessory dwelling units can help meet local housing needs. Counties and cities should consider the kinds of accessory dwelling units most likely to develop in their county or city, how the units will be used, anticipated capacity to accommodate project needs, and the barriers to developing the units.

(f) Racially disparate impacts, displacement, exclusion, and displacement risk.

(i) To identify and remove those policies and regulations that create and perpetuate inequitable housing outcomes, the department recommends counties and cities:

(A) Engage with the community. Identify the communities that may be experiencing disparate impacts, exclusion, or displacement, specifically communities that identify as Black, Indigenous, and People of Color (BIPOC), and develop a program of community engagement to support your analysis and assessment of racially disparate impacts in your existing policies and regulations.

(B) Gather and analyze data. Analyze data to assess racially disparate impacts, displacement, and exclusion in housing, and identify areas at risk of displacement. Analyze data by race and/or ethnicity in connection with the housing needs analysis. Counties and cities should engage impacted people and communities and other knowledgeable stakeholders to help interpret the findings from the analysis and provide greater insight into the factors that may cause racially disparate impacts in local housing policies or regulations.

(C) Evaluate policies. Based on information from (f)(i)(A) and (B) of this subsection, review existing housing policies and identify changes or new policies and regulations to address and begin to undo the racially disparate impacts and exclusion in housing and address displacement impacts.

(D) Revise policies. Revise existing policies to reduce and undo the disparate impacts, displacement, and exclusion, and develop policies to prevent displacement.

(E) Review and update regulations. Review and update regulations to achieve the goals and policies of the housing element in (f)(i)(D) of this subsection.

(ii) A variety of policy and regulatory solutions are available to counties and cities to address racially disparate impacts, exclusion, and displacement, including:

(A) Increasing affordable housing production through the generation of revenue for affordable housing and/or encouraging more affordable housing production through options such as, but not limited to, affordable housing incentive programs, density bonuses, zoning reforms, tax incentives, and fee waiver programs.

(B) Preservation of existing affordable housing through programs or policies including, but not limited to, mobile home park preservation or conversion to cooperative, supporting third-party purchases of existing affordable housing, creation of community land trusts, notice of intent to sell ordinances, and regulating short-term rentals.

(C) Protecting existing communities and households through programs or policies including, but not limited to, homeownership programs, such as those that support financial assistance to low-income homeowners or home repair and rehabilitation assistance; rental assistance; and tenant protections, such as right to return policies, rental inspection and registry programs, deferral of taxes, and tenant opportunity to purchase programs.

(D) Ensuring benefits of investment and development are equitably distributed through programs such as community benefit agreements, support of community-led investments, or monitoring of equitable outcomes.

(g) Implementation plan.

(i) The housing element should identify strategies designed to help meet the needs identified for all economic segments of the population within the planning area and the actions needed to remove barriers to local housing needs. It should include, but not be limited to, the following:

(A) Consideration of the range of housing choices to be encouraged including, but not limited to, multifamily housing, mixed uses, manufactured houses, accessory dwelling units, and detached houses;

(B) Consideration of various lot sizes and densities, and of clustering and other design configurations;

(C) Consideration of incentives to encourage development of affordable housing such as density bonuses, fee waivers or exemptions, parking reductions, and expedited permitting;

(D) Identification of a sufficient amount of appropriately zoned land to accommodate the identified housing needs of all economic segments over the planning period; and

((~~(D)~~)) (E) Evaluation of the capacity of local public and private entities and the availability of financing to produce housing to meet the identified need.

(ii) The housing element should also address how the county or city will provide for group homes, foster care facilities, and facilities for other populations with special needs, including indoor emergency housing, transitional housing, shelters, and permanent supportive housing. The housing element should provide for an equitable distribution of these facilities among neighborhoods within the county or city.

(iii) The housing element should identify strategies designed to ensure the vitality and character of existing neighborhoods. It should show how growth and change will preserve or improve existing residen-

tial qualities. The housing element may not focus on one requirement (e.g., preserving existing housing) to the exclusion of the other requirements (e.g., affordable housing) in RCW 36.70A.070(2). It should explain how various needs are reconciled.

(iv) The housing element should include provisions to monitor the performance of its housing strategy. A monitoring program may include the following:

(A) The collection and analysis of information about the housing market;

(B) Data about the supply of developable residential building lots at various land-use densities and the supply of rental and for-sale housing at various price levels;

(C) A comparison of actual housing development to the targets, policies and goals contained in the housing element;

(D) Identification of thresholds at which steps should be taken to adjust and revise goals and policies; ((~~and~~))

(E) A description of the types of adjustments and revisions that the county or city may consider; and

(F) Coordination with review and evaluation reports. For counties and cities subject to the buildable lands review and evaluation report requirements of RCW 36.70A.215, and the implementation progress report required in RCW 36.70A.130(9), any revision of the housing element shall include consideration of prior buildable lands reports and any reasonable measures identified.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-415 Capital facilities element. (1) Requirements. The capital facilities element of a comprehensive plan must contain at least the following features:

(a) An inventory of existing capital facilities owned by public entities, also referred to as "public facilities," showing the locations and capacities of the capital facilities;

(b) A forecast of the future needs for such capital facilities based on the land use element;

(c) The proposed locations and capacities of expanded or new capital facilities;

(d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and

(e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(2) Recommendations for meeting requirements.

(a) Inventory of existing facilities.

(i) Counties and cities should create an inventory of existing capital facilities showing locations and capacities, including the extent to which existing facilities have capacity available for future growth.

(ii) Capital facilities involved should include, at a minimum, water systems, sanitary sewer systems, stormwater facilities, re-

claimed water facilities, schools, parks and recreational facilities, police and fire protection facilities.

(iii) Capital facilities that are needed to support other comprehensive plan elements, such as transportation, the parks and recreation or the utilities elements, may be addressed in the capital facility element or in the specific element.

(iv) Counties and cities should periodically review and update the inventory. At a minimum this review must occur as part of the periodic update required by RCW 36.70A.130(1). Counties and cities may also maintain this inventory annually in response to changes in the annual capital budget.

(v) Counties and cities should consider where infrastructure availability or lack thereof may have resulted in racially disparate impacts, displacement, or exclusion in housing as a result of local policies or regulations. Where the lack of infrastructure limits the ability to achieve infill development, cities required to allow middle housing must plan for adequate infrastructure, such as sewer, to allow new infill development.

(b) Forecast of future needs.

(i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.

(ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.

(A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

(B) Counties and cities should identify those improvements that are necessary for development.

(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities. Counties and cities are not required to set level of service standards for facilities that are not necessary for development. Because these facilities are not necessary for development, the failure to fund these facilities as planned would not require a reassessment of the land use element if funding falls short as required by RCW 36.70A.070 (3)(e).

(D) Counties and cities should consider improvements to address and begin to undo racially disparate impacts, displacement, or exclusion in housing caused by disinvestment or lack of infrastructure availability as detailed in RCW 36.70A.070 (2)(e) and (f).

(c) Financing plan.

(i) The capital facilities element should include creation of at least a six-year capital facilities plan for financing capital facilities needed within that time frame. Counties and cities should forecast projected funding capacities based on revenues available under existing laws and ordinances, followed by the identification of sources of public or private funds for which there is reasonable assurance of availability. Where the services and capital facilities are provided by other entities, these other providers should provide financial

information as well. If the funding strategy relies on new or previously untapped sources of revenue, the capital facilities element should include an estimate of new funding that will be supplied. Adoption of the development regulations or other actions to secure these funding sources should be included in the implementation strategy.

(ii) The six-year plan should be updated at least biennially so financial planning remains sufficiently ahead of the present for concurrency to be evaluated. Such an update of the capital facilities element may be integrated with the county's or city's annual budget process for capital facilities.

(d) Reassessment.

(i) Counties and cities must reassess the land use element and other elements of the comprehensive plan if the probable funding falls short of meeting the need for facilities that are determined by a county or city to be necessary for development. Counties and cities should identify a mechanism to periodically evaluate the adequacy of public facilities based on adopted levels of service or other objective standards. The evaluation should determine if a combination of existing and funded facilities are adequate to maintain or exceed adopted level of service standards.

(ii) This evaluation must occur, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3) and as major changes are made to the capital facilities element.

(iii) If public facilities are inadequate, local governments must address this inadequacy. If the reassessment identifies a lack of adequate public facilities, counties and cities may use a variety of strategies including, but not limited to, the following:

(A) Reducing demand through demand management strategies;

(B) Reducing levels of service standards;

(C) Increasing revenue;

(D) Reducing the cost of the needed facilities;

(E) Reallocating or redirecting planned population and employment growth within ((~~the jurisdiction or among jurisdictions within~~)) or among counties or cities in the urban growth area to make better use of existing facilities;

(F) Phasing growth or adopting other measures to adjust the timing of development, if public facilities or services are lacking in the short term for a portion of the planning period;

(G) Revising countywide population forecasts within the allowable range, or revising the countywide employment forecast.

(3) Relationship between the capital facilities element and the land use element.

(a) Providing adequate public facilities is a component of the affirmative duty created by the act for counties and cities to accommodate the growth that is selected and allocated, to provide sufficient capacity of land suitable for development, to make adequate provisions for existing and projected needs of all economic segments of the population, and to permit urban densities.

(b) The needs for capital facilities should be dictated by the land use element. The future land use map designates sufficient land use densities ((~~and~~)), intensities, and housing types to accommodate the population and employment that is selected and allocated. The land uses and assumed densities identified in the land use element determine the location and timing of the need for new or expanded facilities.

(c) A capital facilities element includes the new and expanded facilities necessary for growth over the 20-year life of the compre-

hensive plan. Facilities needed for new growth, combined with needs for maintenance and rehabilitation of the existing systems, and the need to address existing deficiencies constitutes the capital facilities demand.

(4) Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

(5) Relationship between growth and provision of adequate public facilities.

(a) Counties and cities should identify in the capital facility element which types of facilities it considers to be necessary for development.

(i) Counties and cities should identify facilities as necessary for development if the need for new facilities is reasonably related to the impacts of development.

(ii) Capital facilities must be identified as necessary for development if a county or city imposes an impact fee as a funding strategy for those facilities.

(iii) In urban areas, all facilities necessary to achieve urban densities must be identified as necessary for development.

(b) For those capital facilities deemed necessary for development, adequate public facilities may be maintained as follows:

(i) Transportation facilities are the only facilities required to have a concurrency mechanism, although a local government may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-840.

(ii) Counties and cities should determine which capital facilities will be required as a condition of project approval, but not subject to concurrency. These may include, for example: Capital facilities required to ensure adequate water availability, capital facilities necessary to handle wastewater, and capital facilities necessary to manage stormwater.

(iii) For capital facilities that are necessary for development, but not identified in subsection (2)(b)(ii)(A) or (B) of this section, counties and cities should set a minimum level of service standard, or provide some other objective basis for assessing the need for new facilities or capacity. This standard must be indicated as the baseline standard, below which the jurisdiction will not allow service to fall. Policies must require periodic analysis to determine if the adopted level of service is being met consistent with this section. If applicable, this analysis should be included in the implementation progress report required in RCW 36.70A.130(9).

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-420 Utilities element. (1) Requirements. The utilities element shall contain at least the following features: The general location, proposed location, and capacity of all existing and proposed utilities including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(2) Recommendations for meeting requirements. Counties and cities should consider the following:

(a) The general location and capacity of existing and proposed utility facilities should be integrated with the land use element. Proposed utilities are those awaiting approval when the comprehensive plan is adopted.

(b) In consultation with serving utilities, counties and cities should prepare an analysis of the capacity needs for various utilities over the planning period, to serve the growth anticipated at the locations and densities proposed within the ((~~jurisdiction's~~)) county's or city's planning area. The capacity needs analysis should include consideration of comprehensive utility plans, least-cost plans, load forecasts, and other planning efforts.

(c) The utility element should identify the general location of utility lines and facilities required to furnish anticipated capacity needs for the planning period. This should be developed in consultation with serving utilities as a part of the process of identifying lands useful for public purposes.

(d) Counties and cities should evaluate whether any utilities should be identified and classified as essential public facilities, subject in cases of siting difficulty to the separate siting process established under the comprehensive plan for such facilities.

(e) Counties and cities should evaluate whether any utility facilities within their planning area are subject to countywide planning policies for siting public facilities of a countywide or statewide nature.

(f) Counties and cities should include local criteria for siting utilities over the planning period, including:

(i) Consideration of whether a siting proposal is consistent with the locations and densities for growth as designated in the land use element.

(ii) Consideration of any public service obligations of the utility involved.

(iii) Evaluation of whether the siting decision will adversely affect the ability of the utility to provide service throughout its service area.

(iv) Balancing of local design considerations against articulated needs for system-wide uniformity.

(g) Counties and cities should adopt policies that call for:

(i) Joint use of transportation rights of way and utility corridors, where possible.

(ii) Timely and effective notification of interested utilities about road construction, and of maintenance and upgrades of existing roads to facilitate coordination of public and private utility trenching activities.

(iii) Consideration of utility permit applications simultaneously with the project permit application for the project proposal requesting service and, when possible, approval of utility permits when the project permit application for the project to be served is approved.

(iv) Municipal utilities to reduce or waive connection fees for affordable housing. This includes properties owned or developed by, or on behalf of, a nonprofit organization, public development authority, housing authority, or a local agency that provides emergency shelter or emergency housing, transitional housing, permanent supportive housing, or other affordable housing consistent with chapter 35.95 RCW.

(v) Cooperation and collaboration between the county or city and the utility provider to develop vegetation management policies and plans for utility corridors.

(A) Coordination and cooperation between the county or city and the utility provider to educate the public on avoiding preventable utility conflicts through choosing proper vegetation (i.e., "Right Tree, Right Place").

(B) Coordination and cooperation between the county or city and the utility provider to reduce potential critical areas conflicts through the consideration of alternate utility routes, expedited vegetation management permitting, coordinated vegetation management activities, and/or long-term vegetation management plans.

(h) Adjacent counties and cities should coordinate to ensure the consistency of each jurisdiction's utilities element and regional utility plan, and to develop a coordinated process for siting regional utility facilities in a timely manner.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-425 Rural element. Counties must include a rural element in their comprehensive plan. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.

(1) Developing a written record. When developing the rural element, a county may consider local circumstances in establishing patterns of rural densities and uses, but must develop a written record explaining how the rural element harmonizes the planning goals in the act and meets the requirements of the act. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

(2) Establishing a definition of rural character.

(a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.

(b) The act identifies rural character as patterns of land use and development that:

(i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(iii) Provide visual landscapes that are traditionally found in rural areas and communities;

(iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;

(v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(vi) Generally do not require the extension of urban governmental services; and

(vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(c) Counties should adopt a locally appropriate definition of rural character. Rural areas are diverse in visual character and in density, across the state and across a particular county. Rural development may consist of a variety of densities and uses. It may, for example, include clustered residential development at levels consistent with the preservation of rural character. Counties should define rural development both in terms of its visual character and in terms of the density and intensity of uses. Defining rural development in this way allows the county to use its definition of rural development both in its future land use designations and in its development regulations governing rural development.

(3) Rural densities.

(a) The rural element should provide for a variety of densities that are consistent with the pattern of development established in its definition of rural character. The rural comprehensive plan designations should be shown on the future land use map. Rural densities are a range of densities that:

(i) Are compatible with the primary use of land for natural resource production;

(ii) Do not make intensive use of the land;

(iii) Allow open space, the natural landscape, and vegetation to predominate over the built environment;

(iv) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(v) Provide visual landscapes that are traditionally found in rural areas and communities;

(vi) Are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(vii) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(viii) Generally do not require the extension of urban governmental services;

(ix) Are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas; and

(x) Do not create urban densities in rural areas or abrogate the county's responsibility to encourage new development in urban areas.

(b) Counties should consider the adverse impact of wildfires when establishing rural densities. Counties may reduce rural densities in areas vulnerable to wildland fires as a mitigation strategy to protect natural resource lands, critical areas, water quality, or rural character.

(c) Counties should perform a periodic analysis of development occurring in rural areas, to determine if patterns of rural development are protecting rural character and encouraging development in urban areas. This analysis should occur along with the urban growth area review required in RCW 36.70A.130 (3)(a) and the implementation progress report required in RCW 36.70A.130(9). The analysis may include the following:

(i) Patterns of development occurring in rural areas.

(ii) The percentage of new growth occurring in rural versus urban areas.

(iii) Patterns of rural comprehensive plan or zoning amendments.

(iv) Numbers of permits issued in rural areas.

(v) Numbers of new approved wells and septic systems.

(vi) Growth in traffic levels on rural roads.

(vii) Growth in public facilities and public services costs in rural areas.

(viii) Changes in rural land values and rural employment.

(ix) Potential build-out at the allowed rural densities.

(x) The degree to which the growth that is occurring in the rural areas is consistent with patterns of rural land use and development established in the rural element.

(4) Rural governmental services.

(a) Rural governmental services are those public facilities and services historically and typically delivered at intensities usually found in rural areas, and may include the following:

(i) Domestic water system;

(ii) Fire and police protection;

(iii) Transportation and public transportation; and

(iv) Public utilities, such as electrical, telecommunications and natural gas lines.

(b) Rural services do not include storm or sanitary sewers. Urban governmental services that pass through rural areas when connecting urban areas do not constitute an extension of urban services into a rural area provided those public services are not provided in the rural area. Sanitary sewer service may be provided only if it:

(i) Is necessary to protect basic public health and safety and the environment;

(ii) Is financially supportable at rural densities; and

(iii) Does not permit urban development.

(c) When establishing levels of service in the capital facilities and transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities. Counties are not required to use a single level of service for the entire rural area and may establish varying levels of service for public services in different rural areas. Where private purveyors or other public entities provide rural services, counties should coordinate with them to establish and document appropriate levels of service.

(d) Rural areas typically rely on natural systems to adequately manage stormwater and typically rely on on-site sewage systems to treat wastewater. Development in rural areas also typically relies on individual wells, exempt wells or small water systems for water. Counties should ensure the densities it establishes in rural areas do not overwhelm the ability of natural systems to provide these services without compromising either public health or the vitality of the surrounding ecosystem.

(e) Rural road systems are not typically designed to handle large traffic volumes. Local conditions may influence varying levels of service for rural road system, and level of service standards for rural arterials should be set accordingly. Generally, level of service standards should reflect the expectation that high levels of local traffic and the associated road improvements are not usually associated with rural areas.

(f) Levels of public services decrease, and corresponding costs increase when demand is spread over a large area. This is especially

true for public safety services and both school and public transportation services. Counties should provide clear expectations to the public about the availability of rural public services. Counties should ensure the densities it establishes in rural areas do not overwhelm the capacity of rural public services.

(5) Innovative zoning techniques.

(a) Innovative zoning techniques allow greater flexibility in rural development regulations to create forms of development that are more consistent with rural character than forms of development generated by conventional large-lot zoning. Innovative zoning techniques may allow forms of rural development that:

(i) Result in rural development that is more visually compatible with the surrounding rural areas;

(ii) Maximize the availability of rural land for either resource use or wildlife habitat;

(iii) Increase the operational compatibility of the rural development with use of the land for resource production;

(iv) Decrease the impact of the rural development on the surrounding ecosystem;

(v) Does not allow urban growth; and

(vi) Does not require the extension of urban governmental services.

(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally be allowed in exchange for open space that preserves a significant portion of the original parcel.

(i) When calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created.

(ii) The open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date.

(iii) If a county allows bonus densities in a rural cluster, the resulting density after applying the bonus must be a rural density.

(iv) Rural clusters may not create a pattern of development that relies on or requires urban governmental services. Counties should establish a limit on the size of the residential cluster so that a cluster does not constitute urban growth in a rural area. A very large project may create multiple smaller clusters that are separated from each other and use a different access point to avoid creating a pattern of development that would constitute urban growth.

(v) Development regulations governing rural clusters should include design criteria that preserve rural visual character.

(6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs.

(a) LAMIRDs serve the following purposes:

(i) To recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl;

(ii) To allow for small-scale commercial uses that rely on a rural location;

(iii) To allow for small-scale economic development and employment consistent with rural character; and

(iv) To allow for redevelopment of existing industrial areas within rural areas.

(b) An existing area or existing use is one that was in existence on the date the county became subject to all of the provisions of the act:

(i) For a county initially required to fully plan under the act, on July 1, 1990.

(ii) For a county that chooses to fully plan under the act, on the date the county adopted the resolution under RCW 36.70A.040(2).

(iii) For a county that becomes subject to all of the requirements of the act under RCW 36.70A.040(5), on the date the office of financial management certifies the county's population.

(c) Counties may allow for more intensive uses in a LAMIRD than would otherwise be allowed in rural areas and may allow public facilities and services that are appropriate and necessary to serve LAMIRDs subject to the following requirements:

(i) Type 1 LAMIRDs - Isolated areas of existing more intense development. Within these areas, rural development consists of infill, development, or redevelopment of existing areas. These areas may include a variety of uses including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) Development or redevelopment in LAMIRDs may be both allowed and encouraged ((~~provided it is consistent with the character of the existing LAMIRD in terms of building size, scale, use, and intensity~~)) if it is consistent with local character and if existing providers of public facilities and public services confirm there is sufficient capacity of existing public facilities and public services to serve new or additional demand. Counties may allow new uses of property within a LAMIRD, including development of vacant land.

(B) Allowed commercial development or redevelopment. Any commercial development or redevelopment within a mixed use area must be principally designed to serve the existing and projected rural population and must meet the following requirements:

(I) Any included retail or food service space must not exceed the footprint of previously occupied space or 5,000 square feet, whichever is greater, for the same or similar use; unless the retail space is for an essential rural retail service and the designated limited area is located at least 10 miles from an existing urban growth area, then the retail space must not exceed the footprint of the previously occupied space or 10,000 square feet, whichever is greater; and

(II) Any included retail or food service space must not exceed 2,500 square feet for a new use unless the new retail space is for an essential rural retail service and the designated limited area is located at least 10 miles from an existing urban growth area, then the new retail space must not exceed 10,000 square feet; and

(III) For the purposes of this section, "essential rural retail services" means services including grocery, pharmacy, hardware, automotive parts, and similar uses that sell or provide products necessary for health and safety, such as food, medication, sanitation supplies, and products to maintain habitability and mobility as defined in RCW 36.70A.070.

(C) When establishing a Type I LAMIRD, counties must establish a logical outer boundary. The purpose of the logical outer boundary is to minimize and contain the areas of more intensive rural development to the existing areas. Uses, densities or intensities not normally allowed in a rural area may be allowed inside the logical outer boundary consistent with the existing character of the LAMIRD. Appropriate and

necessary levels of public facilities and services not otherwise provided in rural areas may be provided inside the logical outer boundary.

((~~(C)~~)) (D) The logical outer boundary must be delineated primarily by the built environment as it existed on the date the county became subject to the planning requirements of the act.

(I) Some vacant land may be included within the logical outer boundary provided it is limited and does not create a significant amount of new development within the LAMIRD.

(II) Construction that defines the built environment may include above or below ground improvements. The built environment does not include patterns of vesting or preexisting zoning, nor does it include roads, clearing, grading, or the inclusion within a sewer or water service area if no physical improvements are in place. Although vested lots and structures built after the county became subject to the act's requirements should not be considered when identifying the built environment, they may be included within the logical outer boundary as infill.

(III) The logical outer boundary is not required to strictly follow parcel boundaries. If a large parcel contains an existing structure, a county may include part of the parcel in the LAMIRD boundary without including the entire parcel, to avoid a significant increase in the amount of development allowed within the LAMIRD.

((~~(D)~~)) (E) The fundamental purpose of the logical outer boundary is to minimize and contain the LAMIRD. Counties should favor the configuration that best minimizes and contains the LAMIRD to the area of existing development as of the date the county became subject to the planning requirements of the act. When evaluating alternative configurations of the logical outer boundary, counties should determine how much new growth will occur at build out and determine if this level of new growth is consistent with rural character and can be accommodated with the appropriate level of public facilities and public services. Counties should use the following criteria to evaluate various configurations when establishing the logical outer boundary:

(I) The need to preserve the character of existing natural neighborhoods and communities;

(II) Physical boundaries such as bodies of water, streets and highways, and land forms and contours;

(III) The prevention of abnormally irregular boundaries; and

(IV) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

((~~(E)~~)) (F) Counties should not propose or accept applications that would expand or create a new Type-1 LAMIRD. Once a logical outer boundary has been adopted, counties may consider changes to the boundary in subsequent amendments if there was an error in application of the original criteria. When doing so, the county must use the same criteria used when originally designating the boundary. Counties should avoid adding new undeveloped parcels as infill, especially if doing so would add to the capacity of the LAMIRD.

(ii) Type 2 LAMIRDs - Small-scale recreational uses. Counties may allow small-scale tourist or recreational uses in rural areas. Small-scale recreational or tourist uses rely on a rural location and setting and need not be principally designed to serve the existing and projected rural population.

(A) Counties may allow small-scale tourist or recreational uses through redevelopment of an existing site, intensification of an existing site, or new development on a previously undeveloped site, but

not new residential development. Counties may allow public services and facilities that are limited to those necessary to serve the recreation or tourist uses and that do not permit low-density sprawl. Small-scale recreational or tourist uses may be added as accessory uses for resource-based industry. For accessory uses on agricultural lands of long-term commercial significance, see WAC 365-196-815.

(B) Counties are not required to designate Type 2 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 2 LAMIRD. Conditions must assure that Type 2 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Rely on a rural location or a natural setting;

(V) Do not include new residential development;

(VI) Do not require services and facilities beyond what is available in the rural area; and

(VII) Are operationally compatible with surrounding resource-based industries.

(iii) Type 3 LAMIRDs - Small-scale businesses and cottage industries. Counties may allow isolated small-scale businesses and cottage industries that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.

(A) Counties may allow the expansion of small-scale businesses in rural areas as long as those small-scale businesses are consistent with the rural character of the area as defined by the county in the rural element. Counties may also allow new small-scale businesses to use a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area. Any public services and public facilities provided to the cottage industry or small-scale business must be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl.

(B) Counties are not required to designate Type 3 LAMIRDs on the future land use map and may allow them as a conditional use. If using a conditional use process, counties should include in their development regulations conditions that address all the statutory criteria for the location of a Type 3 LAMIRD. Conditions must assure that Type 3 LAMIRDs:

(I) Are isolated, both from urban areas and from each other. Conditions should include spacing criteria to avoid creating a pattern of strip development;

(II) Are small in scale;

(III) Are consistent with rural character;

(IV) Do not include new residential development;

(V) Do not require public services and facilities beyond what is available in the rural area; and

(VI) Are operationally compatible with surrounding resource-based industries.

(d) The initial effective date of an action that creates or expands a limited area of more intense development is the latest of the following dates per RCW 36.70A.067:

(i) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided under RCW 36.70A.290(2); or

(ii) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

(e) Major industrial developments and master planned resorts governed by other requirements. Counties may not use the provisions of RCW 36.70A.070 (5)(d)(iii) to permit a major industrial development or a master planned resort. These types of development must comply with the requirements of RCW 36.70A.360 through 36.70A.368. For more information about major industrial developments, see WAC 365-196-465. For more information about master planned resorts, see WAC 365-196-460.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-430 Transportation element. (1) Requirements. Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element. The transportation element shall contain at least the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(c) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airports facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the county's or city's jurisdictional boundaries;

(ii) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's 10-year investment program. The concurrency requirements of RCW 36.70A.070 (6)(b) do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in RCW 36.70A.070 (6)(b);

(iv) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(v) Forecasts of traffic for at least 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(vi) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(d) Finance, including:

(i) An analysis of funding capability to judge needs against probable funding resources;

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the 10-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(iii) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(e) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(f) Demand-management strategies;

(g) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles;

(h) The transportation element, and the six-year plan required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and the 10-year plan required by RCW 47.05.030 for the state, must be consistent.

(2) Recommendations for meeting element requirements.

(a) Consistency with the land use element, regional and state planning.

(i) RCW 36.70A.070(6) requires that the transportation element implement and be consistent with the land use element. Counties and cities should use consistent land use assumptions, population forecasts, and planning periods for both elements. Coordination of the land use and transportation elements should address how the implementation of the transportation element supports the desired land uses and form established in the land use element. Recognizing that there is a direct relationship between land use and how it is accessed.

(ii) Counties and cities should refer to the statewide multimodal transportation plan produced by the department of transportation under chapter 47.06 RCW to ensure consistency between the transportation element and the statewide multimodal transportation plan. Local transportation elements should also reference applicable department of transportation corridor planning studies, including scenic byway corridor management plans, active transportation plans, and recreation and conservation office state trails plan.

(iii) Counties and cities should refer to the regional transportation plan developed by their regional transportation planning organ-

ization under chapter 47.80 RCW to ensure the transportation element reflects regional guidelines and principles; is consistent with the regional transportation plan; and is consistent with adopted regional growth and transportation strategies. Considering consistency during the development and review of the transportation element will facilitate the certification of transportation elements by the regional transportation planning organization as required by RCW 47.80.023(3).

(iv) Counties and cities should develop their transportation elements using the framework established in countywide planning policies, and where applicable, multicounty planning policies. Using this framework ensures their transportation elements are coordinated and consistent with the comprehensive plans of other counties and cities sharing common borders or related regional issues as required by RCW 36.70A.100 and 36.70A.210.

(v) Counties and cities should refer to the six-year transit plans developed by municipalities or regional transit authorities pursuant to RCW 35.58.2795 to ensure their transportation element is consistent with transit development plans as required by RCW 36.70A.070 (6)(c).

(vi) Land use elements and transportation elements may incorporate commute trip reduction plans to ensure consistency between the commute trip reduction plans and the comprehensive plan as required by RCW 70A.15.4060. Counties and cities may also include transportation demand management programs for growth and transportation efficiency centers designated in accordance with RCW 70A.15.4030.

(b) The transportation element should contain goals and policies to guide the development and implementation of the transportation element. The goals and policies should be consistent with statewide and regional goals and policies. Goals and policies should address the following:

(i) Roadways and roadway design that provides safe access and travel for all users, including pedestrians, bicyclists, transit vehicles and riders, and motorists;

(ii) Public transportation, including public transit and passenger rail, intermodal transfers, and access to transit stations and stops by people walking, bicycling, or transferring from another vehicle;

(iii) Bicycle and pedestrian travel including measures of facility quality such as level of traffic stress (an indicator used to quantify the stress experienced by a cyclist or pedestrian on the segments of a road network), route directness, and network completeness;

(iv) Transportation demand management, including education, encouragement and law enforcement strategies;

(v) Freight mobility including port facilities, truck, air, rail, and water-based freight;

(vi) Transportation finance including strategies for addressing impacts of development through concurrency, impact fees, and other mitigation; and

(vii) Policies to preserve the functionality of state highways within the local jurisdiction such as policies to provide an adequate local network of streets, paths, and transit service so that local short-range trips do not require single-occupant vehicle travel on the state highway system; and policies to mitigate traffic and stormwater impacts on state-owned transportation facilities and services as development occurs.

(c) Inventory and analysis of transportation facilities and services. RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of air, wa-

ter, and ground transportation facilities and services, including transit alignments and general aviation airport facilities. The inventory should include facilities for active transportation such as bicycle and pedestrian travel. The inventory defines existing capital facilities and travel levels as a basis for future planning. The inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries. Counties and cities should identify transportation facilities which are owned or operated by others. For those facilities operated by others, counties and cities should refer to the responsible agencies for information concerning current and projected plans for transportation facilities and services. Counties, cities, and agencies responsible for transportation facilities and services should cooperate in identifying and resolving land use and transportation compatibility issues.

(i) Air transportation facilities.

(A) Where applicable, counties and cities should describe the location of facilities and services provided by any general aviation airport within or adjacent to the county or city, and should reference any relevant airport planning documents including airport master plans, airport layout plans or technical assistance materials made available by airport sponsor and in coordination with the Washington state department of transportation, aviation division.

(B) Counties and cities should identify supporting transportation infrastructure such as roads, rail, and routes for freight, employee, and passenger access, and assess the impact to the local transportation system.

(C) Counties and cities should assess the compatibility of land uses adjacent to the airport and discourage the siting of incompatible uses in the land use element as directed by RCW 36.70A.510 and WAC 365-196-455 and in accordance with the best practices recommended by the Washington state department of transportation, aviation division.

(ii) Water transportation facilities.

(A) Where applicable, counties and cities should describe or map any ferry facilities and services, including ownership, and should reference any relevant ferry planning documents. The inventory should identify if a ferry route is subject to concurrency under RCW 36.70A.070 (6)(b). A ferry route is subject to concurrency if it serves counties consisting of islands whose only connection to the mainland are state highways or ferry routes.

(B) Counties and cities should identify supporting infrastructure such as parking and transfer facilities, bicycle, pedestrian, and vehicle access to ferry terminals and assess the impact on the local transportation system.

(C) Where applicable, counties and cities should describe marine and inland waterways, and related port facilities and services. Counties and cities should identify supporting transportation infrastructure, and assess the impact to the local transportation system.

(iii) Ground transportation facilities and services.

(A) Roadways. Counties and cities must include a map of roadways owned or operated by city, county, and state governments.

(I) Counties and cities may describe the general travel market (i.e., commuter, tourist, farm to market, etc.) served by the transportation network. The inventory may include information such as: Traffic volumes, truck volumes and classification, functional classification, strategic freight corridor designation, preferred freight routes, scenic and recreational highway designation, high occupancy vehicle lanes, business access and transit lanes, transit queue jumps,

other transit priority features, bicycle facilities, sidewalks, and ownership.

(II) For state highways, counties and cities should coordinate with the regional office of the Washington state department of transportation to identify designated high occupancy vehicle or high occupancy toll lanes, access classification, roadside classification, functional classification, and whether the highway is a state-designated highway of statewide significance, or state scenic and recreational highway designated under chapter 47.39 RCW. These designations may impact future development along state highway corridors. If these classifications impact future land use, this information should be included in the comprehensive plan along with reference to any relevant corridor planning documents.

(B) Public transportation and rail facilities and services.

(I) RCW 36.70A.070 (6)(a)(iii)(A) requires an inventory of transit alignments. Where applicable, counties and cities must inventory existing public transportation facilities and services. This section should reference transit development plans that provide local services. The inventory should contain a description of regional and intercity rail, and local, regional, and intercity bus service, paratransit, or other services. Counties and cities should include a map of local transit routes. The map should categorize routes by frequency and span of service. The inventory should also identify locations of passenger rail stations and major public transit transfer stations for appropriate land use. <u>The inventory should identify major transit stops.</u>

(II) Where applicable, such as where a major freight transfer facility is located, counties and cities should include a map of existing freight rail lines, and reference any relevant planning documents. Counties and cities should assess the adequacy of supporting transportation infrastructure such as roads, rail, and navigational routes for freight, employee, and passenger access, and the impact on the local transportation system.

(d) If the planning area is within a National Ambient Air Quality Standards nonattainment area, compliance with the Clean Air Act Amendments of 1990 is required. Where applicable, the transportation element should include: A map of the area designated as the nonattainment area for ozone, carbon monoxide, and particulate matter (PM10 and PM2.5); a discussion of the severity of the violation(s) contributed by transportation-related sources; and a description of measures that will be implemented consistent with the state implementation plan for air quality. Counties and cities should refer to chapter 173-420 WAC, and to local air quality agencies and metropolitan planning organizations for assistance.

(e) Level of service standards. Level of service standards serve to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between city, county and state transportation investment programs.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all locally owned arterials. Counties and cities may adopt level of service standards for all travel modes. Counties and cities may adopt level of service standards for locally owned roads that are not classified as arterials.

(ii) RCW 36.70A.070 (6)(a)(iii)(C) requires level of service standards for state-owned highways, as reflected in chapters 47.06 and 47.80 RCW, to gauge the performance of the transportation system. The

department of transportation, in consultation with counties and cities, establishes level of service standards for state highways and ferry routes of statewide significance. Counties and cities should refer to the state highway and ferry plans developed in accordance with chapter 47.06 RCW for the adopted level of service standards.

(iii) Regional transportation planning organizations and the department of transportation jointly develop level of service standards for all other state highways and ferry routes. Counties and cities should refer to the regional transportation plans developed in accordance with chapter 47.80 RCW for the adopted level of service standards.

(iv) RCW 36.70A.070 (6)(a)(iii)(B) requires the transportation element to include level of service standards for all transit routes. To identify level of service standards for public transit services, counties and cities should include the established level of service or performance standards from the transit provider and should reference any relevant planning documents.

(v) Adopted level of service standards should reflect access, mobility, mode-split, or capacity goals for the transportation facility depending upon the surrounding development density and community goals, and should be developed in consultation with transit agencies serving the planning area. Level of service standards should also advance the state's vehicle miles per capita reduction goals as identified in RCW 47.01.440.

(vi) The measurement methodology and standards should vary based on the urban or rural character of the surrounding area. The county or city should also balance the desired community character, funding capacity, and traveler expectations when selecting level of service methodologies and standards for all transportation modes. A county or city may select different ways to measure travel performance depending on how a county or city balances these factors and the characteristics of travel in their community. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones), or in terms of the supply of multimodal capacity available in a corridor.

(vii) In urban areas RCW 36.70A.108 encourages the use of methodologies analyzing the transportation system from a comprehensive, multimodal perspective. Multimodal levels of service methodologies and standards should consider the needs of travelers using the four major travel modes (pedestrian, bicycle, public transportation, motor vehicle), their impacts on each other as they share the street, and their mode specific requirements for street design and operation. For example, bicycle and pedestrian level of service standards should emphasize the availability of facilities and user stress based on facility attributes, traffic speed, traffic volume, number of lanes, frequency of parking turnover, ease of intersection crossings and others. Utilizing additional level of services standards can help make these modes accessible to a broad share of the population.

(f) Travel forecasts. RCW 36.70A.070 (6)(a)(iii)(E) requires forecasts of traffic for at least 10 years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth. Counties and cities must include at least a 10-year travel forecast in the transportation element. The forecast time period and underlying assumptions must be consistent with the

land use element. Counties and cities may forecast travel for the 20-year planning period. Counties and cities may include bicycle, pedestrian, and/or planned transit service in a multimodal forecast. Travel forecasts should be based on adopted regional growth strategies, the regional transportation plan, and comprehensive plans within the region to ensure consistency. Counties and cities should use the most current traffic forecasting methodologies that better account for the different traffic generating characteristics of different land use patterns. Traffic forecasts are one piece of information and should be balanced with other data and goals in the formation of the transportation element.

(g) Identify transportation system needs.

(i) RCW 36.70A.070 (6)(a)(iii)(D) requires that the transportation element include specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below established level of service standards. Such actions and requirements identified should include improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications.

(ii) System needs are those improvements needed to meet and maintain adopted levels of service over at least the required 10-year forecasting period. If counties and cities use a 20-year forecasting period, they should also identify needs for the entire 20-year period.

(iii) RCW 47.80.030(3) requires identified needs on regional facilities or services to be consistent with the regional transportation plan and the adopted regional growth and transportation strategies. RCW 36.70A.070 (6)(a)(iii)(F) requires identified needs on state-owned transportation facilities to be consistent with the statewide multimodal transportation plan.

(iv) Counties and cities should cooperate with public transit providers to analyze projected transit services and needs based on projected land use assumptions, and consistent with regional land use and transportation planning. Coordination may also include identification of mixed use centers, and consider opportunities for intermodal integration and appropriate multimodal access, particularly bicycle and pedestrian access.

(v) Counties and cities must include state transportation investments identified in the statewide multimodal transportation plan required under chapter 47.06 RCW and funded in the Washington state department of transportation's 10-year improvement program. Identified needs must be consistent with regional transportation improvements identified in regional transportation plans required under chapter 47.80 RCW. The transportation element should also include plans for new or expanded public transit and be coordinated with local transit providers.

(vi) The identified transportation system needs may include: Considerations for repair, replacement, enhancement, or expansion of pedestrian, bicycle, transit, vehicular facilities; ADA transitions; enhanced or expanded transit services; system management; or demand management approaches.

(vii) Transportation system needs may include transportation system management measures increasing the motor vehicle capacity of the existing street and road system. They may include, but are not limited to signal timing, traffic channelization, intersection reconfiguration, exclusive turn lanes or turn prohibitions, bus turn-out bays,

grade separations, removal of on-street parking or improving street network connectivity.

(viii) When identifying system needs, counties and cities may identify a timeline for improvements. Identification of a timeline provides clarity as to when and where specific transportation investments are planned and provides the opportunity to coordinate and cooperate in transportation planning and permitting decisions.

(ix) Counties and cities should consider how the improvements relate to adjacent counties or cities.

(x) State policy goals as outlined in RCW 47.04.280. Growth in travel demand should first be met through improvements to active transportation and transit access, improvements in proximity of destinations, and trip avoidance through telework and other use of telecommunications. This approach is consistent with statewide goals to reduce per capita vehicle miles traveled and greenhouse gas emissions.

(xi) The transportation element may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070 (6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(A) Multiple modes of transportation with peak and nonpeak hour capacity performance standards for locally owned transportation facilities; and

(B) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(xii) When identifying system needs, counties and cities should consider improvements to address and begin to undo racially disparate impacts, displacement, or exclusion in housing caused by disinvestment or lack of infrastructure availability as detailed in RCW 36.70A.070 (2)(e) and (f).

(h) Local impacts to state transportation facilities. RCW 36.70A.070 (6)(a)(ii) requires counties and cities to estimate traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the Washington state department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities. Traffic impacts should include the number of motor vehicle, bicycle, public transit, and pedestrian trips estimated to use the state highway and ferry systems throughout the planning period. ((~~Cities and~~)) Counties and cities should work with the Washington state department of transportation to understand the limits of state facilities throughout the planning period and should avoid increasing vehicle demand beyond planned capacity of state facilities.

(i) Transportation demand management.

(i) RCW 36.70A.070 (6)(a)(vi) requires that the transportation element include transportation demand management strategies. These strategies are designed to encourage the use of alternatives to single occupancy travel and to reduce congestion, especially during peak times.

(ii) Where applicable, counties and cities may include the goals and relevant strategies of employer-based commute trip reduction programs developed under RCW 70.94.521 through 70.94.555. All other counties and cities should consider strategies which may include, but are not limited to ridesharing, vanpooling, promotion of bicycling, walk-

ing and use of public transportation, transportation-efficient parking and land use policies, and high occupancy vehicle subsidy programs.

(j) Pedestrian and bicycle component. RCW 36.70A.070 (6)(a)(vii) requires the transportation element to include a pedestrian and bicycle component that includes collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(i) Collaborative efforts may include referencing local, regional, state pedestrian and bicycle planning documents, and ADA transition plans if any. Designated shared use paths, which are part of bicycle and pedestrian networks, should be consistent with those in the parks, recreation and open space element.

(ii) To identify and designate planned improvements for bicycle facilities and corridors, the pedestrian and bicycle component should include a map of bicycle facilities, such as bicycle lanes, shared use paths, paved road shoulders. This map should identify state and local designated bicycle routes, and describe how the facilities link to those in adjacent jurisdictions. This map should also identify the level of traffic stress for each of the facilities. Jurisdictions are encouraged to consider demographic groups that may have special transportation needs, such as older adults, youth, people with low incomes, people with disabilities, and people with limited English proficiency when identifying and designating planned improvements.

(iii) To identify and designate planned improvements for pedestrian facilities and corridors, the pedestrian and bicycle component should include a map of pedestrian facilities such as sidewalks, pedestrian connectors, and other designated facilities, especially in areas of high pedestrian use such as designated centers, major transit routes, and route plans designated by school districts under WAC 392-151-025.

(iv) The pedestrian and bicycle component should plan a network that connects residential and employment areas with community and regional destinations, schools, and public transportation services. The plan should consider route directness, network completeness, and level of traffic stress.

(v) The pedestrian and bicycle component should also plan pedestrian facilities that improve pedestrian and bicycle safety following a safe systems approach and consider existing pedestrian and bicycle collision data, vehicle speeds and volumes, and level of separation of modes.

(k) Multiyear financing plan.

(i) RCW 36.70A.070 (6)(a)(iii)(B) requires that the transportation element include a multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which develop a financing plan that addresses all identified multimodal transportation facilities and services and strategies throughout the 20-year planning period. The identified needs shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should reflect regional improvements identified in regional transportation plans required under chapter 47.80 RCW and be coordinated with the 10-year investment program developed by the Washington state department of transportation as required by RCW 47.05.030;

(ii) The horizon year for the multiyear plan should be the same as the time period for the travel forecast and identified needs. The

financing plan should include cost estimates for new and enhanced locally owned roadway facilities including new or enhanced bicycle and pedestrian facilities to estimate the cost of future facilities and the ability of the local government to fund the improvements.

(iii) Sources of proposed funding may include:

(A) Federal or state funding.

(B) Local funding from taxes, bonds, or other sources.

(C) Developer contributions, which may include:

(I) Impact or mitigation fees assessed according to chapter 82.02 RCW, or the Local Transportation Act (chapter 39.92 RCW).

(II) Contributions or improvements required under SEPA (RCW 43.21C.060).

(III) Concurrency requirements implemented according to RCW 36.70A.070 (6)(b).

(D) Transportation benefit districts established under RCW 35.21.225 and chapter 36.73 RCW.

(iv) RCW 36.70A.070 (6)(a)(iv)(A) requires an analysis of funding capability to judge needs against probable funding resources. When considering the cost of new facilities, counties and cities should consider the life-cycle cost of maintaining facilities in addition to the cost of their initial construction. Counties and cities should forecast projected funding capacities based on revenues that are reasonably expected to be available, under existing laws and ordinances, to carry out the plan. If the funding strategy relies on new or previously untapped sources of revenue, the financing plan should include a realistic estimate of new funding that will be supplied.

(l) Reassessment if probable funding falls short.

(i) RCW 36.70A.070 (6)(a)(iv)(C) requires reassessment if probable funding falls short of meeting identified needs. Counties and cities must discuss how additional funding will be raised or how land use assumptions will be reassessed to ensure that level of service standards will be met.

(ii) This review must take place, at a minimum, as part of the periodic review and update required in RCW 36.70A.130 (1) and (3), and as major changes are made to the transportation element.

(iii) If probable funding falls short of meeting identified needs, counties and cities have several choices. For example, they may choose to:

(A) Seek additional sources of funding for identified transportation improvements;

(B) Adjust level of service standards to reduce the number and cost of needed facilities;

(C) Revisit identified needs and use of transportation system management or transportation demand management strategies to reduce the need for new facilities; or

(D) Revise the land use element to shift future travel to areas with adequate capacity, to lower average trip length by encouraging mixed-use developments to increase the share of people who can walk, bicycle, or take transit to meet daily needs, or to avoid the need for new facilities in undeveloped areas;

(E) If needed, adjustments should be made throughout the comprehensive plan to maintain consistency.

(m) Implementation measures. Counties and cities may include an implementation section that broadly defines regulatory and nonregulatory actions and programs designed to proactively implement the transportation element. Implementation measures may include:

(i) Public works guidelines to reflect multimodal transportation standards for pedestrians, bicycles and transit; or adoption of Washington state department of transportation standards or the National Association of City Transportation Officials standards for bicycle and pedestrian facilities;

(ii) Transportation concurrency ordinances affecting development review;

(iii) Parking standards, especially in urban centers, to reduce or eliminate vehicle parking minimum requirements, provide vehicle parking maximums and include bicycle parking;

(iv) Commute trip reduction ordinances and transportation demand management programs;

(v) Access management ordinances;

(vi) Active transportation funding programs;

(vii) Maintenance procedures and pavement management systems to include bicycle, pedestrians and transit considerations;

(viii) Subdivision standards to reflect multimodal goals, including providing complete and connected networks, particularly for bicycle and pedestrian travel; and

(ix) Transit compatibility policies and rules to guide development review procedures to incorporate review of bicycle, pedestrian and transit access to sites.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-450 Historic preservation. (1) RCW 36.70A.020(13) calls on counties and cities to identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance, herein referred to as "cultural resources." Although the act does not require a separate historic preservation element, counties and cities must be guided by the historic preservation goal in their comprehensive plan.

(2) Recommendations for meeting requirements. ((~~Cities and~~)) Counties and cities should address historic preservation in coordination with their other associated obligations.

(a) Identifying cultural resources.

(i) Counties and cities may use existing programs to identify cultural resources. Counties and cities may consult with the department of archaeology and historic preservation for information and technical assistance regarding identification and protection of cultural resources.

(ii) Examples of existing programs that identify cultural resources include:

(A) The National Register of Historic Places;

(B) The Washington Heritage Register;

(C) Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and

(D) Properties which are listed in a local register of historic places.

(iii) Counties and cities should also identify areas designated as traditional cultural properties. A "traditional cultural property" is a property which has traditional cultural significance. It is associated with the cultural practices or beliefs of a living community

that are rooted in that community's history, and are important in maintaining the continuing cultural identity of the community. Because the location of these sites is uncertain and not on a public register, counties and cities should cooperate with the cultural resource officers of any potentially affected tribal governments to establish a protocol to identify cultural resources and procedures to protect any cultural resources that are identified or discovered during development activity. Counties and cities may establish a cultural resource data-sharing agreement with the department of archaeology and historic preservation to help identify sites with potential cultural historic or archaeological significance.

(iv) Counties and cities may, through existing data, attempt to identify sites with a high likelihood of containing cultural resources. If cultural resources are discovered during construction, irreversible damage to the resource may occur and significant and costly project delays are likely to occur. Establishing an early identification process can reduce the likelihood of these problems.

(b) Encouraging preservation of cultural resources.

(i) Counties and cities should include a process for encouraging the preservation of cultural resources. Counties and cities should start with an identification of existing state and federal requirements that encourage the preservation of cultural resources. These requirements include:

(A) Executive Order 05-05;

(B) Archaeological sites and resources (chapter 27.53 RCW);

(C) Archaeological excavation and removal permit (chapter 25-48 WAC);

(D) Indian graves and records (chapter 27.44 RCW);

(E) Human remains legislation (HB 2624);

(F) Abandoned and historic cemeteries and historic graves (chapter 68.60 RCW);

(G) Surcharge for preservation of historical documents (RCW 36.22.170);

(H) Shoreline Management Act (RCW 90.58.100);

(I) SEPA procedures (WAC 197-11-960).

(ii) Other potential strategies. Counties and cities should then assess if any additional steps are needed to implement the goals and policies established in the comprehensive plan regarding preservation of cultural resources. If a city or county determines any additional steps are needed, the following are other measures that are a means of encouraging the preservation of cultural resources:

(A) Establish a local preservation program and a historic preservation commission through adoption of a local preservation ordinance. The department of archaeology and historic preservation provides guidance on using the National Certified Local Government program as a local program.

(B) Establish zoning, financial, and procedural incentives for cultural and historic resource protection.

(C) Authorize a special valuation for historic properties tax incentive program.

(D) Establish incentives such as preservation covenants/easements and/or current use/open space taxation programs.

(E) Establish design guidelines, and authorize historic overlay/historic district zoning.

(F) Adopt the historic building code.

(G) Establish a program for transfer of development rights to encourage historic preservation.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-460 Master planned resorts. (1) The act allows for master planned resorts to provide counties with a means of capitalizing on areas of significant natural amenities to provide sustainable economic development for its rural areas. The requirements allow for master planned resorts without degrading the rural character of the county or imposing a public service burden on the county.

(2) A master planned resort is a self-contained, fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities, consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. Residential uses are permitted only if they are integrated into and support the on-site recreational nature of the resort.

(3) Master planned resorts may include public facilities and services beyond those normally provided in rural areas. However, those provided on-site must be limited to those that meet the needs of the master planned resort. Services may be developed on-site or may be provided by other service providers, including special purpose districts or municipalities. All costs associated with service extensions and capacity increases directly attributable to the master planned resort must be borne by the resort, rather than the county. A master planned resort may enter into development agreements with service providers to share facilities, provided the services serve either an existing urban growth area or the master planned resort. Such agreements may not allow or facilitate extension of urban services outside of the urban growth area or the master planned resort. When approving the master planned resort, the county must conclude that on-site and off-site infrastructure and service impacts are fully considered and mitigated.

(4) A county must include policies in its rural element to guide the development of master planned resorts before it can approve a master planned resort. These policies must preclude new urban or suburban land uses in the vicinity of the master planned resort unless those uses are otherwise within a designated urban growth area.

(5) When approving a master planned resort, a county must conclude, supported by the record before it, that the master planned resort is consistent with the development regulations protecting critical areas.

(6) If the area designated as a master planned resort includes resource lands of long-term commercial significance, a county must conclude, supported by the record before it, that the land is better suited, and has more long-term importance for the master planned resort than for the commercial harvesting of timber, minerals, or agricultural production. Because this conclusion effects a dedesignation of resource lands, it must be based on the criteria and the process contained in chapter 365-190 WAC. Even if lands are dedesignated, the master planned resort may not operationally interfere with the continued use of any adjacent resource lands of long-term commercial significance for natural resource production.

(7) The initial effective date of an action that creates or expands a master planned resort is the latest of the following dates per RCW 36.70A.067:

(a) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan

or regulation, implementing the action, as provided under RCW 36.70A.290(2); or

(b) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-480 Natural resource lands. (1) Requirements.

(a) In the initial period following adoption of the act, and prior to the development of comprehensive plans, counties and cities planning under the act were required to designate natural resource lands of long-term commercial significance and adopt development regulations to assure their conservation. Natural resource lands include agricultural, forest, and mineral resource lands. The previous designations and development regulations shall be reviewed in connection with the comprehensive plan adoption process and, where necessary, altered to ensure consistency.

(b) Counties and cities planning under the act must review their natural resource lands designations, comprehensive plans, policies, and development regulations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(c) Counties and cities not planning under RCW 36.70A.040 must review their natural resource lands designations, and if necessary revise those designations as part of the required periodic update under RCW 36.70A.130(1) and 36.70A.131.

(d) Forest land and agricultural land located within urban growth areas shall not be designated as forest resource land or agricultural resource land unless the county or city has enacted a program authorizing transfer or purchase of development rights.

(e) Mineral lands may be designated as mineral resource lands within urban growth areas. There may be subsequent reuse of mineral resource lands when the minerals have been mined out. In cases where designated mineral resource lands are likely to be mined out and closed to further mining within the planning period, the surface mine reclamation plan and permit from the department of natural resources division of geology should be reviewed to ensure it is consistent with the adopted comprehensive land use plan.

(f) In adopting development regulations to conserve natural resource lands, counties and cities shall address the need to buffer land uses adjacent to the natural resource lands. Where buffering is used it should be on land within the adjacent development unless an alternative is mutually agreed on by adjacent landowners.

(g) The initial effective date of an action that removes the designation of agricultural, forest, or mineral resource land is the latest of the following dates per RCW 36.70A.067:

(i) Sixty days after the publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided under RCW 36.70A.290(2); or

(ii) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

(2) Recommendations for meeting requirements.

(a) In the initial period following adoption of the act, much of the analysis which was the basis for the comprehensive plan came later

than the initial identification and regulation of natural resource lands. In all cases, counties and cities must address inconsistencies between plan policies, development regulations and previously adopted natural resource land provisions.

(b) The department issued guidelines for the classification and designation of natural resource lands which are contained in chapter 365-190 WAC. In general, natural resource lands should be located beyond the boundaries of urban growth areas; and urban growth areas should avoid including designated natural resource lands. In most cases, the designated purposes of natural resource lands are incompatible with urban densities. For inclusion in the urban growth area, counties and cities must first review the natural resource lands designation and conclude the lands no longer meet the designation criteria for resource lands of long-term commercial significance.

(c) As noted in subsection (1)(f) of this section, mineral resource lands are a possible exception to the requirement that natural resource lands be designated outside the urban growth area. This guidance is based on the significant cost savings from using minerals close to their source, and the potential for reusing the mined out lands for other purposes after mining is complete. Counties and cities should consider the potential loss of access to mineral resource lands if they are not designated and conserved, and should also consider the consumptive use of mineral resources when designating specific mineral resource lands.

(d) Counties and cities may also consider retaining local agricultural lands in or near urban growth areas as part of a local strategy promoting food security, agricultural education, or in support of local food banks, schools, or other large institutions.

(e) The review of existing designations should be done on a countywide basis, and in most cases, be limited to the question of consistency with the comprehensive plan, rather than revisiting the entire prior designation and regulation process. However, to the extent that new information is available or errors have been discovered, the review process should take this information into account. Review for consistency in this context should include whether the planned use of lands adjacent to agricultural, forest, or mineral resource lands will interfere with the continued use, in an accustomed manner and in accordance with the best management practices, of the designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities must defer reviews of resource lands until they are able to conduct a comprehensive countywide analysis consistent with WAC 365-190-040(10).

(f) Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands. Guidance on development regulations ensuring the conservation of designated resource lands is found in WAC 365-196-815.

(g) Counties and cities are encouraged to use a coordinated program that includes nonregulatory programs and incentives to supplement development regulations to conserve natural resource lands. Guidance for addressing the designation of natural resource lands is located under WAC 365-190-040 through 365-190-070.

(h) When adopting comprehensive plan policies on siting energy facilities on or adjacent to natural resource lands, counties and cities must ensure that development does not result in conversion to a use that removes the land from resource production, or interferes with

the usual and accustomed operations of the natural resource lands. Counties and cities are encouraged to adopt policies and regulations regarding the appropriate location for siting energy facilities on or adjacent to natural resource lands. Policies and regulations may emphasize dual-use strategies that preserve or improve natural resource lands, provide clarity to developers, and support renewable energy goals.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-550 Essential public facilities. (1) Determining what facilities are essential public facilities.

(a) The term "essential public facilities" refers to public facilities that are typically difficult to site. Consistent with countywide planning policies, counties and cities should create their own lists of "essential public facilities," to include at a minimum those set forth in RCW 36.70A.200.

(b) For the purposes of identifying facilities subject to the "essential public facilities" siting process, it is not necessary that the facilities be publicly owned.

(c) Essential public facilities include both new and existing facilities. It may include the expansion of existing essential public facilities or support activities and facilities necessary for an essential public facility.

(d) The following facilities and types of facilities are identified in RCW 36.70A.200 as essential public facilities:

(i) Airports;

(ii) State education facilities;

(iii) State or regional transportation facilities;

(iv) Transportation facilities of statewide significance as defined in RCW 47.06.140. These include:

(A) The interstate highway system;

(B) Interregional state principal arterials including ferry connections that serve statewide travel;

(C) Intercity passenger rail services;

(D) Intercity high-speed ground transportation;

(E) Major passenger intermodal terminals excluding all airport facilities and services;

(F) The freight railroad system;

(G) The Columbia/Snake navigable river system;

(H) Marine port facilities and services that are related solely to marine activities affecting international and interstate trade;

(I) High capacity transportation systems.

(v) Regional transit authority facilities as defined under RCW 81.112.020;

(vi) State and local correctional facilities;

(vii) Solid waste handling facilities;

(viii) Opioid treatment programs including both mobile and fixed-site medication units, recovery residences, and harm reduction programs excluding safe injection sites. Harm reduction programs means programs that emphasize engaging directly with people who use drugs to prevent overdose and infectious disease transmission, improve the physical, mental, and social well-being of those served, and offer low

threshold options for accessing substance use disorder treatment and other services.

(ix) In-patient facilities, including substance ((~~abuse~~)) use disorder treatment facilities;

((~~(ix)~~)) (x) Mental health facilities;

((~~(x)~~)) (xi) Group homes;

((~~(xi)~~)) (xii) Secure community transition facilities;

((~~(xii)~~)) (xiii) Any facility on the state 10-year capital plan maintained by the office of financial management.

(e) Essential public facility criteria apply to the facilities and not the operator. ((~~Cities and~~)) Counties and cities may not require applicants who operate essential public facilities to use an essential public facility siting process for projects that would otherwise be allowed by the development regulations. Applicants who operate essential public facilities may not use an essential public facility siting process to obtain approval for projects that are not essential public facilities.

(f) Regardless of whether it is a new, existing or an expansion or modification of an existing public facility, the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following conditions is sufficient to make a facility difficult to site.

(a) The public facility needs a specific type of site of such as size, location, available public services, which there are few choices.

(b) The public facility needs to be located near another public facility or is an expansion of an essential public facility at an existing location.

(c) The public facility has, or is generally perceived by the public to have, significant adverse impacts that make it difficult to site.

(d) Use of the normal development review process would effectively preclude the siting of an essential public facility.

(e) Development regulations require the proposed facility to use an essential public facility siting process.

(3) Preclusion of essential public facilities.

(a) ((~~Cities and~~)) Counties and cities may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable.

(i) Siting of an essential public facility is "impracticable" if it is incapable of being performed or accomplished by the means employed or at command.

(ii) Impracticability may also include restrictive zoning; comprehensive plan policies directing opposition to a regional decision; or the imposition of unreasonable conditions or requirements.

(iii) Limitations on essential public facilities such as capacity limits; internal staffing requirements; resident eligibility restrictions; internal security plan requirements; and provisions to demonstrate need may be considered preclusive in some circumstances.

(b) A local jurisdiction may not include criteria in its land use approval process which would allow the essential public facility to be

denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse effects.

(c) An essential public facility is not precluded simply because the comprehensive plan provisions would be too costly or time consuming to comply with.

(d) If the essential public facility and its location have been evaluated through a state or regional siting process, the county or city may not require the facility to go through the local siting process.

(e) Essential public facilities that are sited through a regional or state agency are distinct from those that are "sited by" a ((~~city or~~)) county or city or a private organization or individual. When a ((~~city or~~)) county or city is siting its own essential public facility, public or private, it is free to establish a nonpreclusive siting process with reasonable criteria.

(4) Comprehensive plan.

(a) Requirements:

(i) Each comprehensive plan shall include a process for identifying and siting essential public facilities. This process must be consistent with and implement applicable countywide planning policies.

(ii) No local comprehensive plan may preclude the siting of essential public facilities.

(b) Recommendations for meeting requirements:

(i) Identification of essential public facilities. When identifying essential public facilities, counties and cities should take a broad view of what constitutes a public facility, involving the full range of services to the public provided by the government, substantially funded by the government, contracted for by the government, or provided by private entities subject to public service obligations.

(ii) Agreements among jurisdictions should be sought to mitigate any disproportionate financial burden which may fall on the county or city which becomes the site of a facility of a statewide, regional, or countywide nature.

(iii) Where essential public facilities may be provided by special districts, the plans under which those districts operate must be consistent with the comprehensive plan of the ((~~city or~~)) county or city. Counties and cities should adopt provisions for consultation to ensure that such districts exercise their powers in a way that does not conflict with the relevant comprehensive plan.

(c) The siting process should take into consideration the need for countywide, regional, or statewide uniformity in connection with the kind of facility under review.

(5) Development regulations governing essential public facilities.

(a) Development regulations governing the siting of essential public facilities must be consistent with and implement the process set forth in the comprehensive plan.

(b) Except where countywide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each county's or city's planning area.

(c) Counties and cities should consider the criteria established in their comprehensive plan, in consultation with this section to determine if a project is an essential public facility. Counties and cities may also adopt criteria for identifying an essential public facility.

(d) If an essential public facility does not present siting difficulties and can be permitted through the normal development review process, project review should be through the normal development review process otherwise applicable to facilities of its type.

(e) If an essential public facility presents siting difficulties, the application should be reviewed using the essential public facility siting process.

(6) The essential public facility siting process.

(a) The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility.

(b) The review process for siting essential public facilities should include a requirement for notice and an opportunity to comment to other interested counties and cities and the public.

(c) The permit process may include reasonable requirements such as a conditional use permit, but the process used must ensure a decision on the essential public facility is completed without unreasonable delay.

(d) The essential public facility siting process should identify what conditions are necessary to mitigate the impacts associated with the essential public facility. The combination of any existing development regulations and any new conditions may not render impossible or impracticable, the siting, development or operation of the essential public facility.

(e) Counties and cities should consider the extent to which design conditions can be used to make a facility compatible with its surroundings. Counties and cities may also consider provisions for amenities or incentives for neighborhoods in which facilities are sited. Any conditions imposed must be necessary to mitigate an identified impact of the essential public facility.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-600 Public participation. (1) Requirements.

(a) Each county and city planning under the act must establish procedures for early and continuous public participation in the development and amendment of comprehensive plans and development regulations. The procedures are not required to be reestablished for each set of amendments.

(b) The procedures must provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

(c) Errors in exact compliance with the established procedures do not render the comprehensive plan or development regulations invalid if the spirit of the procedures is observed.

(2) Record of process.

(a) Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.

(b) The record should show how the public participation requirement was met.

(c) All public hearings should be recorded.

(3) Recommendations for meeting public participation requirements. These recommendations are a list of suggestions for meeting the public participation requirement.

(a) Designing the public participation program.

(i) Implementation of the act requires a series of interrelated steps, including: Development of the initial comprehensive plan, evaluating amendments as part of the docket cycle, conducting the periodic update and reviewing the urban growth boundaries, amending development regulations, and conducting subarea planning. Each of these has different levels of significance and different procedural requirements.

(ii) Counties and cities are not required to establish individual public participation programs for each individual amendment. Counties and cities may wish to consider establishing a public program for annual amendments, and establishing separate or updated programs for major periodic updates. When developing a public participation plan for a project not covered by the existing public participation plan, a county or city should develop a public participation plan tailored to the type of action under consideration. This public participation plan should be focused on the type of public involvement appropriate for that type of action.

(iii) The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the county or city intends to meet those requirements.

(iv) To avoid duplication of effort, counties and cities should integrate public involvement required by the State Environmental Policy Act, chapter 43.21C RCW, and rules adopted thereunder, into the overall public participation plan.

(v) Where a proposed amendment involves shorelines of the state, a county or city should integrate the public participation requirements of the Shoreline Management Act, chapter 90.58 RCW, into its public participation plan, as appropriate.

(vi) The public participation program should include outreach and early coordination with state and tribal agencies with subject matter expertise. Coordination with state agencies and tribes is recommended as draft policies and regulations are being developed.

(vii) Once established, the public participation plan must be broadly disseminated.

(b) Visioning. When developing a new comprehensive plan or a significant update to an existing comprehensive plan, counties and cities should consider using a visioning process. The public should be involved, because the purpose of a visioning process is to gain public input on the desired features of the community. The comprehensive plan can then be designed to achieve these features.

(c) Planning commission. The public participation program should clearly describe the role of the planning commission, ensuring consistency with requirements of chapter 36.70, 35.63, or 35A.63 RCW.

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved. Counties and cities should implement innovative techniques that support meaningful and inclusive engagement for people of color and low-income people. Counties and cities should consider potential barriers to participation that may arise due to race, color, ethnicity, religion, age, disability, income, or education level. Counties and cities should also engage those who may have been impac-

ted by racially disparate impacts, displacement, or exclusion to help identify policies and regulations that contributed to or resulted in these impacts, and identify policies and regulations to address and begin to undo those impacts as required in RCW 36.70A.070 (2)(e) and (f).

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(6) Providing adequate notice.

(a) Counties and cities are encouraged to consider a variety of opportunities to adequately communicate with the public. These methods of notification may include, but are not limited to, traditional forms of mailed notices, published announcements, electronic mail, and internet websites to distribute informational brochures, meeting times, project timelines, and design and map proposals to provide an opportunity for the public to participate.

(b) Counties and cities must provide effective notice. In order to be effective, notice must be designed to accomplish the following:

(i) Notice must be timely, reasonably available and reasonably likely to reach interested persons. Notice of all events where public input is sought should be broadly disseminated at least one week in advance of any public hearing. Newspaper or online articles do not substitute for the requirement that jurisdictions publish the action taken. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

(ii) Broad dissemination means that a county or city has made the documents widely available and provided information on how to access the available documents and how to provide comments. Examples of methods of broad dissemination may include:

(A) Posting electronic copies of draft documents on the county and city official website;

(B) Providing copies to local libraries;

(C) Providing copies as appropriate to other affected counties and cities, state and federal agencies;

(D) Providing notice to local newspapers; and

(E) Maintaining a list of individuals who have expressed an interest and providing them with notice when new materials are available.

(iii) Certain proposals may also require particularized notice to specific individuals if required by statute or adopted local policy.

(iv) The public notice must clearly specify the nature of the proposal under consideration and how the public may participate. Whenever public input is sought on proposals and alternatives, the relevant drafts should be available. The county or city must make available copies of the proposal that will be available prior to the public hearing so participants can comment appropriately. The notice should specify the range of alternatives considered or scope of alternatives available for public comment in accordance with RCW 36.70A.035 (2)(b)(i) and (ii).

(v) The public notice must specify the first and last date and time to submit written public comment.

(7) Receiving public comment.

(a) Public meetings on draft comprehensive plans. Once a comprehensive plan amendment or other proposal is completed in draft form, or as parts of it are drafted, the county or city may consider holding

a series of public meetings or workshops at various locations throughout the jurisdiction to obtain public comments and suggestions.

(b) Public hearings. When the final draft of the comprehensive plan is completed, at least one public hearing should be held prior to the presentation of the final draft to the county or city legislative authority adopting it.

(c) Written comment. At each stage of the process when public input is sought, opportunity should be provided to make written comment.

(d) Attendance for all meetings and hearings to which the public is invited should be free and open. At hearings all persons desiring to speak should be allowed to do so. A county or city may establish a reasonable time limitation on spoken presentations during meetings or public hearings, particularly if written comments are allowed.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.

(9) Considering changes to an amendment after the opportunity for public review has closed.

(a) If the county or city legislative body considers a change to an amendment, and the opportunity for public review and comment has already closed, then the county or city must provide an opportunity for the public to review and comment on the proposed change before the legislative body takes action.

(b) The county or city may limit the opportunity for public comment to only the proposed change to the amendment.

(c) Although counties and cities are required to provide an opportunity for public comment, alternatives to a scheduled public hearing may suffice. Adequate notice must be provided indicating how the public may obtain information and offer comments.

(d) A county or city is not required to provide an additional opportunity for public comment under (a) of this subsection if one of the following exceptions applies (see RCW 36.70A.035 (2)(a)):

(i) An environmental impact statement has been prepared under chapter 43.21C RCW, and the proposal falls within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the range of alternatives available for public comment. When initiating the public participation process, a county or city should consider defining the range of alternatives under consideration;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies

language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to an ordinance or resolution enacting a moratorium or interim control adopted in compliance with RCW 36.70A.390.

(e) If a county or city adopts an amendment without providing an additional opportunity for public comment as described under (a) of this subsection, the findings of the adopted ordinance or resolution should identify which exception under RCW 36.70A.035 (2)(b) applies.

(10) Any amendment to the comprehensive plan or development regulation must follow the applicable procedural requirements and the county or city public participation plan. A county or city should not enter into an agreement that is a de facto amendment to the comprehensive plan accomplished without complying with the statutory public participation requirements. Examples of a de facto amendment include agreements that:

(a) Obligate the county or city, or authorizes another party, to act in a manner that is inconsistent with the comprehensive plan;

(b) Authorize an action the comprehensive plan prohibits; or

(c) Obligate the county or city to adopt a subsequent amendment to the comprehensive plan.

AMENDATORY SECTION (Amending WSR 23-08-037, filed 3/29/23, effective 4/29/23)

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.

(a) Counties and cities must periodically take legislative action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.130(1), is referred to in this section as the periodic update.

(b)(i) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update on a schedule established in RCW 36.70A.130(5).

(ii) Certain smaller, slower-growing counties and cities may take up to an additional two years to complete the update.

(A) The eligibility of a county for the two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than 50,000 and a growth rate of less than 17 percent.

(C) A city is eligible if it has a population of less than 5,000, and either a growth rate of less than 17 percent or a total population growth of less than 100 persons.

(D) Growth rates are measured using the 10-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a ((~~city or~~)) county or city qualifies for the extension on the statutory due date, they remain eligible for the entire extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordi-

nance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(iii) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance, including a best available science review (see chapter 365-195 WAC);

(ii) Analysis of urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures

is observed. For example, if an established public participation program included one public hearing on all actions having to do with the periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population and housing needs allocated to a ((~~city or~~)) county or city during the most recent urban growth area review (see WAC 365-196-310);

(B) Analysis of patterns of development and densities permitted within urban growth areas (see WAC 365-196-310);

(C) Consideration of critical areas and resource lands ordinances. The department recommends evaluating the results of plan, regulation, and permit monitoring to determine if changes are needed to ensure efficient and effective implementation of critical areas ordinances (see WAC 365-195-920);

((~~(C)~~)) (D) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060;

((~~(D)~~)) (E) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the 10-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

((~~(E)~~)) (F) Land use element;

((~~(F)~~)) (G) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

((~~(G)~~)) (H) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the 20-year plan, counties and cities should consider updating them as part of the periodic update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315). Counties and cities required to submit to the department an implementation progress report under RCW 36.70A.130(9) should use that information in this review; and

((~~(H)~~)) (I) Inventories. Counties and cities should review required inventories and to determine if new data or analysis is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2

Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	((~~365-196-430~~)) 365-196-410
Inventory and analyze existing housing stock and projected housing needs at each income level, identifying the number of housing units ((~~necessary to manage project growth~~)) needed at each income level to accommodate the local portion of the countywide projection of housing need from the department.		
Capital Facilities	36.70A.070(3)	((~~365-196-445~~)) 365-196-415
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	((~~365-196-455~~)) 365-196-430
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the ((~~city's or~~)) county's or city's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. ((~~Cities and~~)) Counties and cities may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a ((~~city or~~)) county or city conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process. ((~~Cities and~~)) Counties and cities may not conduct the

periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, ((~~cities and~~)) counties and cities must review the areas and densities contained in the urban growth area and, if needed, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding 20-year period, as required in RCW 36.70A.130(3) (see WAC 365-196-310).

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-640 Comprehensive plan amendment procedures. (1) Each county or city should provide for an ongoing process to ensure:

(a) The comprehensive plan is internally consistent and consistent with the comprehensive plans of adjacent counties and cities. See WAC 365-196-500 and 365-196-510; and

(b) The development regulations are consistent with and implement the comprehensive plan.

(2) Counties and cities should establish procedures governing the amendment of the comprehensive plan. The location of these procedures may be either in the comprehensive plan, or clearly referenced in the plan.

(3) Amendments.

(a) All proposed amendments to the comprehensive plan must be considered by the governing body concurrently and may not be considered more frequently than once every year, so that the cumulative effect of various proposals can be ascertained. If a county or city's final legislative action is taken in a subsequent calendar year, it may still be considered part of the prior year's docket so long as the consideration of the amendments occurred within the prior year's comprehensive plan amendment process.

(b) Amendments may be considered more often under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (3)(b)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the ((~~one hundred~~)) 100-year flood plain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that is part of the adoption or amendment of a county or city budget;

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in agreement with the public participation program established by the county or city under RCW 36.70A.140, and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment;

(vi) To resolve an appeal of the comprehensive plan filed with the growth management hearings board; or

(vii) In the case of an emergency.

(4) Emergency amendments. Public notice and an opportunity for public comment must precede the adoption of emergency amendments to the comprehensive plan. Provisions in RCW 36.70A.390 apply only to moratoria or interim development regulations. They do not apply to comprehensive plans amendments. If a comprehensive plan amendment is necessary, counties and cities should adopt a moratoria or interim zoning control. The county or city should then consider the comprehensive plan amendment concurrently with the consideration of permanent amendments and only after public notice and an opportunity for public comment.

(5) Evaluating cumulative effects. RCW 36.70A.130 (2)(b) requires that all proposed amendments in any year be considered concurrently so the cumulative effect of the proposals can be ascertained. The amendment process should include an analysis of all proposed amendments evaluating their cumulative effect. This analysis should be prepared in conjunction with analyses required to comply with the State Environmental Policy Act under chapter 43.21C RCW.

(6) Docketing of proposed amendments.

(a) RCW 36.70A.470(2) requires that comprehensive plan amendment procedures allow interested persons, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest amendments of comprehensive plans or development regulations. This process should include a means of docketing deficiencies in the comprehensive plan that arise during local project review. These suggestions must be docketed and considered at least annually.

(b) A consideration of proposed amendments does not require a full analysis of every proposal within ((~~twelve~~)) 12 months if resources are unavailable.

(c) As part of this process, counties and cities should specify what information must be submitted and the submittal deadlines so that proposals can be evaluated concurrently.

(d) Once a proposed amendment is received, the county or city may determine if a proposal should receive further consideration as part of the comprehensive plan amendment process.

(e) Some types of proposed amendments require a significant investment of time and expense on the part of both applicants and the county or city. A county or city may specify in its policies certain types of amendments that will not be carried forward into the amendment process on an annual basis. This provides potential applicants with advance notice of whether a proposed amendment will be carried forward and can help applicants avoid the expense of preparing an application.

(7) Effective date of certain comprehensive plan amendments. RCW 36.70A.067 requires that the initial effective date of an action that expands an urban growth area designated under RCW 36.70A.110, removes the designation of agricultural, forest, or mineral resource lands designated under RCW 36.70A.170, creates or expands a limited area of more intense rural development designated under RCW 36.70A.070 (5)(d), establishes a new fully contained community under RCW 36.70A.350, or creates or expands a master planned resort designated under RCW 36.70A.360, is after the latest of the following dates:

(a) Sixty days after the date of publication of notice of adoption of the comprehensive plan, development regulation, or amendment

to the plan or regulation, implementing the action, as provided in RCW 36.70A.290(2); or

(b) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-650 Implementation strategy. Each county or city planning under the act should develop a strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used to implement the comprehensive plan. The strategy should identify each of the development regulations needed. Where applicable, the implementation strategy should be coordinated with the implementation progress report.

(1) Selection. In determining the specific regulations to be adopted, counties and cities may select from a wide variety of types of controls. The strategy should include consideration of:

(a) The choice of substantive requirements, such as the delineation of use zones; general development limitations concerning lot size, setbacks, bulk, height, density; provisions for environmental protection; urban design guidelines and design review criteria; specific requirements for affordable housing, landscaping, parking; levels of service, concurrency regulations and other measures relating to public facilities.

(b) The means of applying the substantive requirements, such as methods of prior approval through permits, licenses, franchises, or contracts.

(c) The processes to be used in applying the substantive requirements, such as permit application procedures, hearing procedures, approval deadlines, and appeals.

(d) The methods of enforcement, such as inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

(2) Identification. The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan. Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Others will need to be written. The strategy should include the actions needed to achieve housing availability and affordability identified in the housing element.

(3) Adoption schedule. The strategy should include a schedule for the adoption or amendment of the development regulations identified. Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-735 State and regional authorities. (1) When developing and amending comprehensive plans and development regulations under the act, counties and cities should consider existing state and regional regulatory and planning provisions affecting land use, resource management, environmental protection, utilities, or public facilities including:

(a) State statutes and regulations imposing statewide standards;

(b) Programs involving state-issued permits or certifications;

(c) State statutes and regulations regarding rates, services, facilities and practices of utilities, and tariffs of utilities in effect pursuant to such statutes and regulations;

(d) State and regional plans;

(e) Regulations and permits issued by regional entities;

(f) Locally developed plans subject to review or approval by state or regional entities.

(2) Examples of statutes and regulations imposing statewide standards are:

(a) Water quality standards and sediment standards, adopted by the department of ecology under the state Water Pollution Control Act;

(b) Drinking water standards adopted by the department of health pursuant to the Federal Safe Drinking Water Act;

(c) Minimum functional standards for solid waste handling, adopted by the department of ecology under the state Solid Waste Management Act;

(d) Minimum cleanup standards under the Model Toxics Control Act adopted by the department of ecology;

(e) Statutory requirements under the Shoreline Management Act and implementing guidelines and regulations adopted by the department of ecology;

(f) Standards for forest practices, adopted by the forest practices board under the state Forest Practices Act;

(g) Minimum requirements for flood plain management, adopted by the department of ecology under the Flood Plain Management Act;

(h) Minimum performance standards for construction pursuant to the state or International Building Code;

(i) Safety codes, such as the electrical construction code, adopted by the department of labor and industries;

(j) Archaeological investigation and reporting standards adopted by the department of archaeology and historic preservation under the Archaeological Sites and Resources Act and the Indian Graves and Records Act;

(k) Statutory requirements and procedures under the Planning Enabling Act;

(l) Statutory requirements and rules associated with operating and maintaining state highways, transportation facilities, and services under the Public Highways and Transportation Act.

(3) Examples of programs involving state issued permits or certifications are:

(a) Permits relating to forest practices, issued by the department of natural resources;

(b) Permits relating to surface mining reclamation, issued by the department of natural resources;

(c) National pollutant discharge elimination permits and waste discharge permits, issued by the department of ecology;

(d) Water rights permits, issued by department of ecology under state surface and groundwater codes;

(e) Hydraulic project approvals, issued by departments of fisheries and wildlife under the state fisheries code;

(f) Water quality certifications, issued by the department of ecology;

(g) Operating permits for public water supply systems, issued by the state health department;

(h) Site certifications developed by the energy facility site evaluation council;

(i) Permits relating to the generation, transportation, storage or disposal of dangerous wastes, issued by the department of ecology;

(j) Permits for disturbing or impacting archaeological sites and for the discovery of human remains, issued by the department of archaeology and historic preservation;

(k) Sponsored fish habitat enhancement projects permitted under RCW 77.55.181.

(4) Examples of state and regional plans are:

(a) State implementation plan for ambient air quality standards under the Federal Clean Air Act;

(b) Statewide multimodal transportation plan and the Washington transportation plan adopted under chapter 47.01 RCW;

(c) Instream resource protection regulations for water resource inventory areas adopted under the Water Resources Act of 1971;

(d) Groundwater management area programs, adopted pursuant to the groundwater code;

(e) Plan or action agendas adopted by the Puget Sound partnership;

(f) State outdoor recreation and open space plan;

(g) State trails plan;

(h) Regional transportation planning organization plans and plans that meet the requirements for multicounty planning policies under RCW 36.70A.210(7).

(5) Examples of regulations and permits issued by regional entities are:

(a) Solid waste disposal facility permits issued by health departments under the Solid Waste Management Act;

(b) Regulations adopted by regional air pollution control authorities;

(c) Operating permits for air contaminant sources issued by regional air pollution control authorities.

(6) Examples of locally developed plans subject to review or approval by state or regional agencies are:

(a) Shoreline master programs, approved by the department of ecology;

(b) The consistency requirement for lands adjacent to shorelines of the state set forth in RCW 90.58.340;

(c) Coordinated water system plans for critical water supply service areas, approved by the department of health;

(d) Plans for individual public water systems, approved by the department of health;

(e) Comprehensive sewage drainage basin plans, approved by the department of ecology;

(f) Local moderate risk waste plans, approved by the department of ecology;

(g) Integrated resource plans required to be filed with the utilities and transportation commission in accordance with WAC 480-100-238;

(h) Reclaimed water plans, approved by the department of ecology and/or department of health.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-820 Subdivisions. (1) Regulations for subdivision approvals and dedications, must require that the county or city make written findings that "appropriate provisions" have been made for the public health, safety, and general welfare, including open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant factors, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and that the public use and interest will be served by the platting of such subdivision and dedication.

(2) All cities, towns, and counties shall include in their short plat regulations procedures for unit lot subdivisions allowing division of a parent lot into separately owned unit lots. Portions of the parent lot not subdivided for individual unit lots shall be owned in common by the owners of the individual unit lots, or by a homeowners' association comprised of the owners of the individual unit lots.

(3) Regulations for short plat and short subdivision approvals may require written findings for "appropriate provisions" that are different requirements than those governing the approval of preliminary and final plats of subdivisions. However, counties and cities must include in their short plat regulations and procedures provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

((~~(3)~~)) (4) Regulations for subdivision approvals may require that the county or city make additional findings related to the public health, safety and general welfare to the specific listing above, such as protection of critical areas, conservation of natural resource lands, and affordable housing for all economic segments of the population.

((~~(4)~~)) (5) In drafting development regulations, "appropriate provisions" should be defined in a manner consistent with the requirements of other applicable laws and with any level of service standards or planning objectives established by the ((~~city or~~)) county or city for the facilities involved. The definition of "appropriate provisions" could also cover the timing within which the facilities involved should be available for use, requiring, for example, that such timing be consistent with the definition of "concurrency" in this chapter. See WAC 365-196-210.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-840 Concurrency. (1) Purpose.

(a) The purpose of concurrency is to assure that those public facilities and services necessary to support development are adequate to serve that development at the time it is available for occupancy and use, without decreasing service levels below locally established minimum standards.

(b) Concurrency describes the situation in which adequate facilities are available when the impacts of development occur, or within a specified time thereafter. Concurrency ensures consistency in land use approval and the development of adequate public facilities as plans are implemented, and it prevents development that is inconsistent with the public facilities necessary to support the development.

(c) With respect to facilities other than transportation facilities counties and cities may fashion their own regulatory responses and are not limited to imposing moratoria on development during periods when concurrency is not maintained.

(2) Determining the public facilities subject to concurrency. Concurrency is required for locally owned transportation facilities and for transportation facilities of statewide significance that serve counties consisting of islands whose only connection to the mainland are state highways or ferry routes. Counties and cities may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-415(5).

(3) Establishing an appropriate level of service.

(a) The concept of concurrency is based on the maintenance of specified levels of service with respect to each of the public facilities to which concurrency applies. For all such facilities, counties and cities should designate appropriate levels of service.

(b) Level of service is typically set in the capital facilities element or the transportation element of the comprehensive plan. The level of service is used as a basis for developing the transportation and capital facilities plans.

(c) Counties and cities should set level of service to reflect realistic expectations consistent with the achievement of growth aims. Setting levels of service too high could, under some regulatory strategies, result in no growth. As a deliberate policy, this would be contrary to the act.

(d) Counties and cities should coordinate with and reach agreements with other affected purveyors or service providers when establishing level of service standards for facilities or services provided by others.

(e) The level of service standards adopted by the county or city should vary based on the urban or rural character of the surrounding area and should be consistent with the land use plan and policies. The county or city should also balance the desired community character, funding capacity, and traveler expectations when adopting levels of service for transportation facilities. For example a plan that calls for a safe pedestrian environment that promotes walking or one that promotes development of a bike system so that biking trips can be substituted for auto trips may suggest using a level of service that includes measures of the pedestrian environment.

(f) For transportation facilities, level of service standards for locally owned arterials and transit routes should be regionally coordinated. In some cases, this may mean less emphasis on peak-hour automobile capacity, for example, and more emphasis on other transportation priorities. Levels of service for highways of statewide significance are set by the Washington state department of transportation. For other state highways, levels of service are set in the regional

transportation plan developed under RCW 47.80.030. Local levels of service for state highways should conform to the state and regionally adopted standards found in the statewide multimodal transportation plan and regional transportation plans. Other transportation facilities, however, may reflect local priorities.

(4) Measurement methodologies.

(a) Depending on how a county or city balances these factors and the characteristics of travel in their community, a county or city may select different ways to measure travel performance. For example, counties and cities may measure performance at different times of day, week, or month (peak versus off-peak, weekday versus weekend, summer versus winter). A city or county may choose to focus on the total multimodal supply of infrastructure available for use during a peak or off-peak period. Counties and cities may also measure performance at different geographic scales (intersections, road or route segments, travel corridors, or travel zones or measure multimodal mobility within a district).

(b) In urban areas, the department recommends counties and cities adopt methodologies that analyze the transportation system from a comprehensive, multimodal perspective, as authorized by RCW 36.70A.108. Multimodal level of service methodologies and standards should consider the needs of travelers using the four major modes of travel (auto, public transportation, bicycle, and pedestrian), their impacts on each other as they share the street or intersection, and their mode specific requirements for street and intersection design and operation.

(c) Although level of service standards and measurement methodologies are interrelated, changes in methodology, even if they have an incidental effect on the resulting level of service for a particular facility, are not necessarily a change in the level of service standard.

(5) Concurrency regulations.

(a) Each planning jurisdiction should produce a regulation or series of regulations which govern the operation of that jurisdiction's concurrency management system. This regulatory scheme will set forth the procedures and processes to be used to determine whether relevant public facilities have adequate capacity to accommodate a proposed development. In addition, the scheme should identify the responses to be taken when it is determined that capacity is not adequate to accommodate a proposal. Relevant public facilities for these purposes are those to which concurrency applies under the comprehensive plan. Adequate capacity refers to the maintenance of concurrency.

(b) Compliance with applicable environmental requirements, such as ambient air quality standards or water quality standards, should have been built into the determination of the facility capacities needed to accommodate anticipated growth.

(c) The variations possible in designing a concurrency management system are many. However, such a system could include the following features:

(i) Capacity monitoring - a process for collecting and maintaining real world data on use for comparison with evolving public facility capacities in order to show at any moment how much of the capacity of public facilities is being used;

(ii) Capacity allocation procedures - a process for determining whether proposed new development can be accommodated within the existing or programmed capacity of public facilities. This can include preassigning amounts of capacity to specific zones, corridors or areas on

the basis of planned growth. For any individual development this may involve:

(A) A determination of anticipated total capacity at the time the impacts of development occur.

(B) Calculation of how much of the total capacity will be used by existing developments and other planned developments at the time the impacts of development occur. If a local government does not require a concurrency certification or exempts small projects from the normal concurrency process, it should still calculate the capacity used and subtract that from the capacity available.

(C) Calculation of the amount of capacity available for the proposed development.

(D) Calculation of the impact on capacity of the proposed development, minus the effects of any mitigation provided by the applicant. (Standardized smaller developments can be analyzed based on predetermined capacity impact values.)

(E) Comparison of available capacity with project impact. For any project that places demands on public facilities, ((~~cities and~~)) counties and cities must determine if levels of service will fall below locally established minimum standards.

(iii) Provisions for reserving capacity - A process of prioritizing the allocation of capacity to proposed developments. This process might include one of the following alternatives:

(A) Setting aside a block or blocks of available or anticipated capacity for specified types of development fulfilling an identified public interest;

(B) Adopting a first-come, first-served system of allocation, dedicating capacity to applications in the order received; or

(C) Adopting a preference system giving certain categories or specified types of development preference over others in the allocation of available capacity.

(6) Regulatory response to the absence of concurrency. The comprehensive plan should provide a strategy for responding when approval of any particular development would cause levels of service for concurrency to fall below the locally adopted standards. To the extent that any jurisdiction uses denial of development as its regulatory response to the absence of concurrency, consideration should be given to defining this as an emergency for the purposes of the ability to amend or revise the comprehensive plan.

(a) In the case of transportation, an ordinance must prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan unless improvements or strategies to accommodate the impacts of development are made concurrent with the development.

(i) These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies.

(ii) "Concurrent with development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(b) If the proposed development is consistent with the land use element, relevant levels of service should be reevaluated.

(c) Other responses could include:

(i) Development of a system of deferrals, approving proposed developments in advance but deferring authority to construct until ade-

quate public facilities become available at the location in question. Such a system should conform to and help to implement the growth phasing schedule contemplated in the land use and capital facilities elements of the plan.

(ii) Conditional approval through which the developer agrees to mitigate the impacts.

(iii) Denial of the development, subject to resubmission when adequate public facilities are made available.

(iv) Redesign of the project or implementation of demand management strategies to reduce trip generation to a level that is within the available capacity of the system.

(v) Transportation system management measures to increase the capacity of the transportation system.

(7) Form, timing and duration of concurrency approvals. The system should include provisions for how to show that a project has met the concurrency requirement, whether as part of another approval document (e.g., permit, platting decisions, planned unit development) or as a separate certificate of concurrency, possibly a transferable document. This choice, of necessity, involves determining when in the approval process the concurrency issue is evaluated and decided. Approvals, however made, should specify the length of time that a concurrency determination will remain effective, including requirements for development progress necessary to maintain approval.

(8) Provisions for interjurisdictional coordination - SEPA consistency. Counties and cities should consider integrating SEPA compliance on the project-specific level with the case-by-case process for concurrency management.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

WAC 365-196-845 Local project review and development agreements.

((~~(1) The local Project Review Act (chapter 36.70B RCW) requires counties and cities planning under the act to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as building permits, subdivisions, binding site plans, planned unit developments, conditional uses, and other permits or other land use actions. The project permitting procedures ensure that when counties and cities implement goal 7 of the act, under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.~~

~~(2) Consolidated permit review process.~~

~~(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action. The permit review process must provide for the following:~~

~~(i) A consolidated project coordinator for a consolidated project permit application;~~

~~(ii) A consolidated determination of completeness;~~

~~(iii) A consolidated notice of application;~~

~~(iv) A consolidated set of hearings; and~~

~~(v) A consolidated notice of final decision that includes all project permits being reviewed through the consolidated permit review process.~~

~~(b) Counties and cities administer many different types of permits, which can generally be grouped into categories. The following are examples of project permit categories:~~

~~(i) Permits that do not require environmental review or public notice, and may be administratively approved;~~

~~(ii) Permits that require environmental review, but do not require a public hearing; and~~

~~(iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal.~~

~~(c) Local project review procedures should address, at a minimum, the following for each category of permit:~~

~~(i) What is required for a complete application;~~

~~(ii) How the county or city will provide notice of application;~~

~~(iii) Who makes the final decision;~~

~~(iv) How long local project review is likely to take;~~

~~(v) What fees and charges will apply, and when an applicant must pay fees and charges;~~

~~(vi) How to appeal the decision;~~

~~(vii) Whether a preapplication conference is required;~~

~~(viii) A determination of consistency; and~~

~~(ix) Requirements for provision of notice of decision.~~

~~(d) A project permit applicant may apply for individual permits separately.~~

~~(3) Project permits that may be excluded from consolidated permit review procedures. A local government may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:~~

~~(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;~~

~~(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or~~

~~(c) Other project permits that the local government has determined present special circumstances.~~

~~(4) RCW 36.70A.470 prohibits using project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals, to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text amendment to the development regulations, even if proposed along with a project permit application.~~

~~(5) Consolidated project coordinator.~~

~~(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.~~

~~(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.~~

~~(6) Determination of complete application.~~

~~(a) A project permit application is complete for the purposes of this section when it meets the county's or city's procedural submission requirements and is sufficient for continued processing, even if additional information is required, or the project is subsequently modified.~~

~~(b) The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.~~

~~(c) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.~~

~~(d) Within twenty-eight days of receiving a project permit application, counties and cities must provide to the applicant a written determination of completeness or request for more information stating either:~~

~~(i) The application is complete; or~~

~~(ii) The application is incomplete and what is necessary to make the application complete.~~

~~(e) A determination of completeness or request for more information is required within fourteen days of the applicant providing additional requested information.~~

~~(f) The application is deemed complete if the county and city does not provide the applicant with a determination of completeness or request for more information within the twenty-eight days of receiving the application.~~

~~(g) The determination of completeness may include a preliminary determination of consistency and a preliminary determination of development regulations that will be used for project mitigation.~~

~~(h) Counties and cities may require project applicants to provide additional information or studies, either at the time of the notice of completeness or if the county or city requires new information during the course of continued review, at the request of reviewing agencies, or if the proposed action substantially changes.~~

~~(7) Identification of permits from other agencies. To the extent known, the county or city must identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application. However, the applicant is solely responsible for knowing of, and obtaining any permits necessary for, a project action.~~

~~(8) Notice of project permit application. Notice of a project permit application must be provided to the public and the departments and agencies with jurisdiction over the project permit application. It may be combined with the notice of complete application.~~

~~(a) What the notice of application must include:~~

~~(i) The date of application, the date of the notice of completion, and the date of the notice of application;~~

~~(ii) A description of the proposed project action and a list of the project permits included in the application and a list of any required studies;~~

~~(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;~~

~~(iv) The identification of existing environmental documents that evaluate the proposed project;~~

~~(v) The location where the application and any studies can be reviewed;~~

~~(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;~~

~~(vii) Any other information determined appropriate by the local government;~~

~~(viii) A statement of the public comment period. The statement must explain the following:~~

~~(A) How to comment on the application;~~

~~(B) How to receive notice of and participate in any hearings on the application;~~

~~(C) How to obtain a copy of the decision once made; and~~

~~(D) Any rights to appeal the decision.~~

~~(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of notice of application, the notice must specify the date, time, place, and type of any hearings required for the project.~~

~~(b) When the notice of application must be provided. Notice of application must be provided within fourteen days of determining an application is complete. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least fifteen days before the open record hearing.~~

~~(c) How to provide notice of application. A county or city may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Cities and counties may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4)(a) and (b). Examples of reasonable methods of providing notice are:~~

~~(i) Posting the property for site-specific proposals;~~

~~(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the local government;~~

~~(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;~~

~~(iv) Notifying the news media;~~

~~(v) Mailing to neighboring property owners; or~~

~~(vi) Providing notice by posting the application and other documentation using electronic media such as an email and a website.~~

~~(9) The application comment period. The comment period must be at least fourteen days and no more than thirty days from the date of notice of application. A county or city may accept public comments any time before the record closes for an open record predecision hearing. If no open record predecision hearing is provided, a county or city may accept public comments any time before the decision on the project permit.~~

~~(10) Project review timelines. Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed one hundred twenty days unless written findings specify the additional time needed for processing. Project permit review time periods established elsewhere, such as in RCW 58.17.140 should be followed for those actions. Counties and cities are encour-~~

~~aged to consider expedited review for project permit applications for projects that are consistent with adopted development regulations and within the capacity of systemwide infrastructure improvements.~~

~~(11) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required for state, federal or other permits hearings provided that the hearing is held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.~~

~~(12) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal to ensure that consolidated permit review occurs as provided in this section.~~

~~(13) Notice of decision.~~

~~(a) The notice of decision must include the following:~~

~~(i) A statement of any SEPA threshold determination;~~

~~(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and~~

~~(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.~~

~~(b) Notice of decision should also include:~~

~~(i) Any findings on which the final decision was based;~~

~~(ii) Any conditions of permit approval conditions or required mitigation; and~~

~~(iii) The permit expiration date, where applicable.~~

~~(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.~~

~~(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:~~

~~(i) Posting the property for site-specific proposals;~~

~~(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; or in a local land use newsletter published by the county or city;~~

~~(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;~~

~~(iv) Notifying the news media;~~

~~(v) Mailing to neighboring property owners; or~~

~~(vi) Providing notice and posting the application and other documentation using electronic media such as email and a website.~~

~~(c) Cities and counties must provide a notice of decision to the following:~~

~~(i) The project applicant;~~

~~(ii) Any person who requested notice of decision;~~

~~(iii) Any person who submitted substantive comments on the application; and~~

~~(iv) The county assessor's office of the county or counties in which the property is situated.~~

~~(14) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed within fourteen days after the notice of final decision and may be extended to twenty-one days to allow for appeals filed under chapter 43.21C RCW.~~

~~(15) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.~~

~~(16) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations. For example, procedures should specify who provides an interpretation related to a specific project, and where a record of such code interpretations are kept so that subsequent interpretations are consistent. Code interpretation procedures help ensure a consistent and predictable interpretation of development regulations.~~

~~(17) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to govern the development of land and the issuance of project permits. These are referred to as development agreements.~~

~~(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.~~

~~(i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of its police power with the exercise of its power to enter contracts.~~

~~(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.~~

~~(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.~~

~~(b) Parties to the development agreement. The development agreement must include as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may~~

~~also include others, including other agencies with permitting authority or service providers. Cities and counties may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.~~

~~(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:~~

~~(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;~~

~~(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;~~

~~(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;~~

~~(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;~~

~~(v) Affordable housing;~~

~~(vi) Parks and open space preservation;~~

~~(vii) Phasing;~~

~~(viii) Review procedures and standards of implementing decisions;~~

~~(ix) A build-out or vesting period for applicable standards; and~~

~~(x) Any other appropriate development requirement or procedure.~~

~~(d) The effect of development agreements. Development agreements may exercise a county's or city's authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. The agreement grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to the comprehensive plan, development regulations or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.~~

~~(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.~~

~~(f) Procedures.~~

~~(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;~~

~~(ii) Only the county or city legislative authority may approve a development agreement;~~

~~(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and~~

~~(iv) A development agreement must be recorded in the county where the property is located.~~))

(1) Counties and cities planning under the act are required to adopt procedures for fair and timely review of project permits under RCW 36.70B.020(4), such as subdivisions, binding site plans, planned unit developments, conditional uses, site-specific rezones which do not require a comprehensive plan amendment and other permits or other land use actions. The project permitting procedures implement goal seven of the act. Under RCW 36.70A.020(7), applications for both state and local government permits should be processed in a timely and fair manner.

(2) Consolidated permit review process.

(a) Counties and cities must adopt a permit review process that provides for consolidated review of all permits necessary for a proposed project action. The permit review process must provide for the following:

(i) A consolidated project coordinator for a consolidated project permit application;

(ii) A consolidated determination of completeness;

(iii) A consolidated notice of application;

(iv) A consolidated set of hearings; and

(v) A consolidated notice of final decision that includes all project permits reviewed through the consolidated permit review process.

(b) The many different types of permits administered by counties and cities can generally be grouped into project permit categories, for example:

(i) Permits that do not require environmental review or public notice, and may be administratively approved;

(ii) Permits that require environmental review, but do not require a public hearing; and

(iii) Permits that require environmental review and/or a public hearing, and may provide for a closed record appeal.

(c) Local project review procedures should address, at a minimum, the following for each category of permit:

(i) Requirements for a complete application;

(ii) How the county or city will provide notice of application;

(iii) Who makes the final decision;

(iv) How long local project review is likely to take;

(v) What fees and charges will apply, and when an applicant must pay fees and charges;

(vi) How to appeal the decision;

(vii) Whether a preapplication conference is required;

(viii) A determination of consistency; and

(ix) Requirements for provision of notice of decision.

(d) A project permit applicant may apply for individual permits separately.

(3) Counties and cities may, by ordinance or resolution, exclude some permit types from these procedures. Excluded permit types may include:

(a) Actions relating to the use of public areas or facilities such as landmark designations or street vacations;

(b) Actions categorically exempt from environmental review, or for which environmental review has already been completed, such as lot line or boundary adjustments, and building and other construction permits, or similar administrative approvals; or

(c) Other project permits that the local government has determined present special circumstances.

(4) Project permits may, by ordinance or resolution, exclude some permit types from time periods for approval.

(5) Interior alteration is defined as construction activities that do not modify the existing site layout or its current use and involve no exterior work adding to the building footprint.

(a) Counties and cities must exclude project permits for interior alterations from site plan review if the criteria in RCW 36.70B.140(3) are met.

(b) Interior alterations must still comply with applicable building, mechanical, plumbing, or electrical codes.

(6) RCW 36.70A.470 prohibits project review conducted under chapter 36.70B RCW from being used as a comprehensive planning process. Except when considering an application for a major industrial development under RCW 36.70A.365, counties and cities may not consolidate project permit review with review of proposals to amend the comprehensive plan, even if the comprehensive plan amendment is site-specific. Counties and cities may not combine a project permit application with an area-wide rezone or a text amendment to the development regulations, even if proposed along with a project permit application.

(7) Consolidated project coordinator.

(a) Counties and cities should appoint a single project coordinator for each consolidated project permit application.

(b) Counties and cities should require the applicant for a project permit to designate a single person or entity to receive determinations and notices about a project permit application as authorized by RCW 36.70A.100.

(8) Determination of complete application.

(a) A project permit application is complete for the purposes of this section when it meets the county or city procedural submission requirements and is sufficient for continued processing, even if additional information is required, or if the project is subsequently modified.

(b) The development regulations must specify, for each type of permit application, what information a permit application must contain to be considered complete. This may vary based on the type of permit.

(c) For more complex projects, counties and cities are encouraged to use preapplication meetings to clarify the project action and local government permitting requirements and review procedures. Counties and cities may require a preapplication conference.

(d) Within 28 days of receiving a project permit application, counties and cities must provide to the applicant a written determination that must state either:

(i) The application is complete; or

(ii) The application is incomplete and that the procedural submission requirements of the local government have not been met. The determination shall outline what is necessary to make the application procedurally complete.

(iii) The number of days shall be calculated by counting every calendar day.

(e) A project permit application is complete when it meets the procedural submission requirements of the local government as outlined

in the project permit application. Additional information or studies may be required or project modifications may be undertaken subsequent to the procedural review of the application by the local government.

(f) The determination of completeness shall not preclude the local government from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur. However, if the procedural submission requirements, as outlined on the project permit application have been provided, the need for additional information or studies may not preclude a completeness determination.

(g) The application is deemed procedurally complete on the 29th day after receiving a project permit application if the county or city does not provide the applicant with a written determination that the application is procedurally incomplete. The local government may still seek additional information or studies when a written determination is not provided.

(h) The determination of completeness may include or be combined with a preliminary determination of consistency, a preliminary determination of development regulations that will be used for project mitigation, the notice of application pursuant to RCW 36.70B.110 or other information the local government chooses to include.

(i) A determination of completeness or a request for more information necessary for a complete application is required within 14 days of the applicant providing additional requested information.

(j) A notice of application shall be provided within 14 days after the determination of completeness. If the project permit requires an open record predecision hearing, the county or city must provide the notice of application at least 15 days before the open record hearing.

(9) Notice of application. The notice of application shall be provided to the public and the departments and agencies with jurisdiction over the project permit application.

(a) The notice of application must include:

(i) The date of application, the date of the notice of completion, and the date of the notice of application;

(ii) A description of the proposed project action, a list of the project permits included in the application and a list of any required studies;

(iii) The identification of other permits not included in the application that the proposed project may require, to the extent known by the county or city;

(iv) The identification of existing environmental documents that evaluate the proposed project;

(v) The location where the application and any studies can be reviewed;

(vi) A preliminary determination, if one has been made at the time of notice, of which development regulations will be used for project mitigation and of project consistency as provided in RCW 36.70B.040 and chapter 365-197 WAC;

(vii) Any other information determined appropriate by the local government;

(viii) A statement of the public comment period, which shall not be less than 14 days or more than 30 days, following the date of the notice of application. The statement must explain the following:

(A) A statement of the right of any person to comment on the application;

(B) How to comment on the application;

(C) How to receive notice of and participate in any hearings on the application;

(D) How to request and obtain a copy of the decision once made; and

(E) Any rights to appeal the decision.

(ix) If the project requires a hearing or hearings, and they have been scheduled by the date of the notice of application, then the notice must specify the date, time, place, and type of any hearings required for the project.

(10) How to provide notice of application.

(a) A county or city may provide notice using reasonable methods for different types of project actions or categories of project permits.

(b) Project review procedures should specify, as minimum requirements, how to provide notice for each type of permit. Counties and cities may use a variety of methods for providing notice. However, if the local government does not specify how it will provide public notice, it shall use the methods specified in RCW 36.70B.110 (4)(a) and (b). Examples of reasonable methods of providing notice are:

(i) Posting notice at the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas, or in a local land use newsletter published by the local government;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners;

(vi) Posting the application and other documentation using electronic media such as an email and a website.

(11) The notice of application comment period.

(a) Must be at least 14 days and no more than 30 days from the date of notice of application.

(b) A county or city may accept public comments:

(i) Any time before the record closes for an open record predecision hearing; and

(ii) Any time before the decision on the project permit if no open record predecision hearing is provided.

(12) Project review timelines.

(a) Counties and cities must establish and implement a permit process time frame for review of each type of project permit application, and for consolidated permit applications, and must provide timely and predictable procedures for review. The time periods for county or city review of each type of complete application should not exceed those specified in this section.

(b) County and city development regulations must, for each type of project permit application, specify contents for a complete application necessary to determine compliance with time periods and procedures.

(c) Counties and cities may exclude certain project permit types and timelines for processing permit applications as provided for in RCW 36.70B.140.

(d) Time periods for local government action to issue a final decision for each type of complete project permit application or project type should not exceed the following timelines:

(i) For project permits which do not require a notice of application (under RCW 36.70B.110): 65 days from determination of completeness;

(ii) For project permits which require public notice (under RCW 36.70B.110): 100 days from the determination of completeness;

(iii) For project permits which require public notice (under RCW 36.70B.110) and a public hearing: 170 days from the determination of completeness.

(e) Counties and cities may add permit types not identified, change permit names or type in each category, address how consolidated review times may be different than permits submitted individually and provide for how projects of a certain size or type may be differentiated, including differentiating between residential and nonresidential permits. For projects subject to consolidated review the final decision shall be subject to the longest applicable permit time period identified in (d)(i),(ii), and (iii) of this subsection, or to a longer time period if the time periods have been amended by the local government.

(f) If a local government does not adopt an ordinance or resolution modifying the timelines for final decisions, then the time periods in (d)(i),(ii), and (iii) of this subsection apply.

(g) The number of days an application is in review with the county or city shall be calculated from the day completeness is determined to the date a final decision is issued on the project permit application. The number of days shall be calculated by counting every calendar day and excluding the following time periods:

(i) Any period between the day that the county or city has notified the applicant, in writing, that additional information is required to further process the application and the day when responsive information is resubmitted by the applicant;

(ii) Any period after an applicant informs the local government, in writing, that they would like to temporarily suspend review of the project permit application until the time that the applicant notifies the local government, in writing, that they would like to resume the application. A local government may set conditions for the temporary suspension of a permit application; and

(iii) Any period after an administrative appeal is filed until the administrative appeal is resolved and any additional time period provided by the administrative appeal has expired.

(h) The time periods for a local government to process a permit shall start over if an applicant proposes a change in use that adds or removes commercial or residential elements from the original application that would make the application fail to meet the determination of procedural completeness for the new use.

(i) If, at any time, an applicant informs the local government, in writing, that the applicant would like to temporarily suspend the review of the project for more than 60 days, or if an applicant is not responsive for more than 60 consecutive days after the county or city has notified the applicant, in writing, that additional information is required to further process the application, an additional 30 days may be added to the time periods for local government action to issue a final decision for each type of project permit subject to this section.

(j) Any written notice from the local government to the applicant that additional information is required to further process the application must include a notice that nonresponsiveness for 60 consecutive days may result in 30 days being added to the time for review.

(k) For the purposes of this subsection, "nonresponsiveness" means that an applicant is not making demonstrable progress on providing additional requested information to the local government, or that there is no ongoing communication from the applicant to the local government on the applicant's ability or willingness to provide the additional information.

(l) Annual amendments to the comprehensive plan are not subject to the requirements of this section.

(m) A county or city adoption of a resolution or ordinance to implement this subsection shall not be subject to appeal under chapter 36.70A RCW unless the resolution or ordinance modifies the time periods by providing for a review period of more than 170 days for any project permit.

(n) When permit time periods, as may be amended or extended, are not met, a portion of the permit fee must be refunded to the applicant as provided in this subsection.

(i) A local government may provide for the collection of only 80 percent of a permit fee initially, and for the collection of the remaining balance if the permitting time periods are met.

(ii) The portion of the fee refunded for missing time periods shall be:

(A) Ten percent if the final decision of the project permit application was made after the applicable deadline but the period from the passage of the deadline to the time of issuance of the final decision did not exceed 20 percent of the original time period; or

(B) Twenty percent if the period from the passage of the deadline to the time of the issuance of the final decision exceeded 20 percent of the original time period.

(iii) Except as provided in RCW 36.70B.160, the provisions in (n) of this subsection are not applicable to counties and cities which have implemented at least three of the options in RCW 36.70B.160 (1)(a) through (j) (section 8, chapter 338, Law of 2023) at the time an application is deemed procedurally complete.

(13) Hearings. Where multiple permits are required for a single project, counties and cities must allow for consolidated permit review as provided in RCW 36.70B.120(1). Counties and cities must determine which project permits require hearings. If hearings are required for certain permit categories, then the review process must provide for no more than one consolidated open record hearing and one closed record appeal. An open record appeal hearing is only allowed for permits in which no open record hearing is provided prior to the decision. Counties and cities may combine an open record hearing on one or more permits with an open record appeal hearing on other permits. Hearings may be combined with hearings required for state, federal, or other permits hearings provided that the hearing is held within the geographic boundary of the local government and the state or federal agency is not expressly prohibited by statute from doing so.

(14) Project permit decisions. A county or city may provide for the same or a different decision maker, hearing body, or officer for different categories of project permits. The consolidated permit review process must specify which decision maker must make the decision or recommendation, conduct any required hearings or decide an appeal

to ensure that consolidated permit review occurs as provided in this section.

(15) Notice of decision.

(a) The notice of decision must include the following:

(i) A statement of any SEPA threshold determination;

(ii) An explanation of how to file an administrative appeal (if provided) of the decision; and

(iii) A statement that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

(b) The notice of decision should also include:

(i) Any findings on which the final decision was based;

(ii) Any conditions of permit approval conditions or required mitigation; and

(iii) The permit expiration date, where applicable.

(c) Notice of decision may be in the form of a copy of the report or decision on the project permit application, provided it meets the minimum requirements for a notice of decision.

(d) How to provide notice of decision. A local government may provide notice in different ways for different types of project permits depending on the size and scope of the project and the types of permit approval included in the project permit. Project review procedures should specify as minimum requirements, how to provide notice for each type of permit. Examples of reasonable methods of providing notice of decision are:

(i) Posting the property for site-specific proposals;

(ii) Publishing notice in written media such as in the newspaper of general circulation in the general area where the proposal is located, in appropriate regional or neighborhood newspapers, trade journals, agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas, or in a local land use newsletter published by the county or city;

(iii) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Mailing to neighboring property owners;

(vi) Providing notice and posting the application, decision, and other documentation using electronic media such as email and a website;

(vii) Placing notices in appropriate regional or neighborhood newspapers or trade journals; or

(viii) Publishing notices in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas.

(e) Counties and cities must provide a notice of decision to the following:

(i) The project applicant;

(ii) Any person who requested notice of decision;

(iii) Any person who submitted substantive comments on the application; and

(iv) The county assessor's office of the county or counties in which the property is situated.

(16) Appeals. A county or city is not required to provide for administrative appeals for project permit decisions. However, where appeals are provided, procedures should allow for no more than one consolidated open record hearing, if not already held, and one closed-record appeal. Provisions should ensure that appeals are to be filed

within 14 days after the notice of final decision and may be extended to 21 days to allow for appeals filed under chapter 43.21C RCW.

(17) Monitoring permit decisions. Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions such as periodic review of permit provisions, inspections, and bonding provisions.

(18) A county or city is not prohibited from extending a deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the county or city.

(19) Counties and cities are encouraged to adopt further project review and code provisions to provide prompt, coordinated review and ensure accountability to applicants and the public with actions that:

(a) Expedite review for project permit applications for projects that are consistent with adopted development regulations;

(b) Impose reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW. The fees imposed may not include a fee for the cost of processing administrative appeals. Nothing in this subsection limits the ability of a county or city to impose a fee for the processing of administrative appeals as otherwise authorized by law;

(c) Enter into interlocal agreements with other counties or cities to share permitting staff and resources;

(d) Maintain and budget for on-call permitting assistance for when permit volumes or staffing levels change rapidly;

(e) Budget new positions contingent on increased permit revenue;

(f) Adopt development regulations which only require public hearings for permit applications that are required to have a public hearing by statute;

(g) Adopt development regulations which make preapplication meetings optional rather than a requirement of permit application submittal;

(h) Adopt development regulations which make housing types an outright permitted use in all zones where the housing type is permitted;

(i) Adopt a program to allow for outside professionals with appropriate professional licenses to certify components of applications consistent with their license; or

(j) Meet with the applicant to attempt to resolve outstanding issues during the review process. The meeting must be scheduled within 14 days of a second request for corrections during permit review. If the meeting cannot resolve the issues and a local government proceeds with a third request for additional information or corrections, the local government must approve or deny the application upon receiving the additional information or corrections.

(20) Adoption of additional measures.

(a) After January 1, 2026, a county or city must adopt additional measures under subsection (19) of this section at the time of its next comprehensive plan update under RCW 36.70A.130 if it meets the following conditions:

(i) The county or city has adopted at least three project review and code provisions under subsection (19) of this section more than five years prior; and

(ii) The county or city is not meeting the permitting deadlines established in RCW 36.70B.080 at least half of the time over the period since its most recent comprehensive plan update under RCW 36.70A.130.

(b) A county or city that is required to adopt new measures under (a) of this subsection but fails to do so becomes subject to the provisions of RCW 36.70B.080 (1)(l), notwithstanding RCW 36.70B.080 (1)(l)(ii).

(21) Code interpretation. Project permitting procedures must include adopted procedures for administrative interpretation of development regulations.

(22) Development agreements. Counties and cities are authorized by RCW 36.70B.170(1) to enter into voluntary contractual agreements to govern the development of land and the issuance of project permits. These are referred to as development agreements.

(a) Purpose. The purpose of development agreements is to allow a county or city and a property owner/developer to enter into an agreement regarding the applicable regulations, standards, and mitigation that apply to a specific development project after the development agreement is executed.

(i) If the development regulations allow some discretion in how those regulations apply or what mitigation is necessary, the development agreement specifies how the county or city will use that discretion. Development agreements allow counties and cities to combine an agreement on the exercise of their police power with the exercise of their powers to enter contracts.

(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.

(iii) Counties and cities may not use development agreements to impose impact fees, inspection fees, or dedications, or require any other financial contribution or mitigation measures except as otherwise expressly authorized, and consistent with the applicable development regulations.

(b) Parties to the development agreement. The development agreement must include, as a party to the agreement, the person who owns or controls the land subject to the agreement. Development agreements may also include others, including other agencies with permitting authority or service providers. Counties and cities may enter into development agreements outside of their boundaries if the agreement is part of a proposed annexation or service agreement.

(c) Content of a development agreement. The development agreement must set forth the development standards and other provisions that apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration of the agreement. These may include, but are not limited to:

(i) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;

(ii) The amount and payment of fees imposed or agreed to in accordance with any applicable laws or rules in effect at the time, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(iii) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(iv) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(v) Affordable housing;

(vi) Parks and open space preservation;

(vii) Phasing;

(viii) Review procedures and standards of implementing decisions;

(ix) A build-out or vesting period for applicable standards; and

(x) Any other appropriate development requirement or procedure.

(d) The effect of development agreements. Development agreements may exercise a county or city authority to issue permits or its contracting authority. Once executed, development agreements are binding between the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement. The agreement grants vesting rights to the proposed development consistent with the development regulations in existence at the time of execution of the agreement. A permit approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement may not obligate a county or city to adopt subsequent amendments to their comprehensive plans or development regulations, or otherwise delegate legislative powers. Any such amendments must still be adopted by the legislative body following all applicable procedural requirements.

(e) A development agreement must reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(f) Procedures.

(i) These procedural requirements are in addition to and supplemental to the procedural requirements necessary for any actions, such as rezones, street vacations or annexations, called for in a development agreement. Development agreements may not be used to bypass any procedural requirements that would otherwise apply. Counties and cities may combine hearings, analyses, or reports provided the process meets all applicable procedural requirements;

(ii) Only the county or city legislative authority may approve a development agreement;

(iii) A county or city must hold a public hearing prior to executing a development agreement. The public hearing may be conducted by the county or city legislative body, planning commission or hearing examiner, or other body designated by the legislative body to conduct the public hearing; and

(iv) A development agreement must be recorded in the county where the property is located.

(23) Nothing in RCW 36.70B.080 prohibits a county or city from extending a deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the local government.

NEW SECTION

WAC 365-196-846 Additional project review encouraged. (1) Counties and cities are encouraged to adopt further project review provi-

sions to provide prompt, coordinated, and objective review and ensure accountability to applicants and the public, including expedited review for project permit applications for projects that are consistent with adopted development regulations or that include dwelling units that are affordable to low-income or moderate-income households and within the capacity of systemwide infrastructure improvements.

(2) Nothing in chapter 36.70B RCW is intended or shall be construed to prevent counties and cities from requiring a preapplication conference or a public meeting by rule, ordinance, or resolution, where otherwise required by applicable state law.

(3) Each county and city shall adopt procedures to monitor and enforce permit decisions and conditions.

(a) Permit decision monitoring procedures referenced in RCW 36.70B.160 should include, but not be limited to:

(i) Use of a permit software system, if possible, to provide reminders to notify staff and the applicant of:

(A) Status of permit processing timelines;

(B) Pending permit expiration dates;

(C) Permit conditions that require compliance or implementation by a certain time frame;

(D) Time frames for financial guarantees and release of financial guarantees.

(b) The enforcement procedures referenced in RCW 36.70B.160 for each permit should include, but not be limited to:

(i) Timelines for compliance upon issuance of a formal compliance order;

(ii) Penalties for lack of compliance;

(iii) Timelines for filing an appeal, including the applicable appeal body;

(iv) Identification of which county or city official has authority to issue enforcement notices for specific permit types.

(4) Nothing in chapter 36.70B RCW modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government.

(5) For the purposes of this section:

(a) A dwelling unit is affordable if it requires payment of monthly housing costs, including utilities other than telephone, of no more than 30 percent of the family's income.

(b) The definitions of "dwelling unit," "low-income household" and "moderate-income household" as used in this section shall be as provided for in RCW 36.70B.160.

NEW SECTION

WAC 365-196-847 Additional project review encouraged—Additional measures for certain jurisdictions. (1) Counties and cities are encouraged to adopt further project review and code provisions to provide prompt, coordinated review and ensure accountability to applicants and the public by:

(a) Expediting review for project permit applications for projects that are consistent with adopted development regulations;

(b) Imposing reasonable fees, consistent with RCW 82.02.020, on applicants for permits or other governmental approvals to cover the cost to the city, town, county, or other municipal corporation of pro-

cessing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

(i) The fees imposed may not include a fee for the cost of processing administrative appeals.

(ii) Nothing in this subsection limits the ability of a county or city to impose a fee for the processing of administrative appeals as otherwise authorized by law.

(c) Entering into an interlocal agreement with another county or city to share permitting staff and resources;

(d) Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly;

(e) Having new positions budgeted that are contingent on increased permit revenue;

(f) Adopting development regulations which only require public hearings for permit applications that are required to have a public hearing by statute;

(g) Adopting development regulations which make preapplication meetings optional rather than a requirement of permit application submittal;

(h) Adopting development regulations which make housing types an outright permitted use in all zones where the housing type is permitted;

(i) Adopting a program to allow for outside professionals with appropriate professional licenses to certify components of applications consistent with their license; or

(j) Meeting with the applicant to attempt to resolve outstanding issues during the review process.

(i) The meeting must be scheduled within 14 days of a second request for corrections during permit review.

(ii) If the meeting cannot resolve the issues and a county or city proceeds with a third request for additional information or corrections, then the county or city must approve or deny the application upon receiving the additional information or corrections.

(2)(a) After January 1, 2026, a county or city must adopt additional measures under subsection (1) of this section at the time of its next comprehensive plan update under RCW 36.70A.130 if it meets the following conditions:

(i) The county or city has adopted at least three project review and code provisions under subsection (1) of this section more than five years prior; and

(ii) The county or city is not meeting the permitting deadlines established in RCW 36.70B.080 at least half of the time over the period since its most recent comprehensive plan update required under RCW 36.70A.130.

(b) A county or city that is required to adopt new measures under (a) of this subsection but fails to do so becomes subject to the provisions of RCW 36.70B.080 (1)(l), notwithstanding RCW 36.70B.080 (1)(l)(ii).

(3) Nothing in chapter 36.70B RCW is intended or shall be construed to prevent a county or city from requiring a preapplication conference or a public meeting by rule, ordinance, or resolution.

(4) Each county or city shall adopt procedures to monitor and enforce permit decisions and conditions.

(a) Permit decision monitoring procedures should include, but not be limited to:

(i) Use of a permit software system, if possible, to provide reminders to notify staff and the applicant of:

(A) Status of permit timelines;
(B) Pending permit expiration dates;
(C) Permit conditions that require compliance or implementation by certain time frame;
(D) Time frames for financial guarantees and release of financial guarantees.
(b) The enforcement procedures for each permit should include, but not be limited to:
(i) Timelines for compliance upon issuance of a formal compliance order;
(ii) Penalties for lack of compliance;
(iii) Timelines for filing an appeal, including the applicable appeal body;
(iv) Identification of which county or city official has authority to issue enforcement notices for specific permit types.
(5) Nothing in chapter 36.70B RCW modifies any independent statutory authority for a government agency to appeal a project permit issued by a local government.

NEW SECTION

WAC 365-196-848 Reporting requirements. (1)(a) Counties subject to the requirements of RCW 36.70A.215 and the cities within those counties that have populations of at least 20,000 must, for each type of permit application:
(i) Identify the total number of project permit applications for which decisions are issued according to the provisions of chapter 36.70B RCW;
(ii) For identified project permit applications, establish and implement a deadline for issuing a notice of final decision as required by RCW 36.70B.080(1) and minimum requirements for applications to be deemed complete under RCW 36.70B.070 as required by RCW 36.70B.080(1).
(b) Counties and cities subject to the requirements in RCW 36.70B.080(2) must also prepare an annual performance report that includes information outlining time periods for certain permit types associated with housing. The report must provide:
(i) Permit time periods for certain permit processes in the county or city in relation to those established under RCW 36.70B.080, including whether the county or city has established shorter time periods than those identified in RCW 36.70B.080;
(ii) The total number of decisions issued during the year for the following permit types:
(A) Preliminary subdivisions;
(B) Final subdivisions;
(C) Binding site plans;
(D) Permit processes associated with the approval of multifamily housing; and
(E) Construction plan review for each of the permit types in subsection (1)(b)(ii)(A) through (D) of this section when submitted separately;
(iii) The total number of decisions for each permit type which included consolidated project permit review;
(iv) The average number of days from a submittal to a decision being issued for the project permit types listed in RCW 36.70B.080

(2)(b)(ii). This shall be calculated from the day completeness is determined under RCW 36.70B.070 to the date a decision is issued on the application. The number of days shall be calculated by counting every calendar day;

(v) The total number of days each project permit application of a type listed in RCW 36.70B.080 (2)(b)(ii) was in review with the county or city. This shall be calculated from the day completeness is determined under RCW 36.70B.070 to the date a final decision is issued on the application. The number of days shall be calculated by counting every calendar day. The days the application is in review with the county or city does not include the time periods in RCW 36.70B.080 (1)(g)(i), (ii), and (iii);

(vi) The total number of days that were excluded from the time period calculation under RCW 36.70B.080 (1)(g)(i), (ii), and (iii) for each project permit application of a type listed in RCW 36.70B.080 (2)(b)(ii).

(2) Counties and cities subject to the requirements of this subsection must:

(a) Post the annual performance report on the county or city website;

(b) Submit the annual performance report to the department by March 1st each year; and

(c) Submit the initial annual report required under this subsection to the department by March 1, 2025, and must include information from permitting in 2024.

NEW SECTION

WAC 365-196-849 Streamlined design review. (1) Design review is a local government process adopted by ordinance by which projects are reviewed for compliance with design standards for the type of use.

(2) Design review process:

(a) Must be conducted concurrently, or otherwise logically integrated, with the consolidated review and decision process for project permits set forth in RCW 36.70B.120(3);

(b) May include no more than one public meeting. Continuation of a public meeting for the purposes of design review should be discouraged.

(3) Clear and objective development regulations.

(a) Counties and cities may apply in any design review process only clear and objective development regulations governing the exterior design of new development. For the design review process, a clear and objective development regulation:

(i) Must include one or more ascertainable guideline, standard, or criterion by which an applicant can determine whether a given building design is permissible under that development regulation; and

(ii) May not result in a reduction in density, height, bulk, or scale below the generally applicable development regulations for a development proposal in the applicable zone.

(b) Exterior design:

(i) Exterior design of new development may include the exterior of the building(s) including, but not limited to, façade, roof, and any other building features visible from the outside of the building.

(ii) Exterior design may also include site features not part of the building such as, but not limited to, lighting, landscaping, art, pedestrian paths, open space, and parking location.

(4) New development.

(a) New development should include development of vacant property. This includes the demolition of existing buildings on a property which is subsequently developed with a new building.

(b) Cities and towns may adopt thresholds for what constitutes new development in situations where there are additions to, or new buildings developed on, property with pre-existing development.

(c) Interior remodels or alterations that do not expand the exterior building footprint and which do not modify the exterior of the building or exterior site design features, including routine and minor repair and maintenance, should not constitute new development for design review purposes; nor should the cost of interior improvements be counted towards the determination of what constitutes new development.

(d) Nothing in this section is intended to exempt exterior repair and maintenance or interior remodels and alterations from applicable building, plumbing, mechanical, or electrical codes and related permits.

(5) The provisions of WAC 365-196-847(1) do not apply to development regulations that apply only to designated landmarks or historic districts established under a local preservation ordinance.

NEW SECTION

WAC 365-196-867 Treatment of residential housing for low-income households. (1) Summary of requirements: Counties, cities, and local government entities or agencies may not adopt, impose, or enforce requirements on an affordable housing development that are different than the requirements imposed on housing developments generally, consistent with RCW 36.130.020. However, they may extend preferential treatment to affordable housing developments, or impose and enforce requirements on affordable housing developments as conditions of financial support or as conditions to eligibility for any affordable housing incentive program or other development regulation waiver.

(2) Recommendations for meeting requirements:

(a) Permanent supportive housing and transitional housing, and indoor emergency housing that is administered through a lease, are determined to be affordable housing developments under RCW 36.130.020 if at least 25 percent of the dwelling units within the development are set aside for or are occupied by low, very low, or extremely low-income households.

(b) If a county, city, or local government imposes or enforces requirements on affordable housing developments as conditions of benefits, funding or incentives, then these requirements must be imposed or enforced on any affordable housing development that receives the same benefit.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

WAC 365-196-870 Affordable housing incentives. (1) Background.

(a) The act calls on counties and cities to ((~~encourage the availability of affordable housing~~)) plan for and accommodate housing affordable to all economic segments of the population. Addressing the need for affordable housing will require a broad variety of tools to address local needs. This section describes certain affordable housing incentive programs (incentive programs) that counties and cities may implement.

(b) ((~~The powers granted in RCW 36.70A.540 are supplemental and additional to the powers otherwise held by local governments, and nothing in RCW 36.70A.540 shall be construed as a limit on such powers.~~

~~(c)~~)) Counties and cities may use incentive programs to implement other policies in their comprehensive plan in addition to affordable housing; for instance, encouraging higher densities that reduce the need for land and increase the efficiency of providing public services.

((~~(d)~~)) (c) Incentive programs may apply to residential, commercial, industrial and/or mixed-use developments.

((~~(e)~~)) (d) Incentive programs may be implemented through fee waivers and exemptions, development regulations, conditions on rezoning or permit decisions, ((~~or~~)) any combination of these, or other tools.

((~~(f)~~)) (e) Incentive programs may apply to part or all of a ((~~city or~~)) county or city. A county or city may apply different standards to different areas within their jurisdiction, or to different development types.

((~~(g)~~)) (f) Incentive programs may be modified to meet local needs.

((~~(h)~~)) (g) Incentive programs may include provisions not expressly provided in RCW 36.70A.540 ((~~or~~)), 82.02.020 or chapter 84.14 RCW.

(h) Incentive programs may include preferential treatment for affordable housing development.

(2) Counties and cities may establish an incentive program that is either required or optional.

(a) Counties and cities may establish an optional incentive program. If a developer chooses not to participate in an optional incentive program, a county or city may not condition, deny or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent the optional incentive provisions of this program.

(b) Counties and cities may establish ((~~an~~)) a mandatory incentive program that requires a minimum amount of affordable housing that must be provided by all residential developments built under the revised regulations. The minimum amount of affordable housing may be a percentage of the units or floor area in a development or of the development capacity of the site under the revised regulations. These programs may be established as follows:

(i) The county or city identifies certain land use designations within a geographic area where increased residential development will help achieve local growth management and housing policies.

(ii) The ((~~city or~~)) county or city adopts revised regulations to increase development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.

(iii) The county or city determines that the increased residential development capacity resulting from the revised regulations can

be achieved in the designated area, taking into consideration other applicable development regulations.

(3) Steps in establishing an incentive program.

(a) When developing incentive programs, counties and cities should start with the ((~~gaps~~)) local housing needs of each economic segment, as identified in the housing element and develop incentive programs as a strategy to ((~~implement the housing element and close some of the identified gaps~~)) make adequate provisions for existing and projected housing needs of all economic segments of the county or city as required by RCW 36.70A.070 (2)(d). Incentive programs could include the following for housing affordable to low, very low, or extremely low-income households, or permanent supportive housing, transitional housing, emergency housing or emergency shelter projects:

(i) Reduced or waived development requirements such as parking and height limitations;

(ii) Reduced or waived fees, such as infrastructure connection fees and/or impact fees;

(iii) Expedited permitting and density bonuses for projects that set aside a percentage of units or all units as affordable;

(iv) Incentive programs that specifically encourage permanent supportive housing, transitional housing, indoor emergency shelter, and indoor emergency housing.

(b) Counties and cities should identify incentives that can be provided to residential, commercial, industrial or mixed-use developments providing affordable housing, including tiny house communities as defined in RCW 35.21.686. Incentives could include density bonuses within the urban growth area, height and bulk bonuses, fee waivers or exemptions, parking reductions, expedited permitting, or other benefits to a development. Counties and cities ((~~may~~)) should provide a variety of incentives to accommodate housing needs of all economic segments and may tailor the type of incentive to the circumstances of a particular development project.

(c) Counties and cities may choose to offer incentives through development regulations, fees, processes, or through conditions on rezones or permit decisions.

(4) Criteria for ((~~determining income eligibility of prospective tenants or buyers~~)) developing a program under RCW 36.70A.540. When developing an affordable housing incentive program, counties and cities must establish standards for low-income renter or owner occupancy housing consistent with RCW 36.70A.540 (2)(b). The housing must be affordable to and occupied by low-income households.

(a) Low-income renter households are defined as households with incomes of ((~~fifty~~)) 50 percent or less of the county median family income, adjusted for family size.

(b) Low-income owner households are defined as households with incomes of ((~~eighty~~)) 80 percent or less of the county median family income, adjusted for family size.

(c) Adjustments to income levels: Counties and cities may, after holding a public hearing, establish lower or higher income levels based on findings that such higher income and corresponding affordability limits are needed to address local housing market. The higher income level may not exceed ((~~eighty~~)) 80 percent of county median family income for rental housing or ((~~one hundred~~)) 100 percent of median county family income for owner-occupied housing.

(d) Affordable units developed under RCW 36.70A.540 should be committed to affordability for 50 years; however, a local government may accept payments in lieu of continuing affordability.

(e) The powers granted in RCW 36.70A.540 are supplemental and additional to the powers otherwise held by local governments, and nothing in RCW 36.70A.540 shall be construed as a limit on such powers.

(5) Maximum rent or sales prices: Counties and cities must establish the maximum rent level or sales prices for each low-income housing unit developed under the terms of their affordable housing programs. Counties and cities may adjust these levels based on the average size of the household expected to occupy the unit. These levels may be adjusted over time with changes in median income and factors affecting the affordability of sales prices to low-income households.

(a) For renter-occupied housing units, the total housing costs, including basic utilities, excluding telephone, as determined by the jurisdiction, may not exceed ((~~thirty~~)) 30 percent of the income limit for the low-income housing unit.

(b) For owner-occupied housing units, affordable home prices should be based on conventional or ((~~FHA~~)) Federal Housing Administration lending standards applicable to low-income first-time homebuyers.

(6) Types of units provided when a developer is using incentives to develop both market rate housing and affordable housing.

(a) Market-rate housing projects participating in the affordable housing incentive program should provide low-income units in a range of sizes comparable to those units that are available for other residents. To the extent practicable, the number of bedrooms in low-income units should be in the same proportion as the number of bedrooms in units within the entire development.

(b) The provision of units within the developments for which a bonus or incentive is provided is encouraged. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided.

(c) The low-income units should have substantially the same functionality as the other units in the development.

(7) Enforcement of conditions: Conditions may be enforced using covenants, options, or other agreements executed and recorded by owners and developers of the affordable housing units. Affordable units developed under an incentive program should be committed to affordability for ((~~fifty~~)) 50 years; however, a local government may accept payments in lieu of continuing affordability.

(8) Payment in lieu of providing units allowed. Counties and cities may also allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site. The payment must not exceed the approximate costs of developing the same number and quality of housing units that would otherwise be developed. The funds or property must be used to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

(9) Jurisdictions with affordable housing incentive programs should consider customized zoning and development regulations for development on real property owned or controlled by a religious organization, but must allow increased density consistent with RCW 36.70A.545, 35A.63.300 and 35.63.280.

NEW SECTION

WAC 365-196-872 Housing on property owned or controlled by a religious organization. (1) Religious organizations may host unsheltered people on property the organizations own or control, whether within buildings located on the property, or outside of buildings on the property consistent with RCW 35A.21.360, 36.01.290, and 35.21.915.

(a) Counties and cities may not impose conditions other than those necessary to protect public health and safety and that do not substantially burden the ability of the religious organization to provide housing for unsheltered people.

(b) Counties and cities have discretion to reduce or waive permit fees for a religious organization that hosts unsheltered people.

(c) Any religious organization hosting an outdoor encampment, vehicle resident safe parking area, temporary small houses, or indoor overnight shelter, with a publicly funded managing agency, must work with the county or city to use Washington's homeless client management information system, as provided for in RCW 43.185C.180.

(2) County and city incentive programs must include increased density bonuses, consistent with local needs, for new or rehabilitated affordable housing development on property owned or controlled by a religious organization, consistent with RCW 36.70A.545, 35A.63.300, and 35.63.280. This density bonus should be administratively approved. There are no requirements for how much additional density must be allowed, but counties and cities:

(a) May develop policies to guide the development of an increased density bonus for affordable housing development on property owned or controlled by a religious organization, such as the level of bonus densities needed to allow an affordable housing project to develop or the scale of bonus densities based on the surrounding context of the property;

(b) Must limit the bonus density to sites within the urban growth area;

(c) Should adopt requirements for recording a notice to title that ensures the development is exclusively used for housing affordable to low-income households, and will meet the established affordability criteria for a time period not less than 50 years;

(d) Should require the developer to work with transit service providers, if applicable, to provide appropriate transit services;

(e) Must require that the development not discriminate against any low-income household on the basis of race, creed, color, national origin, sex, veteran or military status, sexual orientation, or mental or physical disability; or otherwise act in violation of the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.);

(f) Should also refer to RCW 36.01.290 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) to understand the limits of their authority to regulate uses on property owned or controlled by a religious organization as well as the limits of what the religious organization may offer.

NEW SECTION

WAC 365-196-875 Minimum residential parking requirements. (1) For counties and cities planning under RCW 36.70A.040, the minimum residential parking requirements of RCW 36.70.620 shall apply.

(a) For the purposes of this subsection, the following definitions should apply:

(i) "Seniors" means individuals 65 years or older.

(ii) "Transit stop" applies to stops where passengers embark or debark on public transit systems meeting the applicable transit service levels in RCW 36.70A.620, to include stops for conventional bus service, bus rapid transit, commuter rail, light rail, and rail or fixed guideway systems, including transitways.

(iii) A "credentialed transportation or land use planning expert" will have a license, such as a Professional Engineer (PE), or other credential issued by a nationally recognized planning organization, such as the American Planning Association (APA). The person or company preparing the parking study should have at least five years of experience in transportation planning, engineering, or land use with a minimum of two years of experience working on parking issues and related parking studies.

(b) Lack of access to street parking capacity, physical space impediments, or other reasons supported by evidence that would make on-street parking infeasible for the "unit" may be determined by the designated local government decision maker.

(c) Walking distances to transit stops may typically be measured as the distance traveled by road, paths, and sidewalks, or by the direct distance between two points. When measuring distances between two points, conditions that can constrain walkability and reduce the actual area that is in reasonable walking distance of the major transit stop, such as terrain, water bodies, missing pedestrian routes, or infrastructure barriers should be accounted for and documented to more accurately measure walking distance.

(d) When two parking requirement limits are provided, such as "one parking space per bedroom or 0.75 space per unit," the county or city may use either limit.

(e) For the purposes of RCW 36.70A.620(3), market rate multi-family units does not include market rate middle housing units for cities subject to RCW 36.70A.635.

(2) When permitting accessory dwelling units as defined by RCW 36.70A.696(1) counties and cities subject to the requirements of RCW 36.70A.681 may not, for accessory dwelling units:

(a) Require any off-street parking within one-half mile walking distance of a major transit stop;

(b) Require more than one off-street parking space per unit on lots smaller than 6,000 square feet before any zero lot line subdivisions or lot splits; and

(c) Require more than two off-street parking spaces per unit on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits.

(3) When permitting middle housing as defined by RCW 36.70A.030(26), cities subject to the requirements of RCW 36.70A.635 shall not:

(a) Require any off-street parking within one-half mile walking distance of a major transit stop.

(b) Require more than one off-street parking space per unit on lots no greater than 6,000 square feet before any zero lot line subdivisions or lot splits; and

(c) Require more than two off-street parking spaces per unit on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits.

(4) The provisions of subsections (2) and (3) of this section do not apply:

(a) To those areas where the department has certified a local government empirical study, prepared by a certified credentialed transportation or land use expert, meeting the requirements of RCW 36.70A.681 (2)(b)(i) or 36.70A.635 (7)(a);or

(b) To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(5) In cases where the number of off-street parking spaces required by RCW 36.70A.620 conflict with RCW 36.70A.635 or 36.70A.681, the least restrictive off-street parking requirement should apply.

(6) The off-street parking requirements of RCW 36.70A.635 and 36.70A.681 should be considered maximums and may be reduced. In considering reducing maximum off-street parking requirements, counties and cities should give consideration to:

(a) Proximity to transit facilities;

(b) Availability of on-street parking in the area;

(c) Predominant lot sizes, and whether off-street parking may restrict development of middle housing types; and

(d) Demand for off-street parking for affordable housing units.

(7) Counties and cities shall enforce land use regulations for residential development as follows:

(a) Garages and carports may not be required to meet minimum parking requirements for residential development;

(b) Parking spaces that count towards minimum parking requirements may be enclosed or unenclosed;

(c) Parking spaces in tandem must count towards meeting minimum parking requirements at a rate of one space for every 20 linear feet with any necessary provisions for turning radius;

(d) For purposes of this subsection, "tandem" is defined as having two or more vehicles, one in front of or behind the others with a single means of ingress and egress;

(e) Existence of legally nonconforming gravel surfacing in existing designated parking areas may not be a reason for prohibiting utilization of existing space in the parking area to meet local parking standards, up to a maximum of six parking spaces;

(f) Parking spaces may not be required to exceed eight feet by 20 feet, except for required parking for people with disabilities. Angled parking spaces should be sized to be comparable to an eight foot by 20 foot 90 degree stalls. Backing areas and driveway aisles should be sized to be the minimum needed for one way or two way traffic as applicable, which generally should be no greater than 24 feet for 90 degree stalls;

(g) Any county planning under this chapter, and any cities within those counties with a population greater than 6,000, may not require off-street parking as a condition of permitting a residential project if compliance with tree retention would otherwise make a proposed residential development or redevelopment infeasible. By infeasible, consideration should be given to the need to retain significant trees, and retain or replant trees located where off-street parking and driveways for residential development or redevelopment might be located; and

(h) Parking spaces that consist of grass block pavers may count toward minimum parking requirements.

(8) Existing parking spaces that do not conform to the requirements of subsection (7) of this section as of June 6, 2024, are not

required to be modified or resized, except for compliance with the Americans with Disabilities Act (ADA). Existing paved parking lots are not required to change the size of existing parking spaces during re-surfacing if doing so will be more costly or require significant re-configuration of the parking space locations.

(9) The provisions in subsection (7) of this section do not apply to portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

NEW SECTION

WAC 365-196-880 Accessory dwelling units. (1) For the purposes of this section, the definitions established in RCW 36.70A.696 apply.

(2) Requirements: Within urban growth areas, counties and cities:

(a) Must allow at least two accessory dwelling units on all lots that allow for single-family homes in the following configurations:

(i) One attached accessory dwelling unit and one detached accessory dwelling unit;

(ii) Two attached accessory dwelling units;

(iii) Two detached accessory dwelling units, which may be comprised of either one or two detached structures;

(iv) Must allow accessory dwelling units to be converted from existing structures including, but not limited to, detached garages, even if they violate current code requirements for setbacks or lot coverage;

(b) Must allow accessory dwelling units on any lot that meets the minimum lot size required for the principal unit;

(c) May not establish a maximum gross floor area requirement for accessory dwelling units that is less than 1,000 square feet;

(d) May not assess impact fees on the construction of accessory dwelling units that are greater than 50 percent of the impact fees that would be imposed on a principal unit;

(e) May not require the owner of a lot on which there is an accessory dwelling unit to reside in or occupy the accessory dwelling unit or another housing unit on the same lot;

(f) May not establish roof height limits on an accessory dwelling unit of less than 24 feet, unless the height limitation that applies to the principal unit is less than 24 feet, in which case a county or city may not impose roof height limitation on accessory dwelling units that is less than the height limitation that applies to the principal unit;

(g) May not impose setback requirements, yard coverage limits, tree retention mandates, restrictions on entry door locations, aesthetic requirements, or requirements for design review for accessory dwelling units that are more restrictive than those for the principal unit;

(h) Must allow detached accessory dwelling units to be sited at a lot line if the lot line abuts a public alley, unless the county or city routinely plows snow on the public alley;

(i) May not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an accessory dwelling unit;

(j) May not require public street improvements as a condition of permitting accessory dwelling units;

(k) Must align parking with the requirements of WAC 365-196-875.

(3) Restrictions on ADUs.

(a) Counties and cities are not required or authorized to allow the construction of an accessory dwelling unit in a location where development is restricted under other laws, rules, such as home ownership association rules, or ordinances. They may apply appropriate development regulations to the construction of an accessory unit;

(b) Counties and cities may apply public health, safety, building code, and environmental permitting requirements to an accessory dwelling unit that would be applicable to the principal unit;

(c) Counties and cities may apply regulations to protect ground and surface waters from on-site wastewater; as such, the construction of accessory dwelling units may be prohibited on lots that are not connected to or served by public sewers;

(d) Counties and cities may prohibit or restrict the construction of accessory dwelling units on land designated as critical areas or their buffers as designated in RCW 36.70A.060, or in designated shoreline buffers, though conversions of internal space in legally permitted structures may be allowed;

(e) Counties and cities may prohibit or restrict the construction of accessory dwelling units in residential zones with a density of one dwelling unit per acre or less that are within areas designated as wetlands, fish and wildlife habitats, flood plains, or geologically hazardous areas;

(f) Counties and cities may prohibit or restrict the construction of accessory dwelling units in a watershed serving a reservoir for potable water if that watershed is or was listed, as of July 1, 2023, as impaired or threatened under section 303(d) of the federal Clean Water Act (33 U.S.C. Sec. 1313(d));

(g) Counties and cities may prohibit or restrict the construction of accessory dwelling units in portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements;

(h) Counties and cities may prohibit or restrict the construction of accessory dwelling units in areas with other unsuitable physical characteristics of a property; and

(i) Counties and cities may restrict the use of accessory dwelling units for short term rentals.

(4) The requirements of RCW 36.70A.681 shall supersede, preempt, and invalidate local development regulations in any county or city that has not passed ordinances, regulations, or other official controls within the time frames provided under RCW 36.70A.680.

(5) ADU regulations not subject to appeal. Any action taken by a county or city that is consistent with these requirements is not subject to legal challenge under chapter 36.70A or 43.21C RCW, unless the action has a probable significant adverse impact on fish habitat.

NEW SECTION

WAC 365-196-885 Co-living housing. (1) Counties and cities must allow co-living housing as a permitted use on any lot located within an urban growth area that allows at least six multifamily residential units, including on a lot zoned for mixed-use development.

(2) Counties and cities may not require co-living housing to:

(a) Contain room dimensional standards larger than that required by the state building code, including dwelling unit size, sleeping unit size, room area, and habitable space;

(b) Provide a mix of unit sizes or number of bedrooms; or

(c) Include other uses.

(3)(a) Counties and cities also may not require co-living housing to:

(i) Provide off-street parking within one-half mile walking distance of a major transit stop; or

(ii) Provide more than one-quarter off-street parking spaces per sleeping unit.

(b) The provisions of (a) of this subsection do not apply:

(i) If a county or city submits to the department an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and the department finds and certifies, that the application of the parking limitations of (a) of this subsection will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location.

(ii) To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(4) Counties and cities may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone.

(5) Counties and cities may only require a review, notice, or public meeting for co-living housing that is required for other types of residential uses in the same location, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW.

(6) Counties and cities may not exclude co-living housing from participating in affordable housing incentive programs under RCW36.70A.540.

(7) Counties and cities may not treat a sleeping unit in co-living housing as more than one-quarter of a dwelling unit for purposes of calculating dwelling unit density.

(8) Counties and cities may not treat a sleeping unit in co-living housing as more than one-half of a dwelling unit for purposes of calculating fees for sewer connections, unless the city or county makes a finding, based on facts, that the connection fees should exceed the one-half threshold.

(9) For the purposes of this section, the following definitions apply:

(a) "Co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building. Local governments may use other names to refer to co-living housing including, but not limited to, congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites.

(b) "Major transit stop" means:

(i) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;

(ii) Commuter rail stops;

(iii) Stops on rail or fixed guideway systems, including transitways;

(iv) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or

(v) Stops for a bus or other transit mode providing actual fixed route service at intervals of at least 15 minutes for at least five hours during the peak hours of operation on weekdays.

NEW SECTION

WAC 365-196-890 Minimum residential density. (1) Except as provided in RCW 36.70A.635(4) and 36.70A.636(3), any city that is required or chooses to plan under RCW 36.70A.040 must authorize by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, the following:

(a) Cities with a population of at least 75,000, based on office of financial management population estimates must, on all lots zoned predominantly for residential use, permit the development of:

(i) At least four units per lot, unless zoning permitting higher densities or intensities applies;

(ii) At least six units per lot if located within a quarter-mile walking distance of a major transit stop, unless zoning permitting higher densities or intensities applies; and

(iii) At least six units per lot, if at least two of the units are affordable housing, unless zoning permitting higher densities or intensities applies.

(b) Cities with a population less than 75,000 but at least 25,000 based on office of financial management population estimates must, on all lots zoned predominantly for residential use, permit the development of:

(i) At least two units per lot, unless zoning permitting higher densities or intensities applies;

(ii) At least four units per lot if located within a quarter-mile walking distance of a major transit stop unless zoning permitting higher densities or intensities applies; and

(iii) At least four units per lot, if at least one of the units is affordable housing unless zoning permitting higher densities or intensities applies.

(2) Cities with populations under 25,000 based on office of financial management population estimates and within a contiguous urban growth area with the largest city in a county with a population of more than 275,000 must permit the development of at least two units on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies.

(3) Cities are not required to achieve the per unit density on lots after subdivision below 1,000 square feet unless the city chooses to enact smaller allowable lot sizes.

(4)(a) To qualify for the additional affordable housing units allowed under subsection (1) of this section, the applicant must:

(i) Commit to renting or selling the required number of units as affordable housing and maintain the units as affordable for a term of at least 50 years; and

(ii) Have the property satisfy that commitment and all required affordability and income eligibility conditions adopted by the local government under chapter 36.70A RCW.

(b) A city must require the applicant to record a covenant or deed restriction that:

(i) Ensures the continuing rental of units subject to these affordability requirements consistent with the conditions in chapter 84.14 RCW for a period of no less than 50 years; and

(ii) Addresses criteria and policies to maintain public benefit if the property is converted to a use other than which continues to provide for permanently affordable housing.

(c) The units dedicated as affordable must:

(i) Be provided in a range of sizes comparable to other units in the development;

(ii) To the extent practicable, have the number of bedrooms in the same proportion as the number of bedrooms in units within the entire development;

(iii) Generally be distributed throughout the development and have substantially the same functionality as the other units in the development.

(d) For cities that have enacted a program under RCW 36.70A.540, the terms of that program govern to the extent they vary from the requirements of this subsection.

(5) A city that had enacted a program under RCW 36.70A.540 may require any development, including development described in subsection (1) of this section, to provide affordable housing, either on-site or through an in-lieu payment. The city may expand such a program or modify its requirements.

(6)(a) As an alternative to the density requirements in subsection (1) of this section, a city may implement the density requirements in subsection (1) of this section for at least 75 percent of lots in the city that are primarily dedicated to single-family detached housing units.

(b) The 25 percent of lots for which the requirements of subsection (1) of this section are not implemented must include, but are not limited to:

(i) Any areas within the city for which the department has certified an extension of the implementation timelines under RCW 36.70A.637 due to the risk of displacement;

(ii) Any areas within the city for which the department has certified an extension of the implementation timelines under RCW 36.70A.638 due to a lack of infrastructure capacity;

(iii) Any lots, parcels, and tracts designated with critical areas or their buffers that are exempt from the density requirements as provided in RCW 36.70A.635 (8)(a). In making this exclusion, only lots which cannot reasonably be developed for middle housing due to the presence of critical areas or their buffers should be included;

(iv) Any portion of a city within a one-mile radius of a commercial airport with at least 9,000,000 annual enplanements that is exempt from the parking requirements under RCW 36.70A.635 (7)(b); and

(v) Any areas subject to sea level rise, increased flooding, susceptible to wildfires, or geological hazards over the next 100 years.

(c) Unless identified as at higher risk of displacement under RCW 36.70A.070(2)(g), the 25 percent of lots for which the requirements of subsection (1) of this section are not implemented may not include any areas:

(i) For which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect;

(ii) Within one-half mile walking distance of a major transit stop; or

(iii) Historically covered by a covenant or deed restriction excluding racial minorities from owning property or living in the area, as known to the city at the time of each comprehensive plan update.

(d) Cities may make an application to the department to include more than 25 percent of lots for which the requirements of subsection (1) of this section do not apply, subject to the certification process provided for in chapter 365-199 WAC.

(7) Cities subject to the requirements of subsection (1)(a) or (b) of this section must allow at least six of the nine types of middle housing to achieve the unit density required in subsection (1) of this section. Cities subject to the requirements of subsection (2) of this section should allow at least as many middle housing types that can be developed as two unit per lot projects.

(a) Cities may allow accessory dwelling units to achieve the unit density required in subsection (1) of this section.

(b) Cities are not required to allow accessory dwelling units or middle housing types beyond the density requirements in subsection (1) of this section.

(c) Cities must allow zero lot line short subdivisions where the number of lots created is equal to the unit density required in subsection (1) of this section.

(d) Single family detached dwellings are not a middle housing type and may not count toward the unit density requirements of RCW 36.70A.635(1).

(8)(a) Cities shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences.

(b) Cities may apply any objective development regulations that are required for detached single-family residences including, but not limited to, setback, lot coverage, stormwater, clearing, and tree canopy and retention requirements.

(c) Cities may apply design review for middle housing provided:

(i) Only administrative design review shall be applied; and

(ii) Only those objective design standards necessary to address middle housing compatibility with the scale, form, and character with single-family houses are applied.

(9) Cities shall apply to middle housing the same development permit and environmental review processes that apply to detached single-family residences, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW, building codes under chapter 19.27 RCW, energy codes under chapter 19.27A RCW, or electrical codes under chapter 19.28 RCW.

(10) The provisions of this section do not apply to:

(a) Portions of a lot, parcel, or tract with designated critical areas under RCW 36.70A.170 or their buffers as required by RCW 36.70A.170, except for critical aquifer recharge areas where a single-family detached house is an allowed use provided that any requirements to maintain aquifer recharge areas are met;

(b) Areas designated as sole-source aquifers by the United States Environmental Protection Agency on islands in the Puget Sound;

(c) A watershed serving a reservoir for potable water if that watershed is or was listed, as of July 23, 2023, as impaired or threatened under section 303(d) of the federal Clean Water Act (33 U.S.C. Sec. 1313(d));

(d) Lots designated urban separators by countywide planning policies as of July 23, 2023; or

(e) A lot that was created through the splitting of a single residential lot.

(11) RCW 36.70A.635 does not:

(a) Prohibit a city from permitting detached single-family residences;

(b) Require a city to issue a building permit if other federal, state, and local requirements for a building permit are not met.

(12) A city must comply with the requirements of this section on the latter of:

(a) Six months after its next periodic comprehensive plan update required under RCW 36.70A.130 if the city meets the population threshold based on the 2020 office of financial management population data; or

(b) Twelve months after their next implementation progress report required under RCW 36.70A.130 after a determination by the office of financial management that the city has reached a population threshold established under this section.

(13) A city complying with this section and not granted a timeline extension under RCW 36.70A.638 does not have to update its capital facilities plan element required by RCW 36.70A.070(3) to accommodate the increased housing required in RCW 36.70A.635 or 36.70A.636 until the first periodic comprehensive plan update required for the city under RCW 36.70A.130(5) that occurs on or after June 30, 2034.

(14) Until June 30, 2026, for cities subject to a growth target adopted under RCW 36.70A.210 that limits the maximum residential capacity of the jurisdiction, any additional residential capacity created by this section for lots, parcels, and tracts outside of critical areas or their buffers may not be considered an inconsistency with the countywide planning policies, multicounty planning policies, or growth targets adopted under RCW 36.70A.210.

(15) Recommendations for meeting requirements.

(a) Cities should define "all lots zoned predominantly for residential use" with consideration given to:

(i) Including zoning districts where residential dwellings are the primary use;

(ii) Nonresidential zones, such as commercial, industrial, and public zoning districts, should not be considered lots "zoned predominantly for residential use" even though they may permit single-family dwellings;

(iii) Mixed use zones that allow for a complementary mix of commercial development with residential development, and which allow residential development at higher densities than middle housing, should not be considered lots predominantly zoned for residential use.

(b) Cities may define duplex, triplex, fourplex, fiveplex, and sixplex provided that the definitions are consistent with the definition of middle housing in RCW 36.70A.030(26), including that middle housing buildings are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes.

(16) Development regulations for middle housing:

(a) Shall not require any standards that are more restrictive than those required for detached single-family residences, except as provided for in RCW 36.70A.635 (6)(a) through administrative design review;

(b) May apply any objective development regulations that are required for detached single-family residences including, but not limi-

ted to, set-back, lot coverage, stormwater, clearing, and tree canopy and retention requirements;

(c) May adopt objective development regulations for middle housing that are less restrictive than existing standards required for detached single-family residences; and

(d) May use administrative design review to adopt design and development standards that reflect differences between detached single-family residences and "middle housing" types, provided that:

(i) The design and development standard is objective; and

(ii) The design and development standard makes middle housing compatible with the form, character, and scale of existing single-family houses.

(e) Cities establishing unit per lot requirements above the minimums identified in RCW 36.70A.635 (1)(a)(i) through (iii), (b)(i) through (iii) and (c), should consider:

(i) The variety of lot sizes that may exist in the city;

(ii) Proximity to major transit facilities, if any;

(iii) The type of major transit facilities, if any;

(iv) Neighborhood facilities, such as shopping services, if any;

(v) Existing public facilities such as sidewalks;

(vi) How objective middle housing development and design standards can serve to make middle housing compatible with the form, scale, and character of single family homes.

(f) Cities must apply the same critical area requirements for middle housing development that would apply to single family homes on the same lot unless an analysis, including best available science, shows that more restrictive standards are necessary to protect critical area functions and values.

(17) A city complying with the requirements of RCW 36.70A.635 and not granted a timeline extension under RCW 36.70A.638 should update its capital facilities element to accommodate the increased housing required by RCW 36.70A.635 and 36.70A.636 prior to the first periodic update that occurs on or after June 30, 2034.

NEW SECTION

WAC 365-196-900 Department technical assistance—Approval of alternative action. (1) The model middle housing ordinances published by the department in accordance with RCW 36.70A.636(2) shall:

(a) Supersede, preempt, and invalidate local development regulations in any city subject to RCW 36.70A.635 that has not passed ordinances, regulations, or other official controls within the time frames provided under RCW 36.70A.635(11).

(b) Remain in effect until the city takes all actions necessary to implement RCW 36.70A.635.

(2) Subject to a process provided for in WAC 365-199-060, cities implementing the requirements of RCW 36.70A.635 may seek approval of alternative local actions identified in RCW 36.70A.637 (3)(b) and (c), subject to the approval process in WAC 365-199-060.

(a) The department may approve actions for cities that have, by January 1, 2023, adopted a comprehensive plan that is substantially similar to the requirements of RCW 36.70A.635 and have adopted, or within one year of July 23, 2023, adopts permanent development regulations substantially similar to the requirements of RCW 36.70A.635. In

determining whether a city's adopted comprehensive plan and permanent development regulations are substantially similar, the department must find as substantially similar plans and regulations that:

(i) Result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of RCW 36.70A.635 were implemented;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(b) The department may approve actions for cities that have, by January 1, 2023, adopted a comprehensive plan or development regulations that have significantly reduced or eliminated residentially zoned areas that are predominantly single family. The department must find that a city's actions are substantially similar to the requirements of RCW 36.70A.635 if they have adopted, or within one year of July 23, 2023, adopt permanent development regulations that:

(i) Result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of RCW 36.70A.635 were implemented;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(3)(a) The department may determine that a comprehensive plan and development regulations that do not meet the criteria in RCW 36.70A.636 (3)(b) or (c) are otherwise substantially similar to the requirements of RCW 36.70A.635 if the city can clearly demonstrate that the regulations adopted will allow for a greater increase in middle housing production within single family zones than would be allowed through implementation of RCW 36.70A.635.

(b) In making this determination, the city must provide supporting documentation and calculations that compare middle housing units allowed within single-family zones under the alternative action to housing units allowed were the city to adopt applicable provisions of RCW 36.70A.635.

(c) In preparing the documentation and calculations, consideration should be given to housing element technical guidance documents prepared by the department for conducting housing element land capacity analysis.

(4) Any local actions approved by the department pursuant to RCW 36.70A.636 (b) and (c) to implement the requirements under RCW 36.70A.635 are exempt from appeals under this chapter and chapter 43.21C RCW.

(5) The department's final decision to approve or reject actions by cities implementing RCW 36.70A.635 may be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

OTS-5875.3

Chapter 365-199 WAC
PROCEDURES FOR MAKING ((A)) DETERMINATIONS OF COMPLIANCE FOR JURISDICTIONS SEEKING VOLUNTARY REVERSION TO PARTIAL PLANNING STATUS, CERTIFICATION OF AN EMPIRICAL PARKING STUDY, AND CERTIFICATION AND APPROVAL OF ALTERNATIVE PATHWAYS TO THE DENSITY REQUIREMENTS IN RCW 36.70A.635(1)

AMENDATORY SECTION (Amending WSR 15-19-087, filed 9/16/15, effective 10/17/15)

WAC 365-199-010 Purpose and authority. ((~~(1)~~)) The purpose of this chapter is to outline the procedures the department shall use when making a determination of compliance under RCW 36.70A.060 (1)(d), substantially similar approval under RCW 36.70A.636, certification of extension for areas at risk of displacement under RCW 36.70A.637, certification of extension for specific areas lacking infrastructure capacity under RCW 36.70A.638 and certification of empirical parking studies under RCW 36.70A.635 and 36.70A.681.

((~~(2) These rules are adopted under the authority of RCW 36.70A.060 (1)(d)(v).~~))

NEW SECTION

WAC 365-199-060 Approval of substantially similar alternative action. (1) A city seeking approval of an alternative action as provided for in RCW 36.70A.636 (3)(b) or (c) must make a request for such approval to the department.

(2) Notice of intent to apply for approval of an alternative action.

(a) The city must notify the department in writing that it intends to apply for approval of an alternative action at least 30 calendar days prior to formal submittal of the request. Prior notification allows the department to be aware of a request in advance, anticipate the need to consult with state and other agencies and, if needed, provide technical assistance to the city on required submittal materials.

(b) The city's notice of intent to apply for approval of an alternative action must include:

(i) Notice of intent application form;

(ii) A statement of whether the request is being made subject to RCW 36.70A.636 (3)(b) or (c);

(iii) Identification of the ordinance(s), plan(s), documents and other materials the city intends to submit to support its request for the department's approval, as best known at the time of submitting the notice of intent;

(iv) The geographic area(s) for which the approval request will be made, as best known at the time of submitting the notice of intent; and

(v) A summary of the status of the analysis being performed to support the application.

(3) Public notice of intent to apply for a request for approval of an alternative action.

(a) The department will publish notice in the *Washington State Register* that a city has notified the department of its intent to request an approval.

(b) The department will post a copy of the notice of intent to apply for an approval on the department website.

(c) The department will notify state agencies with expertise that a city has notified the department of its intent to apply for an approval.

(4) Procedures for an application of approval.

(a) A formal application for an approval of an alternative action must include, at a minimum, the following items:

(i) Formal application form;

(ii) A cover letter from the city requesting the approval or determination, and stating which alternative action under RCW 36.70A.636(3) the application addresses. The cover letter must also identify the timeline for implementing middle housing development regulations;

(iii) If applicable, a copy of or link to the adopted comprehensive plan and zoning regulation ordinances and any other adopted documents that the city is using to demonstrate that the alternative action taken meets the requirements of findings in RCW 36.70A.636(3);

(iv) An application narrative, to include:

(A) A general discussion of the request; and

(B) For approval requests being made under RCW 36.70A.636 (3)(b) or (c), how the proposed alternative action:

(I) Allows middle housing throughout the city, rather than just in targeted locations;

(II) Provides additional density near major transit stops, and allows for projects that incorporate dedicated affordable housing; and

(III) Shows that the city's adopted comprehensive plan and permanent development regulations result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the applicable provisions of RCW 36.70A.635 were adopted;

(v) The application must be supported by calculations comparing housing units allowed under the alternative action to housing units allowed were the applicable provisions of RCW 36.70A.635 adopted;

(vi) In performing these calculations, consideration should be given to housing element technical guidance documents prepared by the department for housing element land capacity analysis; and

(vii) Map(s) showing the area subject to the requirements of RCW 36.70A.635 in comparison to the area being identified for the alternative action requested under RCW 36.70A.636(3). The map(s) must show:

(A) Major transit stops, if any;

(B) How the comprehensive plan and development regulations allow for additional density near major transit stops, if any;

(C) How the comprehensive plan and development regulations allow for middle housing throughout the city, rather than just in targeted locations; and

(D) How the comprehensive plan and development regulations allow for projects that incorporate dedicated affordable housing.

(viii) Any additional information that the city believes supports the alternative action approval request.

(b) In addition to the requirements listed above, the department may determine that the combined impact of the adopted comprehensive plan and development regulations are substantially similar to the requirements of RCW 36.70A.635 even if the submittal does not demon-

strate the criteria listed in (a)(iv)(B) of this subsection. This determination can only be made if the city jurisdiction can clearly demonstrate that the development regulations adopted by the jurisdiction city will allow for a greater increase in middle housing production within single-family zones than would be allowed through implementation of RCW 36.70A.635.

(c) The department may request additional information or seek clarification of the materials submitted anytime during the 60 calendar day review period.

(5) Approval determination procedures.

(a) The department must approve or deny the application within 60 calendar days of receiving a city's complete request for approval of alternative action. An application is complete when the department has received all the required information identified in subsection (4) of this section including all additional information requested by the department.

(b) The department may at its sole discretion extend the deadline up to an additional 60 calendar days.

(c) The department will issue its decision in the form of a written statement, including findings of fact and conclusions, and noting the date of the issuance of its decision.

(d) The department shall publish its decision on the application as follows:

(i) Notify the city in writing of its determination;

(ii) Publish a notice of action in the *Washington State Register*;

(iii) Post a notice of its decision on the department website; and

(iv) Notify state agencies with expertise with which department consulted and received substantive comments from regarding the request for approval.

(v) For the purposes of RCW 36.70A.290 the date of publication is the date the notice of decision is published on the *Washington State Register*.

(e) The determination of approval requires a finding that the city's alternative action:

(i) Results in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of RCW 36.70A.635 were adopted; allows for middle housing throughout the city, rather than just in targeted locations; and allows for additional density near major transit stops, and for projects that incorporate dedicated affordable housing; or

(ii) A determination by the department that the regulations adopted by the city will allow for a greater increase in middle housing production within single-family zones than would be allowed through implementation of RCW 36.70A.635.

(f) Any local actions approved by the department pursuant to RCW 36.70A.636 (3)(a) to implement the requirements under RCW 36.70A.635 are exempt from appeals under chapters 36.70A and 43.21C RCW.

(6) The department's final decision is appealable to the growth management hearings board by filing a petition consistent with RCW 36.70A.290.

NEW SECTION

WAC 365-199-070 Extension for certain areas at risk of displacement. (1) As provided for in RCW 36.70A.637, any city choosing the alternative density requirements in RCW 36.70A.635(4) may apply to the department for an extension for areas at risk of displacement as determined by the antidisplacement analysis that the city is required to complete under RCW 36.70A.070(2). The requirement to request an extension under RCW 36.70A.637 shall apply if a city proposes to exclude more than 25 percent of lots primarily dedicated to single-family detached units in the city and if any of those lots are identified at higher risk of displacement in the comprehensive plan. Cities may exclude up to 25 percent of the lots in the city without the department's certification, even if those lots include lots identified at higher risk of displacement in the adopted comprehensive plan. Calculation of the 25 percent must include certain lots identified in RCW 36.70A.635 (4)(b)(i) through (v).

(2) Notice of intent to apply for a certification of an extension for certain areas at risk of displacement:

(a) The city must notify the department in writing of its intention to apply for certification for an extension authorized by RCW 36.70A.637 at least 30 calendar days prior to the submittal of the formal request. Prior notification allows the department to be aware in advance of a request, anticipate the need to consult with state and other agencies and, if needed, provide technical assistance to the city on required submittal materials.

(b) The city's notice of intent to apply for approval of an extension must include:

(i) Application form;

(ii) Identification of the ordinance(s), plan(s), documents and other materials the city intends to submit to support its request for the department's certification, as best known when submitting the notice of intent;

(iii) The geographic areas to which the extension request will be made, as best known at the time of submittal of the notice of intent; and

(iv) A summary of the status of the analysis performed to support the application for approval of an alternative approach to density provision under RCW 36.70A.635(4).

(3) Public notice of intent to apply for certification of a time extension.

(a) The department will publish notice in the *Washington State Register* that a city has notified the department of its intent to request the certification of a time extension.

(b) The department will post a copy of the notice of intent to apply for certification of a time extension on the department website.

(c) The department will notify state agencies with expertise that a city has notified the department of its intent to apply for certification for a time extension authorized by RCW 36.70A.637.

(4) Procedures for certification of a time extension. A city's application for certification of a time extension authorized by RCW 36.70A.637 must include the following items:

(a) Formal application form;

(b) Cover letter from the city requesting the certification, to include a narrative that identifies areas that may be at higher risk of displacement as well as adopted antidisplacement policies meeting

the requirements of RCW 36.70A.070 (2)(g) and (h) using data and community engagement:

(i) For cities with a population of more than 6,000 as of April 1, 2021, the city has a plan for implementing the adopted antidisplacement policies by the next implementation progress report required by RCW 36.70A.130(9) and shows that the risk of displacement for the proposed certified area(s) will be reduced over time; or

(ii) For cities with a population of 6,000 or less as of April 1, 2021, the city has provided a plan for implementing the adopted antidisplacement policies within five years of its most recent periodic review update deadline required under RCW 36.70A.130 and shows that the risk of displacement for the proposed certified area will be reduced over time;

(c) Identification of areas at risk of displacement as determined by the antidisplacement analysis that the city has completed as required by RCW 36.70A.070(2). This includes maps that specify those portions of areas at risk of displacement proposed to be certified for extension;

(d) A plan for how to implement middle housing on the temporarily excluded areas once the antidisplacement policies have been implemented;

(e) The adopted comprehensive plan housing element, and related elements, that include supporting analysis performed by the city to identify areas at high risk of displacement and which identify the city's adopted antidisplacement policies;

(f) Calculations that document that the percentages in RCW 36.70A.635 (4)(a) and (b) for lots in the city primarily dedicated to single-family detached housing units have been met;

(g) The proposed length of time for the extension request; and

(h) Any additional information that the city believes supports the request for certification of an extension.

(5) Certification determination procedures.

(a) The department must approve or deny the application within 60 calendar days of receiving a city's complete request for approval of alternative action. An application is complete when the department has received all the required information identified in WAC 365-199-060(4) including all additional information requested by the department.

(b) The department's action may, at the department's sole discretion, be extended beyond 60 calendar days.

(c) The department will issue its certification decision in the form of a written statement, including findings of fact and conclusions, the length of the extension, and noting the date of the issuance of its decision.

(d) The department will publish its certification decision on the application for determination of compliance as follows:

(i) Notify the city in writing of its determination;

(ii) Publish a notice of action in the *Washington State Register*;

(iii) Post a notice of its decision on the department's website; and

(iv) Notify state agencies with expertise with which department consulted and received substantive comments from regarding the request for approval.

(v) For the purposes of RCW 36.70A.290, the date of publication is the date the notice of decision is published in the *Washington State Register*.

(6) Subsequent extensions.

(a) If there is evidence of significant ongoing displacement risk in an area previously certified for a time extension, the department may certify one further time extension.

(b) Notice of intent to apply for an additional time extension request must be made at least six months prior to the expiration date of the original certification.

(c) The application for additional extension certification shall follow the process for an extension as described in this section; except that, the city shall also submit:

(i) Evidence of significant ongoing displacement risk in the impacted area.

(ii) Discussion of the effectiveness of the city's antidisplacement policies adopted under RCW 36.70A.070(2) and revisions to those policies necessary to address the significant ongoing displacement risk in the impacted area.

(7) Extension certification determination procedures.

(a) The department must certify or deny the application within 60 calendar days of receiving a city's complete request for certification of an extension as provided for in RCW 36.70A.637. An application is complete when the department has received all the required information identified in subsections (4) and (6) of this section including all additional information requested by the department.

(b) The department's action may, at the department's sole discretion, extend beyond 60 calendar days.

(c) The department will issue its subsequent time extension certification decision in the form of a written statement, including findings of fact and conclusions, including the length of the extension, and noting the date of the issuance of its decision.

(d) A subsequent extension of time should not exceed the length of the original time extension in years, and should, if certified, be considered the only additional time extension that will be given.

(e) The department will publish its extension certification decision on the application as follows:

(i) Notify the city in writing of its decision;

(ii) Publish a notice of action in the *Washington State Register*;

(iii) Post a notice of its decision on the department's website; and

(iv) Notify state agencies with expertise with which department consulted and received substantive comments from regarding the request for approval.

(f) If the department denies the request, a city may seek agency review as a brief adjudicative proceeding under RCW 34.05.482 through 34.05.494.

NEW SECTION

WAC 365-199-080 Extension for certain areas due to lack of infrastructure capacity. (1) As provided for in RCW 36.70A.638, any city choosing the alternative density requirements in RCW 36.70A.635(4) may apply to the department for an extension of the implementation timelines established under RCW 36.70A.635(11) due to lack of infrastructure capacity.

The requirement to request an extension under RCW 36.70A.638 shall apply if a city proposes to exclude more than 25 percent of lots primarily dedicated to single-family detached units in the city and if

any of those lots lack infrastructure capacity to support the middle housing densities identified in RCW 36.70A.635(1). Cities may exclude up to 25 percent of the lots in the city without the department's certification, even if those lots include lots identified as lacking infrastructure capacity. Calculation of the 25 percent must include certain lots identified in RCW 36.70A.635 (4)(b)(i) through (v). An extension certified under this section may be applied only to specific areas where a city demonstrates that water, sewer, stormwater, transportation infrastructure, including facilities and transit services, or fire protection services lack capacity to accommodate the housing density required in RCW 36.70A.635.

(2) Notice of intent to apply for an extension.

(a) The city must notify the department in writing of its intention to apply for certification for a time extension authorized by RCW 36.70A.638 at least 30 calendar days prior to submittal of the request. Prior notification allows the department to be aware in advance of a request, anticipate the need to consult with state and other agencies and, if needed, provide technical assistance to the city on required submittal materials.

(b) The city's notice of intent to apply for a certification request must include:

(i) Notice of intent to apply application form;

(ii) Identification of the ordinance(s), plan(s), documents and other materials the city intends to submit to support its request for timeline extension certification approval, as best known at the time of the submitting the notice of intent;

(iii) The geographic areas to which the time extension request will be made, as best known at the time of the submitting the notice of intent; and

(iv) A summary of the status of the application for approval of alternative approach to density requirement analysis being performed under RCW 36.70A.635(4).

(3) Public notice of intent to apply for certification of an extension.

(a) The department will publish notice in the *Washington State Register* that a city has notified the department of its intent to request a time extension certification.

(b) The department will post a copy of the notice of intent to apply for a time extension certification on the department website.

(c) The department will notify state agencies with expertise that a city has notified the department of its intent to apply for certification for a time extension authorized by RCW 36.70A.638.

(4) Procedures for certification of an extension. A city's application for certification for a time extension authorized by RCW 36.70A.638 must include the following items:

(a) Formal application form;

(b) A cover letter from the city requesting the time extension certification;

(c) Identification of the specific area(s) proposed for the timeline implementation extension, with clearly defined boundaries identifying which lots are and are not within the area;

(d) Identification of the specific capital facilities that lack capacity to accommodate the middle housing density required by RCW 36.70A.635(1) that serves as the basis for the time extension request to include:

(i) Documentation that the existing infrastructure for water, sewer, stormwater, transportation infrastructure, including facilities

and transit services, or fire protection services, lack the capacity to accommodate minimum residential density required by RCW 36.70A.635(1).

(ii) A list of one or more improvements identified in the capital facilities element to adequately address the capacity needs for the area for which the certification of time extension request is being made. The identified improvements must include planning level cost estimates, and a timeline showing that the improvements are planned within the timeline extension period;

(e) In cases where a special district is responsible for providing the necessary infrastructure:

(i) Identification of the special district and a special district contact person.

(ii) The applicable special district provider's plan documenting the lack of capacity.

(iii) A list of projects identified by the special district associated with the timeline extension certification request;

(f) In cases where an area zoned predominantly for residential use is currently served only by on-site sewage systems, documentation that limiting development to two units per lot would still require a time extension based on lack of infrastructure capacity.

(g) If an extension of the implementation timelines is requested due to lack of water supply, the request must be based on the applicable water system plan(s) in effect and approved by the department of health.

(h) Calculations documenting that the percentages in RCW 36.70A.635 (4)(a) and (b) for lots in the city primarily dedicated to single-family detached housing units have been met during the proposed length of time for the extension request.

(i) Documentation that the city's comprehensive plan and development regulations are consistent with RCW 36.70A.635(1) and 36.70A.638 as well as with applicable growth targets, countywide planning policies, and multicounty planning policies.

(j) Any additional information that the city believes supports the request for approval of a time extension based on a lack of infrastructure capacity.

(5) Certification determination procedures.

(a) The department must approve or deny the application within 60 calendar days of receiving a city's complete request for certification of a time extension. An application is complete when the department has received all the required information identified in subsection (4) of this section including all additional information requested by the department.

(b) The department's action may, at the department's sole discretion, be extended beyond 60 calendar days.

(c) The department will issue its certification decision in the form of a written statement, including findings of fact and conclusions, and noting the date of the issuance of its decision.

(d) The department will publish its time extension certification decision on the application for extension for lack of infrastructure capacity as follows:

(i) Notify the city in writing of its determination;

(ii) Publish a notice of action in the *Washington State Register*;

(iii) Post a notice of its decision on the department website;

(iv) Notify state agencies with expertise with which department consulted and received substantive comments from regarding the request for approval.

(e) A time extension granted under this section remains in effect until the earliest of:

(i) The infrastructure is improved to accommodate the capacity;

(ii) The city's deadline to complete its next periodic comprehensive plan update under RCW 36.70A.130; or

(iii) The city's deadline to complete its implementation progress report to the department as required under RCW 36.70A.130(9).

(6) Subsequent extensions.

(a) A city that has received a time extension under this section may reapply for any needed extension by:

(i) Its next periodic comprehensive plan update under RCW 36.70A.130; or

(ii) If applicable, its next implementation progress report to the department under RCW 36.70A.130(9).

(b) A notice of intent to apply for an additional time extension request must be made at least six months before the expiration date of the original certification.

(c) The application for an additional time extension shall follow the process and application materials for an extension exemption as described in this section except that the city shall also submit:

(i) An updated list of infrastructure improvements and planning level cost estimates necessary to meet the infrastructure capacity required in RCW 36.70A.635(4).

(ii) Narrative on how the extension only addresses infrastructure deficiency that a city is not reasonably able to address within the first extension as required by RCW 36.70A.638(5).

(iii) The proposed length of time for the additional extension request.

(d) The department's decision on the additional certification extension request must only address infrastructure deficiency that the city has shown it was not able to reasonably address with the first extension.

(e) The department may impose the time period for which the additional extension is effective. An additional time extension should, if certified, be considered the only additional time extension that will be given. A subsequent extension of time will not exceed the length (in years) of the original time extension.

(7) In considering or granting extensions under RCW 36.70A.638, nothing affects or modifies the responsibilities of cities to plan for or provide urban governmental services as defined in RCW 36.70A.030 or affordable housing as required by RCW 36.70A.070.

(8) If the department denies the request, a city may seek agency review as a brief adjudicative proceeding under RCW 34.05.482 through 34.05.494.

NEW SECTION

WAC 365-199-090 Certification of empirical parking study. (1) As provided for in RCW 36.70A.635 (7)(a) and 36.70A.681 (2)(b)(i) a county or city may submit an empirical study to the department for review and certification that the requirements of RCW 36.70A.635 (6)(d) through (f) and 36.70A.681 (2)(a)(i) through (iii) do not apply.

(2) The empirical parking study will only be certified if it has been prepared by a credentialed transportation or land use expert and it clearly demonstrates the parking limitations of RCW 36.70A.635 will

be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the county or city's parking requirements were applied to the same location for the same number of detached houses.

(3) Notice of intent to apply for a certification for a parking study for certain areas.

(a) The city or county must notify the department in writing of its intent to apply for certification of an empirical study as authorized by RCW 36.70A.635 (7)(a) and 36.70A.681 (2)(b)(i) at least 30 calendar days prior to submittal of the request. Prior notification allows the department to be aware in advance of a request, anticipate the need to consult with state and other agencies and, if needed, provide technical assistance to the city or county on required submittal materials.

(b) The county or city notice of intent to apply for certification of a parking study must include:

(i) A notice of intent to apply application form;

(ii) Acknowledgment that the certification request may be approved, approved with conditions, or denied;

(iii) Acknowledgment that the jurisdiction has reviewed the department's parking study guidance document;

(iv) Identification of the ordinance(s), plan(s), documents and other materials the city intends to submit to support its request for certification, as best known at the time of submitting the notice of intent to apply; and

(v) The geographic areas to which the request will be made, as best known at the time of the submitting the notice of intent to apply.

(4) Public notice of intent to apply for certification of an extension.

(a) The department will publish notice in the *Washington State Register* that a city or county has notified the department of its intent to request an approval.

(b) The department will post a copy of the notice of intent to apply for a certification on the department website.

(c) The department will notify state agencies with expertise that a city or county has notified the department of its intent to apply for certification of a parking study as authorized by RCW 36.70A.635 (7)(a) and 36.70A.681 (2)(b)(i).

(5) Procedures for certification of a parking study. A city's or county's application for certification for a parking study authorized by RCW 36.70A.635 (7)(a) and 36.70A.681 (2)(b)(i) must include the following items:

(a) A cover letter from the city or county requesting the certification;

(b) The department's formal parking study certification request application form;

(c) The department's local government parking study application checklist;

(d) Identification of areas proposed for certification in relation to, as applicable, areas of the city or county subject to the requirements of RCW 36.70A.635 and 36.70A.681;

(e) The empirical parking study should include the necessary information identified in the empirical parking study application checklist. This includes, but is not limited to, identification of proposed certification area, mapping, estimates of future middle housing and/or

accessory dwelling unit development, comparative parking analysis, safety analysis and findings;

(f) A narrative within the study addressing the following findings:

(i) The maximum off-street parking requirements for middle housing and/or accessory dwelling units are significantly less safe than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses.

(ii) The significantly less safe conditions are a direct result of parking demand associated with the maximum off-street parking requirements and projected growth for middle housing and/or accessory dwelling units in the area proposed for certification, and not solely attributable to off-street parking associated with other types of new development.

(iii) The certification area is the smallest area necessary to address the safety considerations identified in the empirical parking study.

(iv) The estimates of future (up to five-year) middle housing and/or accessory dwelling unit development were reasonably calculated.

(v) The significantly less safe conditions cannot be reasonably addressed through other techniques including, as examples, parking management controls for on-street parking spaces, signage, traffic calming and related physical infrastructure, enhanced transit, travel demand management, and increased parking enforcement.

(vi) Any additional information that the city believes supports the request for approval of alternative action.

(6) Certification determination procedures.

(a) The department must approve or deny the application within 60 calendar days of receiving a city's complete request for certification of the empirical parking study application. An application is complete when the department has received all the required information identified in WAC 365-199-060(5) including all additional information requested by the department.

(b) The department's action may, at the department's sole discretion, extend up to 60 calendar days.

(c) The department will issue its certification decision in the form of a written statement, including findings of fact and conclusions, and noting the date of the issuance of its decision.

(d) The department will publish its certification decision on the application for determination of compliance as follows:

(i) Notify the city or county in writing of its determination;

(ii) Publish a notice of action in the *Washington State Register*;

(iii) Post a notice of its decision on the department's website;

(iv) Notify state agencies with expertise with which department consulted and received substantive comments from regarding the request for approval.

(7) If the department denies the request, a city may seek agency review as a brief adjudicative proceeding under RCW 34.05.482 through 34.05.494.

WSR 24-22-137
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed November 6, 2024, 11:12 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 24-11-161.

Title of Rule and Other Identifying Information: WAC 468-06-060 Requesting public records.

Hearing Location(s): On December 10, 2024, at 3:00 p.m., virtual hearing in Microsoft Teams https://bit.ly/WAC-468-06-060-Dec-10-2024; or dial in by phone +1 206-531-0324,,838717424# for United States, Seattle.

You can use this link to find a local number https://dialin.teams.microsoft.com/039e7852-bef4-4986-949b-6b82f4e2095f?id=838717424. The phone conference ID is 838 717 424#.

For further details about joining a Microsoft Teams meeting, you can visit this web page https://aka.ms/JoinTeamsMeeting?omkt=en-US.

Date of Intended Adoption: December 10, 2024.

Submit Written Comments to: Ashley Holmberg, P.O. Box 47410, 310 Maple Park Avenue, Olympia, WA 98504-7410, email Ashley.holmberg@wsdot.wa.gov, fax 360-705-6805, beginning November 20, 2024, at 8:00 a.m., by December 9, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact the Washington state department of transportation (WSDOT) ADA office, toll free 855-362-4ADA(4232), TTY 711, email wsdotada@wsdot.wa.gov, by December 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are fixing a broken web address link, changing the fax number, and adding an email address where the public can submit a new request for records.

Reasons Supporting Proposal: The WAC has incorrect information on the ways a member of the public can submit a public records request to WSDOT. This proposal corrects that information and adds an alternative option.

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

Statute Being Implemented: Chapter 42.56 RCW, Public Records Act.

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Ashley Holmberg, Olympia, Washington, 360-870-2869; Implementation: Sam Wilson, Olympia, Washington, 360-704-6366.

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 not required because WSDOT is not subject to RCW 34.05.328 (5)(a)(i) and has not made RCW 34.05.328 applicable 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 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.

Scope of exemption for rule proposal:

Is fully exempt.

November 5, 2024
Sam Wilson, Director
Business Support Services

OTS-5444.1

AMENDATORY SECTION (Amending WSR 19-24-068, filed 11/27/19, effective 12/28/19)

WAC 468-06-060 Requesting public records. (1) Submitting a request. Requests for public records to the department or the commission can be made by:

(a) Using the public disclosure request center((~~,~~)) by ((~~clicking on the link on the website at http://www.wsdot.wa.gov/Contact/PublicDisclosure, or~~)) going to https://wsdot.mycusthelp.com/WEBAPP/_rs/supporthome.aspx; or

(b) Submitting a written request to the department that includes:

(i) The name, address, telephone number, and email address of the person requesting the records;

(ii) The date and time of the request;

(iii) A description of the public records sought adequate for the department to identify and locate all responsive records;

(iv) Language stating that the request for records is intended as a public records request or a similar statement placing the department on fair notice that records are being sought under the ((~~PRA~~)) Public Records Act chapter 42.56 RCW; and

(v) A statement indicating whether copies ((~~or~~)) of the records are sought or if the requestor wants to arrange to inspect records.

Requests not submitted through the public disclosure request center identified in (a) of this subsection can be submitted via U.S. mail, hand delivery, email, or facsimile at:

Public Records Office
Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47410
Olympia, WA 98504-7410
Email: HQPDRCoordinators@wsdot.wa.gov
Facsimile: 360-705-((~~6808~~)) 6805

(2) A request not submitted in a manner identified in subsection (1) of this section will not be considered a public records request under chapter 42.56 RCW, but will be responded to as an informal routine inquiry or a general request for information.

(3) Requested production. Nonexempt records are available through inspection, paper copies, or electronic copies. The requestor should indicate the production preference and make arrangements to pay the fees, if any.