

WSR 22-24-004

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 21-04—Filed November 28, 2022, 11:45 a.m., effective December 29, 2022]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Beginning in 2028, the law establishes two preconditions that ecology must demonstrate before reducing the carbon intensity standard for fuels beyond 10 percent below 2017 levels:

- A 15 percent increase in the volume of in-state biofuel production using feedstocks produced in-state; and
- Permit issuance (after July 1, 2021) for a facility or facilities to increase biofuel production capacity by at least 60 million gallons/year, including at least one new facility producing at least 10 million gallons/year.

Purpose: To implement the Transportation fuel—Clean fuels program (chapter 70A.535 RCW), ecology is adopting new chapter 173-424 WAC, Clean fuels program rule; and amending chapter 173-455 WAC, Air quality fee rule.

The adopted rules:

- Establish carbon intensity standards for transportation fuels used in Washington.
- Assign compliance obligations to fuels with carbon intensities that exceed the standard.
- Establish compliance methods, including assigning credits to fuels that have carbon intensities below the standard.
- Establish the process for setting fees to recover the costs of developing and implementing the program.

Citation of Rules Affected by this Order: New chapter 173-424 WAC; and amending chapter 173-455 WAC.

Statutory Authority for Adoption: Chapter 70A.535 RCW, Transportation fuel—Clean fuels program.

Adopted under notice filed as WSR 22-15-077 on July 18, 2022.

Changes Other than Editing from Proposed to Adopted Version: Refer to the concise explanatory statement for the changes from the proposed rule to the adopted rule in the following sections: WAC 173-424-110 Definitions; 173-424-120 Applicability, subsection (3); 173-424-130 Exemptions, subsections (1), (2), (3); 173-424-140 General requirements, subsections (1), (2), (3); 173-424-200 Designation of fuel reporting entities for liquid fuels, subsection (2); 173-424-210 Fuel reporting entities for gaseous fuels, subsection (2); 173-424-220 Designation of fuel reporting entity for electricity, subsections (3) through (12); 173-424-300 Registration, subsections (1), (2); 173-424-400 Recordkeeping, subsections (1), (2), (6); 173-424-410 Quarterly reports, subsection (1); 173-424-420 Specific reporting requirements, subsections (2), (3), (4), (6); 173-424-430 Annual compliance reports, subsection (1); 173-424-500 Demonstrating compliance, subsection (4); 173-424-510 Credit and deficit basics, subsections (1), (3); 173-424-520 Fuels to include in credit and deficit calculation, subsection (4); 173-424-540 Calculating credits and deficits, subsections (2), (3), (4); 173-424-550 Advance crediting, subsections (1), (2), (3), (4), (6), (7); 173-424-560 Generating and calculating credits for ZEV fueling infrastructure pathways, subsections (1), (2);

173-424-570 Credit clearance market, subsection (2); 173-424-600 Carbon intensities, subsections (1), (3), (4), (5), (6), (7), (9); 173-424-610 Obtaining a carbon intensity, subsections (1), (7), (8), (9), (13), (14), (15); 173-424-620 Energy economy ratio-adjusted carbon intensity applications, subsections (3), (5); 173-424-630 Determining the carbon intensity of electricity, subsections (1), (3), (4), (5), (7); 173-424-700 Authority to suspend, revoke, or modify, subsections (1), (2); 173-424-710 Public disclosure, subsection (2); 173-424-900 Tables; and 173-455-150, subsections (1), (3), (4), (5), (6), (7).

A final cost-benefit analysis is available by contacting Rachel Assink, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 425-531-3444, Washington relay service or TTY call 711 or 877-833-6341, email rachel.assink@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/SummaryPages/2202058.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 32, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 28, 2022.

Laura Watson
Director

OTS-3854.7

**Chapter 173-424 WAC
CLEAN FUELS PROGRAM RULE**

PART 1 - OVERVIEW

NEW SECTION

WAC 173-424-100 Purpose. This rule establishes requirements for suppliers and consumers of certain transportation fuels in Washington in order to reduce the lifecycle greenhouse gas emissions per unit energy (carbon intensity) of transportation fuels used in the state.

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NEW SECTION

WAC 173-424-110 Definitions. Except as provided elsewhere in this chapter, the definitions in this section apply throughout the chapter:

(1) "Above the rack" means sales of transportation fuel at pipeline origin points, pipeline batches in transit, barge loads in transit, and at terminal tanks before the transportation fuel has been loaded into trucks.

(2) "Advance credits" refers to credits advanced under WAC 173-424-550 for actions that will result in reductions of the carbon intensity of Washington's transportation fuels.

(3) "Aggregation indicator" means an identifier for reported transactions that are a result of an aggregation or summing of more than one transaction in Washington fuels reporting system (WFRS). An entry of "true" indicates that multiple transactions have been aggregated and are reported with a single transaction number. An entry of "false" indicates that the transaction record represent a single fuel transaction.

(4) "Aggregator" or "credit aggregator" means a person who registers to participate in the clean fuels program, described in WAC 173-424-140(3), on behalf of one or more credit generators to facilitate credit generation and to trade credits.

(5) "Aggregator designation form" means an ecology-approved document that specifies that a credit generator has designated an aggregator to act on its behalf.

(6) "Alternative fuel" means any transportation fuel that is not gasoline or a diesel fuel, including those fuels specified in WAC 173-424-120(2).

(7) "Alternative fuel portal" or "AFP" means the portion of the WFRS where fuel producers can register their production facilities and submit fuel pathway code applications and physical pathway demonstrations.

(8) "Alternative jet fuel" means a fuel made from petroleum or nonpetroleum sources that can be blended and used with conventional petroleum jet fuels without the need to modify aircraft engines and existing fuel distribution infrastructure. To generate credits under this CFP, such fuel must have a lower carbon intensity than the applicable annual carbon intensity standard in Table 2 of WAC 173-424-900. Alternative jet fuel includes those jet fuels derived from co-processed feedstocks at a conventional petroleum refinery.

(9) "Animal fat" means the inedible fat that originates from a rendering facility as a product of rendering the by-products from meat processing facilities including animal parts, fat, and bone. "Yellow grease" must be reported under an applicable animal fat pathway if

evidence is not provided to the verifier or ecology to confirm the quantity that is animal fat and the quantity that is used cooking oil.

(10) "Application" means the type of vehicle where the fuel is consumed in terms of LDV/MDV for light-duty vehicle/medium-duty vehicle or HDV for heavy-duty vehicle.

(11) "Backstop aggregator" means a qualified entity approved by ecology under WAC 173-424-220 to aggregate credits for electricity used as a transportation fuel, when those credits would not otherwise be generated.

(12) "Base credits" refers to electricity credits that are generated by the carbon reduction between the gasoline or diesel standard and the carbon intensity of utility electricity.

(13) "Battery electric vehicle" or "BEV" means any vehicle that operates solely by use of a battery or battery pack, or that is powered primarily through the use of an electric battery or battery pack but uses a flywheel or capacitor that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation.

(14) "Below the rack" means sales of clear or blended gasoline or diesel fuel where the fuel is being sold as a finished fuel for use in a motor vehicle.

(15) "Bill of lading" means a document issued that lists goods being shipped and specifies the terms of their transport.

(16) "Bio-CNG" means biomethane which has been compressed to CNG. Bio-CNG has equivalent performance characteristics when compared to fossil CNG.

(17) "Biodiesel" means a motor vehicle fuel consisting of mono alkyl esters of long chain fatty acids derived from vegetable oils, animal fats, or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D6751.

(18) "Biodiesel blend" means a fuel comprised of a blend of biodiesel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(19) "Bio-L-CNG" means biomethane which has been compressed, liquefied, regasified, and recompressed into L-CNG, and has performance characteristics at least equivalent to fossil L-CNG.

(20) "Bio-LNG" means biomethane which has been compressed and liquefied into LNG. Bio-LNG has equivalent performance characteristics when compared to fossil LNG.

(21) "Biogas" means gas comprised primarily of methane and carbon dioxide, produced by the anaerobic decomposition of organic matter in a landfill, lagoon, or constructed reactor (digester). Biogas often contains a number of other impurities, such as hydrogen sulfide, and it cannot be directly injected into natural gas pipelines or combusted in most natural-gas-fueled vehicles unless first upgraded to biomethane. It can be used as a fuel in boilers and engines to produce electrical power.

(22) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, including: Products, by-products, residues and waste from agriculture, forestry, and related industries; the nonfossilized and biodegradable organic fractions of industrial and municipal wastes; and gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(23) "Biomass-based diesel" means a biodiesel or a renewable diesel.

(24) "Biomethane" means methane derived from biogas, or synthetic natural gas derived from renewable resources, including the organic portion of municipal solid waste, which has been upgraded to meet standards for injection to a natural gas common carrier pipeline, or for use in natural gas vehicles, natural gas equipment, or production of renewable hydrogen. Biomethane contains all of the environmental attributes associated with biogas and can also be referred to as renewable natural gas.

(25) "Blendstock" means a fuel component that is either used alone or is blended with one or more other components to produce a finished fuel used in a motor vehicle. Each blendstock corresponds to a fuel pathway in the Washington Greenhouse Gases, Regulated Emissions, and Energy use in Transportation version 3.0 (WA-GREET 3.0) model, (November 28, 2022), which is incorporated herein by reference. A blendstock that is used directly as a transportation fuel in a vehicle is considered a finished fuel.

(26) "British thermal unit" or "Btu" means a measure of the heat content of fuels or energy sources. It is the quantity of heat required to raise the temperature of one pound of liquid water by one degree Fahrenheit at the temperature that water has its greatest density (approximately 39 degrees Fahrenheit).

(27) "Brown grease" means an emulsion of fat, oil, grease, solids, and water separated from wastewater in a grease interceptor (grease trap) and collected for use as a fuel feedstock. Brown grease must be reported under an applicable used cooking oil (UCO) pathway, i.e., reported as "unprocessed UCO" only if evidence is provided to the verifier or ecology to confirm that it has not been processed prior to receipt by the fuel production facility.

(28) "Bulk system" means a fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Fuel storage and blending facilities that are not fed by pipeline or vessel are considered outside the bulk transfer system.

(29) "Business partner" refers to the second party that participates in a specific transaction involving the regulated party. This can either be the buyer or seller of fuel, whichever applies to the specific transaction.

(30) "Buy/sell board" means a section of the WFRS where registered parties can post that they are interested in buying or selling credits.

(31) "Carbon intensity" or "CI" means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO₂e/MJ).

(32) "Cargo handling equipment" or "CHE" means any off-road, self-propelled vehicle or equipment, other than yard trucks, used at a port or intermodal rail yard to lift or move container, bulk, or liquid cargo carried by ship, train, or another vehicle, or used to perform maintenance and repair activities that are routinely scheduled or that are due to predictable process upsets. Equipment includes, but is not limited to, rubber-tired gantry cranes, top handlers, side handlers, reach stackers, loaders, aerial lifts, excavators, tractors, and dozers.

(33) "Carryback credit" means a credit that was generated during or before the prior compliance period that a regulated party acquires between January 1st and April 30th of the current compliance period to meet its compliance obligation for the prior compliance period.

(34) "Clean fuel standard" or "low carbon fuel standard" means the annual average carbon intensity a regulated party must comply with, as listed in Table 1 under WAC 173-424-900 for gasoline and gasoline substitutes and in Table 2 under WAC 173-424-900 for diesel fuel and diesel substitutes.

(35) "Clear diesel" means a light middle or middle distillate grade diesel fuel derived from crude oil that has not been blended with a renewable fuel.

(36) "Clear gasoline" means gasoline derived from crude oil that has not been blended with a renewable fuel.

(37) "Compliance period" means each calendar year during which regulated parties must demonstrate compliance under WAC 173-424-140.

(38) "Compressed natural gas" or "CNG" means natural gas stored inside a pressure vessel at a pressure greater than the ambient atmospheric pressure.

(39) "Conventional jet fuel" means aviation turbine fuel including commercial and military jet fuel. Commercial jet fuel includes products known as Jet A, Jet A-1, and Jet B. Military jet fuel includes products known as JP-5 and JP-8.

(40) "Co-processing" means the processing and refining of renewable or alternative low-carbon feedstocks intermingled with crude oil and its derivatives at petroleum refineries.

(41) "Credit facilitator" means a person in the WFRS that a regulated party designates to initiate and complete credit transfers on behalf of the regulated party.

(42) "Credit generator" means a person eligible to generate credits by providing clean fuels for use in Washington and who voluntarily registers to participate in the clean fuels program.

(43) "Credits" and "deficits" mean the units of measure used for determining a regulated entity's compliance with the average carbon intensity requirements in WAC 173-424-900. Credits and deficits are denominated in units of metric tons of carbon dioxide equivalent (CO₂e), and are calculated pursuant to WAC 173-424-540 and 173-424-560.

(44) "Crude oil" means any naturally occurring flammable mixture of hydrocarbons found in geologic formations.

(45) "Day" means a calendar day unless otherwise specified as a business day.

(46) "Deferral" means a delay or change in the applicability of a scheduled applicable clean fuel standard for a period of time, accomplished pursuant to an order issued under WAC 173-424-720 or 173-424-730 as directed under RCW 70A.535.110 and 70A.535.120.

(47) "Deficit generator" means a fuel reporting entity who generates deficits in the CFP program.

(48) "Denatured fuel ethanol" or "ethanol" means nominally anhydrous ethyl alcohol meeting ASTM D4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. Before it is blended with gasoline, the denatured fuel ethanol is first made unfit for drinking by the addition of substances approved by the Alcohol and Tobacco Tax and Trade Bureau.

(49) "Diesel fuel" or "diesel" means either:

(a) A light middle distillate or middle distillate fuel suitable for compression ignition engines blended with not more than five volume percent biodiesel and conforming to the specifications of ASTM D975; or

(b) A light middle distillate or middle distillate fuel blended with at least five and not more than 20 volume percent biodiesel suitable for compression ignition engines conforming to the specifications of ASTM D7467.

(50) "Direct current fast charging" means charging an electric vehicle at 50 kW and higher using direct current.

(51) "Disproportionately impacted communities" means communities that are identified by the department of health pursuant to chapters 70A.02 and 19.405 RCW.

(52) "Distiller's corn oil" has the same meaning as "technical corn oil."

(53) "Distiller's sorghum oil" has the same meaning as "technical sorghum oil."

(54) "Duty-cycle testing" means a test procedure used for emissions and vehicle efficiency testing.

(55) "E10" means gasoline containing 10 volume percent fuel ethanol.

(56) "E100" also known as "denatured fuel ethanol," means nominally anhydrous ethyl alcohol.

(57) "Ecology" means the Washington state department of ecology.

(58) "Electric cargo handling equipment (eCHE)" means cargo handling equipment using electricity as the fuel.

(59) "Electric ground support equipment (eGSE)" means self-propelled vehicles used off-road at airports to support general aviation activities that use electric batteries for propulsion and functional energy and only has electric motors. For the purpose of this rule that includes, but is not limited to, pushbacks, belt loaders, and baggage tractors.

(60) "Electric power for ocean-going vessel (eOGV)" means shore power provided to an ocean going vessel at-berth.

(61) "Electric transport refrigeration units (eTRU)" means refrigeration systems powered by electricity designed to refrigerate or heat perishable products that are transported in various containers including, but not limited to, semi-trailers, truck vans, shipping containers, and rail cars.

(62) "Electric vehicle (EV)," for purposes of this regulation, refers to battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs).

(63) "Emergency period" is the period of time in which an emergency action under WAC 173-424-720 is in effect.

(64) "Energy economy ratio (EER)" means the dimensionless value that represents the efficiency of a fuel as used in a powertrain as compared to a reference fuel used in the same powertrain.

(a) EERs are often a comparison of miles per gasoline gallon equivalent (mpge) between two fuels.

(b) EERs for fixed guideway systems are based on MJ/number of passenger-miles.

(65) "Environmental attribute" means greenhouse gas emission reduction recognition in any form, including verified emission reductions, voluntary emission reductions, offsets, allowances, credits, avoided compliance costs, emission rights and authorizations under any law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for greenhouse gas emissions that is established, certified, maintained, or recognized by any international, governmental, or nongovernmental agency.

(66) "Export" means transportation fuel reported in the WFRS that is delivered from locations within Washington state to locations out-

side of Washington state by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle.

(67) "Feedstock transfer document" means a document, or combination of documents, that demonstrates the delivery of specified source feedstocks from the point of origin to the fuel production facility as required under WAC 173-424-600(6).

(68) "Ferry vessel" means a vessel 65 feet or greater designed for operations on lakes, bays, and sounds, built to 46 C.F.R. Subchapter H, K, or T standard that is used on a regular schedule to:

(a) Provide transportation only between places that are not more than 300 miles apart;

(b) Transport only:

(i) Passengers; or

(ii) Vehicles, or railroad cars, that are being used, or have been used, in transporting passengers or goods.

(69) "Finished fuel" means a transportation fuel that is used directly in a vehicle for transportation purposes without requiring additional chemical or physical processing.

(70) "First fuel reporting entity" means the first entity responsible for reporting in the WFRS for a given amount of fuel. This entity initially holds the status as the fuel reporting entity and the credit or deficit generator for this fuel amount, but may transfer either status pursuant to WAC 173-424-200 or 173-424-210.

(71) "Fixed guideway" means a public transportation facility using and occupying a separate right of way for the exclusive use of public transportation using rail, a fixed catenary system, trolley bus, streetcar, or an aerial tramway.

(72) "Fossil" means any naturally occurring flammable mixture of hydrocarbons found in geologic formations such as rock or strata. When used as an adjective preceding a type of fuel (e.g., "fossil gasoline," or "fossil LNG"), it means the subset of that type of fuel that is derived from a fossil source.

(73) "Fuel cell" means a technology that uses an electrochemical reaction to generate electrical energy by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(74) "Fuel pathway" means a detailed description of all stages of fuel production and use for any particular transportation fuel, including feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer. The fuel pathway is used to calculate the carbon intensity of each transportation fuel through a complete well-to-wheel analysis of that fuel's life cycle greenhouse gas emissions.

(75) "Fuel pathway applicant" refers to an entity that has registered in the alternative fuel portal pursuant to WAC 173-424-300 and has submitted an application including all required documents and attestations in support of the application requesting a certified fuel pathway.

(76) "Fuel pathway code" or "FPC" means the identifier used in the WFRS that applies to a specific fuel pathway as approved or issued under WAC 173-424-600 through 173-424-630.

(77) "Fuel pathway holder" means a fuel pathway applicant that has received a certified fuel pathway carbon intensity based on site-specific data, including a provisional fuel pathway from ecology, or who has a certified fuel pathway code from the California air resources board or Oregon department of environmental quality that has been approved for use in Washington by ecology.

(78) "Fuel production facility" means the facility at which a regulated or opt-in fuel is produced. With respect to biomethane, a fuel production facility means the facility at which the fuel is up-graded, purified, or processed to meet the standards for injection to a natural gas common carrier pipeline or for use in natural gas vehicles.

(79) "Fuel reporting entity" means an entity that is required to report fuel transactions in the WFRS pursuant to WAC 173-424-200 through 173-424-220. Fuel reporting entity refers to the first fuel reporting entity and to any entity to whom the reporting entity status is passed for a given quantity of fuel.

(80) "Fuel supply equipment" refers to equipment registered in the WFRS that dispenses alternative fuel into vehicles including, but not limited to, electric vehicle chargers, hydrogen fueling stations, and natural gas fueling equipment.

(81) "Gasoline" means a fuel suitable for spark ignition engines and conforming to the specifications of ASTM D4814.

(82) "Heavy-duty vehicle" or "HDV" means a vehicle that is rated at or greater than 14,001 pounds gross vehicle weight rating (GVWR).

(83) "Home fueling" means the dispensing of fuel by use of a fueling appliance that is located on or within a residential property with access limited to a single household.

(84) "Hybrid electric vehicle (HEV)" means any vehicle that can draw propulsion energy from both of the following on-vehicle sources of stored energy:

(a) A consumable fuel; and

(b) An energy storage device, such as a battery, capacitor, or flywheel.

(85) "Hydrogen station capacity evaluator" or "HySCapE" means a tool developed by the National Renewable Energy Laboratory to determine the dispensing capacity of a hydrogen station, HySCapE Version 1.0 (August 13, 2018).

(86) "Illegitimate credits" means credits that were not generated in compliance with this chapter.

(87) "Import" means to have ownership title to transportation fuel at the time it is brought from outside Washington into Washington by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling that motor vehicle.

(88) "Importer" means:

(a) With respect to any liquid fuel, the person who imports the fuel; or

(b) With respect to any biomethane, the person who owns the biomethane when it is either physically transported into Washington or injected into a pipeline located outside of Washington and contractually delivered for use in Washington through a book-and-claim accounting methodology.

(89) "Incremental credit" means a credit that is generated by an action to further lower the carbon intensity of electricity. Incremental credits are calculated from the difference between the carbon intensity of utility-specific electricity and the carbon intensity of renewable electricity.

(90) "Indirect land use change" means the average lifecycle greenhouse gas emissions caused by an increase in land area used to grow crops that is caused by increased use of crop-based transportation fuels, and expressed as grams of carbon dioxide equivalent per megajoule of energy provided (gCO₂e/MJ). Indirect land use change val-

ues for biofuels are listed in Table 5 under WAC 173-424-900. Indirect land use change for fuel made from sugarcane, corn, sorghum, soybean, canola, and palm feedstocks is calculated using the protocol developed by the California air resources board.

(91) "Ineligible specified source feedstock" means a feedstock specified in WAC 173-424-600 (6) (a) through (c) that does not meet the chain-of-custody documentation requirements specified in WAC 173-424-600 (6) (d).

(92) "Invoice" means the receipt or other record of a sale transaction, specifying the price and terms of sale, that describes an itemized list of goods shipped.

(93) "Lifecycle greenhouse gas emissions" are:

(a) The aggregated quantity of greenhouse gas emissions, including direct emissions and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels, as approved by ecology;

(b) Measured over the full fuel lifecycle, including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer; and

(c) Stated in terms of mass values for all greenhouse gases as adjusted to CO_{2e} to account for the relative global warming potential of each gas.

(94) "Light-duty vehicle" and "medium-duty vehicle" mean a vehicle category that includes both light-duty (LDV) and medium-duty vehicles (MDV).

(a) "LDV" means a vehicle that is rated at 8,500 pounds or less GVWR.

(b) "MDV" means a vehicle that is rated between 8,501 and 14,000 pounds GVWR.

(95) "Liquefied compressed natural gas" or "L-CNG" means natural gas that has been liquefied and transported to a dispensing station where it was then regasified and compressed to a pressure greater than ambient pressure.

(96) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied.

(97) "Liquefied petroleum gas" or "propane" or "LPG" means a petroleum product composed predominantly of any of the hydrocarbons, or mixture thereof; propane, propylene, butanes, and butylenes maintained in the liquid state.

(98) "Liquid fuels" means fossil fuels (including gasoline, diesel, and conventional jet fuels), liquid alternative fuels (including ethanol, biomass-based fuels, and alternative jet fuels), and blend of liquid fossil and alternative fuels.

(99) "Low-carbon intensity (Low-CI) electricity" means any electricity that is determined to have a carbon intensity that is less than the average Washington grid or utility-specific, as applicable including, but not limited to, a renewable resource as defined in RCW 19.405.020(34).

(100) "Motor vehicle" means any vehicle, vessel, watercraft, engine, machine, or mechanical contrivance that is self-propelled.

(101) "M-RETS renewable thermal" means the electronic tracking and trading system for North American biomethane and other renewable thermal attributes run by the M-RETS organization. For the purposes of this division, only the biomethane or renewable natural gas certificates generated by this system are recognized.

(102) "Multifamily housing" means a structure or facility established primarily to provide housing that provides four or more living units, and where the individual parking spaces that an electric vehicle charger serves, and the charging equipment itself, are not deeded to or owned by a single resident.

(103) "Multifuel vehicle" means a vehicle that uses two or more distinct fuels for its operation. A multifuel vehicle (also called a vehicle operating in blended-mode) includes a bi-fuel vehicle and can have two or more fueling ports onboard the vehicle. A fueling port can be an electrical plug or a receptacle for liquid or gaseous fuel. For example, most plug-in hybrid electric vehicles use both electricity and gasoline as the fuel source and can be "refueled" using two separately distinct fueling ports.

(104) "Natural gas" means a mixture of gaseous hydrocarbons and other compounds with at least 80 percent methane by volume.

(105) "Ocean-going vessel" means a commercial, government, or military vessel meeting any one of the following criteria:

(a) A vessel greater than or equal to 400 feet in length overall;

(b) A vessel greater than or equal to 10,000 gross tons pursuant to the convention measurement (international system);

(c) A vessel propelled by a marine compression ignition engine with a per-cylinder displacement of greater than or equal to 30 liters.

(106) "OPGEE" or "OPGEE model" means the oil production greenhouse gas emissions estimator version 2.0 (June 20, 2018) posted at <http://www.arb.ca.gov/fuels/lcfs/lcfs.htm>, which is incorporated herein by reference.

(107) "Opt-in fuel reporting entity" means an entity that meets the requirements of WAC 173-424-120 and voluntarily opts in to be a fuel reporting entity and is therefore subject to the requirements set forth in this chapter.

(108) "Petroleum intermediate" means a petroleum product that can be further processed to produce gasoline, diesel, or other petroleum blendstocks.

(109) "Petroleum product" means all refined and semi-refined products that are produced at a refinery by processing crude oil and other petroleum-based feedstocks, including petroleum products derived from co-processing biomass and petroleum feedstock together. "Petroleum product" does not include plastics or plastic products.

(110) "Physical transport mode" means the applicable combination of actual fuel delivery methods, such as truck routes, rail lines, pipelines and any other fuel distribution methods through which the regulated party reasonably expects the fuel to be transported under contract from the entity that generated or produced the fuel, to any intermediate entities and ending in Washington. The fuel pathway holder and any entity reporting the fuel must demonstrate that the actual feedstock transport mode and distance conforms to the stated mode and distance in the certified pathway.

(111) "Plug-in hybrid electric vehicle" or "PHEV" means a hybrid electric vehicle with the capability to charge a battery from an off-vehicle electric energy source that cannot be connected or coupled to the vehicle in any manner while the vehicle is being driven.

(112) "Position holder" means any person that has an ownership interest in a specific amount of fuel in the inventory of a terminal operator. This does not include inventory held outside of a terminal, retail establishments, or other fuel suppliers not holding inventory at a fuel terminal.

(113) "Power purchase agreement" means a written agreement between an electricity service supplier and a customer that specifies the source or sources of electricity that will supply the customer.

(114) "Private access fueling facility" means a fueling facility with access restricted to privately-distributed electronic cards (cardlock) or is located in a secure area not accessible to the public.

(115) "Producer" means:

(a) With respect to any liquid fuel and renewable propane, the person who makes the fuel; or

(b) With respect to any biomethane, the person who refines, treats, or otherwise processes biogas into biomethane.

(116) "Product transfer document" or "PTD" means a document that authenticates the transfer of ownership of fuel from a fuel reporting entity to the recipient of the fuel. A PTD is created by a fuel reporting entity to contain information collectively supplied by other fuel transaction documents, including bills of lading, invoices, contracts, meter tickets, rail inventory sheets, renewable fuels standard (RFS) product transfer documents, etc.

(117) "Public access fueling facility" means a fueling facility that is not a private-access fueling dispenser.

(118) "Public transit agency" means an entity that operates a public transportation system.

(119) "Public transportation" means regular, continuing shared passenger-transport services along set routes which are available for use by the general public.

(120) "Rack" means a mechanism for delivering motor vehicle fuel or diesel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

(121) "Registered party" means a regulated party, credit generator, aggregator, or an out-of-state fuel producer that has an ecology-approved registration under WAC 173-424-300 to participate in the clean fuels program.

(122) "Regulated fuel" means a transportation fuel identified under WAC 173-424-120(2).

(123) "Regulated party" means a person responsible for compliance with requirements listed under WAC 173-424-140(1).

(124) "Renewable fuel standard" means the program administered by the United States Environmental Protection Agency, under 40 C.F.R. Part 80: Regulation of fuels and fuel additives, Subpart M.

(125) "Renewable gasoline" means a spark ignition engine fuel that substitutes for fossil gasoline and that is produced from renewable resources.

(126) "Renewable hydrocarbon diesel" or "renewable diesel" means a diesel fuel that is produced from nonpetroleum renewable resources but is not a monoalkylester and which is registered as a motor vehicle fuel or fuel additive under 40 C.F.R. Part 79. This includes the renewable portion of a diesel fuel derived from co-processing biomass with a petroleum feedstock.

(127) "Renewable hydrocarbon diesel blend" or "renewable diesel blend" means a fuel comprised of a blend of renewable hydrocarbon diesel with petroleum-based diesel fuel, designated RXX. In the abbreviation RXX, the XX represents the volume percentage of renewable hydrocarbon diesel fuel in the blend.

(128) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for the hydrogen and the source for

the energy input into the production process, as defined in RCW 19.405.020(32). It includes hydrogen derived from:

(a) Electrolysis of water or aqueous solutions using renewable electricity;

(b) Catalytic cracking or steam methane reforming of biomethane; or

(c) Thermochemical conversion of biomass, including the organic portion of municipal solid waste (MSW).

Renewable electricity, for the purpose of renewable hydrogen production by electrolysis, means electricity derived from sources that qualify as renewable energy resources as defined in RCW 19.405.020(34).

(129) "Renewable naphtha" means naphtha that is produced from nonpetroleum renewable resources.

(130) "Renewable propane" means liquefied petroleum gas (LPG or propane) that is produced from nonpetroleum renewable resources.

(131) "Residence" means a structure or facility established primarily to provide housing that provides less than four living units.

(132) "Site-specific data" and "site-specific input" means an input value used in determination of fuel pathway carbon intensity value, or the raw operational data used to calculate an input value, which is required to be unique to the facility, pathway, and feedstock. All site-specific inputs must be measured, metered or otherwise documented, and verifiable, e.g., consumption of natural gas or grid electricity at a fuel production facility must be documented by invoices from the utility.

(133) "Small importer of finished fuels" means any person who imports into Washington 500,000 gallons or less of finished fuels in a given calendar year. Any fuel imported by persons that are related, or share common ownership or control, shall be aggregated together to determine whether a person meets this definition.

(134) "Specified source feedstocks" are feedstocks for fuel pathways that require chain of custody evidence to be eligible for a reduced CI associated with the use of a waste, residue, by-product, or similar material under the pathway certification process under WAC 173-424-600.

(135) "Station operational status system (SOSS)" means a software database tool developed and maintained by California fuel cell partnership to publicly monitor the operational status of hydrogen stations.

(136) "Substitute fuel pathway code" means a fuel pathway code that is used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use when the seller of a fuel does not pass along the credits or deficits to the buyer and the buyer does not have accurate information on the carbon intensity of the fuel or its blendstocks.

(137) "Technical corn oil" means inedible oil recovered from thin stillage or the distiller's grains and solubles produced by a dry mill corn ethanol plant, termed distiller's corn oil (DCO), or other non-food grade corn oil from food processing operations.

(138) "Technical sorghum oil" means inedible oil recovered from thin stillage or the distiller's grains and solubles produced by a dry mill sorghum ethanol plant, termed distiller's sorghum oil (DSO), or other nonfood grade sorghum oil from food processing operations.

(139) "Therm" means a measure of the heat content of fuels or energy sources. One therm equals 100,000 Btu.

(140) "Tier 1 calculator," "simplified calculator," or "WA-GREET 3.0 Tier 1 calculator" means the tools used to calculate lifecycle emissions for commonly produced fuels, including the instruction manuals on how to use the calculators. Ecology will make available copies of these simplified calculators on its website (<https://www.ecology.wa.gov>). The simplified calculators used in the program are:

- (a) Tier 1 simplified calculator for starch and corn fiber ethanol;
- (b) Tier 1 simplified CI calculator for sugarcane-derived ethanol;
- (c) Tier 1 simplified CI calculator for biodiesel and renewable diesel;
- (d) Tier 1 simplified CI calculator for LNG and L-CNG from North American Natural Gas;
- (e) Tier 1 simplified CI calculator for biomethane from North American landfills;
- (f) Tier 1 simplified CI calculator for biomethane from anaerobic digestion of wastewater sludge;
- (g) Tier 1 simplified CI calculator for biomethane from food, green, and other organic wastes; and
- (h) Tier 1 simplified CI calculator for biomethane from AD of dairy and swine manure.

(141) "Tier 2 calculator" or "WA-GREET 3.0 model" means the tool used to calculate lifecycle emissions for next generation fuels, including the instruction manual on how to use the calculator. Next generation fuels include, but are not limited to, cellulosic alcohols, hydrogen, drop-in fuels, or first generation fuels produced using innovative production processes. Ecology will make available a copy of the Tier 2 calculator on its website (<https://www.ecology.wa.gov>).

(142) "Total amount (TA)" means the total quantity of fuel reported by a fuel reporting entity irrespective of whether the entity retained status as the credit or deficit generator for that specific fuel volume. TA is calculated as the difference between the fuel reported using transaction types that increase the net fuel quantity reported in the WFRS and fuel reported using transaction type that decrease the net fuel quantity reported in the WFRS. Transaction types that increase the TA include: Production in Washington, production for import, import, purchased with obligation, purchased without obligation, gain of inventory. Transaction types that decrease the TA include: Sold with obligation, sold without obligation, loss of inventory, export, not used for transportation.

(143) "Transaction date" means the title transfer date as shown on the product transfer document.

(144) "Transaction quantity" means the amount of fuel reported in a transaction. A transaction quantity must be reported in units, provided in Table 3 in WAC 173-424-900 and in the WFRS.

(145) "Transaction type" means the nature of the fuel transaction as defined below:

- (a) "Produced in Washington" means the transportation fuel was produced at a facility in Washington;
- (b) "Import within the bulk system" means the transportation fuel was produced outside of Washington and later imported into Washington and placed into the bulk system;
- (c) "Import outside the bulk system" means the transportation fuel was imported into Washington and delivered outside the bulk system;

- (d) "Purchased with obligation" means the transportation fuel was purchased with the compliance obligation passing to the purchaser;
- (e) "Purchased without obligation" means the transportation fuel was purchased with the compliance obligation retained by the seller;
- (f) "Sold with obligation" means the transportation fuel was sold with the compliance obligation passing to the purchaser;
- (g) "Sold without obligation" means the transportation fuel was sold with the compliance obligation retained by the seller;
- (h) "Position holder sale without obligation" means the transportation fuel was sold below the rack without a transfer of the compliance obligation;
- (i) "Position holder sale with obligation" means the transportation fuel was sold below the rack with a transfer of the compliance obligation;
- (j) "Position holder sale for export" means the transportation fuel was sold below the rack to an entity who exported the fuel;
- (k) "Purchase below the rack for export" means the transportation fuel was purchased below the rack and exported;
- (l) "Export" means a transportation fuel that was reported under the clean fuels program but was later moved from a location inside of Washington to a location outside of Washington, and is not used for transportation in Washington;
- (m) "Loss of inventory" means the fuel exited the Washington fuel pool due to volume loss, such as through evaporation or due to different temperatures or pressurization;
- (n) "Gain of inventory" means the fuel entered the Washington fuel pool due to a volume gain, such as through different temperatures or pressurization;
- (o) "Not used for transportation" means a transportation fuel was reported with compliance obligation under the CFP but was later used in an application unrelated to the movement of goods or people in Washington, such as process heat at an industrial facility, home or commercial building heating, or electric power generation;
- (p) "EV charging" means providing electricity to recharge EVs including BEVs and PHEVs;
- (q) "LPGV fueling" means the dispensing of liquefied petroleum gas at a fueling station designed for fueling liquefied petroleum gas vehicles;
- (r) "NGV fueling" means the dispensing of natural gas at a fueling station designed for fueling natural gas vehicles;
- (s) "Exempt fuel use - aircraft," "exempt fuel use - racing activity vehicles," "exempt fuel use - military tactical and support vehicle and equipment," "exempt fuel use - locomotive," "exempt fuel use - watercraft," "exempt fuel use - farm vehicles, tractors, implements of husbandry," "exempt fuel use - motor trucks primary used to transport logs," "exempt fuel use - off-highway construction vehicles, all of which must meet WAC 173-424-130" means that the fuel was delivered or sold into the category of vehicles or fuel users that are exempt under WAC 173-424-130; or
- (t) "Production for import into Washington" means the transportation fuel was produced outside of Washington and imported into Washington for use in transportation.
- (146) "Transportation fuel" means gasoline, diesel, any other flammable or combustible gas or liquid and electricity that can be used as a fuel for the operation of a motor vehicle. Transportation fuel does not mean unrefined petroleum products.

(147) "Unbundled renewable energy credit" means a renewable energy credit that is sold, delivered, or purchased separately from electricity.

(148) "Unit of fuel" means fuel quantities expressed to the largest whole unit of measure, with any remainder expressed in decimal fractions of the largest whole unit.

(149) "Unit of measure" means either:

(a) The International System of Units defined in NIST Special Publication 811 (2008) commonly called the metric system;

(b) U.S. customer units defined in terms of their metric conversion factors in NIST Special Publications 811 (2008); or

(c) Commodity specific units defined in either:

(i) The NIST Handbook 130 (2015), *Method of Sale Regulation*; or

(ii) Chapter 16-662 WAC.

(150) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to procure the electricity. The generation of such electricity will be assigned an emissions factor of 0.437 metric tons per megawatt-hour of electricity as measured by the utility at the first point of receipt in Washington, unless ecology assigns another number as directed by RCW 19.405.070(2). This includes the GHG emission factor 0.428 metric tons per megawatt-hour for electricity generation, and the two percent GHG emissions due to transmission losses between the point of generation and the first point of receipt in Washington.

(151) "Used cooking oil" or "UCO" means fats and oils originating from commercial or industrial food processing operations, including restaurants that have been used for cooking or frying. Feedstock characterized as UCO must contain only fats, oils, or greases that were previously used for cooking or frying operations. UCO must be characterized as "processed UCO" if it is known that processing has occurred prior to receipt by the fuel production facility or if evidence is not provided to the verifier or ecology to confirm that it is "unprocessed UCO."

(152) "Utility renewable electricity product" means a product where a utility customer has elected to purchase renewable electricity through a product that retires renewable energy certificates (RECs) or represents a bundled purchase of renewable electricity and its RECs.

(153) "Validation" means verification of a fuel pathway application.

(154) "Verification" means a systematic, independent, and documented process for evaluation of reported data against the requirements specified in this chapter.

(155) "Washington fuels reporting system" or "WFRS" means the interactive, secured, web-based, electronic data tracking, reporting, and compliance system that ecology develops, manages, and operates to support the clean fuels program.

(156) "WFRS reporting deadlines" means the quarterly and annual reporting dates in WAC 173-424-410 and 173-424-430.

(157) "WA-GREET" means the greenhouse gases, regulated emissions, and energy in transportation (GREET) model developed by Argonne National Laboratory that ecology modifies and maintains for use in the Washington clean fuels program. The most current version WA-GREET 3.0 is adapted from California's CA-GREET 3.0 (August 13, 2018). The model includes contributions from the oil production greenhouse gas estimator (OPGEE2.0) model (for emissions from crude extraction) and global trade analysis project (GTAP-BIO) together with the agro-ecological

zone emissions factor (AEZ-EF) model for land use change (LUC). Ecology will make available a copy of WA-GREET 3.0 on its website (www.ecology.wa.gov). As used in this rule, WA-GREET refers to both the full model and the fuel-specific simplified calculators that the program has adopted.

(158) "Yard trucks" means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also known as utility tractor rig (UTR), yard tractor, yard goat, yard hostler, yard hustler, or prime mover. For the purpose of CFP crediting, an electric yard truck is considered a heavy-duty truck.

(159) "Yellow grease" means a commodity produced from a mixture of:

(a) Used cooking oil; and

(b) Rendered animal fats that were not used for cooking.

This mixture often is combined from multiple points of origin. Yellow grease must be characterized as "animal fat" if evidence is not provided to the verifier or ecology to confirm the quantity that is animal fat and the quantity that is used cooking oil.

Abbreviations. For the purposes of this chapter, the following acronyms apply.

"AEZ-EF" means agro-ecological zone emissions factor model.

"AFP" means alternative fuel portal.

"AJF" means alternative jet fuel.

"ASTM" means ASTM International (formerly American Society for Testing and Materials).

"BEV" means battery electric vehicles.

"WA-GREET" means Washington-modified greenhouse gases, regulated emissions, and energy use in transportation model.

"CARB" means California air resources board.

"CA-GREET" means the California air resources board adopted version of GREET model.

"CCM" means credit clearance market.

"CEC" means California energy commission.

"CFP" means clean fuels program established under this chapter to implement chapter 70A.535 RCW.

"CFR" means Code of Federal Regulations.

"CFS" means clean fuel standard or carbon intensity standard.

"CHAdEMO" means charge de move, a DC fast charging protocol.

"CI" means carbon intensity.

"CNG" means compressed natural gas.

"DC" means direct current.

"DCO" means distiller's corn oil or technical corn oil.

"DSO" means distiller's sorghum oil or technical sorghum oil.

"eCHE" means electric cargo handling equipment.

"EDU" means electrical distribution utility.

"EER" means energy economy ratio.

"eFV" means electrical power for a ferry vessel.

"eGSE" means electric ground support equipment.

"eTRU" means electric transport refrigeration unit.

"eOGV" means electric ocean-going vessel.

"EV" means electric vehicle.

"FCV" means fuel cell vehicle.

"FCI" means direct current fast charging infrastructure.

"FEIN" means federal employer identification number.

"FPC" means fuel pathway code.

"FSE" means fueling supply equipment.

"(gCO₂e/MJ)" means grams of carbon dioxide equivalent per megajoule.

"GTAP" means the global trade analysis project model.

"GVWR" means gross vehicle weight rating.

"HySCapE" means hydrogen station capacity evaluator.

"H₂" means hydrogen.

"HDV" means heavy-duty vehicles.

"HDV-CIE" means a heavy-duty vehicle compression-ignition engine.

"HDV-SIE" means a heavy-duty vehicle spark-ignition engine.

"HEV" means hybrid electric vehicle.

"HRI" means hydrogen refueling infrastructure.

"ICEV" means internal combustion engine vehicle.

"LUC" means land use change.

"LCA" means life cycle analysis.

"L-CNG" means liquefied compressed natural gas.

"LDV" means light-duty vehicles.

"LNG" means liquefied natural gas.

"LPG" means liquefied petroleum gas.

"LPGV" means liquefied petroleum gas vehicle.

"MCON" means marketable crude oil name.

"MDV" means medium-duty vehicles.

"MMBtu" means million British thermal units.

"MT" means metric tons (of carbon dioxide equivalent).

"NG" means natural gas.

"NGV" means a natural gas vehicle.

"OPGEE" means oil production greenhouse gas emissions estimator model.

"OR-DEQ" means Oregon department of environmental quality.

"PHEV" means plug-in hybrid vehicles.

"PTD" means product transfer document.

"REC" means renewable energy certificate.

"RTC" means renewable thermal certificate.

"RNG" means renewable natural gas or biomethane.

"RFS" means the renewable fuel standard implemented by the U.S. Environmental Protection Agency.

"SAE CCS" means Society of Automotive Engineers combined charging system, a DC fast charging protocol.

"SMR" means steam methane reformation.

"SOSS" means station operational status system.

"UCO" means used cooking oil.

"U.S. EPA" means the United States Environmental Protection Agency.

"WFRS" means Washington fuels reporting system, the electronic reporting, trading, and compliance platform for the clean fuels program.

"WREGIS" means the western renewable energy generation information system run by the western electricity coordinating council.

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NEW SECTION

WAC 173-424-120 Applicability. (1) Except as exempted in WAC 173-424-130, this rule applies to:

(a) Any transportation fuel, as defined in WAC 173-424-110, that is sold, supplied, or offered for sale in Washington; and

(b) Any fuel reporting entity, as defined in WAC 173-424-110 and specified in WAC 173-424-200 through 173-424-220 is responsible for reporting a transportation fuel in a calendar year.

(2) Regulated fuels. This rule applies to the following types of transportation fuels including, but not limited to:

(a) Gasoline;

(b) Diesel or diesel fuel;

(c) Fossil compressed natural gas (fossil CNG), fossil liquefied natural gas (fossil LNG), or fossil liquefied compressed natural gas (fossil L-CNG);

(d) Compressed or liquefied hydrogen (hydrogen);

(e) A fuel blend containing greater than 10 percent ethanol by volume;

(f) A fuel blend containing biomass-based diesel;

(g) Denatured fuel ethanol (E100);

(h) Neat biomass-based diesel (B100 or R100);

(i) Fossil LPG/propane; and

(j) Other liquid or nonliquid transportation fuels as determined by ecology.

(3) **Opt-in fuel.**

(a) Each fuel in (b) of this subsection is presumed to meet the carbon intensity standards (benchmarks) in WAC 173-424-900 Table 1 and 2 for a specific year.

(b) A fuel provider for the following alternative fuels may generate CFP credits for such fuels by electing to opt into the CFP as an opt-in fuel reporting entity under WAC 173-424-140(2) and meeting all applicable requirements of the CFP:

(i) Electricity;

(ii) Bio-CNG;

(iii) Bio-LNG;

(iv) Bio-L-CNG;

(v) Alternative jet fuel; and

(vi) Renewable propane or renewable LPG.

(4) **Annual carbon intensity benchmarks for an alternative fuel intended for use in a single-fuel vehicle.**

(a) Gasoline and gasoline substitutes. A regulated party or credit generator must comply with the benchmarks for gasoline and gasoline substitutes in WAC 173-424-900 Table 1 for alternative fuel intended to be used in a single-fuel light-duty or medium-duty vehicle.

(b) Diesel and diesel substitute. A regulated party or credit generator must comply with the benchmarks for diesel fuel and diesel fuel substitutes in WAC 173-424-900 Table 2 for alternative fuel intended to be used in a single-fuel application other than a single-fuel light-duty or medium-duty vehicle.

(c) Carbon intensity benchmarks for transportation fuels intended for use in multifuel vehicles. Credit and deficit calculations for alternative fuel provided for use in a multifueled vehicle shall be established via:

(i) The benchmarks for gasoline set forth in WAC 173-424-900 Table 1 if one of the fuels used in the multifuel vehicle is gasoline; or

(ii) The benchmarks for diesel fuel set forth in WAC 173-424-900 Table 2 if one of the fuels used in the multifuel vehicle is diesel fuel.

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NEW SECTION

WAC 173-424-130 Exemptions. (1) **Exempt fuels.** The CFP rule does not apply to transportation fuel supplied in Washington if an aggregated quantity of less than 360,000 gasoline gallon equivalent (42.6 million MJ) per year as measured by all providers of such fuel.

(2) **Exempt fuel uses.**

(a) Transportation fuels supplied for use in any of the following motor vehicles are exempt from regulated fuels definition:

(i) Aircraft. This includes conventional jet fuel or aviation gasoline, and alternative jet fuel;

(ii) Vessels;

(iii) Railroad locomotive applications; and

(iv) Military tactical vehicles and tactical support equipment.

(b) The following transportation fuels are exempt from carbon intensity reduction requirements until January 1, 2028:

(i) Special fuel used in off-road vehicles used primarily to transport logs;

(ii) Dyed special fuel used in vehicles that are not designed primarily to transport persons or property, that are not designed to be primarily operated on highways, and that are used primarily for construction work including, but not limited to, mining and timber harvest operations; and

(iii) Dyed special fuel used for agricultural purposes exempt from chapter 82.38 RCW.

(c) Fuels listed under (a) and (b) of this subsection are eligible to generate credits.

(3) To claim exemption for regulated fuel under subsection (2) of this section, the regulated party must document that the fuel was supplied for use in motor vehicles listed in subsection (2) of this section.

(a) The method of documentation must include:

(i) Individual receipts or invoices for each fuel sale claimed as exempt that list the specific customer and exempt vehicle type;

(ii) If the fuel is sold through a dedicated tank for a single customer, electronic or paper records that document that the customer's vehicle(s) being fueled are in an exempt category under subsection (2) of this section, and that the tank is not used to fuel any other vehicles; or

(iii) Other comparable documentation approved in writing by ecology and prior to exemptions being claimed. The documentation must, at a minimum:

(A) Establish that the fuel was sold through a dedicated source or single supplier to use in one of the specified motor vehicles listed in subsection (2) of this section; or

(B) For each fuel transaction if the fuel is not sold through a dedicated source.

(b) The person asserting the exemption of fuel under subsection (2) of this section must maintain the records specified under subsection (2)(a) of this section for seven years, and submit to ecology upon request, records demonstrating adherence to these conditions.

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NEW SECTION**WAC 173-424-140 General requirements. (1) Regulated party.**

(a) Regulated fuels producers in Washington, or importers into Washington, must comply with the requirements of this rule.

(b) The regulated parties for regulated fuels are designated under WAC 173-424-200.

(c) The regulated parties for regulated fuels must:

(i) Register under WAC 173-424-300;

(ii) Keep records under WAC 173-424-400;

(iii) Report quarterly under WAC 173-424-410 and annually under WAC 173-424-430; and

(iv) Comply with the clean fuel standard for:

(A) Gasoline and gasoline substitutes in WAC 173-424-900 Table 1;

or

(B) Diesel fuel and diesel fuel substitutes in WAC 173-424-900 Table 2.

(2) Opt-in fuel reporting entity.

(a) An out-of-state producer of ethanol, biodiesel, renewable diesel, alternative jet fuel, renewable natural gas, or renewable propane that is not an importer is not required to participate in the CFP. Any out-of-state producer that is not an importer who chooses voluntarily to participate in the CFP may retain the ability to generate credits or deficits for the specific volumes of their fuel that is imported into Washington, only if it opts in as a first fuel reporting entity and meets the requirements of WAC 173-424-200 and 173-424-210.

(b) Opting in procedure: Opting into the CFP becomes effective when the opt-in entity establishes an account in the WFRS, pursuant to the voluntary participation under subsection (4) of this section. The opt-in entity may not report and generate credits and deficits based on transactions that precede the quarter in which the entity opted in.

(c) A fuel supplier choosing to opt-in to the CFP under WAC 173-424-120 must:

(i) Register as required by WAC 173-424-300;

(ii) Keep records as required under WAC 173-424-400;

(iii) Report quarterly and annually under WAC 173-424-410 and 173-424-430.

(d) Opting out procedure. In order to opt-out of the CFP, an opt-in entity must complete the following:

(i) Provide ecology a 90-day notice of intent to opt-out and a proposed effective opt-out date;

(ii) Submit in the WFRS any outstanding quarterly fuel transactions up to the quarter in which the effective opt-out date falls and a final annual compliance report that covers the year through the opt-out date; and

(iii) Identify in the 90-day notice any actions to be taken to eliminate any remaining deficits by the effective opt-out date.

(3) Credit aggregator requirements.

(a) Aggregators must:

(i) Register according to WAC 173-424-300;

(ii) Keep records as required under WAC 173-424-400;

(iii) Report quarterly as required under WAC 173-424-410; and

(iv) Report annually as required under WAC 173-424-430.

(b) Designation of aggregator.

(i) A regulated party or an eligible credit generator may designate an aggregator to act on its behalf to facilitate credit generation and trade credits by submitting an aggregator designation form to ecology. Aggregators may register under WFRS only if a regulated party or an eligible credit generator has authorized an aggregator to act on its behalf by submitting a complete and valid aggregator designation form to ecology.

(ii) Aggregator designations may only take effect at the start of the next full calendar quarter after ecology receives such notice.

(iii) A regulated party or credit generator already registered with the program may also serve as an aggregator for others;

(iv) An aggregator must notify ecology when a credit generator or regulated party has withdrawn designation of the aggregator. Aggregator withdrawals may only take effect at the end of the current full calendar quarter when ecology receives such notice.

(4) **Voluntary participation.** Voluntary participation in the CFP shall conclusively establish consent to be subject to the jurisdiction of the state of Washington, its courts, and the administrative authority of ecology to implement the CFP. Failure to consent to such jurisdiction excludes participation in the CFP.

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PART 2 - DESIGNATION OF REGULATED PARTIES AND CREDIT GENERATORS

NEW SECTION

WAC 173-424-200 Designation of fuel reporting entities for liquid fuels. (1) **Applicability.** The purpose of this section is to identify the first fuel reporting entities, any subsequent fuel reporting entities, and the credit or deficit generator for liquid fuels. The first reporting entity is responsible for initiating reporting for a given amount of fuel within the online reporting system according to WAC 173-424-400 and, by default, holds the status as the initial credit or deficit generator. This section so prescribes the transfer of fuel reporting, and credit and deficit generating status.

(2) **Designation.**

(a) Designation of first fuel reporting entities for liquid fuels.

(i) The first fuel reporting entity for liquid fossil fuels is the producer or importer of the liquid fossil fuel.

(ii) For liquid fuels that are a blend of liquid alternative fuel components and a fossil fuel component, the first fuel reporting entity is the following:

(A) The producer or importer of alternative fuels for the alternative fuel component; and

(B) The producer or importer of liquid fossil fuels for the fossil fuel component.

(iii) Conventional jet fuel is not subject to the CFP and need not be reported.

(b) Designation of fuel reporting entities in case of transfer of liquid fuel ownership. An entity transferring ownership of fuel is the "transferor," and an entity acquiring ownership of fuel is the "recipient."

(i) Transferring status as credit or deficit generator.

(A) An entity can voluntarily transfer its status as a credit or deficit generator for a given amount of liquid fuel simultaneously with the ownership of such fuel if the conditions in (b) (i) (A) (I) through (IV) of this subsection are met:

(I) The two entities agree by written contract that specifies the recipient accepts all the responsibilities of a fuel reporting entity and credit and/or deficit generator;

(II) In case of a deficit generating fuel, the two entities agree by written contract that specifies which party is responsible for accounting for the deficit in the annual credits and deficits balance calculation;

(III) The transferor provides the recipient a product transfer document that specifies the recipient is the credit or deficit generator; and

(IV) Transfer of credit or deficit generator status is not the result of a downstream entity acquiring ownership of liquid fuel below the rack. The downstream entity is required to report on WFRS-CBTS, if exports the fuel.

(B) Upon transfer, the recipient also becomes the fuel reporting entity for the fuel, while the transferor remains still subject to reporting requirements and to any other requirement applicable to a fuel reporting entity.

(ii) Retaining status as credit or deficit generator.

(A) An entity can retain its status as a credit or deficit generator for a given amount of liquid fuel, while transferring ownership of that fuel, if the following conditions are met at the time ownership of fuel is transferred:

(I) The two entities agree by written contract that specifies the recipient accepts all the responsibilities of a fuel reporting entity, and the transferor retains the responsibilities as a fuel reporting entity and credit or deficit generator;

(II) In case of a deficit generating fuel, the two entities agree by written contract that specifies which party is responsible for accounting for the deficit in the annual credits and deficits balance calculation; and

(III) The transferor must provide the recipient a product transfer document that specifies the transferor is the credit or deficit generator according to WAC 173-424-400.

(B) Upon transfer according to (b) (ii) (A) of this subsection, the recipient also becomes a fuel reporting entity for the fuel while the transferor is still subject to reporting requirements and any other requirements applicable to a fuel reporting entity under this chapter.

(iii) Transfer period.

(A) For all liquid fuels, the maximum period in which credit or deficit generator status can be transferred to another entity, for a given amount of fuel, is limited to three calendar quarters starting from and including the quarter in which the entity received the title.

After this period is over, the credit and deficit generator status for that amount of fuel cannot be transferred.

(B) After this period is over, the credit and deficit generator status for that amount of fuel cannot be transferred.

(iv) Designation of fuel exporter. Entities responsible for reporting exports of fuel that has been previously reported in the WFRS are identified below:

(A) When the fuel is sold or delivered above the rack for export, the entity holding the ownership title to the fuel as it crosses the Washington border on its way toward the first point of sale/delivery out-of-state is responsible for reporting the export.

(B) When the fuel is sold across the rack for export, the entity holding title to the fuel as the fuel crosses the rack is responsible for reporting.

(C) When the fuel is diverted out-of-state below the rack, the entity holding title to the fuel, as it crosses the Washington border, is responsible for reporting the export.

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NEW SECTION

WAC 173-424-210 Fuel reporting entities for gaseous fuels. (1) **Applicability.** This section applies to providers of both fossil and bio-based compressed natural gas, liquefied natural gas, liquefied compressed natural gas, and liquefied petroleum gas (or propane), and hydrogen used as transportation fuels in Washington.

(2) **Designation of first fuel reporting entities for gaseous fuels.** The first fuel reporting entity for different gaseous fuels is identified below:

(a) Bio-CNG. For bio-CNG, including the bio-CNG portion of a blend with fossil CNG, the first fuel reporting entity is the producer or importer of the biomethane.

(b) Bio-LNG and bio-L-CNG. For bio-LNG and bio-L-CNG, including the biomethane portion of any blend with fossil LNG and L-CNG, the first fuel reporting entity is the producer or importer of the biomethane.

(c) Renewable propane. For renewable propane, including the renewable propane portion of a blend with fossil propane, the first fuel reporting entity is the producer or importer of the renewable propane.

(d) Fossil CNG, LNG, L-CNG and propane.

(i) For fossil CNG, LNG, L-CNG, and propane, including the fossil portion of any blend with a renewable fuel component, the first fuel reporting entity is the entity that owns the fueling equipment through which the fossil fuel is dispensed to motor vehicles for transportation use.

(ii) Forklift: The first fuel reporting entity for fossil propane used in forklifts is the forklift fleet owner.

(e) Hydrogen.

(i) Motor vehicles. The first fuel reporting entity for fossil based hydrogen is the entity that owns the fueling supply equipment through which hydrogen fuel is dispensed to motor vehicles for transportation use.

(ii) Forklift. The first fuel reporting entity for fossil based hydrogen used in fuel cell forklifts is the forklift fleet owner.

(iii) Renewable hydrogen. For renewable hydrogen, including the renewable portion of any blend with fossil hydrogen, the first fuel reporting entity is the producer or importer of the renewable hydrogen.

(3) **Designating another entity as fuel reporting entity.** An entity may elect not to be the first fuel reporting entity for a given gaseous fuel, provided that another entity has contractually agreed to be the fuel reporting entity for the fuel on its behalf. In such cases, the two entities must agree by written contract that:

(a) The original first fuel reporting entity will not generate credits or deficits in the CFP under subsection (2)(a) through (e) of this section. Instead, the original first reporting entity will provide the amount of fuel dispensed, and other required information, to the contractually designated entity for the purpose of CFP reporting, and credit or deficit generation.

(b) The contractually designated entity accepts all CFP responsibilities as the first fuel reporting entity, and as a credit or deficit generator, as applicable.

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NEW SECTION

WAC 173-424-220 Designation of fuel reporting entity for electricity. (1) **Applicability.** This section prescribes how credits are generated for electricity when used as a transportation fuel.

(2) **Responsibilities to generate credits.** To receive credits for electricity supplied as a transportation fuel, an entity subject to this section must:

(a) Establish an account in the online system;

(b) Comply with registration, recordkeeping, and reporting requirements.

(3) **Designating another entity as credit generator.** A person who is eligible to generate credits as described in subsections (4) through (11) of this section may elect to designate another entity to be the credit generator if the two entities agree by written contract that:

(a) The credit generator outlined in subsections (4) through (11) of this section will provide the electricity data to the designated entity.

(b) The designated entity accepts all CFP responsibilities as the fueling reporting entity and credit generator.

(4) **Nonresidential electric vehicle charging.** For electricity used to charge an electric vehicle at nonresidential locations, such as in public for a fleet, at a workplace, or at multifamily housing sites, the eligible entities that generate credits are:

(a) The owner of the electric-charging equipment may generate credits from each piece of equipment.

(b) If the owner of the electric-charging equipment does not generate the credits, then an electric utility or its designated entity may generate the credit, if the two entities agree by written contract that:

(i) The owner of the charging equipment will provide the electricity data to the designated entity.

(ii) The designated entity accepts all CFP responsibilities as the fueling reporting entity and credit generator.

(5) **Public transit systems.** For electricity used to power transit buses, ferry vessels, or fixed guideway vehicles such as light rail systems, streetcars, or aerial tram, the transit agency operating the system is eligible to generate the credits for the electricity used to propel the system.

(6) **Electric forklifts.**

(a) For electricity used as transportation fuel supplied to electric forklifts, the fleet owner is the fuel reporting entity and the credit generator. The forklift owner must annually notify in writing to the forklift operator that:

(i) The owner is generating credit for the amount of electricity the operator uses for the electric forklifts.

(ii) The estimated annual credits and credit revenue the owner gets for the use of electricity in the forklift based on the credit price in the previous year. For the 2023 calendar year, the owner shall use the average of the annual average credit price in CARB and OR-DEQ clean fuel standard programs.

(b) If the fleet owner does not generate the credits, then the forklift operator may generate the credit if the two entities agree by written contract that:

(i) The fleet owner will not generate credits.

(ii) The forklift operator accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(c) If credit generation rights are passed to the forklift operator, the forklift operator must annually notify in writing to the forklift owner that:

(i) The operator is generating credit for the amount of electricity they use for the electric forklifts.

(ii) The estimated annual credits and credit revenue the operator gets for the use of electricity in the forklift based on the credit price in the previous year. For the 2023 calendar year, the operator shall use the average of the annual average credit price in CARB and OR-DEQ clean fuel standard programs.

(7) **Electric transport refrigeration units (eTRU).** For electricity supplied to the eTRU, the eTRU fleet owner is the fuel reporting entity and the credit generator.

(8) **Electric cargo handling equipment (eCHE).**

(a) For electricity supplied to eCHE, the electric cargo handling equipment owner is the fuel reporting entity and the credit generator.

(b) The eCHE owner must annually notify in writing to the eCHE operator that:

(i) The owner is generating credit for the amount of electricity the operator uses for the cargo handling equipment.

(ii) The estimated annual credit revenue the owner gets for the use of electricity in the cargo handling equipment based on the credit price in the previous year. For the 2023 calendar year, the owner shall use the average of the annual average credit price in CARB and OR-DEQ clean fuel standard programs.

(c) If the eCHE owner does not generate the credits, then the eCHE operator may generate the credit if the two entities agree by written contract that:

(i) The eCHE owner will not generate credits.

(ii) The eCHE operator accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(d) If credit generation rights are passed to the eCHE operator, the operator must annually notify in writing to the eCHE owner that:

(i) The operator is generating credit for the amount of electricity they use for the electric cargo handling equipment.

(ii) The estimated annual credits and credit revenue the operator gets for the use of electricity in the eCHE based on the credit price in the previous year. For the 2023 calendar year, the operator shall use the average of the annual average credit price in CARB and OR-DEQ clean fuel standard programs.

(9) Electric power for ocean-going vessel (eOGV).

(a) For electricity supplied to the eOGV, the owner of the electric fuel supply equipment is the fuel reporting entity and the credit generator.

(b) If the owner of the electric fuel supply equipment does not generate the credits, then the operator of the electric fuel supply equipment may generate the credit if the two entities agree by written contract that:

(i) The owner of the electric fuel supply equipment will not generate credits.

(ii) The operator of the electric fuel supply equipment accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(10) Electric ground support equipment.

(a) The owner of the charging equipment for ground support equipment is eligible to generate credits.

(b) If the owner of the charging equipment does not generate the credits, then the owner of the electric ground support equipment may generate the credit if the two entities agree by written contract that:

(i) The owner of the charging equipment will not generate credits.

(ii) The owner of the electric ground support equipment accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(11) Residential electric vehicle charging.

(a) Base credit. For electricity used to charge an electric vehicle in a residence, the following entities are eligible to generate base credits:

(i) Electric utility. In order to generate residential vehicle charging credits for the following year, an electric utility must notify ecology by October 1st of the current year whether it will generate base credits or designate an aggregator to act on its behalf. For the 2023 reporting year, electric utilities must notify ecology by January 15, 2023. The utility or its aggregator must have an active registration approved by ecology under WAC 173-424-300. Once a utility has made an aggregator designation under this section, that designation will remain in effect unless the utility requests a change in writing to ecology.

(ii) Backstop aggregator. If an electric utility does not register or designate an aggregator under (a)(i) of this subsection, then the backstop aggregator is eligible to claim any base credits that the utility could have generated for the following year, as provided in subsection (11) of this section.

(iii) Electric vehicle manufacturer. If a backstop aggregator does not register under (a) of this subsection, then the electric vehicle manufacturer is eligible to claim the base credits associated

with the electric vehicles that the backstop aggregator could have generated for the following year.

(b) Incremental credits. Any entity, including an electric utility, is eligible to generate incremental credits for improvements in carbon intensity of electricity used for residential EV charging. An entity that generates incremental credits must meet the requirements set forth in WAC 173-424-420 (3) (b), as applicable.

(i) For metered residential EV charging, incremental credits for each FSE may be generated for the low-CI electricity.

(ii) For nonmetered residential EV charging, the electric utility is eligible to generate incremental credits for supplying low-CI electricity to the EVs in its service territory.

(iii) Multiple claims for incremental credits for metered residential EV charging associated with a single FSE ID will be resolved pursuant to the following order of preference:

(A) The utility supplying electricity to the EV associated with the FSE ID and metered data has first priority to claim credits;

(B) The manufacturer of the EV associated with the FSE ID has second priority; and

(C) Any other entity has third priority.

(12) **Backstop aggregator.** The backstop aggregator serves as the credit generator of electricity credits that have not been claimed by an electric utility, an aggregator designated by an electric utility, or an owner of electric charging equipment under subsections (4) and (11) of this section.

(a) To qualify to submit an application to be a backstop aggregator, an organization must:

(i) Be an organization exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code; and

(ii) Complete annual independent financial audits.

(b) An entity that wishes to be the backstop aggregator must submit an application to ecology that includes:

(i) A description of the mission of the organization and how being a backstop aggregator fits into its mission;

(ii) A description of the experience and expertise of key individuals in the organization who would be assigned to work associated with being a backstop aggregator;

(iii) A plan describing:

(A) How the organization will promote transportation electrification statewide or in specific utility service territories, if applicable, prioritizing projects that directly benefit disproportionately impacted communities;

(B) Any entities that the organization might partner with to implement its plan;

(C) How the organization plans to use the revenue from the sale of credits, which may include, without limitation, programs that provide incentives to purchase electric vehicles or install electric vehicle chargers, opportunities to educate the public about electric vehicles, and anticipated costs to administer its plan; and

(D) The financial controls that are, or will be, put in place to segregate funds from the sale of credits from other moneys controlled by the organization.

(iv) Its last three years of independent financial audits and I.R.S. form 990s, and proof that the I.R.S. has certified the entity as qualifying as an exempt organization under 501(c)(3);

(c) Initial applications to be a backstop aggregator are due to ecology no later than March 15, 2023, to be eligible to be the back-

stop aggregator beginning in 2023. If ecology does not designate a backstop aggregator out of the applicants under (e) of this subsection, then ecology may set a new deadline for another application if it decides to undertake a new selection process.

(d) Applications will be evaluated by ecology with the assistance of relevant experts ecology may select. Ecology will evaluate applications based on the likelihood that the applicant will maximize the benefits from the credits it receives to promote transportation electrification and reduce greenhouse gas emissions from the transportation sector in Washington while prioritizing projects that directly benefit disproportionately impacted communities.

(e) Ecology may designate the initial backstop aggregator out of the applying organizations by May 31, 2023. If ecology does not designate an organization to be the backstop aggregator, then ecology may undertake a new selection process at a later date under the same criteria in (b) and (d) of this subsection.

(f) Following ecology's designation of an organization to be the backstop aggregator, ecology and the organization may enter into a written agreement regarding its participation in the program. A written agreement must be in place prior to the backstop aggregator registering an account in the WFRS and receiving credits for the first time. The backstop aggregator must:

(i) By March 31st of each year, submit a report that summarizes the previous year's activity including:

(A) How much revenue was generated from the credits it received;

(B) A description of activities including the status of each activity, where each activity took place, and each activity's budget, including administrative costs, and an estimate of its outcomes including the extent to which it directly benefited disproportionately impacted communities; and

(C) The results of its most recent independent financial audit.

(ii) Maintain records and make them available upon request by ecology, including records required to be maintained under WAC 173-424-400 and, in addition, any records relating to its application, the programs it operates using the proceeds from the sale of credits under this program, and any of the organization's financial records.

(g) If ecology determines that a backstop aggregator is in violation of this chapter or the agreement that it enters into with ecology to be the backstop aggregator, ecology may rescind its designation and solicit applications to select a new backstop aggregator.

(h) If backstop aggregator wishes to terminate its agreement with ecology, then ecology may solicit applications to select a new backstop aggregator.

(i) After a backstop aggregator has been in place for three years, ecology may hold a new selection process to appoint a backstop aggregator for future years. Unless ecology has rescinded an organization as backstop aggregator under (g) of this subsection, the current backstop aggregator may apply to be redesignated as the backstop aggregator for future years.

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PART 3 - REGISTRATIONNEW SECTION**WAC 173-424-300 Registration. (1) Registration in Washington fuels reporting system.**

(a) **Eligibility.** The following entities must apply to register to participate in the Washington clean fuel program:

(i) Entities required to report under the CFP pursuant to WAC 173-424-200 through 173-424-220;

(ii) Entities opting into the CFP pursuant to WAC 173-424-140(2); and

(iii) Aggregators and credit aggregators.

(b) **Required information.** To register in WFRS, entities must supply a written registration application to ecology by uploading a complete application to the WFRS. The application must be signed by the entity's owner, president, managing partner, or other authorized officer. At a minimum, the application must include:

(i) The identity of the entity submitting the application, including the entity's federal employer identification number (FEIN);

(ii) Entity's physical and mailing addresses;

(iii) The basis for qualifying for an account pursuant to (a) of this subsection;

(iv) The entity's primary account representative and alternative account representative, including their titles, relationship to the organization, phones, and email addresses;

(v) The category of each transportation fuel that the entity will be producing, importing, or dispensing for use in Washington;

(vi) Any other information requested by ecology related to registration.

(c) **Establishing an account in WFRS.**

(i) Accounts in the WFRS are only established following ecology's approval of the registration application.

(ii) Ecology may deny account registration based on, among other reasons, an entity's provision of false, misleading, or incomplete information.

(d) **Account management roles and duties.**

(i) The account representative is responsible for making any changes to the entity profile within WFRS.

(ii) The account representative in WFRS may designate users within the entity who can access and manage the account.

(iii) The account representative in WFRS is responsible for meeting the reporting requirements as set forth in WAC 173-424-420.

(e) **Modifications to the registration in WFRS.**

(i) Registered entities must submit an amended registration to ecology within 30 days of any change occurring to information described in subsection (2) of this section.

(ii) Ecology may require a registered entity to submit an amended registration based on any new information ecology receives.

(iii) If a registered entity amends its registration under this section, the registered entity must also update its account in the WFRS, as appropriate.

(f) **Cancellation of the registration in WFRS.**

(i) An entity that was registered in WFRS must cancel its registration if:

(A) It no longer meets the applicability of the program under WAC 173-424-120(1); or

(B) It is a credit generator or aggregator who has voluntarily opted out of the CFP. The credit generator or aggregator must provide to ecology a 90-day notice of intent to opt out of the CFP and a proposed effective date for the completion of the opt-out process.

(ii) A registered entity that is canceling its registration from WFRS under this section must:

(A) Submit any outstanding quarterly reports and annual reports;

(B) Comply with any annual reporting requirements, as applicable; and

(C) Not have any outstanding deficits.

(iii) Any credits that remain in an account of a regulated entity, credit generator, or aggregator that is canceling its registrations under this section shall be forfeited and the account in the WFRS shall be closed.

(iv) Once ecology determines that the actions in (f)(ii)(A) through (C) of this subsection are complete, it will notify the registrant in writing that the registration has been canceled.

(g) **Registration of fueling supply equipment (FSE).**

(i) After establishing an account in the WFRS, fuel reporting entities for natural gas, electricity, propane, and hydrogen must register all fueling supply equipment (FSE) in WFRS via the clean fuels program website. Upon FSE registration, the applicant will receive a unique FSE ID that must be used for reporting fuel transactions in WFRS pursuant to the CFP reporting requirements.

(ii) General requirements: All FSE registration must include:

(A) Federal employer identification number (FEIN) for the entity registering, name of the facility at which FSE is situated, street address, latitude, and longitude of the FSE location.

(B) Name and address of the entity that owns the FSE, if different from the entity registering the FSE.

(iii) Specific requirements by fuel type:

(A) Registered entities that are dispensing natural gas, propane, or hydrogen must:

(I) Unless designated as first fuel reporting entity in WAC 173-424-210, provide a written contractual agreement demonstrating it acquired the designation of the first fuel reporting entity status;

(II) Provide the number of dispensing facilities located in Washington, their locations, and the unique identifier associated with the fuel dispensing equipment in the organization's fuel or financial accounting or utility meter.

(B) For CNG, FSE refers to a fueling station associated with a utility meter. A CNG station with multiple dispensers is considered a single FSE. Fuel reporting entities for CNG must provide the natural gas utility meter number at the FSE location, name of the utility company, and a copy of the most recent utility bill.

(C) For LNG and propane, FSE refers to a fueling station. An LNG or propane station with multiple dispensers is considered a single FSE. Fuel reporting entities for LNG and propane must provide a unique identifier associated with the FSE used for their own fuel accounting

or financial accounting or other purposes and copy of invoice or bill of lading for the most recent fuel delivery.

(D) Unless designated as the first fuel reporting entity in WAC 173-424-220, registered entities that are charging electric vehicles must provide ecology with a copy of a written contractual agreement demonstrating the registered entity acquired the designation of the first fuel reporting entity status.

(E) For nonresidential EV charging, FSE refers to each piece of equipment capable of measuring the electricity dispensed for EV charging. Fuel reporting entities for nonresidential EV charging for on-road applications must provide the serial number assigned to the FSE by the original equipment manufacturer (OEM) and the name of OEM. If there are multiple FSEs at the same location, each unique piece of equipment must be registered separately.

(F) For residential metered EV charging, must provide the following information about the fuel-supplying equipment, which refers to a piece of equipment or on-vehicle telematics capable of measuring the electricity dispensed for EV charging:

(I) Fuel reporting entities using off-vehicle meters must provide the serial number assigned to the charging equipment by the OEM, the name of the equipment OEM, and the vehicle identification number (VIN) for the vehicle expected to be charged at the location.

(II) Fuel reporting entities using vehicle telematics must provide the VIN.

(III) EV charging equipment registration is optional when reporting metered electricity to generate base credits.

(IV) Location information and address is not required for residential charging.

(G) For registered entities that are also electric utilities, whether they want to:

(I) Aggregate the residential electric charging credits in their service territory under WAC 173-424-220 (3) or (10); or

(II) Designate an aggregator to act on their behalf under WAC 173-424-220 (3) or (10).

(H) Fuel reporting entities for fixed guideway systems are exempt from the general requirements in (h)(ii) of this subsection. The WFRS will assign FSE IDs for reporting purposes based on the information provided in the WFRS account registration form.

(I) For electric forklifts, eCHE, eOGV, or eGSE, FSE refers to the facility or location where electricity is dispensed for fueling. If there are multiple FSEs capable of measuring the electricity dispensed at the facility or location, then an entity may provide the serial number assigned to each individual FSE by the OEM, along with the name of the OEM.

(J) For eTRU, FSE refers to each eTRU. Fuel reporting entities for eTRU fueling must provide the serial number assigned to the unit by the OEM and the name of the OEM.

(K) For hydrogen, FSE refers to a fueling station. A hydrogen station with multiple dispensers is considered a single FSE.

(L) For transportation applications not covered in (g)(iii)(A) through (K) of this subsection, FSE refers to a fuel dispenser or a transportation equipment with the capability to measure the dispensed fuel in that equipment.

(2) **Registration in the Washington alternative fuel portal (AFP).** AFP handles the registration of fuel production facilities. It also supports fuel pathway applications, certifications, and verifications.

(a) **Eligibility.** A fuel producer who intends to be a fuel pathway applicant can apply to establish an account in the AFP in the WFRS.

(b) **Required information.** To establish an account in AFP, an entity must submit account administrator designation application that includes the following information:

(i) Organization identification, including federal employer identification number (FEIN), EPA RFS identification number (if available), physical and mailing addresses, state, names of organizational representatives.

(ii) The applicant for registration must qualify for an account pursuant to (a) of this subsection. The application:

(A) Must be signed by the company owner, a president, a managing partner, or a corporate officer;

(B) Must designate the account administrator, including their title, phone number, and email address;

(C) Must be uploaded in the AFP to complete the registration application process;

(D) Must retain the original document for the duration of an account representative.

(c) **Account approval.** Ecology will review the registration application for completeness and validity.

(d) **Establishing an account in AFP.** Upon registration approval by ecology, the fuel producer must establish an account in the AFP portion of the WFRS and comply with the requirements of this chapter and any conditions placed upon the fuel pathway codes that it holds.

(e) **Account management roles and duties.**

(i) The account representative is responsible for making any changes to the company profile within AFP.

(ii) The account representative may designate users within the company who can access and manage the account.

(iii) If any information required in (b) of this subsection changes, the entity holding the account must update the account to reflect the changes within 30 calendar days.

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PART 4 - RECORDKEEPING AND REPORTING

NEW SECTION

WAC 173-424-400 Recordkeeping. (1) Fuel reporting entities, opt-in entities, and aggregators must retain the following records for at least 10 years:

(a) Product transfer documents as described in subsection (2) of this section;

(b) Copies of all data and reports submitted to ecology;

(c) Records related to each fuel transaction subject to the CFP;

(d) Records used for each credit transaction;

(e) Records used for compliance credit and deficit calculations;

- (f) Records related to obtaining a carbon intensity described in WAC 173-424-610;
- (g) Records used to establish that feedstocks are specified source feedstocks;
- (h) Records related to third-party verification, if required under WAC 173-424-800;
- (i) Records related to fuel supplying equipment registration including, but not limited to, datasets of monthly utility billing information, bills of lading, and other documents used as a proof at the time of fuel supplying equipment registration pursuant to this chapter;
- (j) Chain of custody evidence for produced fuel imported into Washington;
- (k) As applicable, attestations regarding environmental attributes associated with book-and-claim accounting for renewable electricity or biomethane used as transportation fuel or for hydrogen production.
- (i) A registered party reporting any fuel claimed in the CFP using a book-and-claim accounting method as a fuel in the CFP must retire renewable thermal certificates or renewable energy certificates that embody the full environmental attributes of that fuel in an electronic tracking system approved by ecology in order to claim that fuel. The environmental attributes embodied by that REC or RTC must not have been used or claimed in any other program or jurisdictions with the exception of the federal RFS and the Climate Commitment Act (chapter 173-446 WAC). To be validly used in compliance with this division, any such claims under the federal RFS or Climate Commitment Act must be made for the same use and volume of biomethane or its derivatives as it is being claimed for in the CFP.
- (ii) A fuel pathway holder using directly delivered renewable electricity, biogas, or biomethane, must obtain and keep attestations from each upstream party collectively demonstrating that they have exclusive right to use those environmental attributes.
- (2) **Documenting fuel transfers reported in Washington fuel reporting system.** A product transfer document must include the following information:
- (a) Transferor company name, address, and contact information;
- (b) Recipient company name, address, and contact information;
- (c) Transaction date: Date of title transfer for fuel;
- (d) Fuel pathway code (FPC);
- (e) Carbon intensity (CI);
- (f) Fuel quantity and units;
- (g) A statement identifying whether the CFP obligation to act as a credit or deficit generator is passed to the recipient;
- (h) Fuel production company identification number and facility identification number as registered with RFS program. This does not apply to fossil gasoline, fossil diesel fuel, or fossil natural gas; and
- (i) Destination of the fuel. If the fuel destination is not known or the transfer is not changing the location of the fuel, the PTD shall reflect this.
- (3) For transactions of clear and blended gasoline and diesel below the rack where the fuel is not destined for export, only the records described in subsection (2)(a), (b), (c), (f), and (g) of this section are required to be retained.

(4) **Documenting credit transactions.** Regulated parties, credit generators, and aggregators must retain the following records related to all credit transactions for at least 10 years:

(a) The contract under which the credits were transferred;

(b) Documentation on any other commodity trades or contracts between the two parties conducting the transfer that are related to the credit transfer in any way; and

(c) Any other records relating to the credit transaction, including the records of all related financial transactions.

(5) **Review.** All data, records, and calculations used by a regulated party, a credit generator, or an aggregator to comply with this chapter are subject to inspection and verification by ecology. Regulated parties, credit generators, and aggregators must provide records retained under this rule within 15 business days after the date ecology requests a review of the records, unless a different schedule is agreed to by ecology.

(6) **Initial 2023 inventory.** All regulated fuels held in bulk storage in the state on January 1, 2023, are subject to the program and must be reported as the initial inventory of fuels by regulated parties. This requirement does not apply to fuels stored outside of the bulk system, as defined in WAC 173-424-110(28).

(7) **Information exempt from disclosure.** Pursuant to the provisions of the Washington Public Records Act (chapter 42.56 RCW), all information submitted to ecology is subject to inspection upon request by any person unless such information is determined to be exempt from disclosure under the Washington public records law or other applicable Washington law.

(8) **Monitoring plan for entities required to validate or verify under WAC 173-424-800.**

(a) Each entity responsible for obtaining third-party verification of their data under the CFP must complete and retain a written monitoring plan for review by a verifier or ecology;

(b) If a fuel production facility is required to complete and maintain a monitoring plan by the California LCFS or Oregon CFP, the same monitoring plan may be used to meet the requirements of this rule unless there are substantive differences between the two programs' treatment of the fuel production process;

(c) A monitoring plan must include the following general items and associated references to more detailed information, as applicable:

(i) Information to allow ecology and the verification team to develop a general understanding of boundaries and operations relevant to the entity, facility, or project, including participation in other markets and other third-party audit programs;

(ii) Reference to management policies or practices applicable to reporting pursuant to this chapter, including recordkeeping;

(iii) Explanation of the processes and methods used to collect necessary data for reporting pursuant to this chapter;

(iv) Explanations and queries of source data to compile summary reports of intermediate and final data necessary for reporting pursuant to this chapter;

(v) Reference to one or more simplified block diagrams that provide a clear visual representation of the relative locations and positions of measurement devices and sampling locations, as applicable, required for calculating reported data (e.g., temperature, total pressure, LHV or HHV, fuel consumption); the diagram(s) must include storage tanks for raw material, intermediate products, and finished prod-

ucts, fuel sources, combustion units, and production processes, as applicable;

(vi) Clear identification of all measurement devices supplying data necessary for reporting pursuant to this chapter, including identification of low flow cutoffs as applicable, with descriptions of how data from measurement devices are incorporated into the submitted report;

(vii) Descriptions of measurement devices used to report CFP data and how acceptable accuracy is demonstrated, e.g., installation, maintenance, and calibration method and frequency for internal meters and financial transaction meters; this provision does not apply to data reported in the WFRS for generating credits for EV charging;

(viii) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for CFP reports;

(ix) Original equipment manufacturer (OEM) documentation or other documentation that identifies instrument accuracy and required maintenance and calibration requirements for all measurement devices used to collect necessary data for reporting pursuant to this chapter;

(x) The dates of measurement device calibration or inspection, and the dates of the next required calibration or inspection;

(xi) Requests for postponement of calibrations or inspections of internal meters and subsequent approvals by ecology. The entity must demonstrate that the accuracy of the measured data will be maintained pursuant to the measurement accuracy requirements of WAC 173-424-610;

(xii) A listing of the equation(s) used to calculate flows in mass, volume, or energy units of measurement, and equations from which any nonmeasured parameters are obtained, including meter software, and a description of the calculation of weighted average transport distance;

(xiii) Identification of job titles and training practices for key personnel involved in CFP data acquisition, monitoring, reporting, and report attestation, including reference to documented training procedures and training materials;

(xiv) Records of corrective and subsequent preventative actions taken to address verifier and ecology findings of past nonconformance and material misstatements;

(xv) Log of modifications to a fuel pathway report conducted after attestation in response to review by third-party verifier or ecology staff;

(xvi) Written description of an internal audit program that includes data report review and documents ongoing efforts to improve the entity's CFP reporting practices and procedures, if such an internal audit program exists; and

(xvii) Methodology used to allocate the produced fuel quantity to each certified fuel pathway code;

(d) The monitoring plan related to a fuel pathway carbon intensity or reporting quantities of fuels must also include the following elements specific to fuel pathway carbon intensity calculations and produced quantities of fuels per fuel pathway code:

(i) Explanation of the processes and methods used to collect necessary data for fuel pathway application and annual fuel pathway reports and all site-specific WA-GREET 3.0 inputs, as well as references to source data;

- (ii) Description of steps taken and calculations made to aggregate data into reporting categories, for example aggregation of quarterly fuel transactions per fuel pathway code;
 - (iii) Methodology for assigning fuel volumes by fuel pathway code, if not using a method prescribed by ecology. If using ecology prescribed methodology, the methodology should be referenced;
 - (iv) Methodologies for testing conformance to specifications for feedstocks and produced fuels, particularly describing physical testing standards and processes;
 - (v) Description of procedure taken to ensure measurement devices are performing in accordance with the measurement accuracy requirements of WAC 173-424-610;
 - (vi) Methodology for monitoring and calculating weighted average feedstock transport distance and modes, including the specific documentation records that will be collected and retained on an ongoing basis;
 - (vii) Methodology for monitoring and calculating fuel transport distance and modes, including the specific documentation records that will be collected and retained on an ongoing basis;
 - (viii) References to contracts and accounting records that confirm fuel quantities were delivered into Washington for transportation use in carbon intensity determination, and confirm feedstock and finished fuel transportation distance; and
 - (ix) All documentation required pursuant to WAC 173-424-600(6) for fuel pathways utilizing a specified source feedstock to qualify for a reduced carbon intensity; and
- (e) The monitoring plan must also include the following documentation that can be used to justify transaction types reported for fuel in the WFRS, including the production amount, sale/purchase agreements and final fuel dispensing records. Such documentation must be specific to quarterly fuel transactions reports for importers of blendstocks, importers of finished fuels, Washington producers, credit generators, aggregators, and out-of-state producers.

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NEW SECTION

WAC 173-424-410 Quarterly reports. (1) **Reporting frequency and deadlines.** Except for persons exempt from this requirement under WAC 173-424-130, regulated parties, credit generators, and aggregators must submit a quarterly report using the WFRS by:

- (a) June 30th — for January through March of each year;
- (b) September 30th — for April through June of each year;
- (c) January 10th — for July through September of each year; and
- (d) March 31st — for October through December of each previous year.

(2) **General reporting requirements for quarterly reports.**

- (a) Reporters must upload the data for the quarterly reports in the WFRS within the first 45 days after the end of the quarter.
- (b) During the second 45 days, reporters must work with each other to resolve any fuel transaction discrepancies between different reporters' reported transactions.

(c) In order to allow for carry-back credits to have been generated only in the applicable years, the Q1 report may not be submitted prior to May 1st.

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NEW SECTION

WAC 173-424-420 Specific reporting requirements. The following requirements are in addition to requirements contained in WAC 173-424-410 and 173-424-430.

(1) Quarterly reports must contain the information specified in Table 9 under WAC 173-424-900 for each transportation fuel subject to the CFP.

(2) **Specific (quarterly) reporting parameters for natural gas (including CNG, LNG, and L-CNG) used as transportation fuel.** Any registered party must report the following parameters for each fueling facility to which CNG, LNG, L-CNG, is supplied as a transportation fuel:

(a) The amount of fuel dispensed must be reported per fuel dispensing equipment, as required for registration in WFRS, with a certified fuel pathway code and with transaction type "NGV fueling."

(b) For CNG and L-CNG, the amount of fuel dispensed in therms at higher heating value per reporting period separately for all light/medium (LDV and MDV), heavy-duty vehicles with compression engines (HDV-CIE), and heavy-duty vehicles with spark ignition engines (HDV-SIE).

(c) For LNG, the amount of fuel dispensed in gallons per reporting period separately for all LDV/MDV, HDV-CIE, and HDV-SIE.

(d) For CNG, L-CNG, and LNG, the carbon intensity as listed in Table 6, Washington Carbon Intensity Lookup Fuel Pathway WAC 173-424-900.

(e) For biomethane-based CNG, LNG, and L-CNG, the carbon intensity as approved under WAC 173-424-610 and the EPA production company identification number and facility identification number. Additionally, if the biomethane-based volumes are being reported using a book-and-claim methodology, the registered party must submit records showing the retirement of renewable thermal certificates representing the biomethane environmental attributes from that facility in M-RETS renewable thermal system or another approved and recognized tracking system with the quarterly report. The retirement records must show enough renewable thermal certificates were retired to cover the volume of biomethane claimed as a fuel in the CFP and those certificates must be from the same biomethane production facility to which the fuel pathway code is assigned. If biogas or biomethane is being used that is directly delivered to a vehicle and not injected into a pipeline, the registered party must provide the following attestation when it files the quarterly report for the corresponding volume of biogas or biomethane claimed.

"I certify that to the extent that the gas used in the fuel pathway or supplied as transportation fuel is characterized as biomethane, _____ (registered party name) owns the exclusive rights to the corresponding environmental attributes.

_____ (registered party name) has not sold, transferred, or retired those environmental attributes in any program or jurisdiction other than the federal RFS.

Based on diligent inquiry and review of contracts and attestations from our business partners, I certify under penalty of perjury under the laws of the State of Washington that no other party has or will sell, transfer, or retire the environmental attributes corresponding to the biomethane for which _____ (registered party name) claims credit in the CFP program."

(f) The total quantity of fuel, summed across all fuel pathway codes, dispensed for transportation purpose through the fuel supplying equipment during the reporting period.

(g) When the vehicle application is unknown, for the purpose of reporting, a fueling event of less than 3,500 MJ (30 gasoline gallon equivalents) of fuel dispensed must be reported as NGV fueling of LDV/MDV. A fueling event of 3,500 MJ or more must be reported as NGV fueling of HDV.

(3) Specific reporting parameters for electricity used as a transportation fuel. For electricity, any registered party must report the following as applicable:

(a) To claim a carbon intensity other than a utility-specific mix (Table 10), or directly connected renewable electricity under the lookup table (Table 6) in WAC 173-424-900, a registered party must:

(i) Submit documentation that qualifying RECs were retired in the WREGIS or a recognized renewable electricity tracking system for the unique purpose of covering that specific charging at the same time as the submittal of the quarterly report; or

(ii) Submit documentation at least annually that the electric vehicle chargers are covered by a utility renewable electricity product or a power purchase agreement that has been approved by ecology for a carbon intensity. The carbon intensity assigned to the product or agreement can only be used for reporting if the electric vehicle chargers are covered by that same product or agreement for the time period which is being reported;

(b) For nonmetered residential EV charging:

(i) If an electric utility monitors electric energy use in EVs, the electric utility may provide to ecology the daily average EV electricity use data within the first 45 days after the end of the quarter. Ecology shall use the method established in WAC 173-424-540 to calculate any credits generated for the quarter and place them into the electric utility's account in WFRS;

(ii) For claiming incremental credit for nonmetered residential charging, the electric utility must be able to provide, upon ecology's request: The VIN for each electric vehicle claimed and evidence of EV vehicle registration and low-carbon electricity supply at the same location;

(iii) A nonutility credit generator must use credit revenues from nonmetered residential EV charging to increase consumer EV resources to promote transportation electrification. The credit generator must include, in their annual compliance report, an itemized summary of efforts and costs associated with meeting these requirements;

(c) For metered residential EV charging:

(i) For generating base credits, the amount of electricity (in kWh) used for residential EV charging per FSE;

(ii) For generating incremental credits for low-CI electricity, the amount of electricity (in kWh) used for residential EV charging

per FSE using a certified FPC. The following requirements must also be met:

(A) Upon ecology's request, records must be provided that demonstrate an EV is owned or leased by an individual dwelling at the claimed residence; and

(B) Only a single entity can generate incremental credits using a low-CI pathway for the same FSE. Multiple claims will be resolved pursuant to WAC 173-424-220 (11)(b)(iii). If two or more entities other than utilities or electric vehicle manufacturers report for the same FSE to generate incremental credits, no incremental credits will be issued for that FSE;

(iii) A nonutility credit generator must use credit revenues from nonmetered residential EV charging to increase consumer EV resources to promote transportation electrification. The credit generator must include, in their annual compliance report, an itemized summary of efforts and costs associated with meeting these requirements;

(d) For nonresidential EV charging. For each public access charging facility, fleet charging facility, workplace private access charging facility, or multifamily dwelling, the amount of electricity dispensed in kilowatt hours to vehicles per FSE;

(e) For each public transit agency, the amount of electricity dispensed to or consumed by vehicles used for public transportation in kilowatt-hours per FSE. The report must be:

(i) Separated by use for light rail, streetcars, aerial trams, or electric transit buses; and

(ii) Separated by electricity used in portions of their fixed guideway system placed in service before and after January 1, 2023;

(f) For entities reporting forklift charging, the amount of electricity dispensed to or consumed by forklifts per FSE. The report must be separated by electricity used to charge forklifts built in or before model year 2022 and electricity used to charge forklifts built in model year 2023 and after. The reporting entity must provide the number of electric forklifts in the above model year groups (in and pre-2022 versus in and post-2023). The quantity of electricity used in electric forklifts may be determined as follows:

(i) Quantity of electricity used during a reporting period, as measured per FSE.

(ii) If the quantity of electricity as measured per FSE is unavailable, the reporting entity may submit a written statement to ecology demonstrating the reasons they are unable to provide measured electricity data. Upon approval from ecology, they may use an ecology approved estimation method;

(g) For eTRU, eCHE, or eOGV, the amount of electricity dispensed to or consumed by the equipment per FSE;

(h) For other electric transportation applications, the amount of electricity dispensed to or consumed by the equipment per FSE with transaction type approved by ecology, as Tier-2 FPW.

(4) Specific reporting parameters for hydrogen used as a transportation fuel.

(a) The quantity (in kg) of hydrogen fuel dispensed per FSE, as required in WFRS, and by the vehicle station classes (based on tank type and size) as required in the hydrogen industry standard fueling protocol SAE J2601.

(b) For hydrogen fuel cell forklifts, the amount of hydrogen fuel dispensed (in kg) per FSE.

(5) Specific reporting parameters for propane.

(a) The quantity (in gallon) of propane dispensed per FSE.

(b) For renewable propane, the production company ID and facility ID.

(6) Specific reporting parameters for liquid fuels including gasoline, diesel, diesel fuel blends, alternative fuels, and alternative jet fuel.

(a) The right transaction type for each fuel. The transaction type "production for import" is to be reported by out-of-state producers who choose to be the first fuel reporting entity for fuel imported into Washington. The transaction type "import" is to be reported by nonproducers who choose to be the first fuel reporting entity for out-of-state fuel imported into Washington. The following information are to be reported:

(i) Except as provided in (a)(ii) of this subsection, the volume (in gallons) of each blendstock per reporting period aggregated for each distinct carbon intensity value (e.g., X gallons of blendstock with A gCO₂e/MJ, Y gallons of blendstock with B gCO₂e/MJ).

(ii) A producer of gasoline or diesel fuel must report, for each of its refineries, the MCON or other crude oil name designation, volume (in gallons), and country (or state) of origin for each crude supplied to the refinery during the quarter.

(b) For renewable hydrocarbon diesel or renewable gasoline co-processed at a petroleum refinery, any registered party must report the following information as applicable:

(i) If the registered party is also the producer, then ecology may require the registered party to report the ongoing information required under WAC 173-424-610.

(ii) If the registered party is not the producer, and the producer has not met its obligations under WAC 173-424-610, then ecology may require the registered party to report the volume of fuel under a temporary fuel pathway code or the fuel pathway code for clear gasoline or diesel, as applicable.

(c) Temperature correction. All liquid fuel volumes reported in the WFRS must be adjusted to the standard temperature conditions of 60 degrees Fahrenheit as follows:

(i) For ethanol, using the formula:

Standardized volume = Actual volume * ((-0.0006301 * T) + 1.0378), where standardized volume refers to the volume of ethanol in gallons at 60°F, actual volume refers to the measured volume in gallons, and T refers to the actual temperature of the batch in °F.

(ii) For biodiesel, one of the following two methodologies must be used:

(A) Standardized volume = Actual volume * ((-0.00045767 * T) + 1.02746025), where standardized volume refers to the volume in gallons at 60°F, actual volume refers to the measured volume in gallons, and T refers to the actual temperature of the batch in °F; or

(B) The standardized volume in gallons of biodiesel at 60°F, as calculated using the American Petroleum Institute Refined Products Table 6B, as referenced in ASTM 1250-08.

(iii) For other liquid fuels, the volume correction to standard conditions must be calculated by the methods described in the American Petroleum Institute Manual of Petroleum Measurement Standards Chapter 11 - Physical Properties Data (May 2004), the ASTM Standard Guide for the Use of Petroleum Measurement Tables (ASTM D1250-08) (Reapproved 2013), or the API Technical Data Book, Petroleum Refining Chapter 6 - Density (April 1997).

(iv) If a registered party believes the methods in (c)(i) through (iii) of this subsection are inappropriate, they may request to use a different method and ecology may approve that method if it finds that it is at least as accurate as the methods in (c)(i) through (iii) of this subsection.

(d) Reporting exempt gallons. When a registered party is reporting that it sold gallons of fuel to exempt fuel users as defined in WAC 173-424-110, the registered party must designate in the transaction description field of the WFRS the categories of exempt fuel users to which the registered party delivered fuel and the number of gallons delivered. For blended fuels, all components must be reported as exempt.

(e) Reporting "not for transportation" gallons. When reporting that fuel was sold as not for transportation in the WFRS, the registered party must report in the transaction description field of the WFRS which stationary source, or category of stationary fuel combustion, the fuel was sold to and the number of gallons sold. For blended fuels, all components must be reported as not being used for transportation.

(f) All reports of position holder transactions under this chapter must comply with the following:

(i) Registered parties that are position holders must report fuel sold below the rack;

(ii) Registered parties that are position holders that sell fuel to entities not registered in the CFP may aggregate and report those sales in a single transaction using the "undefined" business partner descriptor; and

(iii) Registered parties that are position holders that sell fuel below the rack for export must identify each recipient of such fuel that is registered in the CFP.

(g) Reporting below the rack exports. Purchasers of fuel from a position holder that is directly exported without modification must report such fuel using the "purchase below the rack for export" transaction category. Such purchasers must also report a transaction for the same gallons using an "Export out of Washington distribution system" transaction.

(7) **Annual reporting of electric utility credit revenue.** All electric utilities that receive credits must annually report the following items to ecology no later than April 30th. Failure to file such a report will result in aggregator receiving credits for that utility until the utility files any past-due reports. Each utility must report the following information, for the prior calendar year:

(a) Total revenue from the sale of base and incremental credits attributable to residential vehicle charging, if applicable in the prior year;

(b) Description of spending of the credit revenue, including:

(i) A description of the programs or projects that were funded by CFP credit revenue;

(ii) The amount spent in each program or project in the prior year;

(iii) Description of the group of individuals or listing of organizations that benefited from the programs or projects;

(iv) Description of the areas that benefited from the programs or projects;

(v) Any other data elements that ecology may prescribe towards the implementation of RCW 70A.535.080.

(8) The registered party must maintain a nonnegative value for each "fuel pathway code obligated amount" as summed across all quarterly data in the online system.

(9) **Significant figures.** A regulated entity must report the following quantities as specific below:

(a) Carbon intensity, expressed to the same number of significant figures in Carbon Intensity of Lookup Table, Table 6 under WAC 173-424-900.

(b) Credits or deficits, expressed to the nearest whole metric ton CO₂ equivalent;

(c) Fuel amounts in units specified in quarterly and annual reports, expressed to the nearest whole unit applicable for that quantity; and

(d) Any other quantity must be expressed to the nearest whole unit applicable for that quantity.

(10) **Correcting a previously submitted report.** Upon discovery of an error, a fuel reporting entity may request to have previously submitted quarterly reports for the current compliance periods reopened for corrective edits and resubmittal by submitting a correction request form online in the WFRS. The fuel reporting entity is required to provide justification for the report corrections and indicate the specific corrections to be made to the report. Pursuant to WAC 173-424-510 (5) (c), no credits may be claimed, and no deficits may be eliminated, retroactively for a quarter for which the quarterly reporting deadline has passed. Each submitted request is subject to ecology review and approval. Permission to correct a report does not preclude enforcement based on misreporting.

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NEW SECTION

WAC 173-424-430 Annual compliance reports. (1) Annual compliance reporting deadline.

(a) Except as provided in (b) of this subsection, regulated parties, credit generators, and aggregators must use the WFRS to submit an annual compliance report to ecology not later than April 30th for the compliance period ending on December 31st of the previous year.

(b) Each regulated party must submit an annual compliance report for 2023 notwithstanding that the initial compliance period is for 2023 and 2024.

(c) Small importers of finished fuels may submit a supplemental annual report using the WFRS, not later than April 30th for the compliance period ending on December 31st of the previous year.

(2) **General reporting requirements for annual compliance reports.** Regulated parties, credit generators, and aggregators must submit annual compliance reports that meet, at minimum, the general and specific requirements for quarterly reports and include the following information:

(a) The total credits and deficits generated by the regulated party, credit generator, or aggregator in the current compliance period, calculated in the WFRS as provided in the equations in WAC 173-424-540;

(b) Any credits carried over from the previous compliance period;

- (c) Any deficits carried over from the previous compliance period;
- (d) The total credits acquired from other regulated parties, credit generators, and aggregators;
- (e) The total credits sold or transferred; and
- (f) The total credits retired within the WFRS to meet the compliance obligation per WAC 173-424-540.
- (3) All pending credit transfers must be completed prior to submittal of the annual compliance report.
- (4) **Correcting a previously submitted report.** A regulated party, credit generator, or aggregator may ask ecology to reopen a previously submitted quarterly or annual compliance report for corrective edits and resubmittal. The requestor must submit an "unlock report request form" within the WFRS. The requestor is required to provide justification for the report corrections and must indicate the specific corrections to be made to the report. Pursuant to WAC 173-424-510 (5)(c), no credits may be claimed, and no deficits may be eliminated, retroactively for a quarter for which the quarterly reporting deadline has passed. Each submitted request is subject to ecology review and approval. Ecology approval of a corrected report does not preclude enforcement based on misreporting.

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PART 5 - DEMONSTRATING COMPLIANCE

NEW SECTION

WAC 173-424-500 Demonstrating compliance. (1) **Compliance demonstration.** Each regulated party must meet its compliance obligation for the compliance period by demonstrating through submission of its annual compliance report that it possessed and has retired a number of credits from its account that is equal to its compliance obligation calculated under subsection (2) of this section.

(2) **Calculation of compliance obligation.** Ecology calculates a regulated party's compliance obligation as the sum of deficits generated in the compliance period plus deficits carried over from the prior compliance period, represented in the following equation:

Compliance Obligation = Deficits Generated + Deficits Carried Over

(3) **Calculation of credit balance.**

(a) Definitions. For the purpose of this section:

- (i) Deficits generated are the total deficits generated by the regulated party in the current compliance period;
- (ii) Deficits carried over are the total deficits carried over by the regulated party from the previous compliance period;
- (iii) Credits generated are the total credits generated by the regulated party in the current compliance period;

(iv) Credits acquired are the total credits acquired by the regulated party in the current compliance period from other regulated parties, credit generators, and aggregators, including carryback credits;

(v) Credits carried over are the total credits carried over by the regulated party from the previous compliance period;

(vi) Credits retired are the total credits retired by the regulated party within the WFRS for the current compliance period;

(vii) Credits sold are the total credits sold by, or otherwise transferred from, the regulated party in the current compliance period to other regulated parties, credit generators, and aggregators; and

(viii) Credits on hold are the total credits placed on hold due to enforcement or an administrative action. While on hold, these credits cannot be used for meeting the regulated party's compliance obligation.

(b) A regulated party's credit balance is calculated using the following equation:

$$\text{Credit Balance} = (\text{Credits Gen} + \text{Credits Acquired} + \text{Credits Carried Over}) - (\text{Credits Retired} + \text{Credits Sold} + \text{Credits on Hold})$$

(4) **Small deficits.** At the end of a compliance period, a regulated party that has a net deficit balance may carry forward a small deficit to the next compliance period without penalty. A small deficit exists if the amount of credits the regulated party needs to meet its compliance obligation is five percent or less than the total amount of deficits the regulated party generated for the compliance period. Carrying forward a small deficit under this subsection is not allowed for more than two consecutive years.

(5) **Extended credit acquisition period.** A regulated party may acquire carryback credits between January 1st and April 30th to be used for meeting its compliance obligation for the prior compliance period. A regulated party must complete all carryback credit transfers in the WFRS prior to submitting their annual report, but no later than April 30th, in order for them to be valid for meeting the compliance obligation for that annual report's compliance period.

(6) **Nonsmall deficit.** Regulated parties who do not demonstrate compliance under subsection (1) of this section and whose deficit is not small as defined in subsection (4) of this section may demonstrate compliance through participation in the credit clearance market under WAC 173-424-570.

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NEW SECTION

WAC 173-424-510 Credit and deficit basics. (1) Carbon intensities.

(a) Except as provided in (b), (c), or (d) of this subsection, regulated parties, credit generators, and aggregators must use a carbon intensity approved by ecology under WAC 173-424-610 for calculating credits and/or deficits.

(b) If a regulated party, credit generator, or aggregator has an ecology-approved provisional carbon intensity under WAC 173-424-610(6), the regulated party, credit generator, or aggregator must use the provisional carbon intensity in calculating credits and/or deficits.

(c) If a regulated party, credit generator, or aggregator has ecology approved temporary carbon intensity under WAC 173-424-610(8), the regulated party, credit generator, or aggregator must use the temporary carbon intensity in calculating credits and/or deficits for the period which it has been approved, unless ecology has subsequently approved a permanent carbon intensity for that fuel.

(d) If a registered party purchases a blended finished fuel and the seller does not provide carbon intensity information, then the registered party must:

(i) Use the applicable substitute fuel pathway code in Table 7 under WAC 173-424-900 or otherwise ecology approved and posted on its website under WAC 173-424-610(11) if the fuel is:

- (A) Exported;
- (B) Not used for transportation; or
- (C) Used in an exempt fuel use; and

(ii) Use the weighted average of the applicable substitute fuel pathway codes as described in (d)(i) of this subsection for the fossil fuel and biofuel or biofuels components, if the finished fuel blend is not listed.

(2) **Fuel quantities.** Regulated parties, credit generators, and aggregators must express fuel quantities in the unit of fuel for each fuel.

(3) **Compliance period.** The annual compliance period is January 1st through December 31st of each year, except the initial compliance period is January 1, 2023, through December 31, 2024. Registered entities can generate and transact credits during the initial compliance period.

(4) **Metric tons of CO₂ equivalent.** Regulated parties, credit generators, and aggregators must express credits and deficits to the nearest whole metric ton of carbon dioxide equivalent.

(5) **Deficit and credit generation.**

(a) Credit generation. A clean fuel credit is generated when:

(i) The fuel is produced, imported, or dispensed for use in Washington, as applicable, and the carbon intensity of the fuel approved for use under WAC 173-424-600 through 173-424-630 is less than the clean fuel standard for:

(A) Gasoline and gasoline substitutes in Table 1 under WAC 173-424-900; or

(B) Diesel fuel and diesel substitutes in Table 2 under WAC 173-424-900.

(ii) A valid and accurate quarterly report is issued in the WFRS.

(b) Deficit generation. A clean fuel deficit is generated when:

(i) Fuel is produced, imported, or dispensed for use in Washington, as applicable, and the carbon intensity of the fuel approved for use under WAC 173-424-600 through 173-424-630 is more than the clean fuel standard for:

(A) Gasoline and gasoline substitutes in Table 1 under WAC 173-424-900; or

(B) Diesel fuel and diesel substitutes in Table 2 under WAC 173-424-900.

(ii) Deficits are generated when a valid and accurate quarterly report is issued in the WFRS.

(c) No credits may be generated or claimed for any transactions or activities occurring in a quarter for which the quarterly reporting deadline has passed, unless the credits are being generated for residential charging of electric vehicles.

(6) **Mandatory retirement of credits.** When filing the annual report at the end of a compliance period, a registered party that possesses credits must retire a sufficient number of credits such that:

- (a) Enough credits are retired to completely meet the registered party's compliance obligation for that compliance period; or
- (b) If the total number of the registered party's credits is less than the total number of the regulated party's deficits, the registered party must retire all of its credits.

(7) **Credit retirement hierarchy.** The WFRS will use the following default hierarchy to retire credits for the purposes of meeting a compliance obligation according to the following sequence:

- (a) Credits acquired or generated in a previous compliance period prior to credits generated or acquired in the current compliance period;
- (b) Credits generated in an earlier quarter before credits generated in a later quarter; and
- (c) Credits with an earlier completed transfer "recorded date" before credits with a later completed transfer "recorded date."

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NEW SECTION

WAC 173-424-520 Fuels to include in credit and deficit calculation. (1) **Fuels included.** Credits and deficits must be calculated for all regulated fuels and clean fuels that are sold, supplied, or offered for sale in Washington.

(2) **Fuels exempted.** Except as provided in subsections (3), (4), and (5) of this section, credits and deficits may not be calculated for fuels exempted under WAC 173-424-130.

(3) **Voluntary inclusion.** A regulated party, credit generator, or aggregator may choose to include in its credits and deficits calculations fuel that is sold to an exempt fuel user in Washington under WAC 173-424-130 (2)(b), provided that the credit and deficit calculation includes all fuels listed on the same invoice.

(4) **When fuels are exported from Washington:**

- (a) Any bulk quantity of fuel that is exported must be reported by the person who holds title to the fuel when it is exported;
- (b) If the exporter purchased the fuel with the compliance obligation, the exported fuels will not generate deficits or credits; and
- (c) If credits or deficits were generated and separated from the fuel through a transfer without obligation, the exporter will incur credits or deficits, as appropriate, to balance out the deficits or credits detached from the fuel.

(5) **Alternative jet fuel.** Alternative jet fuel may be reported by the producer or importer of the fuel and any registered parties that hold title to it, so long as the fuel is loaded into airplanes in Washington. If a gallon of alternative jet fuel that has been reported to the clean fuels program as imported or produced is later exported, lost, or otherwise not used for transportation it must be reported as such.

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NEW SECTION**WAC 173-424-530 Transacting credits. (1) General.**

(a) Credits are a regulatory instrument and do not constitute personal property, instruments, securities, or any other form of property.

(b) Regulated parties, credit generators, and aggregators may:

(i) Retain credits without expiration within the CFP in compliance with this division; and

(ii) Acquire or transfer credits from or to other regulated parties, credit generators, and aggregators that are registered under WAC 173-424-300.

(c) Regulated parties, credit generators, and aggregators may not:

(i) Use credits that have not been generated in compliance with this chapter; or

(ii) Borrow or use anticipated credits from future projected or planned carbon intensity reductions, except as approved by ecology under WAC 173-424-550.

(2) Credit transfers between registered parties.

(a) "Credit seller," as used in this rule, means a registered party that wishes to sell or transfer credits.

(b) "Credit buyer," as used in this rule, means a registered party that wishes to acquire credits.

(c) A credit seller and a credit buyer may enter into an agreement to transfer credits.

(d) A credit seller may only transfer credits up to the number of credits in the credit seller's WFRS account on the date of the transfer.

(3) **Credit seller requirements.** When parties wish to transfer credits, the credit seller must initiate an online "credit transfer form" provided in the WFRS and must include the following:

(a) The date on which the credit buyer and credit seller reached their agreement;

(b) The names and FEINs of the credit seller and credit buyer;

(c) The first and last names and contact information of the persons who performed the transaction on behalf of the credit seller and credit buyer;

(d) The number of credits proposed to be transferred; and

(e) The price or equivalent value of the consideration (in U.S. dollars) to be paid per credit proposed for transfer, excluding any fees. If no clear dollar value can be easily arrived at for the transfer, a price of zero must be entered and a qualitative description of the transaction's valuation must be entered in the seller's notes field.

(4) **Credit buyer requirements.** Within 10 days of receiving the "credit transfer form" from the credit seller in the WFRS, the credit buyer must confirm the accuracy of the information therein and may accept the credit transfer by signing and dating the form using the WFRS.

(5) **Voiding credits.** If the credit buyer and credit seller have not fulfilled the requirements of subsections (3) and (4) of this section within 20 days of the seller initiating the credit transfer, the transaction will be voided. If a transaction has been voided, the credit buyer and credit seller may initiate a new credit transfer.

(6) **Aggregator.** An aggregator may only act as a credit seller or credit buyer if that aggregator:

(a) Has an approved and active registration under WAC 173-424-300;

(b) Has an account in the WFRS; and

(c) Has an approved aggregator designation form from a regulated party or credit generator for whom the aggregator is acting in any given transaction.

(7) **Illegitimate credits.**

(a) A registered party must report accurately when it submits information into the WFRS. If inaccurate information is submitted that results in the generation of one or more credits when such an assertion is inconsistent with the requirements of WAC 173-424-510 through 173-424-540, or a party's submission otherwise causes credits to be generated in violation of the requirements of this chapter, those credits are illegitimate and invalid. If ecology determines that one or more credits that a party has generated are illegitimate credits, then:

(i) If the registered party that generated the illegitimate credits still holds them in its account, ecology will cancel those credits;

(ii) If the registered party that generated the illegitimate credits has retired those credits to meet its own compliance requirement or if it has transferred them to another party, the party that generated the illegitimate credits must retire an approved credit to replace each illegitimate credit; and

(iii) The party that generated the illegitimate credits is also subject to enforcement for the violation, as deemed appropriate in ecology's discretion.

(b) A registered party that has acquired one or more illegitimate credits, but was not the party that generated the illegitimate credits:

(i) When the initial generator of the illegitimate credits has not retired approved credits in place of the illegitimate credits and ecology determines that that initial generator is unlikely to be able to do so, then the party that has acquired such credits may have those credits canceled by ecology if the party still holds the credits in its account, or if the party has used such illegitimate credits to meet its own compliance requirement, then ecology may require the party to retire an approved credit to replace each such illegitimate credit that it retired to meet its compliance obligation;

(ii) May be subject to enforcement at ecology's discretion, unless ecology determines that the party from whom the credits were acquired engaged in false, fraudulent, or deceptive trading practices.

(8) **Prohibited credit transfers.** A credit transfer involving, related to, in service of, or associated with any of the following is prohibited:

(a) Fraud, or an attempt to defraud or deceive using any device, scheme, or artifice;

(b) Either party employed any unconscionable tactic in connection with the transfer;

(c) Any false report, record, or untrue statement of material fact or omission of a material fact related to the transfer or conditions that would relate to the price of the credits being transferred. A fact is material if it is reasonably likely to influence a decision by another party or by the agency;

(d) Where the intended effect of the activity is to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent competition;

- (e) A conspiracy in restraint of trade or commerce; or
- (f) An attempt to monopolize, or combine or conspire with any other person or persons to monopolize.

[]

NEW SECTION

WAC 173-424-540 Calculating credits and deficits. (1) **General credit or deficit calculation method.** Except as provided in subsections (2) and (3) of this section, credit and deficit generation must be calculated for all fuels included in WAC 173-424-520:

(a) Using credit and deficit basics as directed in WAC 173-424-510;

(b) Calculating energy in mega joules by multiplying the amount of fuel by the energy density of the fuel in Table 3 under WAC 173-424-900;

(c) Calculating the adjusted energy in mega joules by multiplying the energy in mega joules from (b) of this subsection by the energy economy ratio of the fuel listed in Table 4 under WAC 173-424-900 or as approved by ecology under WAC 173-424-620, as applicable;

(d) Calculating the carbon intensity difference by subtracting the value in (d)(i) from (ii) of this subsection:

(i) The fuel's carbon intensity as approved under WAC 173-424-600 through 173-424-630, adjusted for the fuel application's energy economy ratio as listed in Table 4 under WAC 173-424-900 or as approved under WAC 173-424-620 as applicable;

(ii) The clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under WAC 173-424-900 or diesel fuel and diesel substitutes listed in Table 2 under WAC 173-424-900, as applicable;

(e) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in mega joules in (c) of this subsection by the carbon intensity difference in (d) of this subsection;

(f) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in (e) of this subsection by 1,000,000; and

(g) Determining under WAC 173-424-510(5) whether credits or deficits are generated.

(2) **Calculation method for fixed guideway vehicles and electric forklifts.** For electricity used to power fixed guideway vehicles on track placed in service prior to 2023 and forklifts from model year 2022 and earlier, credit and deficit generation must be calculated by:

(a) Using credit and deficit basics as directed in WAC 173-424-510;

(b) Calculating energy in mega joules by multiplying the amount of fuel by the energy density of the fuel in Table 3 under WAC 173-424-900;

(c) Calculating the carbon intensity difference by subtracting (c)(i) from (ii) of this subsection:

(i) The fuel's carbon intensity as approved under WAC 173-424-600 through 173-424-630, adjusted for the fuel application's energy economy ratio listed in Table 4 under WAC 173-424-900 as applicable;

(ii) The clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under WAC 173-424-900 or diesel fuel and diesel substitutes listed in Table 2 under WAC 173-424-900, as applicable;

(d) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in mega joules in (b) of this subsection by the carbon intensity difference in (c) of this subsection;

(e) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in (d) of this subsection by 1,000,000; and

(f) Determining under WAC 173-424-600(5) whether credits or deficits are generated.

(3) **Residential electric vehicle charging.** For electricity used in residential charging of electric vehicles, credit calculations must be based on the total electricity dispensed (in kilowatt hours) to vehicles, measured by:

(a) The use of direct metering (either submetering or separate metering) to measure the electricity directly dispensed to all vehicles at each residence; or

(b) For residences where direct metering has not been installed, ecology will calculate the total electricity dispensed as a transportation fuel based on analysis of the total number of BEVs and PHEVs in a utility's service territory based on Washington state department of licensing records. Ecology will perform this analysis at least twice a year and issue credits based on it. Ecology will select one of the following methods for estimating the amount of electricity charged based on its analysis of which is more accurate and feasible at the time it is performing the analysis:

(i) An average amount of electricity consumed by BEVs and PHEVs at residential chargers, based on regional or national data; or

(ii) An analysis of the average electric vehicles miles traveled by vehicle type or make and model, which compares the total amount of estimated charging for those electric vehicle miles traveled with the total reported charging in those territories in order to determine the amount of unreported charging that can be attributed to residential charging. The analysis may be done on a utility territory specific basis.

(iii) Using government published information on average miles per gallon equivalent data by vehicle type or make and model, average annual vehicle miles traveled, and electric energy consumed by BEVs and PHEVs.

(c) If ecology determines after the issuance of residential electric vehicle credits that the estimate under (b) of this subsection contained a significant error that led to one or more credits being incorrectly generated, the error will be corrected by withholding an equal number of credits to the erroneous amount from the next generation of residential electric vehicle credits.

(d) A credit generator or aggregator may propose an alternative method, subject to the approval of ecology upon its determination that the alternative method is more accurate than either of the methods described in (b) of this subsection.

(e) Credits generated under this subsection will be calculated by ecology under subsection (1) of this section using the estimated amount of electricity under (b) of this subsection and issues at least twice per year into the WFRS account of the utility, its designated aggregator, or the backstop aggregator within three months of the close of that year.

(4) **Incremental credits.** In calculating incremental credits for actions that lower the carbon intensity of electricity, the credit calculations must be performed based on subsection (1) of this section, except that the carbon intensity difference is calculated based

on the carbon intensity of the renewable electricity and the carbon intensity used to calculate the base credits for that electric vehicle or charging equipment, and consistent with the following requirements, as applicable:

(a) Incremental credits for **nonresidential charging** are generated upon the retirement of RECs that qualify under WAC 173-424-630(5) by the credit generator, or its aggregator, or by another entity on their behalf. For credit generators and their aggregators, RECs must be retired prior to or at the same time as the submittal as the quarterly report where the charging is being reported and REC retirement records must be submitted with the quarterly report as supplemental documentation. RECs may be retired by another entity on behalf of the credit generator or aggregator for their electric vehicle charging so long as it is clearly documented and that documentation is submitted with the quarterly report.

(b) For incremental credits generated using a utility renewable electricity product or power purchase agreement, evidence that the chargers were covered by such a product must be submitted at least annually along with a quarterly report. Upon request by ecology, any entity using a power purchase agreement or a utility renewable electricity product must produce evidence that the charging equipment was covered by that agreement or product for all time periods when the entity was claiming incremental credits.

(c) Incremental credits are generated when the registered entity retires RECs on behalf of nonresidential electric vehicle charging.

(d) Incremental credits for residential charging are generated by a utility or its aggregator when RECs are retired on behalf of that charging, or when a utility demonstrates to ecology that EVs are being charged by customers enrolled in its utility renewable electricity products.

[]

NEW SECTION

WAC 173-424-550 Advance crediting. (1) General provisions.

(a) Advance credits are used to decarbonize the transportation sector pursuant to RCW 70A.535.050(3).

(b) All advance credits represent actual reductions of greenhouse gas emissions against the clean fuel standards.

(c) Vehicles must be registered in Washington to be eligible to earn advance credits.

(2) Eligibility to generate advance credits.

(a) Washington state department of transportation or other public entities that are implementing state transportation investment projects and programs to be funded through an omnibus transportation appropriations act may apply for advance credit, provided that:

(i) The projects and programs reduce greenhouse gas emissions and decarbonize the transportation sector.

(ii) The projects and programs that are eligible to generate credits may apply for advance credits.

(b) For the purposes of this subsection, public entities include, but are not limited to:

(i) Public transit agencies;

- (ii) Political subdivisions or municipal corporations of the state of Washington;
 - (iii) Tribal governments;
 - (iv) School districts;
 - (v) Companies under contract to provide services to a political subdivision of the state of Washington or a Washington school district may apply if the political subdivision endorses the application, and the vehicles covered by the application are intended to provide contracted services to the public.
- (c) The entities identified in this subsection may apply to earn advance credits for the purchase and use of the following types of investments:
- (i) Medium and heavy-duty vehicles and infrastructure; and
 - (ii) Light-duty vehicles and infrastructure if they are part of an organization's plan to fully electrify its light-duty fleet within a 15-year time period.
 - (iii) Electrification of the state ferry fleet;
 - (iv) Public transit infrastructure; and
 - (v) Other types of investments that ecology may identify to incentivize effective GHG emissions reduction activities that can normally generate credit through the clean fuels program.
- (3) **Applications for advance credits.** All of the following requirements apply to applications for advance credits:
- (a) Applications for advance crediting will be accepted by ecology at least once per year from entities eligible to apply under subsection (2) of this section. Ecology will notify stakeholders when applications will be accepted and will provide application materials and guidance about how it will process and consider applications.
 - (b) Applicants must supply the following information to ecology:
 - (i) A letter describing the activities or purchases that they want to receive advance crediting for, and the estimated time frames for when those projects and programs will be put into useful service;
 - (ii) A detailed estimate of the potential credit generation from the investment projects or programs that they want to receive advance crediting for;
 - (iii) A detailed monitoring mechanism to ensure the accuracy of the credit generation from the investment projects or programs until it has exited the payback period;
 - (iv) Information on the location of the investment projects and programs and all materials and energy inputs and emissions that is used to estimate the potential credit generation;
 - (v) A proposed number of credits to be advanced for each vehicle; and
 - (vi) An attestation that the applicant will remain the owner or lessee of the credit generating units through the implementation of the investment projects and programs until the vehicle has paid back the advance credits, or that, if the credit generating unit is sold prior to the end of the payback period, that the applicant will buy and retire credits against the remaining unearned amount.
 - (c) Ecology may request additional documentation from an applicant prior to making a decision on the application. Not submitting the requested documentation can be reason to deny the application without prejudice.
- (4) **Approval of advance credits.** If ecology determines that an application for advance credits meets the requirements of subsections (2) and (3) of this section, then ecology will negotiate an agreement

with the applicant to issue advance credits consistent with this rule and based on all of the following considerations and requirements:

- (a) A clear and objective milestone for issuing advance credits that represents when the credit generating unit implemented through the investment projects and programs covered by the application are placed into useful service to generate credits;
- (b) The total number of credits being advanced;
- (c) The length of the payback period, which must be at least one year longer than the number of years of credits that will be advanced;
- (d) An attestation from the applicant that it understands that the advanced credits must represent real reductions and that if the activity covered by the agreement does not generate sufficient credits within the payback period that it is responsible for retiring a sufficient number of credits to make up the difference. The attestation must also include a statement that the applicant understands that it is responsible for making up the difference in credits if it sells or relocates covered credit generating units outside of Washington; and
- (e) An attestation from the applicant that it will ensure that actual credits from the investment project or program are not generated from other credit generating units until the credits have been paid back.

(5) **Issuance of advance credits.** If ecology approves an application and has executed an agreement with the applicant under subsection (4) of this section, then:

- (a) Ecology will issue advance credits to the applicant only after the vehicles or equipment are placed into useful service as agreed to under subsection (4) of this section;
- (b) Credits will only be issued to the applicant named in the agreement; and
- (c) Ecology may advance no more than six years of credits for any single investment project or program.

(6) **Payback period.** Advance credits issued under this rule are subject to the following requirements:

- (a) The payback period for the investment project or program will be specified in the agreement between ecology and the applicant, except that the payback period may not exceed nine years. The payback period must be at least one year longer than the number of years of credits advanced to the applicant.
- (b) In the event that the number of advance credits was not realized during the payback period, the recipient is responsible for acquiring and retiring sufficient credits to ensure the environmental integrity of the program.
- (c) If the ownership of an investment project or program is transferred to another entity prior to the close of the payback period, the applicant is responsible for retiring credits against the volume of advanced credits that has not yet been covered by actual credit generation.

(7) **Reporting requirements.** An applicant that has received advance credits under this rule:

- (a) Must file quarterly reports to ecology showing the amount of credit generating activities into the investment project or program covered by the agreement; and
- (b) May not generate additional credits for that project until the advance credits are paid back using credits generated from that project or other banked credits. Ecology and the applicant will monitor the amount of credits that would have been generated to determine

when an equal number of credits has been generated to the number of credits advanced.

(8) **Overall limitation on advance credits.** Ecology may not issue more advance credits in any one calendar year than an amount equal to five percent of the total number of deficits generated in the prior compliance year. In considering applications under this section, ecology will process applications based on the criteria ecology develops in consultation with the Washington state department of transportation towards meeting the goals of the clean fuels program.

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NEW SECTION

WAC 173-424-560 Generating and calculating credits for ZEV fueling infrastructure pathways. (1) Hydrogen refueling infrastructure (HRI) pathways.

(a) HRI pathway eligibility. A hydrogen station owner may submit an application to certify an HRI pathway subject to the following eligibility conditions:

(i) The proposed HRI must be located in Washington and open to the public;

(ii) The HRI pathway application must be received on or before December 31, 2030; and

(iii) The following stations are not eligible for HRI crediting:

(A) Any station receiving or spending funds pursuant to any settlement related to any Washington or federal regulation enforcement; or

(B) Any station built as a required mitigation measure pursuant to the State Environmental Policy Act.

(b) HRI application requirements. For each hydrogen refueling station, the station owner must submit an application in the WFRS containing the following information:

(i) Name and address of the owner of the proposed station.

(ii) Contact person for the owner entity.

(A) Name;

(B) Title or position;

(C) Phone number;

(D) Mobile phone number;

(E) Email address.

(iii) Name, street address, latitude, longitude, and a location description for the proposed station.

(iv) Expected daily permitted hours of operation for the station. If the daily permitted hours are less than 24 hours, the applicant must provide documentation from a permitting authority demonstrating that daily permitted hours for the station are limited.

(v) The station nameplate refueling capacity for the permitted hours of operation calculated using the HySCapE 1.0 model or an equivalent model or capacity estimation methodology approved by ecology. The applicant must submit a completed model with the application. The application for medium and heavy-duty vehicles shall not be accepted until HySCapE model or equivalent model or capacity estimation methodology is approved by ecology for these vehicle size categories.

(vi) The HRI refueling capacity for the station is the nameplate refueling capacity determined in (b) (v) of this subsection or the following, whichever is less:

(A) For light-duty vehicle stations: 800 kg/day, out of which 250 kg/day is eligible for capacity crediting; or

(B) For medium and heavy-duty vehicles station: 3000 kg/day, out of which 1500 kg/day is eligible for capacity crediting.

(vii) The number of dispensing units at the station.

(viii) Expected source(s) of hydrogen, CI value(s), and method(s) used for delivery.

(ix) Expected date that the station will be operational.

(x) Justification for the station location and how the proposed location contributes in developing a hydrogen refueling station network to support ZEV adoption. The justification must include:

(A) The role(s) the station location will play in the developing hydrogen station network;

(B) The means by which the station contributes to robust growth of the statewide hydrogen fueling network;

(C) Demonstration of potential for consistent and calculable hydrogen demand;

(D) Demonstration that the proposed station capacity is an appropriate capacity based on documented, verifiable, and reproducible projections of daily hydrogen demand at the proposed location;

(E) Calculation of the projected trajectory of annualized average station utilization (calculated as annual throughput divided by annual station capacity) at the proposed location; and

(F) Demonstration that the proposed station location has been discussed with local authorities having jurisdiction and no early roadblocks have been identified.

(xi) A signed attestation letter from the applicant attesting to the veracity of the information in the application packet. The attestation letter must be submitted as an electronic copy, be on company letterhead, be signed by an officer of the applicant with authority to attest to the veracity of the information in the application and to sign on behalf of the applicant, be from the applicant and not from an entity representing the applicant (such as a consultant or legal counsel), and include the following attestation:

I, an authorized representative of _____ (applicant entity), attest to the veracity of the information submitted as part of the Hydrogen Refueling Infrastructure (HRI) application, attest that the proposed FSE is not receiving funds pursuant to any enforcement settlement related to any Washington or Federal regulation, and declare that the information submitted accurately represents the anticipated and intended design and operation of the hydrogen refueling station. Further, I understand and agree to each of the statements in the attached application. I am a duly authorized officer with authority to attest to the veracity of the information in the application and to sign on behalf of the respective applicant.

I understand that the following information in the HRI application will be made available on the Washington CFP website: Name of the Applicant Entity, Station Name, Station Address, Number of Dispensing Units, HRI Refueling Capacity, and Effective Date Range for HRI Crediting.

By submitting this application, _____ (applicant entity) accepts responsibility for the information herein provided to Ecology. I certify under penalty of perjury under the laws of

the Washington State that I have personally examined, and am familiar with, the statements and information submitted in this document. I certify that the statements and information submitted to Ecology are true, accurate, and complete.

Signature	Print Name & Title	Date
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(xii) CBI must be designated and a redacted version of any submitted documents designated to include CBI must be provided according to the ecology process consistent with the Washington state Public Records Act (chapter 42.56 RCW).

(xiii) An application and supporting documents must be submitted electronically via WFRS unless ecology has approved or requested in writing another format.

(c) Application approval process.

(i) The HRI application must be approved by ecology before the station owner may generate hydrogen refueling infrastructure credits. If estimated potential HRI credits from all approved stations exceed two and one-half percent of deficits in the most recent quarter, ecology will not approve additional HRI pathways and will not accept additional applications until estimated potential HRI credits are less than two and one-half percent of deficits. HRI applications will be evaluated for approval on a first-come first-served basis.

Estimated potential HRI credits will be calculated using the following equation:

$$Credits_{HRI}^{Potential} = Credits_{HRI}^{Prior\ Qtr} \times \frac{Cap_{HRI}^{Approved}}{Cap_{HRI}^{Operational}}$$

Where:

- $Credits_{HRI}^{Potential}$ means the estimated potential HRI credits from all approved HRI stations;
- $Credits_{HRI}^{Prior\ qtr}$ means the total HRI credits generated by operational stations in the prior quarter;
- $Cap_{HRI}^{Operational}$ means the total HRI capacity of stations that were operational in the prior quarter; and
- $Cap_{HRI}^{Approved}$ means the total HRI capacity of all approved stations, both operational and nonoperational.

(ii) After receipt of an application designated by the applicant as ready for formal evaluation, ecology will advise the applicant in writing either that:

(A) The application is complete; or

(B) The application is incomplete, in which case ecology will identify which requirements of (b) of this subsection have not been met.

(I) The applicant may submit additional information to correct deficiencies identified by ecology.

(II) If the applicant is unable to achieve a complete application within 180 days of ecology's receipt of the original application, the application will be denied on that basis, and the applicant will be informed in writing.

(C) At any point during the application evaluation process, ecology may request in writing additional information or clarification from the applicant.

(iii) Ecology will not approve an application if it determines, based upon the information submitted in the application and any other available information, that the application does not meet requirements in (a) and (b) of this subsection. Ecology may reject an application if satisfactory justification is not provided for station location pursuant to (b)(x) of this subsection. If ecology does not approve the application, the applicant will be notified in writing and the basis for the disapproval shall be identified.

(iv) If ecology determines that the applicant and application have met all requirements for approval pursuant to (a) and (b) of this subsection, ecology will approve the application and provide an approval summary on ecology's CFP website including the station location and assigned identifier, number of dispensing units, HRI refueling capacity, and effective date range for HRI pathway crediting.

(v) Crediting period. HRI crediting is limited to 15 years starting with the quarter following ecology approval of the application.

(d) Requirements to generate HRI credits. To generate credits using HRI pathways the station must meet the following conditions. The station owner must maintain, and submit to ecology upon request, records demonstrating adherence to these conditions.

(i) The station owner must update the HRI refueling capacity if different from the design HRI refueling capacity provided in the application. Any station design or operational information that deviates from the original application must be declared to ecology, and a new attestation must be submitted pursuant to (b) of this subsection.

(ii) The station must be open to the public, meaning that no obstructions or obstacles exist to preclude vehicle operators from entering the station premises, no access cards or personal identification (PIN) codes are required for the station to dispense fuel, and no formal or registered station training shall be required for individuals to use the hydrogen refueling station.

(iii) The station uses a public point of sale terminal that accepts major credit and debit cards.

(iv) The station uses a system that verifies the availability of the station for refueling, similar to being connected with the station operational status system (SOSS), and:

(A) The station passed final inspection by the appropriate authority having jurisdiction and has a permit to operate.

(B) The station owner has fully commissioned the station, and has declared it fit to service retail FCV drivers. This includes the station owner's declaration that the station meets an appropriate SAE fueling protocol.

(C) At least three OEMs have confirmed that the station meets protocol expectations, and their customers can fuel at the station.

(D) All dispensers installed in the hydrogen refueling station have undergone a review for suitability of the type of station by the Washington state department of agriculture weights and measures program and have either a temporary use permit or a certificate of approval issued by the Washington state department of agriculture.

(v) The FSE registration must be completed pursuant to WAC 173-424-300 (1)(g) and the quantity of dispensed hydrogen must be reported as required in WAC 173-424-420.

(vi) Dispensed hydrogen meets the following CI and renewable content requirements on a company-wide, weighted average basis. Ecology will consider all the stations registered by an entity with a unique FEIN in the WFRS for calculating the company-wide weighted average CI and renewable content.

(A) CI of 120 gCO₂e/MJ or less; and

(B) Renewable content of 50 percent or greater.

(vii) The station must be operational within 24 months of application approval. If the applicant fails to demonstrate the operability within 24 months of approval, then the application will be canceled. The applicant can reapply for the same station eligible only for nine years of crediting.

(viii) The estimated cumulative value of HRI credits generated for the FSE in the prior quarter must be less than the difference between the total capital expenditure reported pursuant to (f) (iii) (A) of this subsection and the total grant revenue or other funding reported pursuant to (f) (iii) (E) of this subsection in the prior quarter.

(A) The estimated value of FCI credits, for the purpose of this determination, shall be calculated using the number of FCI credits generated for the FSE in the quarter and the average CFP credit price for that quarter published on ecology's CFP website.

(B) The cumulative credit value generated for each FSE will be tracked as the sum of all quarterly credit values in constant-dollar for the year in which the HRI application was approved using an annual discount rate of 10 percent.

(C) The estimated value calculated under this provision will be made available only to the respective reporting entity in WFRS and will not be published on ecology's CFP website.

(D) This will not affect the reporting entity's ability to generate non-FCI CFP credits for the electricity dispensed at the FSE.

(e) Calculation of HRI credits. HRI credits will be calculated using the following equation:

$$Credits_{HRI}(MT) = (CI_{standard}^{XD} \times EER - CI_{HRI}) \times E_{H2} \times (Cap_{HRI} \times N \times UT - H2_{disp}) \times C$$

Where:

- $CI_{standard}^{XD}$ is the average carbon intensity standard of gasoline (XD = "gasoline") or diesel (XD = "diesel") for a given year as provided in Table 1 of WAC 173-424-900, depending on the fuel it replaces;
- EER is the dimensionless Energy Economy Ratio for H2/FCV relative to gasoline or diesel as listed in Table 4 of WAC 173-424-900, depending on the fuel it replaces;
- CI_{HRI} is the carbon intensity used for HRI crediting. Company-wide weighted average CI for dispensed hydrogen during the quarter or 0 g/MJ, whichever is greater;
- E_{H2} is the energy density for hydrogen in MJ/kg as listed in Table 4 of WAC 173-424-900;
- Cap_{HRI} is the HRI refueling capacity for the station (kg/day);
- UT is the uptime multiplier which is the percentage of time that the station is available to refuel a vehicle up to 90 percent of state of charge during the quarter, in a similar manner as reported in SOSS;
- $H2_{disp}$ is the quantity of hydrogen dispensed during the quarter (kg);
- N is the number of days during the quarter;
- C is a factor used to convert credits to units of metric tons from gCO₂e and has the value of:

$$C = 1.0 \times 10^{-6} \frac{(MT)}{(gCO_2e)}$$

(f) Reporting and recordkeeping requirements. The following must be reported to ecology each quarter as set forth in WAC 173-424-420

before credits will be issued to the WFRS account associated with an approved HRI pathway.

(i) Station availability. This is the percentage of hours the station is available for fueling during the quarter relative to the permitted hours of operation for the station. Any period of time that a portion of the station capacity is not available will count as a prorated amount of station availability, proportional to the percentage of the station capacity that remains available for fueling for this period of time.

(ii) Company-wide, weighted average renewable content (percent) for dispensed hydrogen.

(iii) Cost and revenue data. Provide a quarterly account of the following costs borne and revenues received by the station owner up through the most recent reporting quarter per station.

(A) Total capital expenditures (\$)

(B) Total delivered cost (\$) of hydrogen and average delivered cost (\$/kg) for hydrogen

(C) Total maintenance costs (\$)

(D) Total land rental cost (\$)

(E) Total grant revenue or other external funding received towards capital expenditures (\$)

(F) Total grant revenue or other external funding received towards operational and maintenance expenditures (\$)

(G) Total revenue (\$) received from sale of hydrogen and average retail price (\$/kg) for hydrogen sold

(H) Other operational expenditures (\$)

(g) Applications for expanded HRI refueling capacity. Station owners who expand the capacity of a station and that is already generating HRI credits under the CFP must submit an application to ecology to generate additional credits based on the updated capacity. Applications for expanded station capacity must be received before December 31, 2030, and do not extend the effective date range for the HRI crediting specified upon initial project approval in (c)(iv) of this subsection. The application must include the following elements:

(i) In order to be eligible to generate HRI credits for expanded capacity, the station owner must demonstrate that station throughput in a reporting quarter is greater than or equal to 50 percent of the original approved HRI refueling capacity multiplied by the number of days in the quarter, assuming 100 percent uptime.

(ii) Updated nameplate refueling capacity and updated HRI refueling capacity.

(iii) If the sources of hydrogen and delivery methods stated in the original HRI application will change as a result of the added capacity, the station owner must disclose the new hydrogen sources and delivery methods.

(iv) The station owner must maintain records demonstrating that any new equipment added as a result of the expansion in capacity, including storage and fueling dispensers, meet the requirements in WAC 173-424-560(1).

(2) **DC fast charging infrastructure (FCI) pathways.**

(a) FCI pathway eligibility. An FSE owner may submit an application to receive an FCI pathway subject to the following eligibility conditions:

(i) The proposed FSE must be located in Washington and open to the public for charging.

(ii) Upon an individual applicant's estimated potential FCI credits, calculated pursuant to (d)(ii) of this subsection, exceeding 0.5

percent of the deficits in the prior quarter, each additional site applied for by the applicant must meet the following requirements:

- (A) Charging equipment at the site must support at least two of the following three fast charging connectors: CHAdeMO, SAE CCS, and Tesla;
- (B) The site must have at least three quarters of all FSE subject to this provision with SAE CCS connector protocol; and
- (C) The charging equipment owner must have at least one adaptor for all three charging connector types, if the adaptor technology is available.
 - (iii) The FCI pathway application must be received on or before December 31, 2029.
 - (iv) The following FSE are not eligible for FCI crediting:
 - (A) Any FSE that is permitted to operate prior to January 1, 2023; or
 - (B) Any FSE built as a required mitigation measure pursuant to the State Environmental Policy Act (SEPA).
 - (v) Each FSE must have a minimum nameplate power rating of 50 kW.
 - (vi) Each FSE must be networked and capable of monitoring and reporting its availability for charging.
 - (b) FCI application requirements. The applicant must submit an application in the WFRS containing the following information:
 - (i) Name and address of the owner of the proposed FSE.
 - (ii) Contact person for the owner entity.
 - (A) Name;
 - (B) Title or position;
 - (C) Phone number;
 - (D) Mobile phone number;
 - (E) Email address.
 - (iii) Name, street address, latitude, longitude, and a location description for each proposed FSE site.
 - (iv) The number of FSEs.
 - (v) The nameplate power rating (kW), connector type(s), and model for each FSE.
 - (A) The total nameplate power rating for all FSE at a single site claiming FCI credit under this provision cannot exceed 1,500 kW.
 - (B) Notwithstanding (b) (v) (A) of this subsection, upon request, ecology may approve an application with total nameplate power rating for all FSE at a single site up to 3,600 kW. The total number of FSE at sites with total nameplate power rating greater than 1,500 kW cannot exceed 10 percent of total FSE approved under FCI pathways. The applicant must provide justification for requesting a total power rating greater than 1,500 kW at the given site.
 - (vi) The effective simultaneous power rating (kW) for each FSE calculated using the equation below. The effective simultaneous power rating must be at least 50 percent of the nameplate power rating for each FSE.

$$P_{Sim}^i = P_{NP}^i \times \frac{P_{Sim}^{Tot}}{\sum_{i=1}^n P_{NP}^i}$$

Where:

- P_{Sim}^i is the simultaneous power rating (kW) for FSE i;
- P_{NP}^i is the nameplate power rating (kW) for FSE i;

- P_{Sim}^{Tot} is the maximum total power (kW) that can be delivered to all FSEs at a single site when they are operated simultaneously; and
- n is the number of FSEs at a single site.

(vii) The FCI charging capacity for each FSE calculated using the following equation:

$$Cap_{FCI}^i = 43 \times (P_{FCI}^i)^{0.45}$$

Where:

- Cap_{FCI}^i is the FCI charging capacity (kWh/day) for the FSE i; and
- P_{FCI}^i is the nameplate power rating for the FSE or 350kW.

(viii) Expected date that the FSE will be operational.

(ix) Expected daily permitted hours of operation for the site. If the daily permitted hours are less than 24 hours, the applicant must provide documentation from a permitting authority demonstrating that daily permitted hours for the FSE are limited.

(x) A signed attestation letter from the applicant attesting to the veracity of the information in the application packet. The attestation letter must be submitted as an electronic copy, be on company letterhead, be signed by an officer of the applicant with authority to attest to the veracity of the information in the application and to sign on behalf of the applicant, be from the applicant and not from an entity representing the applicant (such as a consultant or legal counsel), and include the following attestation:

I, an authorized representative of _____ (proposed FSE owner entity), attest to the veracity of the information submitted as part of the DC Fast Charging Infrastructure (FCI) application, and declare that the information submitted accurately represents the anticipated and intended design and operation of the charging infrastructure. Further, I understand and agree to each of the statements in the attached application. I am a duly authorized officer with authority to attest to the veracity of the information in the application and to sign on behalf of the respective applicant.

I understand that the following information in the FCI application will be made available on the Washington CFP website: Name of the Applicant Entity, Site Name, Site Address, Number and Type of Charging Units, Nameplate and Effective Simultaneous Power Rating for Each Unit, and Effective Date Range for FCI Crediting

By submitting this application, _____ (applicant entity) accepts responsibility for the information herein provided to Ecology. I certify under penalty of perjury under the laws of the State of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document. I certify that the statements and information submitted to Ecology are true, accurate, and complete.

(xi) CBI must be designated and a redacted version of any submitted documents designated to include CBI must be provided according to the ecology process consistent with the Washington state Public Records Act.

(xii) An application and supporting documents must be submitted electronically via the WFRS unless ecology has approved or requested in writing another format.

(c) Application approval process.

(i) The FCI application must be approved by ecology before the applicant may generate FCI credits. If estimated potential FCI credits from all approved FSEs exceed two and one-half percent of deficits in the most recent quarter, ecology will not approve additional FCI pathways and will not accept additional applications until FCI credits are less than two and one-half percent of deficits. FCI applications will be evaluated for approval on a first-come first-served basis.

Estimated potential FCI credits will be calculated using the following equation:

$$Credits_{FCI}^{Potential} = Credits_{FCI}^{Prior\ Qtr} \times \frac{Cap_{FCI}^{Approved}}{Cap_{FCI}^{Operational}}$$

Where:

- $Credits_{FCI}^{Potential}$ means the estimated potential FCI credits from all approved FSEs;
- $Credits_{FCI}^{Prior\ qtr}$ means the total FCI credits generated by operational FSEs in the prior quarter;
- $Cap_{FCI}^{Operational}$ means the total FCI charging capacity of FSEs that were operational in the prior quarter; and
- $Cap_{FCI}^{Approved}$ means the total FCI charging capacity of all approved FSEs, both operational and nonoperational.

(ii) The estimated potential FCI credits for an individual applicant will be calculated using the same equation as above, where:

Where:

- $Credits_{FCI}^{Potential}$ means the estimated potential FCI credits from applicant's approved FSEs;
- $Credits_{FCI}^{Prior\ qtr}$ means the total FCI credits generated by the applicant for operational FSEs in the prior quarter;
- $Cap_{FCI}^{Operational}$ means the total FCI charging capacity of the applicant's approved FSEs that were operational in the prior quarter; and
- $Cap_{FCI}^{Approved}$ means the total FCI charging capacity of all the applicant's approved FSEs, both operational and nonoperational.

(iii) After receipt of an application designated by the applicant as ready for formal evaluation, ecology shall advise the applicant in writing either that:

(A) The application is complete; or

(B) The application is incomplete, in which case ecology will identify which requirements of (b) of this subsection have not been met.

(I) The applicant may submit additional information to correct deficiencies identified by ecology.

(II) If the applicant is unable to achieve a complete application within 180 days of ecology's receipt of the original application, the application will be denied on that basis, and the applicant will be informed in writing.

(C) At any point during the application evaluation process, ecology may request in writing additional information or clarification from the applicant.

(iv) Ecology shall not approve an application if it determines that the application does not meet requirements in (a) and (b) of this

subsection, based upon the information submitted in the application and any other available information. If ecology does not approve the application, the applicant will be notified in writing and the basis for the disapproval shall be identified.

(v) If ecology determines the application has met all requirements for approval pursuant to (a) and (b) of this subsection, ecology will approve the application and provide an approval summary on ecology's CFP website including the site location and FSE ID, number and type of FSE, nameplate and effective simultaneous power rating for each FSE, and effective date range for FCI pathway crediting.

(vi) Crediting period. FCI crediting is limited to five years starting with the quarter following ecology approval of the application.

(d) Requirements to generate FCI credits. To generate credits using FCI pathways the following conditions must be met. The applicant must maintain, and submit to ecology upon request, records demonstrating adherence to these conditions.

(i) The applicant must update the nameplate and effective simultaneous power rating of FSE if different from the power rating provided in the application. Any FSE design or operational information that deviates from the original application must be declared to ecology, and a new attestation must be submitted using the language in (b) in this subsection.

(ii) The FSE must be open to the public, meaning that no obstructions or obstacles exist to preclude vehicle operators from entering the FSE premises, no access cards or personal identification (PIN) codes are required for the FSE to dispense fuel, and no formal or registered equipment training shall be required for individuals to use the FSE.

(iii) The FSE that charges a fee for service must be capable of supporting a public point-of-sale method that accepts all major credit or debit cards.

(iv) The FSE passed final inspection by the appropriate authority having jurisdiction and has a permit to operate.

(v) The FSE owner has fully commissioned the FSE, and has declared it fit to service retail EV drivers.

(vi) The FSE registration must be completed pursuant to WAC 173-424-300 (1)(g) and the quantity of dispensed electricity must be reported as required in WAC 173-424-420.

(vii) The FSE must be operational within 12 months of application approval. If the applicant fails to demonstrate the operability within 12 months of approval, then the application will be canceled. The applicant can reapply for the same FSE site eligible only for two years of crediting.

(viii) The estimated cumulative value of FCI credits generated for the FSE in the prior quarter must be less than the difference between the total capital expenditure reported pursuant to subsection (1)(f)(iii)(A) of this section and the total grant revenue or other funding reported pursuant to subsection (1)(f)(iii)(E) of this section in the prior quarter.

(A) The estimated value of FCI credits, for the purpose of this determination, shall be calculated using the number of FCI credits generated for the FSE in the quarter and the average CFP credit price for that quarter published on ecology's CFP website.

(B) The cumulative credit value generated for each FSE will be tracked as the sum of all quarterly credit values in constant-dollar

for the year in which the FCI application was approved using an annual discount rate of 10 percent.

(C) The estimated value calculated under this provision will be made available only to the respective reporting entity in WFRS and will not be published on ecology's CFP website.

(D) This will not affect the reporting entity's ability to generate non-FCI CFP credits for the electricity dispensed at the FSE.

(e) Calculation of FCI credits. FCI credits will be calculated using the following equation for each FSE approved under this provision:

$$Credits_{FCI}(MT) = (CI_{standard}^{XD} \times EER - CI_{FCI}) \times C_{Elec} \times (Cap_{FCI} \times N \times UT - Elec_{disp}) \times C$$

Where:

- $CI_{standard}^{XD}$ is the average carbon intensity standard of gasoline (XD = "gasoline") or diesel (XD = "diesel") for a given year as provided in Table 1 of WAC 173-424-900, depending on the fuel it replaces;
- EER is the dimensionless Energy Economy Ratio for Electricity/BEV or PHEV relative to gasoline or diesel as listed in Table 5 of WAC 173-424-900, depending on the fuel it replaces;
- CI_{FCI} is the Washington annual utility-specific carbon intensity as listed in Table 10;
- C_{Elec} is the conversion factor for electricity as listed in Table 3 of WAC 173-424-900;
- Cap_{FCI} is the FC charging capacity (kWh/day) for the FSE;
- N is the number of days during the quarter;
- UT is the uptime multiplier which is the fraction of time that the FSE is available for charging a vehicle up to 90 percent of state of charge during the quarter;
- $Elec_{disp}$ is the quantity of electricity dispensed during the quarter (kWh);
- C is a factor used to convert credits to units of metric tons from gCO_{2e} and has the value of:

$$C = 1.0 \times 10^{-6} \frac{(MT)}{(gCO_2e)}$$

(f) Reporting and recordkeeping requirements. The following must be reported to ecology each quarter as set forth in WAC 173-424-420 before credits will be issued to the WFRS account associated with an approved FCI pathway.

(i) FSE availability. This is the percentage of hours the FSE is available for charging during the quarter relative to the permitted hours of operation for the site.

(ii) Cost and revenue data. Provide a quarterly account of the following costs borne and revenues received by the FSE owner up through the most recent reporting quarter per site.

- (A) Total capital expenditures (\$)
- (B) Total delivered cost (\$) of electricity, including demand charges, and average delivered cost (\$/kWh) for electricity
- (C) Total maintenance costs (\$)
- (D) Total land rental cost (\$)
- (E) Total grant revenue or other external funding received towards capital expenditures (\$)
- (F) Total grant revenue or other external funding received towards operational and maintenance expenditures (\$)
- (G) Total revenue (\$) received from sale of electricity and average retail price (\$/kWh) for electricity sold

(H) Other operational expenditures (\$)

(g) Applications for expanded FCI capacity. Applicants who increase the power rating of an FSE or add an FSE to a site that is already generating FCI credits under the CFP must submit an application to ecology to generate additional credits based on the increased power or number of FSEs. Applications must be received before December 31, 2029, and do not extend the end date for the FCI crediting specified upon initial project approval in (c) of this subsection. The application must include the following elements.

(i) Updated number and type of FSE at the site.

(ii) Updated FCI charging capacity, nameplate power rating and effective simultaneous power rating for each FSE at the site.

(iii) The applicant must maintain records demonstrating that any new equipment added as a result of the expansion in capacity meet the requirements listed in this subsection.

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NEW SECTION

WAC 173-424-570 Credit clearance market. (1) **General.** If a regulated party owes more than the allowed small deficit under WAC 173-424-500(4), it must enter and purchase its pro-rata share of credits in the credit clearance market under subsection (5) of this section.

(a) The credit clearance market is separate from the normal year-round market opportunities for parties to engage in credit transactions.

(b) Ecology will consider a regulated party in compliance with WAC 173-424-500 if it acquires its pro-rata obligation in the credit clearance market and retires that number of credits within 30 days of the end of the credit clearance market.

(2) **Maximum price.** The maximum price for the credit clearance market must be:

(a) Two hundred U.S. dollars in 2018 per credit for the markets held upon the submission of the annual reports for compliance year 2023.

(b) For markets held upon submission of annual reports in 2023/2024 and thereafter ecology shall adjust the maximum price for the credit clearance market annually for inflation at the end of each January using the inflation rate as provided by the last 12 months of data from the U.S. Bureau of Labor Statistics West Region Consumer Price Index for All Urban Consumers for All Items. The formula for that adjustment is as follows:

$$\text{maximum price} = [\text{Last year's maximum price}] * (1 + [\text{CPI-U West}])$$

Ecology will publish the new maximum price on its web page on the first Monday of April each year.

(3) **Acquisition of credits in the credit clearance market.** The credit clearance market will operate from June 1st to July 31st.

(a) Regulated parties subject to subsection (1) of this section must acquire their pro-rata share of the credits in the credit clearance market calculated in subsection (5) of this section.

(b) A regulated party may only use credits acquired in the credit clearance market to retire them against its unmet compliance obligation from the prior year.

(c) To qualify for compliance through the credit clearance market, the regulated party in question must have:

(i) Retired all credits in its possession; and

(ii) Have an unmet compliance obligation for the prior year that has been reported to ecology through submission of its annual report in the WFRS.

(4) Selling credits in the clearance market.

(a) On the first Monday in April each year, ecology shall issue a call to all eligible registered parties in the WFRS to pledge credits into the credit clearance market, or will issue a notification that it will not hold a credit clearance market that year. Registered parties are eligible to sell credits in the clearance market if they will have excess credits upon the submission of their annual report. Parties wanting to pledge credits into the credit clearance market will notify ecology by April 30th. Ecology will announce if a clearance market will occur by May 15th.

(b) In order to participate in the credit clearance market, sellers must:

(i) Agree that they will sell their credits for no higher than the maximum price as published by ecology for that year;

(ii) Agree to withhold any pledged credits from sale in any transaction outside of the credit clearance market until the end of the credit clearance market on July 31st, or if no clearance market is held in a given year, then on the date which ecology announces it will not be held;

(iii) Not reject an offer to purchase the credits at the maximum price for that year as published by ecology, unless the seller has already sold or agreed to sell those pledged credits to another regulated party participating in the credit clearance market; and

(iv) Agree to replace any credits that the seller pledges into the clearance market if those credits are later found to be invalid by ecology due to fraud or noncompliance by the generator of the credit, unless the buyer of the credits was a party to that fraud or noncompliance.

(5) Operation of the credit clearance market. Prior to June 1st, ecology will inform each regulated party that failed to meet its annual compliance obligation under WAC 173-424-500 of its pro-rata share of the credits pledged into the credit clearance market.

(a) Calculation of pro-rata shares.

(i) Each regulated party's pro-rata share of the credits pledged into the credit clearance market will be calculated by the following formula:

Regulated Party A's pro-rata share =

$$\left[\frac{A's\ deficit}{All\ Parties' total\ deficit} \right] x [lessor\ of\ (pledged\ credits)\ or\ (total\ deficits)]$$

(A) "Deficit" refers to the regulated party's total obligation for the prior compliance year that has not been met under WAC 173-424-500;

(B) "All parties' total deficit" refers to the sum of all of the unmet compliance obligations of all regulated parties in the credit clearance market; and

(C) "Pledged credits" refers to the sum of all credits pledged for sale into the credit clearance market.

(ii) If there is at least one large producer or importer of finished fuels participating in the credit clearance market, ecology will determine the pro-rata share of the available credits in two phases.

(A) The first phase will begin with all of the credits pledged into the credit clearance market and the deficits from large producers or importers of finished fuels in place of "all parties' total deficit" in (a)(i)(B) of this subsection.

(B) The second phase will begin with the remainder of the pledged credits into the credit clearance market in place of "pledged credits" in (a)(i)(C) of this subsection and the deficits from all other regulated parties in place of "all parties' total deficit" in (a)(i)(B) of this subsection.

(C) The calculation for each phase will be done as in (a)(i) of this subsection.

(b) On or before June 1st, ecology will post the name of each party that is participating in the credit clearance market as a buyer, and the name of each party that is participating as a seller in the market and the number of credits they have pledged into the market.

(c) Following the close of the credit clearance market, each regulated party that was required to purchase credits in the credit clearance market must submit an amended annual compliance report in the WFRS by August 31st which shows the acquisition and retirement of its pro-rata share of credits purchased in the credit clearance market, and any remaining unmet deficits.

(6) If a regulated party has unmet deficits upon the submission of the amended annual compliance report, ecology will increase the regulated party's number of unmet deficits by five percent and the total unmet deficits will be carried over into the next compliance period for that regulated party.

(7) If the same regulated party has been required to participate in two consecutive credit clearance markets and carries over deficits under subsection (6) of this section in both markets, ecology will conduct a root cause analysis into the inability of that regulated party to retire the remaining deficits.

(a) If multiple regulated parties are subject to this section in a single year, ecology may produce a single root cause analysis for those regulated parties if it determines the same general set of causes contributed to those parties' inability to retire those deficits. Ecology will also analyze whether there were specific circumstances for the individual parties.

(b) Based on the results of the root cause analysis, ecology may issue a deferral under WAC 173-424-720 or craft a remedy that addresses the root cause or causes. The remedy cannot:

(i) Require a regulated party to purchase credits for an amount that exceeds the maximum price for credits in the most recent credit clearance market; or

(ii) Compel a registered party to sell credits.

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

PART 6 - OBTAINING CARBON INTENSITY VALUES FOR FUEL PATHWAYSNEW SECTION

WAC 173-424-600 Carbon intensities. (1) **WA-GREET.** Carbon intensities for fuels must be calculated using:

(a) WA-GREET 3.0 (November 28, 2022) or another model that ecology determines to be equivalent or superior to WA-GREET 3.0. WA-GREET 3.0 was derived from CA-GREET 3.0 model (August 13, 2018), and is posted on ecology's website <https://www.ecology.wa.gov>. CA-GREET 3.0 includes contributions from the oil production greenhouse gas estimator (OPGEE2.0) model (for emissions from crude extraction) and global trade analysis project (GTAP-BIO) model together with the agro-ecological zone emissions factor (AEZ-EF) model for land use change (LUC).

(b) If a reporting entity wishes to use a modified or different life cycle carbon intensity model, it must be approved by ecology in advance of an application under WAC 173-424-610.

(2) **Ecology review of carbon intensities.** Every three years, or sooner if ecology determines that new information becomes available that warrants an earlier review, ecology will review the carbon intensities used in the CFP and must consider, at a minimum, changes to:

(a) The sources of crude and associated factors that affect emissions such as flaring rates, extraction technologies, capture of fugitive emissions, and energy sources;

(b) The sources of natural gas and associated factors that affect emissions such as extraction technologies, capture of fugitive emissions, and energy sources;

(c) Fuel economy standards and energy economy ratios;

(d) Methods to calculate lifecycle greenhouse gas emissions of transportation fuels including changes in:

(i) GREET, WA-GREET, CA-GREET; or

(ii) Methods to quantify indirect land use change including CCLUB; or

(iii) Methods to quantify other indirect effects.

(3) **Established carbon intensities.**

(a) Regulated parties, credit generators, and aggregators must use the statewide average carbon intensities listed in Table 6 under WAC 173-424-900 for the following fuels:

(i) Clear gasoline or the gasoline blendstock of a blended gasoline fuel;

(ii) Clear diesel or the diesel blendstock of a blended diesel fuel;

(iii) Fossil CNG;

(iv) Fossil LNG; and

(v) Fossil LPG.

(b) A hydrogen supplier may apply to use the applicable CI value in Table 6 under WAC 173-424-900, or apply for a specific carbon intensity under WAC 173-424-610.

(c) For electricity suppliers:

(i) The utility-specific electricity carbon intensity is calculated annually under WAC 173-424-630 and posted on ecology's website.

(ii) Credit generators or aggregators may use a carbon intensity different from the utility-specific average under (c)(i) of this subsection if the party generates lower carbon electricity at the same location as it is dispensed into a motor vehicle consistent with the conditions of the approved fuel pathway code under WAC 173-424-630(3).

(4) **Carbon intensities for established fuel pathways.** Except as provided in subsection (3) of this section, regulated parties, credit generators, and aggregators can use a carbon intensity that CARB or OR-DEQ certified for use in the California LCFS or Oregon CFP programs provided that:

(a) The carbon intensity value for the fuel pathway is adjusted for consistency with WA-GREET 3.0 including the adjustment for fuel transportation distances and indirect land use change, as applicable. The adjusted carbon intensity for the established fuel pathway can be used after ecology has reviewed and approved it for consistency with WA-GREET; or

(b) Matches the description of a fuel pathway listed in Table 6 under WAC 173-424-900. For hydrogen produced using biomethane or renewable electricity, the producer of the hydrogen must:

(i) Demonstrate to ecology that the carbon intensity value in Table 6 is appropriate for its production facility; and

(ii) Submit retirement records from an electronic tracking system recognized by ecology on an annual basis that the renewable electricity and biomethane attributes, as applicable, were not claimed in any other program except for the federal RFS and Climate Commitment Act (chapter 173-446 WAC). Any such claims under the federal RFS or the Climate Commitment Act must be made for the same use and volume of biomethane or its derivatives as it is being claimed for in the CFP, or the claim under the CFP is invalid.

(5) **Primary alternative fuel pathway classifications.** If it is not possible to identify an applicable carbon intensity under either subsection (3) or (4) of this section, then the regulated party, credit generator, or aggregator has the option to develop its own fuel pathway and apply for it to be certified under WAC 173-424-610. Fuel pathway applications fall into one of two tiers:

(a) **Tier 1.** Conventionally-produced alternative fuels of a type that have been well-evaluated. Tier 1 fuels include:

(i) Starch-based and sugar-based ethanol;

(ii) Biodiesel produced from conventional feedstocks (plant oils, tallow, and related animal wastes and used cooking oil);

(iii) Renewable diesel produced from conventional feedstocks (plant oils, tallow, and related animal wastes and used cooking oil);

(iv) Natural gas; and

(v) Biomethane from landfills; anaerobic digestion of dairy and swine manure or wastewater sludge; and food, vegetative, or other organic waste.

(b) **Tier 2.** Except CARB or OR-DEQ certified fuel pathways as provided in subsection (4) of this section, ecology will start accepting Tier 2 applications no later than October 1, 2024, and only after providing a 30 calendar day advance notice. Low carbon fuel production facilities with already-certified fuel pathways may also use it temporarily for the production capacity expanded facility. Tier 2 includes all fuels not included in Tier 1 including, but not limited to:

(i) Cellulosic alcohols;

(ii) Biomethane from other sources;

(iii) Hydrogen;

(iv) Renewable hydrocarbons other than renewable diesel produced from conventional feedstocks;

(v) Biogenic feedstocks co-processed at a petroleum refinery;

(vi) Alternative jet fuel;

(vii) Renewable propane; and

(viii) Tier 1 fuels using innovative methods including, but not limited to, carbon capture and sequestration or a process that cannot be accurately modeled using the simplified calculators.

(6) **Specified source feedstocks.** Except as specified in subsection (4) of this section, fuels that are produced from a specified source feedstock may be eligible for a reduced carbon intensity value when applying under WAC 173-424-610 so long as they meet all of the following requirements:

(a) Specified source feedstocks are nonprimary products of commercial or industrial processes for food, fuel, or other consumer products and include, but are not limited to, used cooking oil, animal fats, fish oil, yellow grease, distiller's corn oil, distiller's sorghum oil, brown grease, and other fats, oils, and greases;

(b) The specified source feedstocks are used in pathways for biodiesel; renewable diesel; alternative jet fuel; co-processed refinery products; biomethane supplied using book-and-claim accounting and claimed as a feedstock for CNG, LNG, L-CNG, or hydrogen produced using steam-methane reformation;

(c) Under WAC 173-424-610 (9)(d), any feedstock can be designated as a specified source feedstock if requested by a supplier using site-specific carbon intensity data or if it is specified in a pathway approval condition; and

(d) Chain-of-custody evidence must be used to demonstrate the proper characterization and accuracy of the quantity of the specified source feedstocks going into a fuel production facility or claimed as biomethane, subject to all of the following provisions:

(i) Chain-of-custody evidence must be provided to the verifier and to ecology upon request;

(ii) Joint applicants may assume responsibility for different portions of the chain-of-custody evidence;

(iii) Fuel pathway applicants using specified source feedstocks must maintain either:

(A) Delivery records that show shipments of feedstock type and quantity directly from the point of origin to the fuel production facility; or

(B) Information from material balance or energy balance systems that control and record the assignment of input characteristics to output quantities at relevant points along the feedstock supply chain between the point of origin and the fuel production facility;

(e) In order to maintain the pathway, the fuel production and any joint applicant must meet the following requirements:

(i) Maintain records of the type and quantity of feedstock obtained from each supplier, including feedstock transaction records, feedstock transfer documents pursuant to (f) of this subsection, weighbridge tickets, bills of lading or other documentation for all incoming and outgoing feedstocks;

(ii) Maintain records used for material balance and energy balance calculations; and

(iii) Ensure ecology staff and verifier access to audit feedstock suppliers to demonstrate proper accounting of attributes and conformance with certified CI data; and

(f) A feedstock transfer document for specified source feedstocks must prominently state the following information:

- (i) Transferor company name, address, and contact information;
- (ii) Recipient company name, address, and contact information;
- (iii) Type and amount of feedstock, including units; and
- (iv) Transaction date.

(7) The carbon intensity value certified under WAC 173-424-610, including any margin of safety requested by the fuel producer, is the maximum carbon intensity value that can be claimed for a fuel reported in the CFP. The actual operational carbon intensity of a fuel will be calculated from the most recent production data covering 24 months of the fuel production facility's operation. A fuel pathway applicant may add a conservative margin of safety, of a magnitude determined by the applicant, to increase the certified CI above the operational CI calculated based on the data submitted in the initial fuel pathway application, to account for potential process variability and diminish the risk of noncompliance with the certified CI. Registered parties shall not report fuel sales under any CFP carbon intensity unless the actual operational carbon intensity is equal to or less than the certified CI.

(8) Fuel producers labeling fuel sold in Washington with a carbon intensity under the CFP and registered entities using those labeled carbon intensities to report in the WFRS, must ensure that the fuel so labeled and reported will be found to have an actual operational life-cycle carbon intensity equal to or below its certified carbon intensity.

(9) Fuel pathways for 2023 and 2024. A registered entity that supplies a fuel to Washington state and has an active fuel pathway approved by CARB or OR-DEQ:

(a) May use the fuel pathway temporarily to participate in the CFS program until ecology approves the fuel pathway under this chapter. The fuel pathway holder may also use a CARB or DEQ approved fuel pathway temporarily for a facility that has undergone capacity expansion, provided that the fuel pathway holder demonstrates that the expected carbon intensity of the expanded capacity fuel pathway does not exceed the CARB or OR-DEQ approved CI based on the energy sources, feedstocks, process technology, product and co-products mix, etc. of the expanded production facility.

(b) Must submit the revised fuel pathway application by April 30, 2023, according to WAC 173-424-610, if the entity plans to participate in the program in 2023.

(c) Must submit the 2023 temporary annual compliance reports using the CARB or OR-DEQ approved fuel pathway, unless ecology approves the revised fuel pathway before December 31, 2023, according to WAC 173-424-430. The registered entity must submit the 2023 revised annual compliance report together with the 2024 annual compliance report using an ecology-approved fuel pathway carbon intensity.

(d) Must use an ecology-approved fuel pathway to participate in the program in the next quarter after ecology approves it.

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NEW SECTION

WAC 173-424-610 Obtaining a carbon intensity. (1) Fuel producers can apply to obtain a carbon intensity for their transportation fuels by following the process under this section.

(2) Applicants seeking approval to use a carbon intensity that is currently approved by CARB or OR-DEQ must provide:

(a) The application package submitted to CARB or OR-DEQ;

(b) The Tier 1 or Tier 2 CA-GREET or OR-GREET calculator approved by CARB or OR-DEQ, and the WA-GREET 3.0 equivalent with the fuel transportation and distribution cells modified for that fuel's pathway to Washington;

(c) The CARB or OR-DEQ review report for the approved fuel pathway;

(d) Annual fuel pathway report, if submitted to CARB or OR-DEQ;

(e) Any other supporting materials relating to the pathway, as requested by ecology; and

(f) If the applicant is seeking to use a provisional pathway approved by CARB or OR-DEQ, then the applicant must submit to ecology the ongoing documentation it provides to CARB or OR-DEQ, and as required in subsection (6) of this section. The applicant must provide to ecology within 14 days:

(i) Any additional documentation it has submitted to CARB or DEQ; and

(ii) A notification of any changes to the status of its provisional pathway approved by CARB or OR-DEQ.

(3) **General requirements.** Applicants seeking to obtain a carbon intensity using either the Tier 1 or Tier 2 calculator must submit the following information:

(a) Company name and full mailing address.

(b) Company contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website address.

(c) Facility name (or names if more than one facility is covered by the application).

(d) Facility address (or addresses if more than one facility is covered by the application).

(e) Facility ID for facilities covered by the RFS program.

(f) Facility geographical coordinates (for each facility covered by the application).

(g) Facility contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, and email address.

(h) Facility nameplate production capacity in million gallons per year (for each facility covered by the application).

(i) If applicable, consultant's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website URL.

(j) Declaration whether the applicant is applying for a carbon intensity for a Tier 1 or Tier 2 fuel.

(4) **Tier 1.** In addition to the items in subsection (3) of this section, applicants seeking to obtain a carbon intensity for a Tier 1 fuel using one of the simplified calculators must submit the following:

(a) The applicable simplified calculator with all necessary inputs completed, following the instructions in the applicable manual for that calculator;

(b) All documentation related to the approval and verification of the fuel pathway application from the jurisdiction and from the third-party verifier. This includes a positive verification statement from CARB or OR-DEQ approved verification body, stating that it has reviewed and validated all of the data used to form the inputs for the Tier 1 calculator submitted under (a) of this subsection, or the invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all coproducts sold for the most recent 24 months of full commercial production, along with a summary of those invoices and receipts; and

(c) The most recent RFS third-party engineering report, if one has been conducted for the facility.

(5) **Tier 2.** In addition to the items in subsection (3) of this section, applicants seeking to obtain a carbon intensity for a Tier 2 fuel using the full WA-GREET 3.0 model must submit the following:

(a) A positive verification statement from CARB or OR-DEQ approved verification body, stating that it has reviewed and validated all of the data used to form the inputs for the Tier 2 calculator submitted under (c) of this subsection, or the invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all coproducts sold for the most recent 24 months of full commercial production, and a summary of those invoices and receipts;

(b) The geographical coordinates of the fuel production facility;

(c) A completed Tier 2 model;

(d) Process flow diagrams that depict the complete fuel production process;

(e) Applicable air permits issued for the facility;

(f) A copy of the RFS third-party engineering report, if available;

(g) A copy of the RFS fuel producer coproducts report; and

(h) A life cycle analysis report that describes the fuel pathway and describes in detail the calculation of carbon intensity for the fuel. The report shall contain sufficient detail to allow staff to replicate the carbon intensity the applicant calculated. The applicant must describe all inputs to, and outputs from, the fuel production process that are part of the fuel pathway.

(6) **Applicants seeking a provisional carbon intensity.** If a fuel production facility has been in full commercial production for at least 90 days but less than 24 months, it can apply for a provisional carbon intensity.

(a) The applicant shall submit operating records covering all periods of full commercial operation in accordance with subsections (2) through (5) of this section.

(b) Ecology may approve the provisional carbon intensity under subsection (9) of this section.

(c) At any time before the plant reaches a full 24 months of full commercial production, ecology may revise as appropriate the operational carbon intensity based on the required ongoing submittals or other information it learns.

(d) If, after a plant has been in full commercial production for more than 24 months, the facility's operational carbon intensity is higher than the provisionally-certified carbon intensity, ecology will replace the certified carbon intensity with the operational carbon intensity in the WFRS and adjust the credit balance accordingly.

(e) If the facility's operational carbon intensity appears to be lower than the certified carbon intensity, ecology will take no ac-

tion. The applicant may; however, petition ecology for a new carbon intensity that reflects the operational data. In support of such a petition, the applicant must submit a revised application packet that fully documents the requested reduction.

(7) Applicants employing co-processing at a petroleum refinery.

(a) Applicants employing co-processing of biogenic feedstocks at a petroleum refinery must submit all information required under subsections (3) and (5) of this section.

(b) For the renewable diesel or other renewable refinery product of the fuel, the applicant must also submit:

(i) The planned proportions of biogenic feedstocks to be processed;

(ii) A detailed methodology for the allocation of biogenic feedstocks to the renewable products; and

(iii) The corresponding carbon intensities from each biogenic feedstock.

(c) The allocation methodology for associating amount of the biogenic feedstocks to the production a unit of fuel shall be equivalent to allocation methodologies accepted in the federal and other states' similar programs, and will be subject to ecology approval and may be modified at ecology's discretion based on ongoing quarterly reporting of production data at the refinery.

(d) Ecology may adjust the carbon intensities applied for under this section as it determines is appropriate.

(8) Temporary fuel pathway codes for fuels with indeterminate carbon intensities.

(a) A registered party that has purchased a fuel without a carbon intensity must submit a request to ecology for permission to use a temporary fuel pathway code in (a)(i) or (ii) of this subsection. A fuel producer may also apply to ecology for approval to have a temporary fuel pathway code assigned to its facility. Temporary fuel pathway code that:

(i) Already exist in Table 8 under WAC 173-424-900; or

(ii) Ecology newly approved and posted on its website under subsection (11) of this section.

(b) The request must:

(i) Be submitted within 45 days after the end of the calendar quarter for which the applicant is seeking to use a temporary fuel pathway code; and

(ii) Explain and document that the production facility is unknown or that the production facility is known but there is no approved fuel pathway code.

(c) Temporary fuel pathway codes may be used for up to two calendar quarters. If more time is needed to obtain a carbon intensity, the party that obtained the temporary fuel pathway must submit an additional request to ecology for an extension of the authorization to use a temporary fuel pathway code.

(d) If ecology grants a request to use a temporary fuel pathway code, credits and deficits may be generated subject to the quarterly reporting provisions in WAC 173-424-410.

(9) Approval process to use carbon intensities for fuels other than electricity.

(a) For applications proposing to use fuel pathways approved by CARB or OR-DEQ, including provisional pathways, ecology will:

(i) Confirm that the proposed fuel pathway is consistent with WA-GREET 3.0; and

- (ii) Review the materials submitted under subsection (2) of this section.
- (b) For applications proposing to use the Tier 1 or Tier 2 calculators, ecology may approve the application if it can:
- (i) Verify the energy consumption and other inputs.
 - (ii) Replicate the calculator outputs; and
- (c) If ecology has approved or denied the application for a carbon intensity, ecology will notify the applicant of its determination.
- (d) Ecology may impose conditions in its approval of the carbon intensity. Conditions may include specific limitations, recordkeeping or reporting requirements, adherence to protocols to assure carbon reduction or sequestration claims, or operational conditions that ecology determines should apply to assure the ongoing accuracy of the approved carbon intensity. Failure to meet those conditions may result in the carbon intensity approval being revoked.
- (e) For applicants seeking a provisional pathway, ecology will specify the conditions used to establish the pathway.
- (i) In order to maintain an active provisional pathway eligible to generate credits, the applicant must file the annual fuel pathway report and seek third-party verification if required under WAC 173-424-800.
- (ii) At any point during the 24 months following the certification of a provisional pathway, ecology may revise as appropriate the CI score for the provisional pathway, and adjust any credits in the fuel reporting entity based on new information or a better understanding of the pathway.
- (iii) Ecology may remove the provisional status of the pathway after the applicant provides 24 months of operational data with a positive or qualified positive verification status, if verification is required under WAC 173-424-800.
- (iv) For pathways that are not subject to verification, ecology may remove the provisional status upon review of 24 months of operational data demonstrating that the pathway data supports the provisional CI.
- (f) For a fuel pathway approved by CARB or OR-DEQ that ecology has approved for use in Washington, if at any time the pathway's approval is revoked by CARB or OR-DEQ then:
- (i) The fuel pathway holder must inform ecology within 14 days of the revocation and provide ecology with the documentation related to that decision.
 - (ii) Upon ecology request, the fuel pathway holder must provide to ecology additional documentation.
 - (iii) Ecology may at its discretion revoke its approval of the pathway's use in Washington at any time.
 - (iv) If CARB or OR-DEQ modifies its approval of the pathway, then the fuel pathway holder must notify ecology of the modification not later than 14 days after CARB's or OR-DEQ modification and must provide to ecology any accompanying documentation the fuel pathway holder received from CARB or OR-DEQ.
 - (v) Based on the underlying facts that led to CARB's and OR-DEQ's modification of the pathway's status, within 30 days ecology may modify its approval, take no action, or revoke its approval and will provide the fuel pathway holder with written notice of its decision.
- (g) In order to receive and maintain an active fuel pathway code, the producer of any fuel must:
- (i) Maintain an active registration with the AFP;

(ii) Provide proof of delivery to Washington through a physical pathway demonstration in the quarter in which the fuel is first reported in the WFRS;

(iii) Each fuel pathway holder must submit an annual fuel pathway report into the AFP no later than March 31st of each calendar year. The annual fuel pathway report must include:

(A) The certified version of the simplified WA-GREET or full WA-GREET calculator, as applicable, updated to include the most recent two calendar years of operational data;

(B) The annual fuel pathway report for renewable electricity and hydrogen lookup table pathways, in lieu of the CI calculator, must include invoices or metering records substantiating the quantity of renewable or low-CI inputs procured from a qualifying source;

(C) If the fuel or fuel production process involves biomethane or renewable electricity, the fuel producer must:

(I) Provide the attestation regarding environmental attributes or proof of nongeneration or retirement of any RECs and RTCs as required by WAC 173-424-420 or 173-424-630 (4) (d); and

(II) For biomethane injected into a natural gas common carrier pipeline, RTCs from an ecology recognized renewable thermal tracking system are required to be retired and used instead of an attestation and the specific volume of biomethane claimed as being used in the fuel production process must have been injected into the pipeline in the current or prior quarter as the fuel is being produced. Biomethane can only be claimed in this manner in a fuel pathway application as the feedstock for CNG, LNG, L-CNG or hydrogen production, and cannot be claimed as an energy source for another fuel production process.

(D) Any fuel pathway holder, including a joint applicant, who is not subject to site visits by a third-party verifier, whose fuel pathway involves the use of renewable or low-CI process energy, must submit invoices for that energy to the AFP. Additionally, for any on-site or directly connected renewable electricity that is used to reduce the carbon intensity of electricity used as a transportation fuel or hydrogen production via electrolysis, the pathway holder must upload records demonstrating that any renewable energy certificates generated were retired in WREGIS or another comparable, recognized REC tracking system for the purpose of lowering the certified CI, or for credit generation. Any offsite source of renewable electricity must meet the requirements under WAC 173-424-630 (5);

(E) Any temporally variable information that was requested or required by ecology to be included in the initial application as supplemental information, or any required data or documentation listed in the pathway's operating conditions. The information required to be submitted under this subsection must cover the same time period as the updated WA-GREET model required under (g) (iii) (A) of this subsection;

(F) If the verified operational CI as calculated from the operational data covering the prior two calendar years of production is found to be lower than the certified CI, and a positive verification statement is issued for this period, the fuel pathway holder may elect to keep the original certified CI, or may request to replace the certified CI with the verified operational CI. The new certified CI will take effect for the following reporting year. The fuel pathway holder may elect to add a margin of safety to the new certified CI, and must submit an attestation that the new CI can be maintained through the next reporting period with the acknowledgment that exceeding the newly certified CI in subsequent annual reports or verifications is a violation of the requirements of this division; and

(iv) Comply with the requirements of this chapter. Failure to timely submit an annual fuel pathway report or a required verification statement for a facility's pathways will result in the deactivation of those pathways; and

(v) If a pathway employs carbon capture and sequestration, the fuel pathway holder or joint applicant must submit annual reports of greenhouse gas emissions reductions, project operations, and ongoing monitoring results. Reports must include measurements of relevant parameters sufficient to ensure that the quantification and documentation of CO₂ sequestered is replicable and verifiable. Ecology may specify a protocol for measuring and reporting such information in its approval of such an application.

(h) If ecology determines the proposal for the carbon intensity has not met the criteria in (b) of this subsection, ecology will notify the applicant that the proposal is denied and identify the basis for the denial.

(i) Ecology may modify an approved fuel pathway's CI or approval conditions upon receipt of a verification statement that shows that the verified operational CI is higher than the certified CI.

(j) Any applicant may include a margin of safety in its application which will increase its certified CI in order to account for potential process variability and to reduce the risk that it will violate this division by having its operational CI exceed its certified CI.

(k) Ecology may prioritize the review of fuel pathway applications according to the date the application is submitted, the application deemed complete date, and the potential GHG emission reduction potential.

(10) Completeness determination process.

(a) Within one month after receiving a registration application using the Tier 1 or Tier 2 calculator, ecology will advise in writing whether:

(i) The proposal is complete; or

(ii) The application is incomplete, in which case ecology identifies the deficiencies.

(b) The applicant may submit supplemental information to correct the ecology identified deficiencies. Ecology has 30 calendar days to determine if the supplemental submittal is complete, or to notify the party and identify the continued deficiencies. If the applicant is unable to achieve a complete application within 180 days of ecology's receipt of the original application, the application will be denied on that basis, and the applicant will be informed in writing.

(11) Issuing additional substitute and temporary fuel pathway codes.

(a) For new fuels or new fuel blends being used in Washington state, registered parties may request ecology for an additional fuel pathway codes that can be used in the same manner as those in Table 7 or 8 (substitute or temporary pathway codes) under WAC 173-424-900.

(b) Ecology may approve such substitute or temporary pathway codes if it concludes they are technically sound and supported by appropriate evidence. If any are approved, ecology will post these additional pathway codes in the WFRS and on its public website for the clean fuels program.

(c) All of the following requirements apply to such requests:

(i) Requests must be made in writing to ecology.

(ii) If ecology concludes the proposed pathway may be technically sound and supported by appropriate evidence, then it will post the proposed new substitute or temporary pathway codes on its website and take comments for:

(A) Fourteen calendar days in the case of a substitute fuel pathway code; or

(B) Forty-five calendar days in the case of a temporary fuel pathway code.

(iii) Ecology will consider any comments received, make any modifications, if necessary, and make a final decision on the proposed pathway.

(iv) Ecology may approve the fuel pathway and publish it on its website, if ecology concludes the proposed pathway is technically sound and supported by appropriate evidence.

(d) Any newly approved substitute or temporary fuel pathway code will be effective for use in the quarter in which it is approved.

(12) Measurement accuracy.

(a) **Calibration requirement.** All measurement devices that log or record data for use in a fuel pathway application must comply with the manufacturer-recommended calibration frequency and precision requirements. If manufacturer recommendations are not provided, the measurement devices must be calibrated at least every six years.

(b) **Requests to postpone calibration.** For units and processes that operate continuously with infrequent outages, it may not be possible to meet manufacturer-recommended calibration deadlines for measurement devices. In such cases, the owner or operator may submit a written request to ecology to postpone calibration or inspection until the next scheduled maintenance outage. Such postponements are subject to the procedures of (b)(ii)(A) and (B) of this subsection and must be documented in the monitoring plan required under WAC 173-424-400.

(i) A written request for postponement must be submitted to ecology not less than 30 days before the required calibration, recalibration or inspection date. Ecology may request additional documentation to validate the operator's claim that the device meets the accuracy requirements of this section. The operator shall provide any additional documentation to ecology within 10 business days of a request for documentation.

(ii) The request must include:

(A) The date of the required calibration, recalibration, or inspection;

(B) The date of the last calibration or inspection;

(C) The date of the most recent field accuracy assessment, if applicable;

(D) The results of the most recent field accuracy assessment, if applicable, clearly indicating a pass/fail status;

(E) The proposed date for the next field accuracy assessment, if applicable;

(F) The proposed date for calibration, recalibration, or inspection which must be during the time period of the next scheduled shutdown. If the next shutdown will not occur within three years, this must be noted and a new request must be received every three years until the shutdown occurs and the calibration, recalibration or inspection is completed; and

(G) A description of the meter or other device including, at a minimum, the:

(I) Make and model;

(II) Installation date;

(III) Location;

(IV) Parameter measured by the meter or other device, including the rate of data capture;

(V) Description of how data from the meter or other device is used in a fuel pathway;

(VI) Calibration or inspection procedure;

(VII) Reason for delaying the calibration or inspection;

(VIII) Proposed method to ensure that the precision requirements listed by the manufacturer are upheld; and

(IX) The contact details for an individual at the fuel production facility who can answer questions about the meter or other device.

(iii) Ecology will approve or deny the request at its discretion based on whether or not it concludes that the device's calibration is reasonably reliable.

(13) **Missing data provisions.**

(a) **Meter record, accuracy, or calibration requirements not met.**

If a measurement device is not functional, not calibrated within the time period recommended by the manufacturer, or fails a field accuracy assessment, the fuel production facility operator must otherwise demonstrate to a verifier or ecology that the reported data are accurate within +/- five percent. The following requirements apply to such demonstration:

(i) If the operator can demonstrate to the verifier or ecology staff that reported data are accurate, the data are acceptable. The entity must then provide a detailed plan describing when the measurement device will be brought into calibration. This plan is subject to ecology approval; and

(ii) If the operator cannot demonstrate to the verifier or ecology that reported data are accurate, the data is not acceptable and the missing data provisions in (b) of this subsection apply.

(b) **Missing data provisions.** If missing data exists, the entity must submit for ecology approval an alternate method of reporting the missing data. Alternate methods shall be evaluated on a case-by-case basis for reasonableness and continuity with the rest of the dataset. Ecology may choose to require a more conservative approach to the missing data if it is concerned that the alternative method may understate actual life cycle emissions associated with the fuel or fuels produced by the facility.

(c) **Force majeure events.** In the event of a facility shutdown or disruption drastically affecting production attributable to a force majeure event, the fuel pathway applicant or holder must notify ecology. Ecology may require the reporting entity to provide documentation to support the force majeure event timeline.

(14) **Biomethane applications.** In addition to the other requirements of this rule, for any fuel pathway where biomethane is being injected into a natural gas common carrier pipeline to be reported in the CFP using book and claim accounting, the fuel pathway holder, fuel producer, or both must ensure that no other party can make a claim on the specific biomethane attributes that are being used in the CFP. If the biomethane is being injected into the pipe of a local distribution company, the fuel producer must have an agreement with that company along with any other purchaser of the physical gas that they will not make any claims on the biomethane reported through book and claim in this program. That agreement must be submitted at the time of the fuel pathway application or in the next annual fuel pathway report if the fuel pathway is currently certified.

(15) **For nonprovisional pathways.** If a fuel pathway's operational CI is found to be greater than its certified CI, the fuel pathway holder is out of compliance with this chapter and may be subject to investigation and enforcement by ecology.

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NEW SECTION

WAC 173-424-620 Energy economy ratio-adjusted carbon intensity applications. (1) **Energy economy ratio-adjusted CI applications.** Applications submitted under this section are modified Tier 2 pathway applications under WAC 173-424-610.

(2) **Eligibility.** The following persons are eligible to submit an application under this section:

(a) Vehicle owners or operators that would be eligible to generate credits for their vehicles;

(b) Manufacturers of vehicles that would be eligible to generate credits may make a joint application with an owner or operator of their vehicles based in Washington; and

(c) A single, joint application may be submitted on behalf of, and combining data from, any combination of multiple vehicle owners, operators, and manufacturers.

(3) Applications made under this rule must be for electric vehicles capable of full normal operation using energy from onboard batteries, fuel cells, or other fuel-vehicle technologies.

(4) **Application requirements for an energy economy ratio-adjusted CI.** In addition to the application requirements for a Tier 2 pathway application under WAC 173-424-610, the applicant or applicants must include:

(a) A letter of intent to request an energy economy ratio (EER) adjusted carbon intensity and why the EER values provided in Table 4 of WAC 173-424-900 are not applicable;

(b) Supplemental information including a detailed description of the methodology used in its calculations, all assumptions made, and provide all data and references used for the calculation of the proposed EER-adjusted CI value. The methodology used must compare the useful output from the alternative fuel-vehicle technology under consideration to comparable conventional fuel-vehicle technology;

(c) If the applicant or applicants plan to use a value in the lookup table in WAC 173-424-900 for the carbon intensity of the fuel, or an electricity fuel pathway code issued under WAC 173-424-630, to request an EER-adjusted carbon intensity then they do not need to provide the fuel facility information required under WAC 173-424-610 (3) (e) through (h) and (5).

(5) **Minimum data requirements to apply for an energy economy ratio-adjusted CI:**

(a) Any application made under this rule must include at least three months of operating data that represents typical usage for each individual vehicle type included in the application, except that the application must cover at least 300 hours of operating data for each individual vehicle type included in the application; and

(b) Notwithstanding (a) of this subsection, an application from a manufacturer may provide data from duty-cycle testing. A manufacturer seeking to apply using duty-cycle testing data must consult with ecol-

ogy prior to submitting an application and receive written, advanced approval from the agency for the duration and test cycles it is including in the application in addition to or in lieu of operational data.

(6) Application review process to apply for an energy economy ratio-adjusted CI:

(a) Ecology will review an application for completeness, soundness of the assumptions and comparison to the conventional fuel technology, and accuracy of the data. Ecology may deny an application without prejudice if it is incomplete. Ecology may deny any application that it believes is adequately covered by an existing EER value in Table 4 in WAC 173-424-900 or that it believes does not fit the intent and purpose of the clean fuels program;

(b) Ecology may prioritize its review of applications under this provision to those that cover a greater number of entities or that the agency believes are critical to the state's transportation electrification goals;

(c) If ecology intends to approve an application, it first must present a review report with a proposed EER value and pathway conditions to the applicant or applicants. If the applicant or applicants accept the proposed review report and EER value, ecology will post the review report and application on its website for a 30-day public comment period. Ecology staff will work with the applicant to aggregate and summarize any submitted data in order to ameliorate concerns regarding trade secrets included in the application. The aggregated data must still allow external stakeholders to understand and replicate the EER value that ecology is proposing to approve; and

(d) Based on comments received during the public comment period, ecology may move forward with approving the application as provided in subsection (7) of this section, deny the application, request additional information from the applicant or applicants, or modify the review report. If ecology modifies the review report or receives additional information that has a material bearing on the proposed EER value, it will issue the modified review report and any affected supplemental materials for another round of public comment.

(7) Based on its review of the application materials and any comments submitted upon the application under subsection (6) of this section, ecology may issue an EER-adjusted fuel pathway or issue a value that it would post on its website that could be used similarly to the EER values contained in Table 4 of WAC 173-424-900. Values issued under this rule can only be used by the applicant or applicants for that value.

(8) Adding joint applicants after a value is approved. If ecology has issued a value under subsection (7) of this section as part of an application that includes the manufacturer of the vehicle(s), owners or operators who begin to operate the same vehicle(s) covered in that application in Washington may request to be added as a joint applicant. In order to do so they must provide the following:

(a) A letter from the manufacturer stating that the manufacturer supports the addition of the joint applicant;

(b) Any current operational data by the new joint applicant, or other data elements required to be reported under the value's pathway conditions; and

(c) A statement by the new joint applicant that they understand and accept any and all pathway conditions associated with the value.

(9) Ongoing reporting requirements.

(a) For any EER-adjusted fuel pathway approved by ecology under subsection (7) of this section, the applicant for such approval must annually submit vehicle usage and energy consumption data for each individual vehicle using the value approved by ecology to generate credits or deficits in the clean fuels program. Ecology may require additional data elements that must be reported annually as part of its pathway conditions for an application that is approved under this rule.

(b) For any EER-adjusted fuel pathway approved by ecology under subsection (7) of this section, ecology may require third-party verification of the annual fuel pathway report submitted by the applicant or joint applicants for such approval in CARB or OR-DEQ. If ecology determines that third-party verification is required, ecology will include that as a pathway condition presented to the applicant or applicants under this section as part of its approval of such fuel pathway.

(10) **Modifications to values issued under this rule.** Based on the ongoing reported data required under subsection (9) of this section or additional applications for vehicles that ecology determines to be in the same category, ecology may modify any value issued under this provision for reporting beginning with the next full calendar quarter following its notice that the agency is modifying the value. Ecology will provide notice to the applicant(s) for such fuel pathway prior to doing so, and may request comment from them and the public prior to modifying the value.

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NEW SECTION

WAC 173-424-630 Determining the carbon intensity of electricity.

(1) **Utility-specific electricity mix.** The carbon intensity of the electricity used in a utility service area is calculated based on the mix of resources the electricity used to generate the electricity used using the most recent year fuel-mix report published by the Washington department of commerce under RCW 19.29A.140. No later than December 31st of each year, except that ecology may revise the carbon intensity of electricity for 2023 no later than March 15, 2023, ecology will:

(a) Post the updated utility-specific electricity carbon intensity for the next year on the ecology web page;

(b) Post the updated utility-specific carbon intensities for the next year on the ecology web page; and

(c) Add the new fuel pathway codes to the WFRS effective for Q1 reporting for the next year.

(2) **Statewide electricity mix.** The carbon intensity for the statewide electricity mix will reflect the average carbon intensity of electricity served in Washington and be calculated by using the carbon-intensity of electricity from the most recent year as published by department of commerce under RCW 19.29A.140.

(3) **Unspecified electricity.** The emissions associated with electricity generated from unspecified electricity is 0.437 metric tons per megawatt-hour of electricity as measured by the utility at the first point of receipt in Washington, unless ecology assigns another number as directed by RCW 19.405.070(2).

(4) **On-site renewable electricity generation.** For on-site generation of electricity using renewable generation systems such as solar or wind, applicants must document that:

(a) The renewable generation system is on-site or directly connected to the electric vehicle chargers;

(b) The fuel pathway codes listed in Table 6 under WAC 173-424-900 for solar-generated or wind-generated electricity can only be used for the portion of the electricity dispensed from the charger that is generated by that dedicated renewable energy system;

(c) Any grid electricity dispensed from the charger must be reported separately under the statewide electricity mix or utility-specific fuel pathway codes; and

(d) RECs are not generated from the renewable generation system or, if they are, then an equal number of RECs generated from that facility to the number of MWh reported in the WFRS from that facility must be retired in the recognized REC tracking system. The applicant is allowed to utilize RECs generated on-site for other purposes, if the RECs are in excess of the energy dispensed through EV chargers.

(5) **Offsite renewable electricity.** In order to lower the carbon intensity of electricity claimed as a vehicle fuel in the clean fuels program, credit generators and aggregators may retire renewable electricity certificates that meet the following qualifications:

(a) Renewable energy certificates (RECs) retired in order to claim a carbon intensity other than the statewide mix or utility-specific mix must be certified by the WREGIS, or by a certification system approved by ecology as being substantially equivalent, and:

(i) Unbundled RECs being used to claim low-carbon electricity through book-and-claim accounting must be certified at the wholesale level, while

(ii) RECs used in a power purchase agreement or utility renewable electricity product may be certified at the retail level;

(b) RECs must be generated in and after 2023;

(c) RECs must be generated from facilities located in the western electricity coordinating council; and

(d) RECs must be recorded and retired in a recognized REC tracking system. In addition to recognizing the western renewable energy generation information system, ecology may recognize additional REC tracking systems upon a request from a registered party. In reviewing those requests, ecology will consider whether the tracking system is comparable to WREGIS and if it has systems in place to ensure accurate issuance and tracking of RECs.

(e) Unbundled RECs must meet the safeguards to prevent double counting in WAC 194-40-420, except the term "utility" is replaced with "registered entity."

(6) **Carbon intensity of renewable electricity.** The carbon intensity of solar, wind, geothermal, hydropower, and ocean power renewable electricity is deemed to be zero. For renewable electricity generated from biomass, biogas, biodiesel, and hydrogen, the generator must file a Tier 1 or Tier 2 fuel pathway application to determine the carbon intensity of its electricity. Ecology may adopt an efficiency adjustment factor for biogas to electricity pathways that include emissions reduction credits in order to maintain the program's incentive for energy efficiency.

(7) **Utility renewable electricity products and power purchase agreements.** Electric utilities may apply for ecology to assign a carbon intensity to one or more of their renewable electricity products or a specific power purchase agreement, which may then be used to gen-

erate credits from charging electric vehicles attributable to the use of such products or agreements. All of the following requirements apply to such applications:

(a) Applications made under this section must include:

(i) A letter describing the power purchase agreement or utility renewable electricity product, the existing or planned source, or sources, of electricity and environmental attributes, and the terms by which it is being offered to customers;

(ii) Samples or examples of bills, invoices, contracts, or other documentation that an entity claiming renewable energy under this product could provide to ecology to prove that their electric vehicle charging is covered by the product or agreement;

(iii) In the case of a utility renewable electricity product, any filings with, and orders by, the Washington utilities and transportation commission, governing boards of consumer-owned utilities, or any other local governing board that approves the product; and

(iv) An estimate of the amount of electric vehicle charging attributable to customers for the product or agreement.

(b) Ecology will review pathway applications under this section to determine if they result in a substantially similar environmental outcome to the sources of renewable energy required under subsection (5) of this section. In reviewing a utility product or agreement that contains multiple sources of power, ecology may use the estimate under (a)(iii) of this subsection to determine if sufficient renewable energy that is substantially similar to the requirements of subsection (5) of this section is included in the product to cover transportation-related charging that may be claimed under the CFP. Ecology may revisit this determination annually using the annual fuel pathway report.

(c) Annual fuel pathway report. The annual fuel pathway report for pathways covered by this section must include information to update the sources or sources of electricity or environmental attributes that were used in the prior year and are planned for use in the year in which the report is submitted. That documentation must include retirement records for any RECs used to lower the claimed carbon intensity of the electricity being used by customers of those products in the clean fuels program for the prior year. That documentation must also update the estimate of the amount of electric vehicle charging attributable to customers using the products or agreements. Fuel pathway reports required by this section are due by June 30th, notwithstanding WAC 173-424-610 (9) (g) (iii) (C).

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PART 7 - OTHERS

NEW SECTION

WAC 173-424-700 Authority to suspend, revoke, or modify. (1) If ecology determines that any basis for invalidation set forth in sub-

section (2) of this section has occurred, in addition to taking any other authorized enforcement action, ecology may take any of the actions described in (a) through (d) of this subsection. For the purposes of this section an approved carbon intensity refers both to carbon intensities approved by ecology under WAC 173-424-600(4), 173-424-610, 173-424-620, and 173-424-630.

- (a) Suspend, restrict, modify, or revoke an account in the WFRS, or take one combination of two or more such actions;
- (b) Modify or delete an approved carbon intensity;
- (c) Restrict, suspend, or invalidate credits; or
- (d) Recalculate the deficits in a regulated party's WFRS account.

(2) Ecology may take any of the actions described in subsection (1) of this section based on any of the following:

- (a) Any of the information used to generate or support the approved carbon intensity was incorrect, including if material information was omitted or the process changed following the submission of the carbon intensity application;
- (b) Any material information submitted in connection with the approved carbon intensity or a credit transaction was incorrect;
- (c) Fuel reported under a given pathway was produced or transported in a manner that varies in any way from the methods set forth in any corresponding pathway application documents submitted under WAC 173-424-600 and 173-424-610 such that the variance would meet the threshold to be material information;
- (d) Fuel transaction data or other data reported into the WFRS and used to calculate credits and deficits was incorrect or omitted material information;
- (e) Credits or deficits were generated or transferred in violation of any provision of this chapter or in violation of other laws, statutes, or regulations;
- (f) A party obligated to provide records under this chapter refused to provide such records or failed to do so within the required time frame for documenting credit transactions under WAC 173-424-400;
- (g) Failure to submit a verification statement when it is required under WAC 173-424-800;
- (h) An adverse verification statement submitted under WAC 173-424-800; or
- (i) A party obligated to provide records associated with credit revenue spending under this chapter refused to provide such records or failed to do so within the required time frame.

(3) **Providing notice of an initial determination.**

(a) Upon making an initial determination that a credit calculation, deficit calculation, or an approved carbon intensity may be subject to an action described in subsection (1) of this section, ecology will notify all potentially affected parties.

(b) The notice shall state the reason for the initial determination and may also include a specific request from any party for information relevant to any of the bases described in subsection (2) of this section.

(c) Within 20 days of the issuance of the notice, the affected parties shall make records and personnel available to ecology as it conducts its investigation.

(d) Any party receiving the notice may submit any information it believes is relevant to the investigation and that it wants ecology to consider in its evaluation. Within 15 business days of any such request, unless a different schedule is agreed to by ecology, a regulated entity shall make records and personnel available to assist ecolo-

gy in determining the validity of the credit, deficit calculation, or certified CI.

(4) **Interim account suspension.** Once a notice has been issued based on initial determination under subsection (3) of this section, ecology may immediately take one or both of the following actions:

(a) Deactivate an approved carbon intensity in the AFP; or

(b) Suspend an account in the WFRS. In cases where a discrete number of credits are being investigated, ecology may place an administrative hold on a specific number of credits rather than suspending an entire account.

(5) **Final determination.** Within 50 days after making an initial determination under subsections (2) and (3) of this section, ecology shall make a final determination based on the available information. The final determination should include:

(a) Whether any of the bases for invalidation in subsection (2) of this section exist;

(b) Identification of the affected parties; and

(c) What actions in subsection (1) of this section ecology will impose and how many credits, deficits, or approved carbon intensities are affected. If the final determination invalidates credits or deficit calculations, the corresponding credits and deficits will be added or subtracted from the appropriate accounts in the WFRS.

(6) **Responsibility for invalidated credits or miscalculated deficits.** Any party that generated, previously held, or holds invalidated credits or whose account reflects an invalid deficit calculation is responsible for returning its account to compliance without regard to its fault or role with respect to the invalidation of the credits or miscalculation of deficits. The deficit holder has 60 days from the date of the final determination to purchase sufficient credits to eliminate the entire deficit. A return to compliance does not preclude further enforcement actions.

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NEW SECTION

WAC 173-424-710 Public disclosure. (1) **List of ecology-approved registered parties.** Ecology will maintain a current list of ecology-approved registered parties and will make that list publicly available on its website. The list will include, at a minimum, the name of the registered party and whether the registered party is an importer of blendstocks, a large importer of finished fuels, a small importer of finished fuels, a producer, a credit generator, or an aggregator.

(2) All information submitted as application materials in the WFRS that are not identified as trade secrets or confidential business information are subject to public disclosure pursuant to Washington Public Records Act (chapter 42.56 RCW). If ecology approved the application, the carbon intensity value(s) and its associated fuel pathway code(s) will be posted publicly on the CFP website and incorporated into the WFRS for use by fuel reporting entities.

(3) **Monthly credit trading activity report.** Ecology must post on its web page, by no later than the last day of the month immediately following the month for which the calculation is completed, a credit trading activity report that:

(a) Summarizes the aggregate credit transfer information for the:

- (i) Most recent month;
- (ii) Previous three months;
- (iii) Previous three quarters; and
- (iv) Previous compliance periods;
- (b) Includes, at a minimum:
 - (i) The total number of credits transferred;
 - (ii) The number of transfers;
 - (iii) The number of parties making transfers; and
 - (iv) The formula ecology used to calculate the volume-weighted average price of that month's transfers, exclusive of transactions that fall two standard deviations outside of the mean credit price for the month or that are transferred without a price;
- (c) Is based on the information submitted into the WFRS; and
- (d) Presents aggregated information on all fuel transacted within the state and does not disclose individual parties' transactions.
- (4) **Quarterly data summary.** Ecology must post on its web page at least quarterly:
 - (a) An aggregate data summary of credit and deficit generation for the most recent quarter and all prior quarters; and
 - (b) Information on the contribution of credit generation by different fuel types.
- (5) **Clean fuels program annual report.** Ecology must post on its web page by April 15th of each year, the following information from the previous year:
 - (a) The average cost or cost-savings per gallon of gasoline, per gallon of diesel, or any other fuel types, and the formulas used to calculate such costs or cost-savings; and
 - (b) The total greenhouse gas emissions reductions.
- (6) **Utility reports.** Ecology will post the utility reports it receives under WAC 173-424-420(7) to its website.

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NEW SECTION

- WAC 173-424-720 Emergency deferral.** (1) **Emergency deferral due to fuels shortage.** Ecology may issue an order declaring an emergency deferral of compliance with the carbon intensity standard during the effective compliance period:
- (a) After ecology determines, in consultation with the governor's office and the Washington department of commerce:
 - (i) Extreme and unusual circumstances exist that prevent the **distribution of an adequate supply of renewable fuels** needed for regulated parties to comply with the clean fuels program taking into consideration all available methods of obtaining sufficient credits to comply with the standard;
 - (ii) The extreme and unusual circumstances are the result of a natural disaster, an act of God, a significant supply chain disruption or production facility equipment failure, or another event that could **not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuels** to the state; and
 - (iii) **It is in the public interest to grant the deferral** such as when a deferral is necessary to meet projected temporary shortfalls in the supply of the renewable fuel in the state and that other methods

of obtaining compliance credits are unavailable to compensate for the shortage of renewable fuel supply.

(b) To determine the extent of the fuel shortage and the amount of the fuel needed for regulated parties to comply with that year's standard, ecology will consider the following:

(i) The volume and carbon intensity of the fuel determined to be not available under (a) of this subsection;

(ii) The estimated duration of the shortage; and

(iii) Whether there are any options that could mitigate the shortage including, but not limited to:

(A) The same fuel from other sources;

(B) Substitutes for the affected fuel and the carbon intensities of those substitutes are available; or

(C) Banked clean fuel credits are available.

(c) In addition to the determination in (a) of this subsection, such a temporary and extremely unusual deferral is allowed only if:

(i) The deferral applies only for the shortest time necessary to address the extreme and unusual circumstances;

(ii) The deferral is effective for the shortest practicable time period ecology determines necessary to permit the correction of the extreme and unusual circumstances; and

(iii) Ecology has given public notice of a proposed deferral.

(d) No later than 15 calendar days after the date that ecology determines to issue emergency deferral according to (a) of this subsection.

(2) **Content of an emergency deferral order.** An order declaring an emergency deferral under this section must set forth:

(a) The duration of the emergency deferral;

(b) The types of fuel to which the emergency deferral applies;

(c) Which of the following methods the department has selected for deferring compliance with the clean fuels program during the emergency deferral:

(i) Temporarily adjusting the scheduled applicable carbon intensity standard to a standard identified in the order that better reflects the availability of credits during the emergency deferral and requiring regulated parties to comply with the temporary standard;

(ii) Allowing for the carryover of deficits accrued during the emergency deferral into the next compliance period without penalty; or

(iii) Suspending deficit accrual during the emergency deferral period.

(3) **Termination of emergency deferral.** An emergency deferral may be terminated prior to the expiration date:

(a) If new information becomes available indicating that the shortage that provided the basis for the emergency deferral has ended.

(b) After ecology consults with the department of commerce and the governor's office in making an early termination decision.

(c) Termination of an emergency deferral is effective 15 calendar days after the date that the order declaring the termination is adopted.

(4) In addition to the emergency deferral specified in subsection (1) of this section, ecology may issue a full or partial deferral for one calendar quarter of a person's obligation to furnish credits for compliance under the following conditions.

(a) If ecology finds that the person is unable to comply with the requirements of this chapter due to reasons beyond the person's reasonable control.

(b) Such deferral may be initiated by ecology at its own discretion or at the request of a person regulated under this chapter.

(c) In making decision to issue a deferral under this subsection, ecology may consider the results of the fuel supply forecast in WAC 173-424-730, but is not bound in its decision-making discretion by the results of the forecast.

(d) Ecology may renew issued deferrals under this section.

(e) If ecology issues a deferral pursuant to this subsection, it may require the person subject to the deferral to:

(i) File a progress report on achieving full compliance with the requirements of this chapter within an amount of time determined to be reasonable by the department; and

(ii) Take specific actions to achieve full compliance with the requirements of this chapter.

(f) The issuance of a deferral under this subsection does not permanently relieve the deferral recipient of the obligation to comply with the requirements of this chapter.

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NEW SECTION

WAC 173-424-730 Forecast deferral. (1) **Conditions and deadline for forecast deferral.** No later than December 1st, ecology shall issue an order declaring a forecast deferral for the following compliance period if:

(a) Ecology receives a fuel supply forecast for the following compliance period by October 2nd; and

(b) The forecast projects that the amount of credits that will be available during the forecast compliance period will be less than 100 percent of the credits projected to be necessary for regulated parties to comply with the carbon intensity standard.

(2) **Forecast deferral content:** The forecast deferral order that ecology issues must set forth:

(a) The duration of the forecast deferral, which may not be less than one calendar quarter or longer than one compliance period;

(b) The types of fuel to which the forecast deferral applies; and

(c) Methods for deferring compliance with the carbon intensity standard during the forecasted deferral out of the following:

(i) Temporarily adjusting the scheduled applicable clean fuel standard to a standard identified that better reflects the forecast availability of credits during the forecast compliance period and requiring regulated parties to comply with the temporary standard;

(ii) Requiring regulated parties to comply only with the clean fuel standard applicable during the compliance period prior to the forecast compliance period; or

(iii) Suspending deficit accrual for part or all of the forecast deferral period.

(3) **Other or additional method of deferring compliance with the carbon intensity standard:**

(a) Ecology may take an action for deferring compliance other than, or in addition to, the method listed in subsection (2)(c) of this section provided that ecology determines that none of the methods under subsection (2)(c) of this section will provide a sufficient

mechanism for containing the costs of compliance with the carbon intensity standard during the forecast deferral.

(b) If ecology makes the determination specified in (a) of this subsection, ecology shall:

(i) Include in such order ecology's determination and the action to be taken; and

(ii) Provide written notification and justification of the determination and the action to:

(A) The governor;

(B) The president of the senate;

(C) The speaker of the house of representatives;

(D) The majority and minority leaders of the senate; and

(E) The majority and minority leaders of the house of representatives.

(4) **Terminating a forecast deferral.** Ecology may terminate, by order, a forecast deferral before the expiration date of the forecast deferral. Termination is effective on the first day of the next calendar quarter after the date that the order declaring the termination is adopted.

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PART 8 - VALIDATION AND VERIFICATION

NEW SECTION

WAC 173-424-800 Validation and verification. (1) For fuel pathways that have been certified by CARB or OR-DEQ and approved by ecology, the regulated party must submit the periodic third-party verification reports submitted to and approved by CARB or OR-DEQ.

(2) Ecology may require third-party verification, as necessary, to validate and verify the carbon intensity of fuel pathways, according to:

(a) The principles, requirements, guidelines, and procedures in ISO 14067; or

(b) The requirements California adopted in low carbon fuels standard program under 95500 through 95502.

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PART 9 - TABLES

NEW SECTION

WAC 173-424-900 Tables.

Table 1. Washington Carbon Intensity Standards for Gasoline and Gasoline Substitutes

Calendar Year	Washington Carbon Intensity Standard (gCO₂e per MJ)	Percent Reduction
2023	98.44	0.50 percent
2024	97.97	1.00 percent
2025	96.95	2.00 percent
2026	95.96	3.00 percent
2027	94.97	4.00 percent
2028	93.49	5.50 percent
2029	92.0	7.00 percent
2030	90.52	8.50 percent
2031	89.04	10.00 percent
2032	89.04	10.00 percent
2033	89.04	10.00 percent
2034	79.14	20.00 percent
2035	79.14	20.00 percent
2036	79.14	20.00 percent
2027	79.14	20.00 percent
2038	79.14	20.00 percent
Carbon intensity of gasoline and gasoline substitute for the baseline year (2017) is 98.93 gCO ₂ per MJ		

Table 2. Washington Carbon Intensity Standards for Diesel and Diesel Substitutes

Calendar Year	Washington Carbon Intensity Standard (gCO₂e per MJ)	Percent Reduction
2023	99.61	0.50 percent
2024	99.11	1.00 percent
2025	98.11	2.00 percent
2026	97.11	3.00 percent
2027	96.11	4.00 percent
2028	94.60	5.50 percent
2029	93.10	7.00 percent
2030	91.60	8.50 percent
2031	90.10	10.00 percent
2032	90.10	10.00 percent
2033	90.10	10.00 percent
2034	80.09	20.00 percent

Calendar Year	Washington Carbon Intensity Standard (gCO ₂ e per MJ)	Percent Reduction
2035	80.09	20.00 percent
2036	80.09	20.00 percent
2037	80.09	20.00 percent
2038	80.09	20.00 percent
Carbon intensity of diesel and diesel substitute for the baseline year (2017) is 100.11 gCO ₂ per MJ		

Table 3. Washington Energy Densities and Conversion Factors for Fuels and Blendstocks

Fuel (unit)	MJ/unit
Gasoline blendstock (gallon)	122.48 (MJ/gallon)
Washington gasoline (gallon)	118.38 (MJ/gallon)
Fossil diesel fuel (gallon)	134.48 (MJ/gallon)
Compressed natural gas (therm) ¹	105.5 (MJ/therm)
Electricity (kiloWatt hour)	3.60 (MJ/kiloWatt hour)
Denatured ethanol (gallon)	81.51 (MJ/gallon)
Clear biodiesel (gallon)	126.13 (MJ/gallon)
Liquefied natural gas (gallon)	78.83 (MJ/gallon)
Hydrogen (kilogram)	120.00 (MJ/kilogram)
Liquefied petroleum gas (gallon)	89.63 (MJ/gallon)
Renewable hydrocarbon diesel (gallon)	129.65 (MJ/gallon)
Undenatured anhydrous ethanol (gallon)	80.53 (MJ/gallon)
Alternative Jet Fuel (gallon)	126.37 (MJ/gallon)
Renewable naphtha (gallon)	117.66 (MJ/gallon)

¹ If terms are reported on a LHV basis. For terms reported on an HHV basis, this value must be converted to HHV basis.

Table 4. Washington Energy Economy Ratio Values for Fuels in Vehicles

Light/Medium Duty Applications (Fuels used as gasoline replacements)		Heavy-Duty/Off-Road Applications (Fuels used as diesel replacements)		Aviation Applications (Fuels used as jet fuel replacements)	
Fuel/Vehicle Combination	EER Value Relative to Gasoline	Fuel/Vehicle Combination	EER Value Relative to Diesel	Fuel/Vehicle Combination	EER Value Relative to conventional jet
Gasoline (including E10) or any other gasoline-ethanol blend	1	Diesel fuel (including B5) or any other blend of diesel and biodiesel or renewable hydrocarbon diesel	1	Alternative Jet Fuel+	1

Light/Medium Duty Applications (Fuels used as gasoline replacements)		Heavy-Duty/Off-Road Applications (Fuels used as diesel replacements)		Aviation Applications (Fuels used as jet fuel replacements)	
Fuel/Vehicle Combination	EER Value Relative to Gasoline	Fuel/Vehicle Combination	EER Value Relative to Diesel	Fuel/Vehicle Combination	EER Value Relative to conventional jet
CNG Internal Combustion Engine Vehicle (ICEV)	1	CNG, LNG, or LPG (Spark-Ignition Engines)	0.9		
Electricity/Battery Electric Vehicle or Plug-In Hybrid Electric Vehicle	3.4	CNG, LNG, or LPG (Compression-Ignition Engines)	1		
Electricity/On-Road Electric Motorcycle	4.4	Electricity/Battery Electric Vehicle or Plug-In Hybrid Electric Vehicle	5		
Propane/LPG Forklift	0.9	Electricity/Battery Electric or Plug-in Hybrid Transit Bus	5		
Hydrogen/Fuel Cell Vehicle	2.5	Electricity/Fixed Guideway Light Rail	3.3		
		Electricity/Fixed Guideway Streetcar/Trolley bus	2.1		
		Electricity/Fixed Guideway Aerial Tram	2.6		
		Electricity/Electric Forklift	3.8		
		Electricity/Electric TRU (eTRU)	3.4		
		Hydrogen/Fuel Cell Vehicle	1.9		
		Hydrogen/Fuel Cell Forklift	2.1		
		Electricity/Cargo Handling Equipment	2.7		
		Electricity/Ocean Going Vessel	2.6		
		Electricity/Ground Support Equipment	3.2		

Table 5. Washington Land Use Change CI Values for Biofuels CI Determination

Feedstock	LUC Value (gCO ₂ e/MJ)
Corn Ethanol	19.80
Sorghum Ethanol	19.40
Sugarcane Ethanol	11.80
Soybean Biodiesel or Renewable Diesel	29.10
Canola Biodiesel or Renewable Diesel	14.50
Palm Biodiesel or Renewable Diesel	71.40

Table 6. Washington Carbon Intensity Lookup Fuel Pathway Table

Fuel	Pathway Code	Pathway Description	Carbon Intensity Values (gCO ₂ e/MJ)
Gasoline	WAGAS001	Clear gasoline - based on a weighted average of gasoline supplied to Washington. The CI of the gasoline supply was based on average crude oil supplied to the states (WA, UT, and MT) and U.S. average refinery efficiency	100.46
	WAGAS002	Washington gasoline - blended with corn ethanol as supplied to Washington ²	98.93
Diesel	WAULSD001	Clear diesel - based on a weighted average of diesel fuel supplied to Washington. The CI of the diesel supply was based on average crude oil supplied to the states (WA, UT, and MT) and U.S. average refinery efficiency	101.18
	WAULSD002	Washington diesel - blended with soy biodiesel as supplied to Washington ³	100.11
Compressed Natural Gas	WACNG	Average North American natural gas delivered via pipeline; compressed in WA	77.98
Liquefied Natural Gas	WALNG	Average North American natural gas delivered via pipeline; liquefied in WA	86.76
Liquefied Petroleum Gas	WALPG	Fossil Liquefied petroleum gas from crude oil and natural gas ⁴	80.79
Electricity	WAELEC001	Washington average grid electricity used as transportation fuel in Washington	63.51 (subject to annual update)
	WAELEC002	Renewable electricity, from solar or wind, deemed to have a carbon intensity of zero	0

Fuel	Pathway Code	Pathway Description	Carbon Intensity Values (gCO ₂ e/MJ)
Hydrogen	WAHYF	Compressed H ₂ produced in Washington from central steam methane reformation of North American fossil-based NG	112.76
	WAHYB	Compressed H ₂ produced in WA from central steam methane reformation of biomethane (renewable feedstock) from North American landfills	92.77
	WAHYEG	Compressed H ₂ produced in WA from electrolysis using WA average grid electricity	101.57
	WAHYER	Compressed H ₂ produced in WA from electrolysis using zero-CI electricity, from solar- or wind-generated electricity ⁵	6.49

- 2 Based on 2017 WA blending level of 10% ethanol derived from EIA data, using standard corn ethanol pathway CI from WA-GREET.
- 3 Based on 2017 WA blending level of 2.5% biodiesel derived from EIA data, using standard soy biodiesel pathway CI from WA-GREET.
- 4 Based on CARB estimate of 25% NG and 75% petroleum for PADD5.
- 5 Assumes WAMX grid electricity is used for compression and dispensing at refueling stations.

Table 7. Washington Substitute Fuel Pathway Codes

Fuel	Fuel Pathway code	CI (gCO ₂ e/MJ)
Substitute CI for Ethanol. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	ETH0116	40
Substitute CI for Biodiesel. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	BIOD0116	15
Substitute CI for Renewable Diesel. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	RNWD0116	15
Substitute CI for E10 Gasoline. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	WAGAS0116	96.43 (subject to annual update)
Substitute CI for B2.5 Diesel ⁶ . This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	WAULSD0116	99.17 (subject to annual update)

⁶ Based on 2017 WA average diesel blending level derived from EIA data.

Table 8. Washington Temporary Fuel Pathway Codes

Fuel	Feedstock	Process Energy	FPC	CI (gCO ₂ e/MJ)
Ethanol	Corn	Grid electricity, natural gas, and/or renewables	WAETH100T	90 ⁷
	Sorghum	Grid electricity, natural gas, and/or renewables	WAETH101T	95 ⁸
	Sugarcane and Molasses	Bagasse and straw only, no grid electricity	WAETH102T	55
	Any other starch or sugar feedstock	Any	WAETH103T	98.93 ¹
	Any cellulosic biomass including Corn Stover, Wheat Straw, or Sugarcane Straw	As specified in WA-GREET	WAETH104T	50
Biodiesel	Any feedstock derived from animal fats, corn oil, or a waste stream	Grid electricity, natural gas, and/or renewables	WABIOD200T	45
	Any feedstock derived from plant oils except for Palm-derived oils	Grid electricity, natural gas, and/or renewables	WABIOD201T	65
	Any feedstock	Any	WABIOD202T	100.11 ²
Renewable Diesel	Any feedstock derived from animal fats, corn oil, or a waste stream	Grid electricity, natural gas, and/or renewables	WARNWD300T	45
	Any feedstock derived from plant oils except for Palm-derived oils	Grid electricity, natural gas, and/or renewables	WARNWD301T	65
	Any other feedstock	Any	WARNWD302T	100.11 ³
Biomethane CNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	WACNG500T	70
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	WACNG501T	45
Biomethane LNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	WALNG501T	85
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	WALNG502T	60

Fuel	Feedstock	Process Energy	FPC	CI (gCO ₂ e/MJ)
Biomethane L-CNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	WALCNG502T	90
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	WALCNG503T	65
Biomethane CNG, LNG, L-CNG	Dairy and Swine Manure	Grid electricity, natural gas, and/or parasitic load	WALCNG504T	-150
Hydrogen	Centralized SMR of fossil natural gas or LNG	Grid electricity, natural gas, and/or renewables	WAHYG601T	185
Renewable LPG	Fats, Oils, and Grease residues	Grid electricity, natural gas, and/or renewables	WARNWP400T	45
	Any feedstock derived from plant oils (excluding palm and palm derivatives)	Grid electricity, natural gas, and/or renewables	WARNWP401T	65
Alternative Jet Fuel	Any feedstock derived from animal fats, corn oil, or a waste stream	Grid electricity, natural gas, and/or renewables	WAAJF701T	50
	Any feedstock derived from plant oils (excluding palm oil and palm derivatives, as a sole feedstock or blended with other feedstocks)	Grid electricity, natural gas, and/or renewables	WAJF702T	70
	Any other feedstock	Grid electricity, natural gas, and/or renewables	WAAJF703T	100.11
Any Gasoline Substitute Feedstock-Fuel Combination Not Included Above	Any	Any	WASG800T	98.93 ⁴
Any Diesel Substitute Feedstock- Fuel Combination not Included Above	Any	Any	WASD801T	100.11 ⁵

¹ 2017 baseline carbon intensity for Washington gasoline is 98.85 gCO₂e/MJ.

² 2017 baseline carbon intensity for Washington diesel is 100.02 gCO₂e/MJ.

³ 2017 baseline carbon intensity for Washington diesel is 100.02 gCO₂e/MJ.

⁴ 2017 baseline carbon intensity for Washington gasoline is 98.85 gCO₂e/MJ.

⁵ 2017 baseline carbon intensity for Washington diesel is 100.02 gCO₂e/MJ.

⁷ Reflects an iLUC value of 19.8. If iLUC value under WA CFS is modified, this may be adjusted accordingly.

⁸ Reflects an iLUC value of 19.4. If iLUC value under WA CFS is modified, this may be adjusted accordingly.

Table 9. Summary Checklist of Quarterly and Annual Reporting Requirements

Parameters to report	Gasoline & Diesel Fuel	Ethanol, Biomass based diesel, Renewable Diesel, Alternative Jet Fuel, Other alternative fuels	Natural Gas and Propane	Electricity	Hydrogen
For Quarterly Reporting					
Organization/Company	x	x	x	x	x

Parameters to report	Gasoline & Diesel Fuel	Ethanol, Biomass based diesel, Renewable Diesel, Alternative Jet Fuel, Other alternative fuels	Natural Gas and Propane	Electricity	Hydrogen
Organization FEIN	x	x	x	x	x
Fuel Pathway Code	x	x	x	x	x
Transaction Type	x	x	x	x	x
*Transaction Date	x	x	x	x	x
Business Partner (if applicable)	x	x	x	x	x
Production Company ID and Facility ID	x**	x**	x**	n/a	x**
Fuel Supplying Equipment ID	n/a	n/a	x	x	x
Vehicle Identifier (if applicable)	n/a	n/a	n/a	x	n/a
Physical Transport Mode Code (all)	x	x	x	x	x
Aggregated Transaction Indicator (T/F)	x	x	x	n/a	x
Fuel Application/EER	x	x	x	x	x
Amount of each gasoline and diesel blendstock	x	n/a	n/a	n/a	n/a
Amount of each fuel used as gasoline or diesel replacement	n/a	x	x	x	x
Amount of each fuel used as a jet fuel replacement	n/a	x	n/a	n/a	n/a
MCON or other crude oil name designation, volume (in gal), and country (or state) of origin for each crude supplied to the refinery	x	n/a	n/a	n/a	n/a
Credits/deficits generated per quarter (MT)	x	x	x	x	x
For Annual Compliance Reporting (in addition to the items above)					
***Credits/deficits generated per year (MT)	x	x	x	x	x
***Credits/deficits carried over from the previous year (MT), if any	x	x	x	x	x
***Credits acquired from another entity (MT), if any	x	x	x	x	x
***Credits sold to another entity (MT), if any	x	x	x	x	x
***Credits pledged for sale into CCM (MT) from another entity, if any	x	x	x	x	x
***Credits retired within CFP (MT) to meet compliance obligation, if any	x	x	x	x	x
MCON or other crude oil name designation, volume (in gal), and country (or state) of origin for each crude supplied to the refinery.	x	n/a	n/a	n/a	n/a
* Same as Title Transfer Date; For Aggregated Transactions enter the last day of the reporting period.					
** Does not apply to Gasoline blendstock, Diesel Fuel, Fossil Propane, or Fossil NG.					
*** Value will be calculated, stored and displayed in the WFRS.					

Table 10. Utility-Specific Carbon Intensity of Electricity¹

Fuel Mix Disclosure Claimant ID	Claimant Utility Name	2020 Carbon Intensity of electricity, gCO₂e/MJ
1	Alder Mutual Light	7.06
4	Benton County PUD #1	6.43
5	Benton Rural Electric Assn.	7.07
6	Big Bend Electric Coop	16.19
12	City of Blaine	7.07
18	Centralia City Light	48.63
19	Chelan County PUD #1	0.00
20	Cheney Light Department	16.21
21	Chewelah Electric Department	7.07
22	Clallam County PUD #1	6.97
23	Clark County PUD #1	61.14
26	Clearwater Power (WA)	7.09
30	Columbia Rural Electric Assn. (WA)	20.01
32	Coulee Dam, Town of	7.06
33	Cowlitz County PUD #1	16.10
35	Douglas County PUD #1	41.01
38	Eatonville Electric Department	7.07
39	Elmhurst Mutual Power & Light	7.07
41	Ellensburg Electric Division	7.07
44	Ferry County PUD #1	7.07
46	Franklin County PUD #1	10.83
47	Grays Harbor County PUD #1	7.17
48	Inland Power & Light	14.19
51	Kittitas County PUD #1	7.31
52	Klickitat County PUD #1	25.18
53	Kootenai Electric Coop	0.00
54	Lakeview Light & Power	7.07
56	Lewis County PUD #1	6.59
59	McCleary Light & Power	7.06
63	Milton Electric Division	7.07
64	Modern Electric Water Company	7.07
66	Nespelem Valley Electric Coop	7.07
69	Northern Lights (WA)	6.61
71	Ohop Mutual Light	7.07
72	Okanogan County PUD #1	10.63
73	Okanogan County Electric Coop	0.00
75	Orcas Power & Light Coop	0.00
76	Pacific County PUD #2	14.65
81	Parkland Light & Water	7.07
82	Grant County PUD #2	118.63
83	Pend Oreille County PUD #1	11.73
84	Peninsula Light	6.27
85	Asotin County PUD #1	7.03
86	Port Angeles Light Operations	7.07

Fuel Mix Disclosure Claimant ID	Claimant Utility Name	2020 Carbon Intensity of electricity, gCO ₂ e/MJ
88	Wahkiakum County PUD #1	7.07
89	Mason County PUD #3	6.78
90	Puget Sound Energy	134.79
91	Richland Energy Services	18.21
92	Ruston, Town of	0.53
95	Seattle City Light	4.45
96	Skamania County PUD #1	7.07
97	Snohomish County PUD #1	6.22
99	Steilacoom Electric Utility	7.07
101	Sumas, City of	7.07
102	Tacoma Power	4.02
103	Tanner Electric Coop	7.07
106	Vera Water & Power	14.57
109	Avista (WA)	113.08
111	Mason County PUD #1	6.60
117	Whatcom County PUD #1	7.07
118	Jefferson County PUD #1	7.07
119	Port of Seattle	7.07
120	Yakama Power	7.07
124	Port Townsend	0.00
130	Pacific Power (WA)	178.47
143	Solar City (WA)	0.00
144	Kalispel Tribal Utility	7.07
157	Okanogan County Electric Coop	15.64
158	Orcas Power & Light Coop	7.07
160	Energy Northwest	7.06
161	Consolidated Irrigation District #19	7.11
162	Fairchild Airforce Base	7.07

¹ Updates to this table will be provided annually on the CFS website.

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OTS-3844.2

NEW SECTION

WAC 173-455-150 Clean fuels program fees. (1) Fee determination. Credit and deficit generators as defined in WAC 173-424-110 must pay an annual fee. Ecology must establish fees based on workload using the process outlined below. The fees must be sufficient to cover ecology's costs to administer the clean fuels program.

(2) Fee eligible activities. All costs of activities associated with implementing and administering the clean fuels program are fee eligible.

(3) Ecology identifies deficit and credit generators based on the following:

(a) In 2023, ecology determines deficit and credit generators based on registration information.

(b) In 2024, ecology determines deficit and credit generators based on quarterly reports submitted in 2023.

(c) For all subsequent years, ecology determines deficit and credit generators based on the annual compliance reports required by WAC 173-424-430 and covering deficits generated during the previous compliance year.

(4) Workload analysis and budget development. Each biennium, ecology, along with the department of commerce, must conduct a workload analysis and develop a budget for administration of the clean fuels program. The workload analysis must project resource requirements for administering the clean fuels program. Ecology must publish the workload analysis and provide an opportunity for public review and comment on the workload analysis. The budget must be based on the resource requirements identified in the workload analysis.

(5) Allocation methodology. Ecology must allocate the clean fuels program budget among credit and deficit generators.

(a) For fees assessed in 2023, ecology may collect a participation fee only. Ecology must allocate the participation fee as follows:

(i) Ninety-five percent of the annual budget is to be paid by deficit generators.

(ii) Five percent of the annual budget is to be paid by credit generators.

(b) For fees assessed in 2024 and later, ecology may collect both a participation fee and a deficit generation fee.

(i) The participation fee must equal five percent of the annual budget, and ecology must split the fee equally amongst deficit and credit generators.

(ii) The deficit generation fee must equal 95 percent of the annual budget, and ecology must allocate the fee based on the number of deficits generated by an entity as follows:

(A) Category 1 (highest fee): Top 30 percent of deficit generators. Category 1 is 70 percent of the deficit generation fee.

(B) Category 2 (middle fee): Middle 30 percent of deficit generators. Category 2 is 20 percent of the deficit generation fee.

(C) Category 3 (lowest fee): Lower 30 percent of deficit generators. Category 3 is 10 percent of the deficit generation fee.

(D) Category 4 (fee exemption): The lowest 10 percent of deficit generators will be exempt from the deficit generation fee.

(6) Fee schedule.

(a) In 2023, ecology must prepare an annual budget that reflects the estimated cost of administering the clean fuels program. Following preparation of the annual budget, ecology must:

(i) Post the draft annual budget and estimated fees on ecology's website by February 1, 2023.

(ii) Provide a 30-day public comment period on the draft budget and fees.

(iii) Post the final budget and fees by March 15, 2023.

(b) In 2024, ecology must prepare an annual budget that reflects the estimated cost of administering the clean fuels program. Following preparation of the annual budget, ecology must:

(i) Post the draft 2024 workload analysis, annual budget, estimated fees, and list of deficit generators on ecology's website by February 1, 2024.

(ii) Provide a 30-day public comment period on the draft workload analysis, budget, fees, and deficit generator list.

(iii) Post the final workload analysis, budget, fees, and deficit generator list by March 15, 2024.

(c) For all subsequent years, ecology must prepare an annual budget that reflects the estimated cost of the program. Following preparation of the annual budget, ecology must:

(i) Post the draft workload analysis applicable to that year, annual budget, estimated fees, and list of deficit generators on ecology's website by May 15th.

(ii) Provide a 30-day public comment period on the draft workload analysis, budget, fees, and deficit generator list.

(iii) Post the final workload analysis, budget, fees, and deficit generator list by June 30th.

(7) Fee payments. Fees specified in this section must be paid within 30 calendar days of receipt of ecology's billing statement. All fees collected under this section must be made payable to the Washington department of ecology. Ecology may assess a late fee surcharge of \$50 or 10 percent of the fee, whichever is more, for any fee received after 60 calendar days past the due date for fee payment.

(8) Dedicated account. Ecology must deposit all clean fuels program fees and penalties in the clean fuels program account.

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WSR 22-24-010

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 28, 2022, 4:52 p.m., effective December 29, 2022]

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

Purpose: Currently, WAC restricts the age a person can take the knowledge exam to obtain a permit beyond what is required by law. This proposal would align WAC 308-110-030 with 308-104-046 for age requirements found within RCW 46.20.055.

Citation of Rules Affected by this Order: Amending WAC 308-110-030 Administration of examinations.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, and 46.20.119 Reasonable rules.

Adopted under notice filed as WSR 22-17-134 on August 23, 2022.

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

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

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

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

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

Date Adopted: November 28, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-4053.1

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-110-030 Administration of examinations. (1) Schools and examiners must conduct skills tests using routes that meet department standards.

(2) Knowledge test questions must be supplied by the department or meet department criteria.

(3) Knowledge tests must be conducted in an area separate from classroom instruction or when a class is not in session, minimizing distractions or interactions.

(4) Examinations must be conducted by examiners.

(5) Knowledge test results may be used to obtain a driver license for no more than two years from the date of completion.

(6) Skills test results may be used to obtain a driver license for no more than one year from the date of completion.

(7) In accordance with the department's guidelines, schools must refer to the department for testing any applicant who has a condition that may impair their ability to operate a motor vehicle safely.

~~(8) Prior to administering the knowledge and skills tests, schools ((must)) will ensure that applicants are ((at least fifteen years of age. When the applicant is less than eighteen years of age, the applicant must have successfully completed a traffic safety education course.~~

~~(9)) properly informed regarding testing requirements and their test results. Schools must also inform applicants of the school's current retesting, refund, and grievance policies and procedures.~~

~~(9) Prior to administering the knowledge exam, schools must ensure the applicants are at least 15 1/2 years old; or 15 years old and have successfully completed a traffic safety education course.~~

~~(10) Prior to administering the skills ((test)) exam, schools ((will)) must ensure that applicants are ((properly informed regarding testing requirements and their test results. Schools must also inform applicants of the school's current retesting, refund, and grievance policies and procedures)) at least 15 years of age. When the applicant is less than 18 years of age, the applicant must have successfully completed a traffic safety education course.~~

~~((10)) (11) Applicants must possess one of the following to participate in the skills testing portion of the examination:~~

~~(a) A Washington instruction permit issued under RCW 46.20.055;~~

~~(b) A temporary authorization to drive issued on a form prescribed by the department; or~~

~~(c) A valid foreign driver's license.~~

[Statutory Authority: RCW 46.01.110 and 46.82.450. WSR 12-17-059, § 308-110-030, filed 8/10/12, effective 9/10/12.]

WSR 22-24-019
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 30, 2022, 9:03 a.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: This rule adoption amends the tables of classification base premium rates, experience rating plan parameters, and experience modification factor calculation limitations for the workers' compensation insurance program for calendar year 2023. Classification base rates were updated to align with expected losses. The department of labor and industries (L&I) is adopting a 4.8 percent overall average premium rate increase.

Washington law provides that rates should be adjusted annually to reflect the hazards of each industry and in accordance with recognized workers' compensation insurance principles and to ensure solvency of the accident, medical aid, and supplemental pension funds.

Washington employers continue to deal with uncertainties associated with the pandemic and the global economy. In light of that, L&I is adopting an overall average rate increase of 4.8 percent to ensure adequate premiums to cover expected costs of 2023 claims. This increase is below the indicated break-even rate and consistent with our rate-making principle of keeping rates steady and predictable. This rate increase is required to partially account for two consecutive years of higher-than-normal increases in the state's average wage. L&I is able to minimize the increase for this upcoming year due to the ongoing efforts to gradually increase the workers' compensation contingency reserve (surplus).

Citation of Rules Affected by this Order: Amending WAC 296-17-855 Experience modification, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89507 Horse racing rates, 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class, 296-17-920 Assessment for supplemental pension fund, 296-17B-540 Determining loss incurred for each claim, and 296-17B-900 Retrospective rating plans standard premium size ranges.

Statutory Authority for Adoption: RCW 51.16.035 (base rates), 51.32.073 (supplemental pension), 51.18.010 (retrospective rating), and 51.04.020(1) (general authority).

Adopted under notice filed as WSR 22-19-075 on September 20, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 12, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 12, Repealed 0.
 Date Adopted: November 30, 2022.

Joel Sacks
 Director

OTS-4077.1

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-855 Experience modification. The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due consideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\begin{aligned} \text{EXPERIENCE MODIFICATION FACTOR} &= \frac{(\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss})}{\text{Expected Loss}} \\ \text{Where} & \\ \text{Credible Actual Primary Loss} &= \text{Actual Primary Loss} \times \text{Primary Credibility} \\ &+ \text{Expected Primary Loss} \times (100\% - \text{Primary Credibility}) \\ \text{Credible Actual Excess Loss} &= \text{Actual Excess Loss} \times \text{Excess Credibility} \\ &+ \text{Expected Excess Loss} \times (100\% - \text{Excess Credibility}) \end{aligned}$$

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of (~~(\$21,280)~~) \$22,670 the actual primary loss shall be determined from the formula:

$$\text{Primary Loss} = \frac{((\del{53,240}) \ 56,670)}{(\text{Total Loss} + ((\del{31,930}) \ 34,000))} \times \text{Total Loss}$$

For each claim, less than (~~(\$21,280)~~) \$22,670 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of (~~(\$3,450)~~) \$3,570 or the total cost of the claim. Here are some examples for these claims:

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
300	Medical Only	0	0	0
4,000	Medical Only	((550)) <u>430</u>	((550)) <u>430</u>	0
4,000	Timeloss	4,000	4,000	0
30,000	Medical Only	((26,550)) <u>26,430</u>	((24,157)) <u>24,786</u>	((2,393)) <u>1,644</u>
30,000	Timeloss	30,000	((25,776)) <u>26,564</u>	((4,224)) <u>3,436</u>
130,000	PPD	130,000	((42,718)) <u>44,921</u>	((87,282)) <u>85,079</u>
500,000	TPD Pension	((341,650)) <u>382,810</u>	((48,662)) <u>52,047</u>	((292,988)) <u>330,763</u>
2,000,000	TPD Pension	((341,650)) <u>382,810</u>	((48,662)) <u>52,047</u>	((292,988)) <u>330,763</u>

Note: The deduction, (~~(\$3,450)~~) \$3,570, is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about seventy percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 21-24-066, § 296-17-855, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-855, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-855, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-855, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-855, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-855, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-855, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-855, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-855, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR

12-24-048, § 296-17-855, filed 11/30/12, effective 1/1/13; WSR
11-24-026, § 296-17-855, filed 12/1/11, effective 1/1/12. Statutory
Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR
11-04-069, § 296-17-855, filed 1/28/11, effective 2/28/11; WSR
09-24-086, § 296-17-855, filed 11/30/09, effective 1/1/10; WSR
08-24-074, § 296-17-855, filed 12/1/08, effective 1/1/09; WSR
07-24-046, § 296-17-855, filed 12/1/07, effective 1/1/08; WSR
06-24-054, § 296-17-855, filed 12/1/06, effective 1/1/07. Statutory
Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, §
296-17-855, filed 11/22/05, effective 1/1/06; WSR 04-24-025, §
296-17-855, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW
51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, §
296-17-855, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW
51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, §
296-17-855, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW
51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, §
296-17-855, filed 11/20/01, effective 1/1/02; WSR 00-23-101, §
296-17-855, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW
51.16.035, 51.04.020. WSR 00-14-052, § 296-17-855, filed 7/1/00, ef-
fective 7/1/00. Statutory Authority: RCW 51.04.020, 51.16.035 and
51.32.073. WSR 99-24-055, § 296-17-855, filed 11/29/99, effective
12/31/99; WSR 98-24-094, § 296-17-855, filed 12/1/98, effective
1/1/99; WSR 97-24-062, § 296-17-855, filed 12/1/97, effective 1/1/98;
WSR 96-24-063, § 296-17-855, filed 11/29/96, effective 1/1/97. Statu-
tory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-855, filed
11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-855, filed
11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-855, filed
12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and
51.16.035. WSR 93-12-093, § 296-17-855, filed 5/31/93, effective
7/1/93; WSR 92-24-063, § 296-17-855, filed 11/30/92, effective 1/1/93;
WSR 91-24-053, § 296-17-855, filed 11/27/91, effective 1/1/92; WSR
90-24-042, § 296-17-855, filed 11/30/90, effective 1/1/91; WSR
89-24-051 (Order 89-22), § 296-17-855, filed 12/1/89, effective
1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR
88-24-012 (Order 88-30), § 296-17-855, filed 12/1/88, effective
1/1/89. Statutory Authority: RCW 51.16.035. WSR 87-24-060 (Order
87-26), § 296-17-855, filed 12/1/87, effective 1/1/88. Statutory Au-
thority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41),
§ 296-17-855, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR
85-24-032 (Order 85-33), § 296-17-855, filed 11/27/85, effective
1/1/86; WSR 84-24-016 (Order 84-23), § 296-17-855, filed 11/28/84, ef-
fective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-855, filed
11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-855,
filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), §
296-17-855, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order
80-23), § 296-17-855, filed 11/13/80, effective 1/1/81. Statutory Au-
thority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), §
296-17-855, filed 11/30/79, effective 1/1/80; Order 77-27, §
296-17-855, filed 11/30/77, effective 1/1/78; Order 74-40, §
296-17-855, filed 11/27/74, effective 1/1/75; Order 73-22, §
296-17-855, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-875 Table I.

**Primary Losses for Selected Claim Values
Effective January 1, ((2022)) 2023**

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
5,000	5,000
10,000	10,000
15,000	15,000
((21,280	21,280
28,297	25,000
41,271	30,000
61,370	35,000
96,684	40,000
175,012	45,000
265,617	47,500
341,650 **	48,662))
<u>22,670</u>	<u>22,670</u>
<u>26,839</u>	<u>25,000</u>
<u>38,245</u>	<u>30,000</u>
<u>54,915</u>	<u>35,000</u>
<u>81,584</u>	<u>40,000</u>
<u>131,105</u>	<u>45,000</u>
<u>176,118</u>	<u>47,500</u>
<u>382,810 **</u>	<u>52,047</u>

** Maximum claim value

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-875, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-875, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-875, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-875, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-875, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-875, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-875, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-875, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-875, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-875, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-875, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-875, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-875, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-875, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-875, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-875, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-875, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-875, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, §

296-17-875, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-875, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-875, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-875, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-875, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-875, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-875, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-875, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-875, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-875, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-875, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-875, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-875, filed 11/27/91, effective 1/1/92; WSR 90-24-042, § 296-17-875, filed 11/30/90, effective 1/1/91; WSR 89-24-051 (Order 89-22), § 296-17-875, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-875, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 87-24-060 (Order 87-26), § 296-17-875, filed 12/1/87, effective 1/1/88. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-875, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-875, filed 5/30/86, effective 7/1/86; WSR 85-24-032 (Order 85-33), § 296-17-875, filed 11/27/85, effective 1/1/86; WSR 84-24-016 (Order 84-23), § 296-17-875, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-875, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-875, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-875, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-875, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-875, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-875, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-875, filed 11/30/77, effective 1/1/78; Order 76-36, § 296-17-875, filed 11/30/76; Order 75-38, § 296-17-875, filed 11/24/75, effective 1/1/76; Order 74-40, § 296-17-875, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-875, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-880 Table II.

**PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2022)) 2023**

Maximum Claim Value = ((~~\$341,650~~)) \$382,810
Average Death Value = ((~~\$341,650~~)) \$382,810

Expected Losses	Primary Credibility	Excess Credibility
((0 - 5,884	12%	7%

Expected Losses		Primary Credibility	Excess Credibility
5,885	- 6,282	13%	7%
6,283	- 6,683	14%	7%
6,684	- 7,088	15%	7%
7,089	- 7,500	16%	7%
7,501	- 7,916	17%	7%
7,917	- 8,338	18%	7%
8,339	- 8,765	19%	7%
8,766	- 9,196	20%	7%
9,197	- 9,636	21%	7%
9,637	- 10,080	22%	7%
10,081	- 10,533	23%	7%
10,534	- 10,989	24%	7%
10,990	- 11,455	25%	7%
11,456	- 11,929	26%	7%
11,930	- 12,408	27%	7%
12,409	- 12,898	28%	7%
12,899	- 13,394	29%	7%
13,395	- 13,899	30%	7%
13,900	- 14,417	31%	7%
14,418	- 14,940	32%	7%
14,941	- 15,478	33%	7%
15,479	- 16,027	34%	7%
16,028	- 16,587	35%	7%
16,588	- 17,160	36%	7%
17,161	- 17,747	37%	7%
17,748	- 18,354	38%	7%
18,355	- 18,971	39%	7%
18,972	- 19,609	40%	7%
19,610	- 20,265	41%	7%
20,266	- 20,944	42%	7%
20,945	- 21,646	43%	7%
21,647	- 22,373	44%	7%
22,374	- 23,131	45%	7%
23,132	- 23,923	46%	7%
23,924	- 24,751	47%	7%
24,752	- 25,626	48%	7%
25,627	- 26,554	49%	7%
26,555	- 27,541	50%	7%
27,542	- 28,610	51%	7%
28,611	- 29,780	52%	7%
29,781	- 31,083	53%	7%
31,084	- 31,217	54%	7%
31,218	- 32,586	54%	8%
32,587	- 34,421	55%	8%
34,422	- 52,096	56%	8%
52,097	- 57,418	57%	8%
57,419	- 82,015	57%	9%

Expected Losses			Primary Credibility	Excess Credibility
82,016	-	84,473	57%	10%
84,474	-	106,762	58%	10%
106,763	-	116,850	58%	11%
116,851	-	131,664	59%	11%
131,665	-	149,230	59%	12%
149,231	-	156,715	60%	12%
156,716	-	181,609	60%	13%
181,610	-	181,926	61%	13%
181,927	-	207,293	61%	14%
207,294	-	213,986	61%	15%
213,987	-	232,818	62%	15%
232,819	-	246,364	62%	16%
246,365	-	258,504	63%	16%
258,505	-	278,743	63%	17%
278,744	-	284,353	64%	17%
284,354	-	310,363	64%	18%
310,364	-	311,119	64%	19%
311,120	-	336,542	65%	19%
336,543	-	343,498	65%	20%
343,499	-	362,881	66%	20%
362,882	-	375,878	66%	21%
375,879	-	389,390	67%	21%
389,391	-	408,257	67%	22%
408,258	-	416,070	68%	22%
416,071	-	440,631	68%	23%
440,632	-	442,921	69%	23%
442,922	-	469,943	69%	24%
469,944	-	473,010	69%	25%
473,011	-	497,140	70%	25%
497,141	-	505,391	70%	26%
505,392	-	524,514	71%	26%
524,515	-	537,769	71%	27%
537,770	-	552,066	72%	27%
552,067	-	570,147	72%	28%
570,148	-	579,796	73%	28%
579,797	-	602,526	73%	29%
602,527	-	607,708	74%	29%
607,709	-	634,904	74%	30%
634,905	-	635,805	75%	30%
635,806	-	664,085	75%	31%
664,086	-	667,282	75%	32%
667,283	-	692,553	76%	32%
692,554	-	699,661	76%	33%
699,662	-	721,206	77%	33%
721,207	-	732,039	77%	34%
732,040	-	750,055	78%	34%
750,056	-	764,417	78%	35%

Expected Losses	Primary Credibility	Excess Credibility
764,418 - 779,092	79%	35%
779,093 - 796,796	79%	36%
796,797 - 808,325	80%	36%
808,326 - 829,172	80%	37%
829,173 - 837,756	81%	37%
837,757 - 861,551	81%	38%
861,552 - 867,384	82%	38%
867,385 - 893,931	82%	39%
893,932 - 897,212	83%	39%
897,213 - 926,309	83%	40%
926,310 - 927,241	84%	40%
927,242 - 957,477	84%	41%
957,478 - 958,685	84%	42%
958,686 - 987,915	85%	42%
987,916 - 991,063	85%	43%
991,064 - 1,018,567	86%	43%
1,018,568 - 1,023,443	86%	44%
1,023,444 - 1,049,427	87%	44%
1,049,428 - 1,055,822	87%	45%
1,055,823 - 1,080,501	88%	45%
1,080,502 - 1,088,200	88%	46%
1,088,201 - 1,111,790	89%	46%
1,111,791 - 1,120,577	89%	47%
1,120,578 - 1,143,298	90%	47%
1,143,299 - 1,152,957	90%	48%
1,152,958 - 1,175,023	91%	48%
1,175,024 - 1,185,333	91%	49%
1,185,334 - 1,206,970	92%	49%
1,206,971 - 1,217,714	92%	50%
1,217,715 - 1,239,142	93%	50%
1,239,143 - 1,250,092	93%	51%
1,250,093 - 1,271,542	94%	51%
1,271,543 - 1,282,469	94%	52%
1,282,470 - 1,304,171	95%	52%
1,304,172 - 1,314,847	95%	53%
1,314,848 - 1,337,030	96%	53%
1,337,031 - 1,347,226	96%	54%
1,347,227 - 1,370,123	97%	54%
1,370,124 - 1,379,604	97%	55%
1,379,605 - 1,403,453	98%	55%
1,403,454 - 1,411,983	98%	56%
1,411,984 - 1,437,022	99%	56%
1,437,023 - 1,444,360	99%	57%
1,444,361 - 1,470,832	100%	57%
1,470,833 - 1,504,888	100%	58%
1,504,889 - 1,539,191	100%	59%
1,539,192 - 1,573,742	100%	60%

Expected Losses	Primary Credibility	Excess Credibility
1,573,743 - 1,608,546	100%	61%
1,608,547 - 1,643,605	100%	62%
1,643,606 - 1,678,923	100%	63%
1,678,924 - 1,714,500	100%	64%
1,714,501 - 1,750,342	100%	65%
1,750,343 - 1,786,449	100%	66%
1,786,450 - 1,822,829	100%	67%
1,822,830 - 1,859,478	100%	68%
1,859,479 - 1,896,404	100%	69%
1,896,405 - 1,933,610	100%	70%
1,933,611 - 1,971,098	100%	71%
1,971,099 - 2,008,871	100%	72%
2,008,872 - 2,046,932	100%	73%
2,046,933 - 2,085,286	100%	74%
2,085,287 - 2,123,932	100%	75%
2,123,933 - 2,162,880	100%	76%
2,162,881 - 2,202,127	100%	77%
2,202,128 - 2,241,682	100%	78%
2,241,683 - 2,281,545	100%	79%
2,281,546 - 2,321,722	100%	80%
2,321,723 - 2,362,218	100%	81%
2,362,219 - 2,403,029	100%	82%
2,403,030 - 2,444,168	100%	83%
2,444,169 - 2,485,631	100%	84%
2,485,632 - 2,527,430	100%	85%
2,527,431 and higher	100%	86%))
<u>0</u> = <u>5,913</u>	<u>12%</u>	<u>7%</u>
<u>5,914</u> = <u>6,313</u>	<u>13%</u>	<u>7%</u>
<u>6,314</u> = <u>6,716</u>	<u>14%</u>	<u>7%</u>
<u>6,717</u> = <u>7,123</u>	<u>15%</u>	<u>7%</u>
<u>7,124</u> = <u>7,538</u>	<u>16%</u>	<u>7%</u>
<u>7,539</u> = <u>7,956</u>	<u>17%</u>	<u>7%</u>
<u>7,957</u> = <u>8,380</u>	<u>18%</u>	<u>7%</u>
<u>8,381</u> = <u>8,809</u>	<u>19%</u>	<u>7%</u>
<u>8,810</u> = <u>9,242</u>	<u>20%</u>	<u>7%</u>
<u>9,243</u> = <u>9,684</u>	<u>21%</u>	<u>7%</u>
<u>9,685</u> = <u>10,130</u>	<u>22%</u>	<u>7%</u>
<u>10,131</u> = <u>10,586</u>	<u>23%</u>	<u>7%</u>
<u>10,587</u> = <u>11,044</u>	<u>24%</u>	<u>7%</u>
<u>11,045</u> = <u>11,512</u>	<u>25%</u>	<u>7%</u>
<u>11,513</u> = <u>11,989</u>	<u>26%</u>	<u>7%</u>
<u>11,990</u> = <u>12,470</u>	<u>27%</u>	<u>7%</u>
<u>12,471</u> = <u>12,962</u>	<u>28%</u>	<u>7%</u>
<u>12,963</u> = <u>13,461</u>	<u>29%</u>	<u>7%</u>
<u>13,462</u> = <u>13,969</u>	<u>30%</u>	<u>7%</u>
<u>13,970</u> = <u>14,489</u>	<u>31%</u>	<u>7%</u>
<u>14,490</u> = <u>15,015</u>	<u>32%</u>	<u>7%</u>

Expected Losses	Primary Credibility	Excess Credibility
<u>15,016</u> = <u>15,555</u>	<u>33%</u>	<u>7%</u>
<u>15,556</u> = <u>16,107</u>	<u>34%</u>	<u>7%</u>
<u>16,108</u> = <u>16,670</u>	<u>35%</u>	<u>7%</u>
<u>16,671</u> = <u>17,246</u>	<u>36%</u>	<u>7%</u>
<u>17,247</u> = <u>17,836</u>	<u>37%</u>	<u>7%</u>
<u>17,837</u> = <u>18,446</u>	<u>38%</u>	<u>7%</u>
<u>18,447</u> = <u>19,066</u>	<u>39%</u>	<u>7%</u>
<u>19,067</u> = <u>19,707</u>	<u>40%</u>	<u>7%</u>
<u>19,708</u> = <u>20,366</u>	<u>41%</u>	<u>7%</u>
<u>20,367</u> = <u>21,049</u>	<u>42%</u>	<u>7%</u>
<u>21,050</u> = <u>21,754</u>	<u>43%</u>	<u>7%</u>
<u>21,755</u> = <u>22,485</u>	<u>44%</u>	<u>7%</u>
<u>22,486</u> = <u>23,247</u>	<u>45%</u>	<u>7%</u>
<u>23,248</u> = <u>24,043</u>	<u>46%</u>	<u>7%</u>
<u>24,044</u> = <u>24,875</u>	<u>47%</u>	<u>7%</u>
<u>24,876</u> = <u>25,754</u>	<u>48%</u>	<u>7%</u>
<u>25,755</u> = <u>26,687</u>	<u>49%</u>	<u>7%</u>
<u>26,688</u> = <u>27,679</u>	<u>50%</u>	<u>7%</u>
<u>27,680</u> = <u>28,753</u>	<u>51%</u>	<u>7%</u>
<u>28,754</u> = <u>29,929</u>	<u>52%</u>	<u>7%</u>
<u>29,930</u> = <u>31,238</u>	<u>53%</u>	<u>7%</u>
<u>31,239</u> = <u>31,373</u>	<u>54%</u>	<u>7%</u>
<u>31,374</u> = <u>32,749</u>	<u>54%</u>	<u>8%</u>
<u>32,750</u> = <u>34,593</u>	<u>55%</u>	<u>8%</u>
<u>34,594</u> = <u>52,356</u>	<u>56%</u>	<u>8%</u>
<u>52,357</u> = <u>57,705</u>	<u>57%</u>	<u>8%</u>
<u>57,706</u> = <u>82,425</u>	<u>57%</u>	<u>9%</u>
<u>82,426</u> = <u>84,895</u>	<u>57%</u>	<u>10%</u>
<u>84,896</u> = <u>107,296</u>	<u>58%</u>	<u>10%</u>
<u>107,297</u> = <u>117,434</u>	<u>58%</u>	<u>11%</u>
<u>117,435</u> = <u>132,322</u>	<u>59%</u>	<u>11%</u>
<u>132,323</u> = <u>149,976</u>	<u>59%</u>	<u>12%</u>
<u>149,977</u> = <u>157,499</u>	<u>60%</u>	<u>12%</u>
<u>157,500</u> = <u>182,517</u>	<u>60%</u>	<u>13%</u>
<u>182,518</u> = <u>182,836</u>	<u>61%</u>	<u>13%</u>
<u>182,837</u> = <u>208,329</u>	<u>61%</u>	<u>14%</u>
<u>208,330</u> = <u>215,056</u>	<u>61%</u>	<u>15%</u>
<u>215,057</u> = <u>233,982</u>	<u>62%</u>	<u>15%</u>
<u>233,983</u> = <u>247,596</u>	<u>62%</u>	<u>16%</u>
<u>247,597</u> = <u>259,797</u>	<u>63%</u>	<u>16%</u>
<u>259,798</u> = <u>280,137</u>	<u>63%</u>	<u>17%</u>
<u>280,138</u> = <u>285,775</u>	<u>64%</u>	<u>17%</u>
<u>285,776</u> = <u>311,915</u>	<u>64%</u>	<u>18%</u>
<u>311,916</u> = <u>312,675</u>	<u>64%</u>	<u>19%</u>
<u>312,676</u> = <u>338,225</u>	<u>65%</u>	<u>19%</u>
<u>338,226</u> = <u>345,215</u>	<u>65%</u>	<u>20%</u>
<u>345,216</u> = <u>364,695</u>	<u>66%</u>	<u>20%</u>

Expected Losses		Primary Credibility	Excess Credibility	
<u>364,696</u>	=	<u>377,757</u>	<u>66%</u>	<u>21%</u>
<u>377,758</u>	=	<u>391,337</u>	<u>67%</u>	<u>21%</u>
<u>391,338</u>	=	<u>410,298</u>	<u>67%</u>	<u>22%</u>
<u>410,299</u>	=	<u>418,150</u>	<u>68%</u>	<u>22%</u>
<u>418,151</u>	=	<u>442,834</u>	<u>68%</u>	<u>23%</u>
<u>442,835</u>	=	<u>445,136</u>	<u>69%</u>	<u>23%</u>
<u>445,137</u>	=	<u>472,293</u>	<u>69%</u>	<u>24%</u>
<u>472,294</u>	=	<u>475,375</u>	<u>69%</u>	<u>25%</u>
<u>475,376</u>	=	<u>499,626</u>	<u>70%</u>	<u>25%</u>
<u>499,627</u>	=	<u>507,918</u>	<u>70%</u>	<u>26%</u>
<u>507,919</u>	=	<u>527,137</u>	<u>71%</u>	<u>26%</u>
<u>527,138</u>	=	<u>540,458</u>	<u>71%</u>	<u>27%</u>
<u>540,459</u>	=	<u>554,826</u>	<u>72%</u>	<u>27%</u>
<u>554,827</u>	=	<u>572,998</u>	<u>72%</u>	<u>28%</u>
<u>572,999</u>	=	<u>582,695</u>	<u>73%</u>	<u>28%</u>
<u>582,696</u>	=	<u>605,539</u>	<u>73%</u>	<u>29%</u>
<u>605,540</u>	=	<u>610,747</u>	<u>74%</u>	<u>29%</u>
<u>610,748</u>	=	<u>638,079</u>	<u>74%</u>	<u>30%</u>
<u>638,080</u>	=	<u>638,984</u>	<u>75%</u>	<u>30%</u>
<u>638,985</u>	=	<u>667,405</u>	<u>75%</u>	<u>31%</u>
<u>667,406</u>	=	<u>670,618</u>	<u>75%</u>	<u>32%</u>
<u>670,619</u>	=	<u>696,016</u>	<u>76%</u>	<u>32%</u>
<u>696,017</u>	=	<u>703,159</u>	<u>76%</u>	<u>33%</u>
<u>703,160</u>	=	<u>724,812</u>	<u>77%</u>	<u>33%</u>
<u>724,813</u>	=	<u>735,699</u>	<u>77%</u>	<u>34%</u>
<u>735,700</u>	=	<u>753,805</u>	<u>78%</u>	<u>34%</u>
<u>753,806</u>	=	<u>768,239</u>	<u>78%</u>	<u>35%</u>
<u>768,240</u>	=	<u>782,987</u>	<u>79%</u>	<u>35%</u>
<u>782,988</u>	=	<u>800,780</u>	<u>79%</u>	<u>36%</u>
<u>800,781</u>	=	<u>812,367</u>	<u>80%</u>	<u>36%</u>
<u>812,368</u>	=	<u>833,318</u>	<u>80%</u>	<u>37%</u>
<u>833,319</u>	=	<u>841,945</u>	<u>81%</u>	<u>37%</u>
<u>841,946</u>	=	<u>865,859</u>	<u>81%</u>	<u>38%</u>
<u>865,860</u>	=	<u>871,721</u>	<u>82%</u>	<u>38%</u>
<u>871,722</u>	=	<u>898,401</u>	<u>82%</u>	<u>39%</u>
<u>898,402</u>	=	<u>901,698</u>	<u>83%</u>	<u>39%</u>
<u>901,699</u>	=	<u>930,941</u>	<u>83%</u>	<u>40%</u>
<u>930,942</u>	=	<u>931,877</u>	<u>84%</u>	<u>40%</u>
<u>931,878</u>	=	<u>962,264</u>	<u>84%</u>	<u>41%</u>
<u>962,265</u>	=	<u>963,478</u>	<u>84%</u>	<u>42%</u>
<u>963,479</u>	=	<u>992,855</u>	<u>85%</u>	<u>42%</u>
<u>992,856</u>	=	<u>996,018</u>	<u>85%</u>	<u>43%</u>
<u>996,019</u>	=	<u>1,023,660</u>	<u>86%</u>	<u>43%</u>
<u>1,023,661</u>	=	<u>1,028,560</u>	<u>86%</u>	<u>44%</u>
<u>1,028,561</u>	=	<u>1,054,674</u>	<u>87%</u>	<u>44%</u>
<u>1,054,675</u>	=	<u>1,061,101</u>	<u>87%</u>	<u>45%</u>
<u>1,061,102</u>	=	<u>1,085,904</u>	<u>88%</u>	<u>45%</u>

Expected Losses	Primary Credibility	Excess Credibility
<u>1,085,905</u>	<u>88%</u>	<u>46%</u>
<u>1,093,642</u>	<u>89%</u>	<u>46%</u>
<u>1,117,350</u>	<u>89%</u>	<u>47%</u>
<u>1,126,181</u>	<u>90%</u>	<u>47%</u>
<u>1,149,015</u>	<u>90%</u>	<u>48%</u>
<u>1,158,723</u>	<u>91%</u>	<u>48%</u>
<u>1,180,899</u>	<u>91%</u>	<u>49%</u>
<u>1,191,261</u>	<u>92%</u>	<u>49%</u>
<u>1,213,006</u>	<u>92%</u>	<u>50%</u>
<u>1,223,804</u>	<u>93%</u>	<u>50%</u>
<u>1,245,339</u>	<u>93%</u>	<u>51%</u>
<u>1,256,343</u>	<u>94%</u>	<u>51%</u>
<u>1,277,901</u>	<u>94%</u>	<u>52%</u>
<u>1,288,882</u>	<u>95%</u>	<u>52%</u>
<u>1,310,693</u>	<u>95%</u>	<u>53%</u>
<u>1,321,422</u>	<u>96%</u>	<u>53%</u>
<u>1,343,716</u>	<u>96%</u>	<u>54%</u>
<u>1,353,963</u>	<u>97%</u>	<u>54%</u>
<u>1,376,975</u>	<u>97%</u>	<u>55%</u>
<u>1,386,503</u>	<u>98%</u>	<u>55%</u>
<u>1,410,471</u>	<u>98%</u>	<u>56%</u>
<u>1,419,044</u>	<u>99%</u>	<u>56%</u>
<u>1,444,208</u>	<u>99%</u>	<u>57%</u>
<u>1,451,583</u>	<u>100%</u>	<u>57%</u>
<u>1,478,187</u>	<u>100%</u>	<u>58%</u>
<u>1,512,413</u>	<u>100%</u>	<u>59%</u>
<u>1,546,888</u>	<u>100%</u>	<u>60%</u>
<u>1,581,612</u>	<u>100%</u>	<u>61%</u>
<u>1,616,590</u>	<u>100%</u>	<u>62%</u>
<u>1,651,824</u>	<u>100%</u>	<u>63%</u>
<u>1,687,319</u>	<u>100%</u>	<u>64%</u>
<u>1,723,074</u>	<u>100%</u>	<u>65%</u>
<u>1,759,095</u>	<u>100%</u>	<u>66%</u>
<u>1,795,382</u>	<u>100%</u>	<u>67%</u>
<u>1,831,944</u>	<u>100%</u>	<u>68%</u>
<u>1,868,776</u>	<u>100%</u>	<u>69%</u>
<u>1,905,887</u>	<u>100%</u>	<u>70%</u>
<u>1,943,279</u>	<u>100%</u>	<u>71%</u>
<u>1,980,954</u>	<u>100%</u>	<u>72%</u>
<u>2,018,916</u>	<u>100%</u>	<u>73%</u>
<u>2,057,168</u>	<u>100%</u>	<u>74%</u>
<u>2,095,713</u>	<u>100%</u>	<u>75%</u>
<u>2,134,553</u>	<u>100%</u>	<u>76%</u>
<u>2,173,695</u>	<u>100%</u>	<u>77%</u>
<u>2,213,139</u>	<u>100%</u>	<u>78%</u>
<u>2,252,891</u>	<u>100%</u>	<u>79%</u>
<u>2,292,954</u>	<u>100%</u>	<u>80%</u>

Expected Losses	Primary Credibility	Excess Credibility
<u>2,333,332</u> = <u>2,374,029</u>	<u>100%</u>	<u>81%</u>
<u>2,374,030</u> = <u>2,415,044</u>	<u>100%</u>	<u>82%</u>
<u>2,415,045</u> = <u>2,456,389</u>	<u>100%</u>	<u>83%</u>
<u>2,456,390</u> = <u>2,498,059</u>	<u>100%</u>	<u>84%</u>
<u>2,498,060</u> = <u>2,540,067</u>	<u>100%</u>	<u>85%</u>
<u>2,540,068</u> and higher	<u>100%</u>	<u>86%</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-880, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-880, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-880, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-880, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-880, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-880, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-880, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-880, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-880, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-880, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-880, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-880, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-880, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-880, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-880, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-880, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-880, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-880, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-880, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-880, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-880, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-880, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-880, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-880, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-880, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-880, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-880, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-880, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-880, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-880, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-880, filed 11/27/91, effective 1/1/92; WSR 90-24-042, § 296-17-880, filed 11/30/90, effective 1/1/91; WSR 89-24-051 (Order 89-22), § 296-17-880, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-880, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 87-24-060 (Order 87-26), § 296-17-880, filed 12/1/87, effective 1/1/88. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR

86-24-042 (Order 86-41), § 296-17-880, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 85-24-032 (Order 85-33), § 296-17-880, filed 11/27/85, effective 1/1/86; WSR 84-24-016 (Order 84-23), § 296-17-880, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-880, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-880, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-880, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-880, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-880, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-880, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-880, filed 11/30/77, effective 1/1/78; Order 76-36, § 296-17-880, filed 11/30/76; Order 75-38, § 296-17-880, filed 11/24/75, effective 1/1/76; Order 74-40, § 296-17-880, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-880, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-885 Table III.

**Expected Loss Rates and Primary Ratios
by Risk Classification and Fiscal Year
Expected Loss Rates in Dollars Per Worker Hour
Effective January 1, ((2022)) 2023**

((Clas s	2018	2019	2020	Primary Ratio
101	0.7342	0.6551	0.5303	0.415
103	0.9369	0.8429	0.6940	0.417
104	0.6350	0.5660	0.4572	0.412
105	0.7935	0.7098	0.5777	0.491
106	1.7238	1.5562	1.2904	0.452
107	0.6721	0.5994	0.4846	0.420
108	0.6350	0.5660	0.4572	0.412
112	0.5180	0.4658	0.3830	0.411
201	1.5008	1.3380	1.0811	0.372
202	1.3704	1.2204	0.9840	0.397
210	0.6178	0.5529	0.4504	0.396
212	0.6096	0.5454	0.4439	0.439
214	1.1725	1.0412	0.8341	0.418
217	0.8085	0.7216	0.5843	0.444
219	0.5662	0.5028	0.4029	0.464
301	0.7059	0.6338	0.5195	0.478
302	1.4900	1.3247	1.0645	0.402
303	1.3056	1.1681	0.9508	0.411
306	0.5356	0.4778	0.3866	0.441
307	0.6141	0.5479	0.4431	0.474
308	0.4604	0.4138	0.3399	0.513
403	1.2552	1.1165	0.8979	0.478

Classes	2018	2019	2020	Primary Ratio
502	0.6672	0.5910	0.4711	0.475
504	1.4020	1.2601	1.0353	0.406
507	2.1128	1.9125	1.5942	0.389
508	0.9382	0.8346	0.6715	0.367
509	0.6220	0.5525	0.4430	0.357
510	1.6857	1.5183	1.2529	0.413
511	0.9550	0.8496	0.6832	0.470
512	0.8808	0.7898	0.6458	0.447
513	0.6414	0.5720	0.4626	0.452
514	0.8519	0.7641	0.6251	0.459
516	1.0671	0.9538	0.7749	0.443
517	1.2373	1.1119	0.9135	0.381
518	0.8355	0.7440	0.5995	0.427
519	1.0390	0.9261	0.7482	0.439
521	0.4779	0.4294	0.3525	0.450
601	0.3761	0.3349	0.2697	0.443
602	0.4930	0.4353	0.3447	0.408
603	0.5801	0.5152	0.4130	0.407
604	0.7987	0.7165	0.5865	0.444
606	0.4228	0.3754	0.3006	0.541
607	0.5720	0.5075	0.4063	0.495
608	0.3170	0.2804	0.2228	0.461
701	1.3057	1.1640	0.9405	0.372
803	0.4693	0.4166	0.3335	0.522
901	0.8355	0.7440	0.5995	0.427
1002	0.5999	0.5364	0.4359	0.430
1003	0.5061	0.4504	0.3627	0.485
1004	0.3205	0.2832	0.2246	0.468
1005	6.3853	5.6789	4.5694	0.418
1006	0.1721	0.1529	0.1228	0.531
1007	0.2395	0.2135	0.1726	0.457
1101	0.9395	0.8343	0.6688	0.497
1102	1.2456	1.1092	0.8943	0.398
1103	0.8256	0.7327	0.5865	0.479
1104	0.4933	0.4422	0.3612	0.489
1105	0.6563	0.5822	0.4654	0.502
1106	0.2968	0.2660	0.2171	0.538
1108	0.3555	0.3192	0.2618	0.503
1109	1.3799	1.2349	1.0059	0.429
1301	0.4819	0.4287	0.3445	0.470
1303	0.3049	0.2697	0.2142	0.528
1304	0.0152	0.0135	0.0109	0.505
1305	0.3958	0.3512	0.2811	0.478
1401	0.2477	0.2244	0.1874	0.495
1404	0.6067	0.5414	0.4384	0.518
1405	0.5591	0.4972	0.3997	0.523
1407	0.5350	0.4761	0.3832	0.522

Classes	2018	2019	2020	Primary Ratio
1501	0.6846	0.6063	0.4832	0.497
1507	0.3850	0.3434	0.2777	0.523
1701	0.6107	0.5463	0.4446	0.425
1702	0.9116	0.8119	0.6549	0.318
1703	0.6565	0.5832	0.4677	0.410
1704	0.6107	0.5463	0.4446	0.425
1801	0.3489	0.3110	0.2512	0.416
1802	0.5583	0.4976	0.4019	0.416
2002	0.5917	0.5297	0.4319	0.470
2004	0.4557	0.4058	0.3267	0.560
2007	0.5430	0.4891	0.4035	0.443
2008	0.3050	0.2735	0.2238	0.519
2009	0.3033	0.2727	0.2242	0.519
2101	0.4918	0.4430	0.3654	0.487
2102	0.5322	0.4778	0.3914	0.472
2103	1.1392	1.0046	0.7931	0.580
2104	0.3381	0.3062	0.2553	0.552
2105	0.5348	0.4734	0.3769	0.533
2106	0.4704	0.4206	0.3418	0.508
2201	0.2956	0.2660	0.2188	0.526
2202	0.5297	0.4728	0.3829	0.499
2203	0.4639	0.4149	0.3375	0.550
2204	0.2956	0.2660	0.2188	0.526
2401	0.3679	0.3275	0.2638	0.459
2903	0.5488	0.4943	0.4079	0.507
2904	0.5550	0.4986	0.4090	0.410
2905	0.4326	0.3870	0.3150	0.533
2906	0.4342	0.3927	0.3265	0.472
2907	0.3781	0.3382	0.2749	0.544
2908	0.7723	0.6912	0.5628	0.530
2909	0.3413	0.3096	0.2592	0.461
3101	0.6281	0.5605	0.4537	0.489
3102	0.2215	0.1973	0.1591	0.467
3103	0.2876	0.2583	0.2119	0.433
3104	0.5421	0.4858	0.3965	0.526
3105	0.6890	0.6227	0.5174	0.481
3303	0.3122	0.2792	0.2268	0.522
3304	0.5898	0.5301	0.4354	0.507
3309	0.3425	0.3061	0.2484	0.507
3402	0.3721	0.3329	0.2709	0.507
3403	0.1081	0.0965	0.0781	0.487
3404	0.3765	0.3362	0.2722	0.517
3405	0.2346	0.2094	0.1696	0.492
3406	0.2418	0.2153	0.1737	0.557
3407	0.6066	0.5409	0.4373	0.468
3408	0.2258	0.1993	0.1576	0.546
3409	0.1610	0.1436	0.1162	0.560

Classes	2018	2019	2020	Primary Ratio
3410	0.1610	0.1436	0.1162	0.560
3411	0.4146	0.3684	0.2957	0.479
3412	0.5234	0.4649	0.3729	0.425
3414	0.6803	0.6034	0.4822	0.500
3415	0.9122	0.8114	0.6527	0.509
3501	0.3583	0.3239	0.2691	0.481
3503	0.2639	0.2356	0.1908	0.522
3506	0.6322	0.5640	0.4564	0.441
3509	0.3773	0.3357	0.2701	0.548
3510	0.2981	0.2685	0.2214	0.502
3511	0.6492	0.5837	0.4798	0.470
3512	0.2975	0.2665	0.2172	0.555
3513	0.3638	0.3264	0.2672	0.508
3602	0.0844	0.0754	0.0612	0.526
3603	0.3859	0.3465	0.2841	0.477
3604	0.6209	0.5571	0.4560	0.479
3605	0.3721	0.3329	0.2709	0.507
3701	0.2215	0.1973	0.1591	0.467
3702	0.3118	0.2786	0.2261	0.520
3708	0.4981	0.4481	0.3688	0.458
3802	0.1754	0.1576	0.1294	0.494
3808	0.3284	0.2942	0.2400	0.487
3901	0.1300	0.1164	0.0949	0.585
3902	0.3975	0.3563	0.2910	0.552
3903	0.4171	0.3739	0.3053	0.552
3905	0.1157	0.1042	0.0857	0.565
3906	0.4089	0.3678	0.3026	0.529
3909	0.2230	0.1998	0.1631	0.560
4101	0.2011	0.1797	0.1459	0.529
4103	0.4597	0.4134	0.3401	0.489
4107	0.1643	0.1463	0.1180	0.491
4108	0.1443	0.1290	0.1046	0.544
4109	0.1713	0.1547	0.1284	0.501
4201	0.6313	0.5576	0.4418	0.438
4301	0.7524	0.6777	0.5588	0.525
4302	0.6013	0.5383	0.4385	0.486
4304	0.8882	0.8058	0.6743	0.502
4305	0.8491	0.7527	0.6011	0.493
4401	0.3122	0.2792	0.2268	0.522
4402	0.5433	0.4824	0.3864	0.515
4404	0.3651	0.3272	0.2672	0.489
4501	0.1496	0.1329	0.1067	0.578
4502	0.0526	0.0471	0.0383	0.484
4504	0.0998	0.0890	0.0718	0.590
4802	0.3676	0.3309	0.2726	0.500
4803	0.3682	0.3319	0.2741	0.550
4804	0.5020	0.4527	0.3742	0.524

Class	2018	2019	2020	Primary Ratio
4805	0.3295	0.2972	0.2457	0.536
4806	0.1123	0.1008	0.0825	0.597
4808	0.4090	0.3675	0.3018	0.470
4809	0.2124	0.1913	0.1579	0.488
4810	0.2150	0.1937	0.1596	0.553
4811	0.4383	0.3966	0.3301	0.519
4812	0.3781	0.3396	0.2783	0.493
4813	0.2159	0.1950	0.1615	0.562
4814	0.1103	0.1004	0.0843	0.558
4815	0.2271	0.2070	0.1745	0.572
4816	0.3093	0.2823	0.2389	0.514
4900	0.0974	0.0867	0.0700	0.460
4901	0.0334	0.0297	0.0237	0.478
4902	0.0748	0.0669	0.0542	0.504
4903	0.1407	0.1248	0.0995	0.528
4904	0.0132	0.0118	0.0095	0.550
4905	0.3166	0.2848	0.2344	0.559
4906	0.0906	0.0803	0.0641	0.547
4907	0.0509	0.0459	0.0379	0.610
4908	0.0815	0.0733	0.0604	0.592
4909	0.0326	0.0294	0.0241	0.592
4910	0.3870	0.3451	0.2791	0.495
4911	0.0458	0.0409	0.0334	0.443
5001	6.1433	5.5201	4.5355	0.362
5002	0.4844	0.4301	0.3444	0.522
5003	1.8231	1.6282	1.3211	0.392
5004	0.8090	0.7364	0.6205	0.405
5005	0.7622	0.6794	0.5489	0.397
5006	0.9158	0.8174	0.6625	0.374
5101	0.7685	0.6813	0.5442	0.453
5103	0.7160	0.6418	0.5242	0.507
5106	0.7160	0.6418	0.5242	0.507
5108	0.7019	0.6218	0.4959	0.538
5109	0.4000	0.3551	0.2844	0.494
5201	0.2587	0.2303	0.1852	0.553
5204	0.7832	0.6948	0.5558	0.431
5206	0.3450	0.3101	0.2549	0.417
5207	0.1250	0.1123	0.0920	0.540
5208	0.5222	0.4679	0.3819	0.476
5209	0.5156	0.4598	0.3718	0.487
5300	0.0831	0.0738	0.0592	0.550
5301	0.0271	0.0242	0.0198	0.488
5302	0.0070	0.0062	0.0049	0.524
5305	0.0347	0.0310	0.0251	0.536
5306	0.0369	0.0329	0.0265	0.591
5307	0.5863	0.5186	0.4124	0.505
5308	0.0757	0.0679	0.0555	0.559

Class	2018	2019	2020	Primary Ratio
6103	0.0814	0.0731	0.0598	0.588
6104	0.3237	0.2890	0.2341	0.540
6105	0.4460	0.3956	0.3161	0.486
6107	0.1315	0.1182	0.0969	0.644
6108	0.2292	0.2056	0.1681	0.582
6109	0.0912	0.0809	0.0648	0.504
6110	0.3560	0.3155	0.2515	0.527
6120	0.2746	0.2436	0.1947	0.522
6121	0.3803	0.3353	0.2646	0.532
6201	0.4261	0.3785	0.3036	0.511
6202	0.6491	0.5795	0.4696	0.519
6203	0.0935	0.0845	0.0701	0.623
6204	0.1240	0.1110	0.0905	0.562
6205	0.1575	0.1408	0.1144	0.525
6206	0.1766	0.1576	0.1276	0.565
6207	0.8400	0.7537	0.6173	0.484
6208	0.2143	0.1927	0.1584	0.589
6209	0.2500	0.2256	0.1866	0.547
6301	0.1087	0.0970	0.0786	0.446
6303	0.0435	0.0387	0.0313	0.520
6305	0.0816	0.0729	0.0592	0.574
6306	0.2879	0.2561	0.2060	0.552
6308	0.0501	0.0448	0.0362	0.493
6309	0.1834	0.1640	0.1334	0.527
6402	0.2241	0.2009	0.1640	0.571
6403	0.1263	0.1127	0.0912	0.582
6404	0.2533	0.2282	0.1885	0.519
6405	0.5279	0.4695	0.3775	0.506
6406	0.1301	0.1160	0.0936	0.577
6407	0.2470	0.2205	0.1786	0.538
6408	0.5097	0.4565	0.3724	0.479
6409	0.5314	0.4737	0.3826	0.484
6410	0.2675	0.2378	0.1909	0.539
6411	0.0370	0.0334	0.0276	0.526
6501	0.0914	0.0809	0.0643	0.562
6502	0.0231	0.0206	0.0165	0.509
6503	0.0700	0.0616	0.0484	0.537
6504	0.2478	0.2236	0.1848	0.593
6505	0.1447	0.1294	0.1050	0.640
6506	0.1093	0.0975	0.0789	0.547
6509	0.2165	0.1943	0.1589	0.578
6510	0.3130	0.2784	0.2240	0.401
6511	0.2467	0.2210	0.1802	0.554
6512	0.0763	0.0682	0.0555	0.455
6601	0.1666	0.1495	0.1222	0.519
6602	0.4985	0.4487	0.3698	0.499
6603	0.2451	0.2193	0.1783	0.552

Classes	2018	2019	2020	Primary Ratio
6604	0.0636	0.0569	0.0461	0.549
6605	0.2469	0.2193	0.1758	0.564
6607	0.0880	0.0791	0.0650	0.538
6608	0.3956	0.3501	0.2787	0.392
6620	2.8352	2.4937	1.9578	0.579
6704	0.1135	0.1010	0.0813	0.583
6705	0.6226	0.5623	0.4659	0.579
6706	0.2172	0.1961	0.1624	0.519
6707	11.2987	10.0420	8.0498	0.667
6708	8.0379	7.3520	6.2503	0.485
6709	0.2369	0.2114	0.1712	0.560
6801	0.5865	0.5102	0.3911	0.552
6802	0.6889	0.6097	0.4851	0.547
6803	0.4158	0.3678	0.2923	0.393
6804	0.2394	0.2132	0.1718	0.558
6809	3.2949	2.9642	2.4384	0.556
6901	0.0192	0.0185	0.0171	0.808
6902	0.6662	0.5977	0.4893	0.420
6903	3.6438	3.2724	2.6842	0.331
6904	0.8938	0.7881	0.6223	0.482
6905	0.6427	0.5683	0.4511	0.499
6906	0.2491	0.2355	0.2121	0.618
6907	0.7274	0.6488	0.5245	0.545
6908	0.2951	0.2638	0.2141	0.481
6909	0.0954	0.0853	0.0693	0.523
7100	0.0165	0.0145	0.0115	0.532
7101	0.0186	0.0165	0.0134	0.450
7103	0.8743	0.7711	0.6091	0.490
7104	0.0205	0.0183	0.0148	0.503
7105	0.0139	0.0124	0.0102	0.504
7106	0.2612	0.2324	0.1867	0.580
7107	0.3621	0.3218	0.2583	0.571
7108	0.2432	0.2163	0.1739	0.610
7109	0.0828	0.0740	0.0600	0.506
7110	0.3681	0.3304	0.2708	0.429
7111	0.2544	0.2244	0.1773	0.469
7112	0.5812	0.5225	0.4293	0.522
7113	0.3892	0.3469	0.2799	0.552
7114	0.7032	0.6273	0.5070	0.586
7115	0.5064	0.4550	0.3732	0.560
7116	0.4160	0.3712	0.3007	0.478
7117	0.9334	0.8380	0.6870	0.498
7118	1.4329	1.2780	1.0335	0.497
7119	1.4906	1.3254	1.0655	0.482
7120	4.2459	3.7638	3.0058	0.493
7121	6.1170	5.4953	4.5123	0.350
7122	0.3219	0.2907	0.2410	0.511

Class	2018	2019	2020	Primary Ratio
7200	1.7445	1.5337	1.2035	0.476
7201	1.3706	1.2088	0.9551	0.502
7202	0.0211	0.0188	0.0149	0.527
7203	0.0852	0.0771	0.0640	0.583
7204	0.0000	0.0000	0.0000	0.500
7205	0.0000	0.0000	0.0000	0.500
7301	0.5811	0.5280	0.4434	0.473
7302	0.6820	0.6189	0.5182	0.456
7307	0.4573	0.4084	0.3310	0.551
7308	0.2248	0.2023	0.1665	0.580
7309	0.2223	0.1997	0.1638	0.587
7400	2.0062	1.7638	1.3840	0.476))

Class	2019	2020	2021	Primary Ratio
<u>101</u>	<u>0.6962</u>	<u>0.6462</u>	<u>0.5405</u>	<u>0.401</u>
<u>103</u>	<u>0.8755</u>	<u>0.8212</u>	<u>0.7009</u>	<u>0.412</u>
<u>104</u>	<u>0.6069</u>	<u>0.5634</u>	<u>0.4706</u>	<u>0.415</u>
<u>105</u>	<u>0.7505</u>	<u>0.7045</u>	<u>0.5883</u>	<u>0.484</u>
<u>106</u>	<u>1.8780</u>	<u>1.7702</u>	<u>1.5198</u>	<u>0.448</u>
<u>107</u>	<u>0.6123</u>	<u>0.5693</u>	<u>0.4754</u>	<u>0.429</u>
<u>108</u>	<u>0.6069</u>	<u>0.5634</u>	<u>0.4706</u>	<u>0.415</u>
<u>112</u>	<u>0.5147</u>	<u>0.4809</u>	<u>0.4064</u>	<u>0.423</u>
<u>201</u>	<u>1.4181</u>	<u>1.3098</u>	<u>1.0974</u>	<u>0.355</u>
<u>202</u>	<u>1.2796</u>	<u>1.1855</u>	<u>0.9853</u>	<u>0.409</u>
<u>210</u>	<u>0.6587</u>	<u>0.6119</u>	<u>0.5157</u>	<u>0.395</u>
<u>212</u>	<u>0.6190</u>	<u>0.5779</u>	<u>0.4832</u>	<u>0.432</u>
<u>214</u>	<u>1.1322</u>	<u>1.0460</u>	<u>0.8618</u>	<u>0.418</u>
<u>217</u>	<u>0.7426</u>	<u>0.6926</u>	<u>0.5794</u>	<u>0.438</u>
<u>219</u>	<u>0.5157</u>	<u>0.4801</u>	<u>0.3979</u>	<u>0.457</u>
<u>301</u>	<u>0.7180</u>	<u>0.6742</u>	<u>0.5690</u>	<u>0.471</u>
<u>302</u>	<u>1.3363</u>	<u>1.2407</u>	<u>1.0374</u>	<u>0.396</u>
<u>303</u>	<u>1.2046</u>	<u>1.1223</u>	<u>0.9387</u>	<u>0.416</u>
<u>306</u>	<u>0.5270</u>	<u>0.4903</u>	<u>0.4085</u>	<u>0.439</u>
<u>307</u>	<u>0.5605</u>	<u>0.5238</u>	<u>0.4354</u>	<u>0.477</u>
<u>308</u>	<u>0.4481</u>	<u>0.4225</u>	<u>0.3581</u>	<u>0.509</u>
<u>403</u>	<u>1.1279</u>	<u>1.0514</u>	<u>0.8683</u>	<u>0.467</u>
<u>502</u>	<u>0.6063</u>	<u>0.5635</u>	<u>0.4598</u>	<u>0.473</u>
<u>504</u>	<u>1.2843</u>	<u>1.1981</u>	<u>1.0141</u>	<u>0.401</u>
<u>507</u>	<u>2.0470</u>	<u>1.9210</u>	<u>1.6578</u>	<u>0.394</u>
<u>508</u>	<u>1.0124</u>	<u>0.9339</u>	<u>0.7744</u>	<u>0.367</u>
<u>509</u>	<u>0.5847</u>	<u>0.5383</u>	<u>0.4487</u>	<u>0.352</u>
<u>510</u>	<u>1.6072</u>	<u>1.5043</u>	<u>1.2807</u>	<u>0.412</u>
<u>511</u>	<u>0.9023</u>	<u>0.8410</u>	<u>0.6957</u>	<u>0.473</u>
<u>512</u>	<u>0.8150</u>	<u>0.7622</u>	<u>0.6441</u>	<u>0.445</u>
<u>513</u>	<u>0.5963</u>	<u>0.5562</u>	<u>0.4646</u>	<u>0.447</u>
<u>514</u>	<u>0.8380</u>	<u>0.7849</u>	<u>0.6629</u>	<u>0.464</u>
<u>516</u>	<u>1.0530</u>	<u>0.9826</u>	<u>0.8214</u>	<u>0.442</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>517</u>	<u>1.1401</u>	<u>1.0619</u>	<u>0.9013</u>	<u>0.376</u>
<u>518</u>	<u>0.8006</u>	<u>0.7429</u>	<u>0.6198</u>	<u>0.417</u>
<u>519</u>	<u>1.0676</u>	<u>0.9937</u>	<u>0.8295</u>	<u>0.424</u>
<u>521</u>	<u>0.4823</u>	<u>0.4515</u>	<u>0.3817</u>	<u>0.449</u>
<u>601</u>	<u>0.3471</u>	<u>0.3225</u>	<u>0.2666</u>	<u>0.453</u>
<u>602</u>	<u>0.4750</u>	<u>0.4372</u>	<u>0.3564</u>	<u>0.408</u>
<u>603</u>	<u>0.5569</u>	<u>0.5157</u>	<u>0.4275</u>	<u>0.402</u>
<u>604</u>	<u>0.7619</u>	<u>0.7138</u>	<u>0.6020</u>	<u>0.454</u>
<u>606</u>	<u>0.4161</u>	<u>0.3896</u>	<u>0.3173</u>	<u>0.543</u>
<u>607</u>	<u>0.5658</u>	<u>0.5279</u>	<u>0.4312</u>	<u>0.500</u>
<u>608</u>	<u>0.2973</u>	<u>0.2757</u>	<u>0.2252</u>	<u>0.460</u>
<u>701</u>	<u>1.0495</u>	<u>0.9693</u>	<u>0.8120</u>	<u>0.355</u>
<u>803</u>	<u>0.4643</u>	<u>0.4333</u>	<u>0.3541</u>	<u>0.516</u>
<u>901</u>	<u>0.8006</u>	<u>0.7429</u>	<u>0.6198</u>	<u>0.417</u>
<u>1002</u>	<u>0.5730</u>	<u>0.5332</u>	<u>0.4451</u>	<u>0.430</u>
<u>1003</u>	<u>0.4591</u>	<u>0.4288</u>	<u>0.3546</u>	<u>0.479</u>
<u>1004</u>	<u>0.3153</u>	<u>0.2925</u>	<u>0.2381</u>	<u>0.455</u>
<u>1005</u>	<u>6.1984</u>	<u>5.7597</u>	<u>4.7437</u>	<u>0.415</u>
<u>1006</u>	<u>0.1786</u>	<u>0.1671</u>	<u>0.1361</u>	<u>0.534</u>
<u>1007</u>	<u>0.2432</u>	<u>0.2274</u>	<u>0.1890</u>	<u>0.472</u>
<u>1101</u>	<u>0.8724</u>	<u>0.8146</u>	<u>0.6665</u>	<u>0.501</u>
<u>1102</u>	<u>1.1854</u>	<u>1.0979</u>	<u>0.9098</u>	<u>0.400</u>
<u>1103</u>	<u>0.7932</u>	<u>0.7396</u>	<u>0.6016</u>	<u>0.490</u>
<u>1104</u>	<u>0.4655</u>	<u>0.4373</u>	<u>0.3666</u>	<u>0.492</u>
<u>1105</u>	<u>0.6010</u>	<u>0.5603</u>	<u>0.4578</u>	<u>0.496</u>
<u>1106</u>	<u>0.2993</u>	<u>0.2820</u>	<u>0.2348</u>	<u>0.546</u>
<u>1108</u>	<u>0.3695</u>	<u>0.3480</u>	<u>0.2926</u>	<u>0.501</u>
<u>1109</u>	<u>1.4619</u>	<u>1.3625</u>	<u>1.1344</u>	<u>0.433</u>
<u>1301</u>	<u>0.4917</u>	<u>0.4579</u>	<u>0.3777</u>	<u>0.466</u>
<u>1303</u>	<u>0.2939</u>	<u>0.2739</u>	<u>0.2222</u>	<u>0.523</u>
<u>1304</u>	<u>0.0141</u>	<u>0.0132</u>	<u>0.0109</u>	<u>0.497</u>
<u>1305</u>	<u>0.3659</u>	<u>0.3407</u>	<u>0.2789</u>	<u>0.470</u>
<u>1401</u>	<u>0.2517</u>	<u>0.2382</u>	<u>0.2034</u>	<u>0.497</u>
<u>1404</u>	<u>0.5941</u>	<u>0.5587</u>	<u>0.4652</u>	<u>0.515</u>
<u>1405</u>	<u>0.5736</u>	<u>0.5375</u>	<u>0.4421</u>	<u>0.528</u>
<u>1407</u>	<u>0.5046</u>	<u>0.4719</u>	<u>0.3870</u>	<u>0.515</u>
<u>1501</u>	<u>0.6423</u>	<u>0.5979</u>	<u>0.4880</u>	<u>0.486</u>
<u>1507</u>	<u>0.3411</u>	<u>0.3201</u>	<u>0.2663</u>	<u>0.516</u>
<u>1701</u>	<u>0.6024</u>	<u>0.5621</u>	<u>0.4707</u>	<u>0.422</u>
<u>1702</u>	<u>0.8383</u>	<u>0.7701</u>	<u>0.6447</u>	<u>0.315</u>
<u>1703</u>	<u>0.6391</u>	<u>0.5919</u>	<u>0.4883</u>	<u>0.407</u>
<u>1704</u>	<u>0.6024</u>	<u>0.5621</u>	<u>0.4707</u>	<u>0.422</u>
<u>1801</u>	<u>0.3559</u>	<u>0.3304</u>	<u>0.2752</u>	<u>0.406</u>
<u>1802</u>	<u>0.5695</u>	<u>0.5286</u>	<u>0.4404</u>	<u>0.406</u>
<u>2002</u>	<u>0.5572</u>	<u>0.5212</u>	<u>0.4368</u>	<u>0.465</u>
<u>2004</u>	<u>0.4613</u>	<u>0.4336</u>	<u>0.3579</u>	<u>0.558</u>
<u>2007</u>	<u>0.5300</u>	<u>0.4975</u>	<u>0.4236</u>	<u>0.439</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>2008</u>	<u>0.2541</u>	<u>0.2394</u>	<u>0.2002</u>	<u>0.507</u>
<u>2009</u>	<u>0.2997</u>	<u>0.2826</u>	<u>0.2397</u>	<u>0.507</u>
<u>2101</u>	<u>0.4832</u>	<u>0.4551</u>	<u>0.3863</u>	<u>0.492</u>
<u>2102</u>	<u>0.5361</u>	<u>0.5040</u>	<u>0.4251</u>	<u>0.480</u>
<u>2103</u>	<u>1.2790</u>	<u>1.1957</u>	<u>0.9545</u>	<u>0.574</u>
<u>2104</u>	<u>0.3193</u>	<u>0.3040</u>	<u>0.2617</u>	<u>0.555</u>
<u>2105</u>	<u>0.5497</u>	<u>0.5138</u>	<u>0.4179</u>	<u>0.531</u>
<u>2106</u>	<u>0.4499</u>	<u>0.4227</u>	<u>0.3536</u>	<u>0.511</u>
<u>2201</u>	<u>0.2807</u>	<u>0.2653</u>	<u>0.2258</u>	<u>0.511</u>
<u>2202</u>	<u>0.5566</u>	<u>0.5207</u>	<u>0.4309</u>	<u>0.503</u>
<u>2203</u>	<u>0.4128</u>	<u>0.3890</u>	<u>0.3255</u>	<u>0.540</u>
<u>2204</u>	<u>0.2807</u>	<u>0.2653</u>	<u>0.2258</u>	<u>0.511</u>
<u>2401</u>	<u>0.3513</u>	<u>0.3278</u>	<u>0.2732</u>	<u>0.453</u>
<u>2903</u>	<u>0.5090</u>	<u>0.4802</u>	<u>0.4072</u>	<u>0.502</u>
<u>2904</u>	<u>0.5117</u>	<u>0.4778</u>	<u>0.4075</u>	<u>0.401</u>
<u>2905</u>	<u>0.4265</u>	<u>0.4016</u>	<u>0.3367</u>	<u>0.524</u>
<u>2906</u>	<u>0.4269</u>	<u>0.4024</u>	<u>0.3458</u>	<u>0.463</u>
<u>2907</u>	<u>0.3635</u>	<u>0.3428</u>	<u>0.2858</u>	<u>0.552</u>
<u>2908</u>	<u>0.6991</u>	<u>0.6589</u>	<u>0.5536</u>	<u>0.524</u>
<u>2909</u>	<u>0.3309</u>	<u>0.3133</u>	<u>0.2695</u>	<u>0.461</u>
<u>3101</u>	<u>0.5761</u>	<u>0.5388</u>	<u>0.4493</u>	<u>0.484</u>
<u>3102</u>	<u>0.2057</u>	<u>0.1919</u>	<u>0.1596</u>	<u>0.469</u>
<u>3103</u>	<u>0.2688</u>	<u>0.2517</u>	<u>0.2131</u>	<u>0.426</u>
<u>3104</u>	<u>0.5826</u>	<u>0.5481</u>	<u>0.4593</u>	<u>0.529</u>
<u>3105</u>	<u>0.6675</u>	<u>0.6300</u>	<u>0.5405</u>	<u>0.475</u>
<u>3303</u>	<u>0.3048</u>	<u>0.2861</u>	<u>0.2377</u>	<u>0.517</u>
<u>3304</u>	<u>0.5735</u>	<u>0.5399</u>	<u>0.4580</u>	<u>0.495</u>
<u>3309</u>	<u>0.3212</u>	<u>0.3010</u>	<u>0.2497</u>	<u>0.504</u>
<u>3402</u>	<u>0.3407</u>	<u>0.3199</u>	<u>0.2687</u>	<u>0.498</u>
<u>3403</u>	<u>0.1016</u>	<u>0.0950</u>	<u>0.0793</u>	<u>0.484</u>
<u>3404</u>	<u>0.4011</u>	<u>0.3759</u>	<u>0.3131</u>	<u>0.504</u>
<u>3405</u>	<u>0.2136</u>	<u>0.2001</u>	<u>0.1670</u>	<u>0.497</u>
<u>3406</u>	<u>0.2233</u>	<u>0.2098</u>	<u>0.1734</u>	<u>0.537</u>
<u>3407</u>	<u>0.5848</u>	<u>0.5448</u>	<u>0.4531</u>	<u>0.440</u>
<u>3408</u>	<u>0.2229</u>	<u>0.2084</u>	<u>0.1678</u>	<u>0.544</u>
<u>3409</u>	<u>0.1446</u>	<u>0.1362</u>	<u>0.1128</u>	<u>0.546</u>
<u>3410</u>	<u>0.1446</u>	<u>0.1362</u>	<u>0.1128</u>	<u>0.546</u>
<u>3411</u>	<u>0.3818</u>	<u>0.3558</u>	<u>0.2942</u>	<u>0.473</u>
<u>3412</u>	<u>0.5146</u>	<u>0.4770</u>	<u>0.3953</u>	<u>0.411</u>
<u>3414</u>	<u>0.6431</u>	<u>0.5999</u>	<u>0.4925</u>	<u>0.493</u>
<u>3415</u>	<u>0.9964</u>	<u>0.9324</u>	<u>0.7641</u>	<u>0.520</u>
<u>3501</u>	<u>0.3471</u>	<u>0.3276</u>	<u>0.2810</u>	<u>0.475</u>
<u>3503</u>	<u>0.2743</u>	<u>0.2577</u>	<u>0.2135</u>	<u>0.527</u>
<u>3506</u>	<u>0.6054</u>	<u>0.5633</u>	<u>0.4703</u>	<u>0.428</u>
<u>3509</u>	<u>0.3912</u>	<u>0.3670</u>	<u>0.2991</u>	<u>0.550</u>
<u>3510</u>	<u>0.2989</u>	<u>0.2819</u>	<u>0.2410</u>	<u>0.493</u>
<u>3511</u>	<u>0.6438</u>	<u>0.6052</u>	<u>0.5113</u>	<u>0.476</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>3512</u>	<u>0.3016</u>	<u>0.2845</u>	<u>0.2390</u>	<u>0.537</u>
<u>3513</u>	<u>0.3410</u>	<u>0.3206</u>	<u>0.2700</u>	<u>0.488</u>
<u>3602</u>	<u>0.0802</u>	<u>0.0753</u>	<u>0.0632</u>	<u>0.507</u>
<u>3603</u>	<u>0.3738</u>	<u>0.3512</u>	<u>0.2955</u>	<u>0.480</u>
<u>3604</u>	<u>0.6175</u>	<u>0.5796</u>	<u>0.4890</u>	<u>0.470</u>
<u>3605</u>	<u>0.3407</u>	<u>0.3199</u>	<u>0.2687</u>	<u>0.498</u>
<u>3701</u>	<u>0.2057</u>	<u>0.1919</u>	<u>0.1596</u>	<u>0.469</u>
<u>3702</u>	<u>0.3015</u>	<u>0.2835</u>	<u>0.2360</u>	<u>0.528</u>
<u>3708</u>	<u>0.5060</u>	<u>0.4742</u>	<u>0.4012</u>	<u>0.454</u>
<u>3802</u>	<u>0.1663</u>	<u>0.1565</u>	<u>0.1325</u>	<u>0.497</u>
<u>3808</u>	<u>0.3153</u>	<u>0.2956</u>	<u>0.2481</u>	<u>0.484</u>
<u>3901</u>	<u>0.1266</u>	<u>0.1197</u>	<u>0.1000</u>	<u>0.579</u>
<u>3902</u>	<u>0.4038</u>	<u>0.3806</u>	<u>0.3179</u>	<u>0.549</u>
<u>3903</u>	<u>0.5269</u>	<u>0.4967</u>	<u>0.4150</u>	<u>0.549</u>
<u>3905</u>	<u>0.1119</u>	<u>0.1061</u>	<u>0.0901</u>	<u>0.558</u>
<u>3906</u>	<u>0.3971</u>	<u>0.3749</u>	<u>0.3180</u>	<u>0.521</u>
<u>3909</u>	<u>0.2227</u>	<u>0.2102</u>	<u>0.1755</u>	<u>0.565</u>
<u>4101</u>	<u>0.1825</u>	<u>0.1716</u>	<u>0.1435</u>	<u>0.531</u>
<u>4103</u>	<u>0.4414</u>	<u>0.4154</u>	<u>0.3521</u>	<u>0.485</u>
<u>4107</u>	<u>0.1529</u>	<u>0.1429</u>	<u>0.1185</u>	<u>0.486</u>
<u>4108</u>	<u>0.1379</u>	<u>0.1295</u>	<u>0.1081</u>	<u>0.534</u>
<u>4109</u>	<u>0.1693</u>	<u>0.1599</u>	<u>0.1362</u>	<u>0.499</u>
<u>4201</u>	<u>0.6293</u>	<u>0.5809</u>	<u>0.4695</u>	<u>0.438</u>
<u>4301</u>	<u>0.7010</u>	<u>0.6625</u>	<u>0.5645</u>	<u>0.515</u>
<u>4302</u>	<u>0.5853</u>	<u>0.5482</u>	<u>0.4587</u>	<u>0.478</u>
<u>4304</u>	<u>0.7809</u>	<u>0.7399</u>	<u>0.6387</u>	<u>0.489</u>
<u>4305</u>	<u>0.8480</u>	<u>0.7900</u>	<u>0.6430</u>	<u>0.489</u>
<u>4401</u>	<u>0.3048</u>	<u>0.2861</u>	<u>0.2377</u>	<u>0.517</u>
<u>4402</u>	<u>0.5118</u>	<u>0.4781</u>	<u>0.3929</u>	<u>0.508</u>
<u>4404</u>	<u>0.3762</u>	<u>0.3529</u>	<u>0.2985</u>	<u>0.467</u>
<u>4501</u>	<u>0.1419</u>	<u>0.1335</u>	<u>0.1093</u>	<u>0.571</u>
<u>4502</u>	<u>0.0492</u>	<u>0.0461</u>	<u>0.0385</u>	<u>0.480</u>
<u>4504</u>	<u>0.0998</u>	<u>0.0942</u>	<u>0.0786</u>	<u>0.580</u>
<u>4802</u>	<u>0.3634</u>	<u>0.3422</u>	<u>0.2906</u>	<u>0.493</u>
<u>4803</u>	<u>0.3750</u>	<u>0.3551</u>	<u>0.3018</u>	<u>0.549</u>
<u>4804</u>	<u>0.4516</u>	<u>0.4272</u>	<u>0.3651</u>	<u>0.516</u>
<u>4805</u>	<u>0.3090</u>	<u>0.2928</u>	<u>0.2499</u>	<u>0.540</u>
<u>4806</u>	<u>0.1193</u>	<u>0.1130</u>	<u>0.0941</u>	<u>0.595</u>
<u>4808</u>	<u>0.4068</u>	<u>0.3819</u>	<u>0.3238</u>	<u>0.456</u>
<u>4809</u>	<u>0.2045</u>	<u>0.1927</u>	<u>0.1633</u>	<u>0.503</u>
<u>4810</u>	<u>0.2281</u>	<u>0.2154</u>	<u>0.1806</u>	<u>0.547</u>
<u>4811</u>	<u>0.3992</u>	<u>0.3783</u>	<u>0.3253</u>	<u>0.508</u>
<u>4812</u>	<u>0.3535</u>	<u>0.3319</u>	<u>0.2812</u>	<u>0.482</u>
<u>4813</u>	<u>0.2405</u>	<u>0.2281</u>	<u>0.1939</u>	<u>0.564</u>
<u>4814</u>	<u>0.1052</u>	<u>0.1003</u>	<u>0.0872</u>	<u>0.552</u>
<u>4815</u>	<u>0.2167</u>	<u>0.2070</u>	<u>0.1807</u>	<u>0.565</u>
<u>4816</u>	<u>0.2960</u>	<u>0.2820</u>	<u>0.2473</u>	<u>0.509</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>4900</u>	<u>0.0949</u>	<u>0.0885</u>	<u>0.0739</u>	<u>0.460</u>
<u>4901</u>	<u>0.0315</u>	<u>0.0293</u>	<u>0.0241</u>	<u>0.468</u>
<u>4902</u>	<u>0.0669</u>	<u>0.0626</u>	<u>0.0516</u>	<u>0.510</u>
<u>4903</u>	<u>0.1422</u>	<u>0.1327</u>	<u>0.1078</u>	<u>0.522</u>
<u>4904</u>	<u>0.0116</u>	<u>0.0109</u>	<u>0.0091</u>	<u>0.546</u>
<u>4905</u>	<u>0.3153</u>	<u>0.2981</u>	<u>0.2518</u>	<u>0.546</u>
<u>4906</u>	<u>0.0899</u>	<u>0.0841</u>	<u>0.0686</u>	<u>0.536</u>
<u>4907</u>	<u>0.0462</u>	<u>0.0442</u>	<u>0.0380</u>	<u>0.607</u>
<u>4908</u>	<u>0.0792</u>	<u>0.0756</u>	<u>0.0645</u>	<u>0.594</u>
<u>4909</u>	<u>0.0317</u>	<u>0.0303</u>	<u>0.0258</u>	<u>0.594</u>
<u>4910</u>	<u>0.3781</u>	<u>0.3537</u>	<u>0.2935</u>	<u>0.489</u>
<u>4911</u>	<u>0.0472</u>	<u>0.0441</u>	<u>0.0372</u>	<u>0.447</u>
<u>5001</u>	<u>5.8422</u>	<u>5.4258</u>	<u>4.6022</u>	<u>0.348</u>
<u>5002</u>	<u>0.4629</u>	<u>0.4329</u>	<u>0.3546</u>	<u>0.518</u>
<u>5003</u>	<u>1.7799</u>	<u>1.6533</u>	<u>1.3800</u>	<u>0.386</u>
<u>5004</u>	<u>0.8005</u>	<u>0.7565</u>	<u>0.6631</u>	<u>0.397</u>
<u>5005</u>	<u>0.7327</u>	<u>0.6803</u>	<u>0.5695</u>	<u>0.391</u>
<u>5006</u>	<u>0.9072</u>	<u>0.8407</u>	<u>0.6998</u>	<u>0.382</u>
<u>5101</u>	<u>0.7280</u>	<u>0.6765</u>	<u>0.5541</u>	<u>0.450</u>
<u>5103</u>	<u>0.7002</u>	<u>0.6585</u>	<u>0.5531</u>	<u>0.509</u>
<u>5106</u>	<u>0.7002</u>	<u>0.6585</u>	<u>0.5531</u>	<u>0.509</u>
<u>5108</u>	<u>0.6725</u>	<u>0.6290</u>	<u>0.5112</u>	<u>0.532</u>
<u>5109</u>	<u>0.3735</u>	<u>0.3481</u>	<u>0.2873</u>	<u>0.489</u>
<u>5201</u>	<u>0.2402</u>	<u>0.2256</u>	<u>0.1865</u>	<u>0.549</u>
<u>5204</u>	<u>0.7898</u>	<u>0.7314</u>	<u>0.5957</u>	<u>0.437</u>
<u>5206</u>	<u>0.3158</u>	<u>0.2954</u>	<u>0.2508</u>	<u>0.421</u>
<u>5207</u>	<u>0.1212</u>	<u>0.1145</u>	<u>0.0968</u>	<u>0.538</u>
<u>5208</u>	<u>0.4809</u>	<u>0.4498</u>	<u>0.3779</u>	<u>0.471</u>
<u>5209</u>	<u>0.4923</u>	<u>0.4611</u>	<u>0.3860</u>	<u>0.486</u>
<u>5300</u>	<u>0.0770</u>	<u>0.0721</u>	<u>0.0594</u>	<u>0.527</u>
<u>5301</u>	<u>0.0246</u>	<u>0.0231</u>	<u>0.0193</u>	<u>0.493</u>
<u>5302</u>	<u>0.0058</u>	<u>0.0054</u>	<u>0.0045</u>	<u>0.505</u>
<u>5305</u>	<u>0.0349</u>	<u>0.0328</u>	<u>0.0272</u>	<u>0.541</u>
<u>5306</u>	<u>0.0333</u>	<u>0.0313</u>	<u>0.0259</u>	<u>0.571</u>
<u>5307</u>	<u>0.5632</u>	<u>0.5243</u>	<u>0.4276</u>	<u>0.491</u>
<u>5308</u>	<u>0.0687</u>	<u>0.0649</u>	<u>0.0550</u>	<u>0.531</u>
<u>6103</u>	<u>0.0779</u>	<u>0.0738</u>	<u>0.0621</u>	<u>0.583</u>
<u>6104</u>	<u>0.3124</u>	<u>0.2936</u>	<u>0.2441</u>	<u>0.534</u>
<u>6105</u>	<u>0.4184</u>	<u>0.3901</u>	<u>0.3205</u>	<u>0.494</u>
<u>6107</u>	<u>0.1403</u>	<u>0.1338</u>	<u>0.1128</u>	<u>0.639</u>
<u>6108</u>	<u>0.2133</u>	<u>0.2022</u>	<u>0.1709</u>	<u>0.583</u>
<u>6109</u>	<u>0.0938</u>	<u>0.0875</u>	<u>0.0718</u>	<u>0.495</u>
<u>6110</u>	<u>0.3357</u>	<u>0.3137</u>	<u>0.2560</u>	<u>0.528</u>
<u>6120</u>	<u>0.2662</u>	<u>0.2487</u>	<u>0.2036</u>	<u>0.520</u>
<u>6121</u>	<u>0.3777</u>	<u>0.3518</u>	<u>0.2835</u>	<u>0.522</u>
<u>6201</u>	<u>0.4189</u>	<u>0.3917</u>	<u>0.3199</u>	<u>0.514</u>
<u>6202</u>	<u>0.6827</u>	<u>0.6406</u>	<u>0.5282</u>	<u>0.525</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>6203</u>	<u>0.0851</u>	<u>0.0813</u>	<u>0.0702</u>	<u>0.614</u>
<u>6204</u>	<u>0.1100</u>	<u>0.1039</u>	<u>0.0878</u>	<u>0.541</u>
<u>6205</u>	<u>0.1433</u>	<u>0.1349</u>	<u>0.1130</u>	<u>0.521</u>
<u>6206</u>	<u>0.1650</u>	<u>0.1554</u>	<u>0.1292</u>	<u>0.552</u>
<u>6207</u>	<u>0.7937</u>	<u>0.7464</u>	<u>0.6264</u>	<u>0.475</u>
<u>6208</u>	<u>0.1964</u>	<u>0.1867</u>	<u>0.1589</u>	<u>0.580</u>
<u>6209</u>	<u>0.2299</u>	<u>0.2179</u>	<u>0.1864</u>	<u>0.534</u>
<u>6301</u>	<u>0.1090</u>	<u>0.1017</u>	<u>0.0850</u>	<u>0.435</u>
<u>6303</u>	<u>0.0395</u>	<u>0.0370</u>	<u>0.0307</u>	<u>0.501</u>
<u>6305</u>	<u>0.0852</u>	<u>0.0804</u>	<u>0.0671</u>	<u>0.574</u>
<u>6306</u>	<u>0.3118</u>	<u>0.2928</u>	<u>0.2403</u>	<u>0.556</u>
<u>6308</u>	<u>0.0550</u>	<u>0.0515</u>	<u>0.0426</u>	<u>0.503</u>
<u>6309</u>	<u>0.1814</u>	<u>0.1707</u>	<u>0.1425</u>	<u>0.533</u>
<u>6402</u>	<u>0.2129</u>	<u>0.2012</u>	<u>0.1688</u>	<u>0.567</u>
<u>6403</u>	<u>0.1245</u>	<u>0.1174</u>	<u>0.0972</u>	<u>0.574</u>
<u>6404</u>	<u>0.2526</u>	<u>0.2383</u>	<u>0.2020</u>	<u>0.522</u>
<u>6405</u>	<u>0.5233</u>	<u>0.4894</u>	<u>0.4022</u>	<u>0.509</u>
<u>6406</u>	<u>0.1315</u>	<u>0.1238</u>	<u>0.1023</u>	<u>0.574</u>
<u>6407</u>	<u>0.2335</u>	<u>0.2196</u>	<u>0.1834</u>	<u>0.531</u>
<u>6408</u>	<u>0.5262</u>	<u>0.4938</u>	<u>0.4143</u>	<u>0.483</u>
<u>6409</u>	<u>0.5728</u>	<u>0.5345</u>	<u>0.4417</u>	<u>0.479</u>
<u>6410</u>	<u>0.2509</u>	<u>0.2352</u>	<u>0.1940</u>	<u>0.534</u>
<u>6411</u>	<u>0.0350</u>	<u>0.0331</u>	<u>0.0284</u>	<u>0.517</u>
<u>6501</u>	<u>0.0859</u>	<u>0.0804</u>	<u>0.0652</u>	<u>0.558</u>
<u>6502</u>	<u>0.0181</u>	<u>0.0169</u>	<u>0.0141</u>	<u>0.491</u>
<u>6503</u>	<u>0.0681</u>	<u>0.0633</u>	<u>0.0506</u>	<u>0.528</u>
<u>6504</u>	<u>0.2364</u>	<u>0.2248</u>	<u>0.1912</u>	<u>0.590</u>
<u>6505</u>	<u>0.1353</u>	<u>0.1284</u>	<u>0.1076</u>	<u>0.631</u>
<u>6506</u>	<u>0.1019</u>	<u>0.0957</u>	<u>0.0793</u>	<u>0.533</u>
<u>6509</u>	<u>0.1985</u>	<u>0.1881</u>	<u>0.1586</u>	<u>0.573</u>
<u>6510</u>	<u>0.3155</u>	<u>0.2920</u>	<u>0.2402</u>	<u>0.404</u>
<u>6511</u>	<u>0.2332</u>	<u>0.2199</u>	<u>0.1828</u>	<u>0.561</u>
<u>6512</u>	<u>0.0755</u>	<u>0.0707</u>	<u>0.0591</u>	<u>0.455</u>
<u>6601</u>	<u>0.1671</u>	<u>0.1575</u>	<u>0.1316</u>	<u>0.507</u>
<u>6602</u>	<u>0.5013</u>	<u>0.4725</u>	<u>0.4011</u>	<u>0.488</u>
<u>6603</u>	<u>0.2437</u>	<u>0.2298</u>	<u>0.1925</u>	<u>0.549</u>
<u>6604</u>	<u>0.0569</u>	<u>0.0535</u>	<u>0.0448</u>	<u>0.538</u>
<u>6605</u>	<u>0.2478</u>	<u>0.2326</u>	<u>0.1895</u>	<u>0.565</u>
<u>6607</u>	<u>0.0878</u>	<u>0.0830</u>	<u>0.0702</u>	<u>0.536</u>
<u>6608</u>	<u>0.3748</u>	<u>0.3452</u>	<u>0.2833</u>	<u>0.384</u>
<u>6620</u>	<u>2.8489</u>	<u>2.6600</u>	<u>2.1135</u>	<u>0.576</u>
<u>6704</u>	<u>0.1057</u>	<u>0.0995</u>	<u>0.0822</u>	<u>0.569</u>
<u>6705</u>	<u>0.6447</u>	<u>0.6138</u>	<u>0.5278</u>	<u>0.577</u>
<u>6706</u>	<u>0.2064</u>	<u>0.1951</u>	<u>0.1674</u>	<u>0.516</u>
<u>6707</u>	<u>9.5297</u>	<u>9.0489</u>	<u>7.4637</u>	<u>0.658</u>
<u>6708</u>	<u>7.6928</u>	<u>7.3306</u>	<u>6.4654</u>	<u>0.480</u>
<u>6709</u>	<u>0.2253</u>	<u>0.2120</u>	<u>0.1759</u>	<u>0.552</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>6801</u>	<u>0.5454</u>	<u>0.5052</u>	<u>0.3922</u>	<u>0.539</u>
<u>6802</u>	<u>0.7268</u>	<u>0.6793</u>	<u>0.5496</u>	<u>0.538</u>
<u>6803</u>	<u>0.4017</u>	<u>0.3698</u>	<u>0.3022</u>	<u>0.403</u>
<u>6804</u>	<u>0.2168</u>	<u>0.2037</u>	<u>0.1683</u>	<u>0.549</u>
<u>6809</u>	<u>3.0048</u>	<u>2.8437</u>	<u>2.4114</u>	<u>0.545</u>
<u>6901</u>	<u>0.0193</u>	<u>0.0199</u>	<u>0.0201</u>	<u>0.817</u>
<u>6902</u>	<u>0.6118</u>	<u>0.5712</u>	<u>0.4816</u>	<u>0.419</u>
<u>6903</u>	<u>3.1754</u>	<u>2.9366</u>	<u>2.5040</u>	<u>0.321</u>
<u>6904</u>	<u>0.9100</u>	<u>0.8433</u>	<u>0.6807</u>	<u>0.465</u>
<u>6905</u>	<u>0.6772</u>	<u>0.6280</u>	<u>0.5090</u>	<u>0.486</u>
<u>6906</u>	<u>0.2484</u>	<u>0.2440</u>	<u>0.2321</u>	<u>0.602</u>
<u>6907</u>	<u>0.6695</u>	<u>0.6298</u>	<u>0.5242</u>	<u>0.537</u>
<u>6908</u>	<u>0.3105</u>	<u>0.2911</u>	<u>0.2429</u>	<u>0.496</u>
<u>6909</u>	<u>0.0878</u>	<u>0.0824</u>	<u>0.0693</u>	<u>0.504</u>
<u>7100</u>	<u>0.0146</u>	<u>0.0136</u>	<u>0.0110</u>	<u>0.530</u>
<u>7101</u>	<u>0.0184</u>	<u>0.0172</u>	<u>0.0143</u>	<u>0.437</u>
<u>7103</u>	<u>0.8369</u>	<u>0.7765</u>	<u>0.6287</u>	<u>0.470</u>
<u>7104</u>	<u>0.0204</u>	<u>0.0191</u>	<u>0.0158</u>	<u>0.497</u>
<u>7105</u>	<u>0.0140</u>	<u>0.0132</u>	<u>0.0109</u>	<u>0.506</u>
<u>7106</u>	<u>0.2410</u>	<u>0.2267</u>	<u>0.1868</u>	<u>0.564</u>
<u>7107</u>	<u>0.3598</u>	<u>0.3376</u>	<u>0.2750</u>	<u>0.559</u>
<u>7108</u>	<u>0.2563</u>	<u>0.2415</u>	<u>0.1980</u>	<u>0.602</u>
<u>7109</u>	<u>0.0774</u>	<u>0.0726</u>	<u>0.0607</u>	<u>0.494</u>
<u>7110</u>	<u>0.3693</u>	<u>0.3452</u>	<u>0.2902</u>	<u>0.435</u>
<u>7111</u>	<u>0.2574</u>	<u>0.2384</u>	<u>0.1917</u>	<u>0.476</u>
<u>7112</u>	<u>0.5450</u>	<u>0.5139</u>	<u>0.4356</u>	<u>0.516</u>
<u>7113</u>	<u>0.3382</u>	<u>0.3177</u>	<u>0.2631</u>	<u>0.533</u>
<u>7114</u>	<u>0.7048</u>	<u>0.6648</u>	<u>0.5483</u>	<u>0.585</u>
<u>7115</u>	<u>0.5672</u>	<u>0.5357</u>	<u>0.4483</u>	<u>0.560</u>
<u>7116</u>	<u>0.4462</u>	<u>0.4175</u>	<u>0.3452</u>	<u>0.489</u>
<u>7117</u>	<u>0.8490</u>	<u>0.7991</u>	<u>0.6728</u>	<u>0.498</u>
<u>7118</u>	<u>1.3691</u>	<u>1.2806</u>	<u>1.0646</u>	<u>0.481</u>
<u>7119</u>	<u>1.4079</u>	<u>1.3146</u>	<u>1.0812</u>	<u>0.476</u>
<u>7120</u>	<u>4.2400</u>	<u>3.9500</u>	<u>3.2151</u>	<u>0.489</u>
<u>7121</u>	<u>5.6360</u>	<u>5.2264</u>	<u>4.4413</u>	<u>0.338</u>
<u>7122</u>	<u>0.3025</u>	<u>0.2867</u>	<u>0.2455</u>	<u>0.506</u>
<u>7200</u>	<u>1.8404</u>	<u>1.7007</u>	<u>1.3626</u>	<u>0.464</u>
<u>7201</u>	<u>1.4176</u>	<u>1.3157</u>	<u>1.0526</u>	<u>0.500</u>
<u>7202</u>	<u>0.0185</u>	<u>0.0173</u>	<u>0.0142</u>	<u>0.516</u>
<u>7203</u>	<u>0.0812</u>	<u>0.0773</u>	<u>0.0667</u>	<u>0.575</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>
<u>7301</u>	<u>0.5655</u>	<u>0.5357</u>	<u>0.4685</u>	<u>0.444</u>
<u>7302</u>	<u>0.6549</u>	<u>0.6196</u>	<u>0.5384</u>	<u>0.447</u>
<u>7307</u>	<u>0.4114</u>	<u>0.3872</u>	<u>0.3229</u>	<u>0.538</u>
<u>7308</u>	<u>0.2174</u>	<u>0.2063</u>	<u>0.1749</u>	<u>0.574</u>
<u>7309</u>	<u>0.2041</u>	<u>0.1937</u>	<u>0.1643</u>	<u>0.580</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>7400</u>	<u>2.1165</u>	<u>1.9559</u>	<u>1.5669</u>	<u>0.464</u>

Expected Loss Rates in Dollars Per Sq. Ft. of Wallboard Installed

<u>Class</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Primary Ratio</u>
<u>540</u>	<u>0.0145</u>	<u>0.0130</u>	<u>0.0105</u>	<u>0.459</u>
<u>541</u>	<u>0.0069</u>	<u>0.0062</u>	<u>0.0050</u>	<u>0.428</u>
<u>550</u>	<u>0.0267</u>	<u>0.0240</u>	<u>0.0197</u>	<u>0.367</u>
<u>551</u>	<u>0.0097</u>	<u>0.0087</u>	<u>0.0072</u>	<u>0.407</u>

<u>Class</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Primary Ratio</u>
<u>540</u>	<u>0.0130</u>	<u>0.0121</u>	<u>0.0102</u>	<u>0.464</u>
<u>541</u>	<u>0.0065</u>	<u>0.0061</u>	<u>0.0051</u>	<u>0.426</u>
<u>550</u>	<u>0.0258</u>	<u>0.0239</u>	<u>0.0204</u>	<u>0.338</u>
<u>551</u>	<u>0.0091</u>	<u>0.0085</u>	<u>0.0072</u>	<u>0.402</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-885, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-885, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-885, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-885, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-885, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-885, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-885, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-885, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-885, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-885, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-885, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-885, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-885, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-885, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-885, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-885, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-885, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-885, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-885, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-885, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-885, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-885, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-885, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-885, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-885, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-885, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-885, filed 11/29/96, effective 1/1/97. Statu-

tory Authority: RCW 51.16.035. WSR 96-12-039, § 296-17-885, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-885, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-885, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-885, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-885, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-885, filed 11/27/91, effective 1/1/92; WSR 91-12-014, § 296-17-885, filed 5/31/91, effective 7/1/91; WSR 90-24-042, § 296-17-885, filed 11/30/90, effective 1/1/91; WSR 90-13-018, § 296-17-885, filed 6/8/90, effective 7/9/90; WSR 89-24-051 (Order 89-22), § 296-17-885, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.04.020(1). WSR 89-16-001 (Order 89-07), § 296-17-885, filed 7/20/89, effective 8/20/89. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-885, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 88-12-065 (Order 88-05), § 296-17-885, filed 5/31/88; WSR 88-12-050 (Order 88-06), § 296-17-885, filed 5/31/88, effective 7/1/88; WSR 88-06-047 (Order 87-33), § 296-17-885, filed 3/1/88; WSR 87-24-060 (Order 87-26), § 296-17-885, filed 12/1/87, effective 1/1/88; WSR 87-12-032 (Order 87-12), § 296-17-885, filed 5/29/87, effective 7/1/87. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-885, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-885, filed 5/30/86, effective 7/1/86; WSR 85-24-032 (Order 85-33), § 296-17-885, filed 11/27/85, effective 1/1/86; WSR 85-06-026 (Order 85-7), § 296-17-885, filed 2/28/85, effective 4/1/85; WSR 84-24-016 (Order 84-23), § 296-17-885, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-885, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-885, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-885, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-885, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-885, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-885, filed 11/27/78, effective 1/1/79, effective 1/1/80. Order 77-27, § 296-17-885, filed 11/30/77, effective 1/1/78; Emergency Order 77-25, § 296-17-885, filed 12/1/77; Order 77-10, § 296-17-885, filed 5/31/77; Order 76-36, § 296-17-885, filed 11/30/76; Order 76-18, § 296-17-885, filed 5/28/76, effective 7/1/76; Order 75-38, § 296-17-885, filed 11/24/75, effective 1/1/76; Order 74-40, § 296-17-885, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-885, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-890 Table IV.

**Maximum Experience Modifications
For Firms with No Compensable Accidents:
Effective January 1, ((2022)) 2023**

Expected Loss Range	Maximum Experience Modification
((1 - 5,329	0.90
5,330 - 6,506	0.89
6,507 - 7,177	0.88
7,178 - 7,847	0.87
7,848 - 8,517	0.86
8,518 - 9,187	0.85
9,188 - 9,857	0.84
9,858 - 10,528	0.83
10,529 - 11,198	0.82
11,199 - 11,893	0.81
11,894 - 12,617	0.80
12,618 - 13,369	0.79
13,370 - 14,150	0.78
14,151 - 14,959	0.77
14,960 - 15,797	0.76
15,798 - 16,664	0.75
16,665 - 17,559	0.74
17,560 - 18,483	0.73
18,484 - 19,436	0.72
19,437 - 20,417	0.71
20,418 - 21,426	0.70
21,427 - 22,464	0.69
22,465 - 23,531	0.68
23,532 - 24,626	0.67
24,627 - 25,750	0.66
25,751 - 26,903	0.65
26,904 - 28,632	0.64
28,633 - 31,225	0.63
31,226 - 35,115	0.62
35,116 - 40,950	0.61
40,951 and higher	0.60))
<u>1</u> - <u>5,356</u>	<u>0.90</u>
<u>5,357</u> - <u>6,539</u>	<u>0.89</u>
<u>6,540</u> - <u>7,212</u>	<u>0.88</u>
<u>7,213</u> - <u>7,885</u>	<u>0.87</u>
<u>7,886</u> - <u>8,559</u>	<u>0.86</u>
<u>8,560</u> - <u>9,232</u>	<u>0.85</u>
<u>9,233</u> - <u>9,905</u>	<u>0.84</u>
<u>9,906</u> - <u>10,579</u>	<u>0.83</u>
<u>10,580</u> - <u>11,252</u>	<u>0.82</u>
<u>11,253</u> - <u>11,951</u>	<u>0.81</u>
<u>11,952</u> - <u>12,679</u>	<u>0.80</u>
<u>12,680</u> - <u>13,436</u>	<u>0.79</u>
<u>13,437</u> - <u>14,221</u>	<u>0.78</u>
<u>14,222</u> - <u>15,035</u>	<u>0.77</u>
<u>15,036</u> - <u>15,877</u>	<u>0.76</u>

Expected Loss Range	Maximum Experience Modification
<u>15,878</u> = <u>16,749</u>	<u>0.75</u>
<u>16,750</u> = <u>17,649</u>	<u>0.74</u>
<u>17,650</u> = <u>18,577</u>	<u>0.73</u>
<u>18,578</u> = <u>19,534</u>	<u>0.72</u>
<u>19,535</u> = <u>20,520</u>	<u>0.71</u>
<u>20,521</u> = <u>21,535</u>	<u>0.70</u>
<u>21,536</u> = <u>22,578</u>	<u>0.69</u>
<u>22,579</u> = <u>23,650</u>	<u>0.68</u>
<u>23,651</u> = <u>24,751</u>	<u>0.67</u>
<u>24,752</u> = <u>25,880</u>	<u>0.66</u>
<u>25,881</u> = <u>27,038</u>	<u>0.65</u>
<u>27,039</u> = <u>28,775</u>	<u>0.64</u>
<u>28,776</u> = <u>31,381</u>	<u>0.63</u>
<u>31,382</u> = <u>35,289</u>	<u>0.62</u>
<u>35,290</u> = <u>41,152</u>	<u>0.61</u>
<u>41,153</u> and higher	<u>0.60</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-890, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-890, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-890, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-890, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-890, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-890, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-890, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-890, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-890, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-890, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-890, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-890, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-890, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-890, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-890, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-890, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-890, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-890, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-890, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-890, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-890, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-890, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-890, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-890, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-890, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-890, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.04.020. WSR 95-23-080, §

296-17-890, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-890, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-890, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-890, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-890, filed 11/27/91, effective 1/1/92; WSR 90-24-042, § 296-17-890, filed 11/30/90, effective 1/1/91; WSR 89-24-051 (Order 89-22), § 296-17-890, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-890, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 87-24-060 (Order 87-26), § 296-17-890, filed 12/1/87, effective 1/1/88. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-890, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 85-24-032 (Order 85-33), § 296-17-890, filed 11/27/85, effective 1/1/86; WSR 84-24-016 (Order 84-23), § 296-17-890, filed 11/28/84, effective 1/1/85; WSR 83-24-017 (Order 83-36), § 296-17-890, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-890, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-890, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-890, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-890, filed 11/30/79, effective 1/1/80.]

OTS-4079.1

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry. Industrial insurance accident fund, stay at work and medical aid fund base rates by class of industry shall be as set forth below.

Base Rates Effective January 1, ((2022)) 2023			
Class	Accident Fund	Stay at Work	Medical Aid Fund
101	1.3687	0.0234	0.5372
103	1.5726	0.0266	0.8086
104	1.2083	0.0207	0.4562
105	1.2229	0.0206	0.7000
106	2.5426	0.0425	1.6376
107	1.2607	0.0216	0.4925
108	1.2083	0.0207	0.4562
112	0.9012	0.0153	0.4396
201	3.0533	0.0526	0.9878
202	2.6980	0.0464	0.9298
210	1.1763	0.0201	0.4728
212	1.0529	0.0179	0.4957
214	2.3037	0.0396	0.7653

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund
217	1.4242	0.0243	0.6252
219	1.0152	0.0173	0.4151
301	1.0640	0.0179	0.6227
302	2.9267	0.0503	0.9897
303	2.3404	0.0399	0.9860
306	0.9661	0.0165	0.4163
307	1.0332	0.0175	0.4973
308	0.6385	0.0106	0.4389
403	2.1251	0.0362	0.9576
502	1.1778	0.0202	0.4612
504	2.4361	0.0414	1.1460
507	3.5520	0.0599	1.9418
508	1.9483	0.0336	0.5921
509	1.3605	0.0235	0.3814
510	2.8124	0.0476	1.4515
511	1.6717	0.0285	0.7327
512	1.4782	0.0250	0.7512
513	1.1139	0.0190	0.4956
514	1.4276	0.0241	0.7717
516	1.8299	0.0311	0.8383
517	2.2504	0.0384	0.9738
518	1.5866	0.0272	0.6103
519	1.8512	0.0316	0.7692
521	0.7663	0.0129	0.4170
601	0.6988	0.0119	0.2855
602	1.0324	0.0179	0.2841
603	1.1585	0.0199	0.3871
604	1.3315	0.0225	0.6895
606	0.6331	0.0107	0.3385
607	0.9385	0.0160	0.4170
608	0.5936	0.0102	0.2107
701	2.6563	0.0458	0.8594
803	0.7404	0.0126	0.3609
901	1.5866	0.0272	0.6103
1002	1.0671	0.0182	0.4660
1003	0.8288	0.0141	0.3910
1004	0.5966	0.0102	0.2197
1005	11.8281	0.2028	4.4298
1006	0.2633	0.0044	0.1432
1007	0.4088	0.0070	0.1861
1101	1.5114	0.0257	0.6953
1102	2.4043	0.0413	0.8363
1103	1.3918	0.0237	0.5976
1104	0.7645	0.0128	0.4528
1105	1.0830	0.0184	0.4853

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund
1106	0.4082	0.0068	0.2833
1108	0.5222	0.0087	0.3446
1109	2.3828	0.0406	1.0706
1301	0.8315	0.0142	0.3581
1303	0.4939	0.0084	0.2207
1304	0.0246	0.0004	0.0125
1305	0.6693	0.0114	0.2816
1401	0.3107	0.0051	0.2577
1404	0.8773	0.0147	0.5100
1405	0.8605	0.0145	0.4576
1407	0.7993	0.0135	0.4208
1501	1.1438	0.0195	0.4791
1507	0.5760	0.0097	0.3296
1701	1.0681	0.0182	0.4726
1702	2.0528	0.0356	0.5429
1703	1.2774	0.0220	0.4333
1704	1.0681	0.0182	0.4726
1801	0.6549	0.0112	0.2520
1802	1.0478	0.0179	0.4032
2002	0.9499	0.0160	0.5033
2004	0.6560	0.0110	0.4091
2007	0.8575	0.0144	0.4934
2008	0.4153	0.0069	0.2828
2009	0.4270	0.0071	0.3065
2101	0.7141	0.0119	0.4754
2102	0.8211	0.0138	0.4721
2103	1.6013	0.0271	0.7920
2104	0.3944	0.0064	0.3874
2105	0.8452	0.0143	0.4061
2106	0.6974	0.0117	0.4051
2201	0.3847	0.0064	0.2828
2202	0.8244	0.0139	0.4374
2203	0.6285	0.0105	0.4343
2204	0.3847	0.0064	0.2828
2401	0.6387	0.0109	0.2772
2903	0.7505	0.0124	0.5485
2904	0.9972	0.0169	0.4724
2905	0.6050	0.0101	0.3953
2906	0.6541	0.0109	0.4626
2907	0.5275	0.0088	0.3570
2908	1.1101	0.0185	0.7335
2909	0.4734	0.0078	0.3680
3101	1.0147	0.0172	0.5145
3102	0.3895	0.0066	0.1749
3103	0.4793	0.0081	0.2486

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund
3104	0.7637	0.0127	0.4975
3105	0.9866	0.0163	0.7169
3303	0.4493	0.0075	0.2720
3304	0.8206	0.0137	0.5491
3309	0.5129	0.0086	0.2899
3402	0.5645	0.0095	0.3329
3403	0.1832	0.0031	0.0942
3404	0.5773	0.0097	0.3316
3405	0.3805	0.0064	0.2015
3406	0.3325	0.0056	0.2064
3407	1.0079	0.0171	0.4720
3408	0.3502	0.0060	0.1624
3409	0.2123	0.0035	0.1417
3410	0.2123	0.0035	0.1417
3411	0.7057	0.0120	0.3080
3412	0.9971	0.0171	0.3562
3414	1.1101	0.0189	0.4892
3415	1.3994	0.0237	0.6965
3501	0.5130	0.0085	0.3728
3503	0.3901	0.0065	0.2313
3506	1.1278	0.0192	0.4874
3509	0.5334	0.0090	0.3137
3510	0.4263	0.0071	0.2970
3511	0.9928	0.0167	0.5979
3512	0.4053	0.0067	0.2936
3513	0.5337	0.0089	0.3507
3602	0.1255	0.0021	0.0751
3603	0.5952	0.0100	0.3555
3604	0.9721	0.0163	0.5709
3605	0.5645	0.0095	0.3329
3701	0.3895	0.0066	0.1749
3702	0.4622	0.0077	0.2801
3708	0.7837	0.0132	0.4476
3802	0.2582	0.0043	0.1638
3808	0.5111	0.0086	0.2885
3901	0.1586	0.0026	0.1295
3902	0.5202	0.0086	0.3815
3903	0.5458	0.0090	0.4003
3905	0.1424	0.0023	0.1236
3906	0.5416	0.0090	0.4020
3909	0.2915	0.0048	0.2185
4101	0.2904	0.0049	0.1773
4103	0.6650	0.0111	0.4276
4107	0.2676	0.0045	0.1294
4108	0.1960	0.0033	0.1241

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Class	Accident Fund	Stay at Work	Medical Aid Fund
4109	0.2408	0.0040	0.1870
4201	1.2331	0.0213	0.3762
4301	0.9764	0.0161	0.7381
4302	0.9390	0.0158	0.5248
4304	1.0833	0.0177	0.9319
4305	1.4213	0.0242	0.6144
4401	0.4493	0.0075	0.2720
4402	0.8645	0.0147	0.4159
4404	0.5706	0.0096	0.3311
4501	0.2050	0.0034	0.1311
4502	0.0837	0.0014	0.0459
4504	0.1333	0.0022	0.0990
4802	0.5135	0.0086	0.3482
4803	0.4561	0.0075	0.3874
4804	0.6450	0.0106	0.5074
4805	0.4198	0.0069	0.3454
4806	0.1292	0.0021	0.1170
4808	0.6290	0.0106	0.3694
4809	0.3111	0.0052	0.2065
4810	0.2624	0.0043	0.2190
4811	0.5506	0.0090	0.4709
4812	0.5639	0.0095	0.3418
4813	0.2564	0.0042	0.2380
4900	0.1710	0.0029	0.0756
4901	0.0594	0.0010	0.0256
4902	0.1158	0.0020	0.0625
4903	0.2251	0.0038	0.1095
4904	0.0188	0.0003	0.0120
4905	0.3846	0.0063	0.3222
4906	0.1357	0.0023	0.0709
4907	0.0630	0.0010	0.0660
4908	0.1047	0.0017	0.1022
4909	0.0419	0.0007	0.0408
4910	0.6088	0.0103	0.3147
4911	0.0810	0.0014	0.0388
5001	11.5021	0.1965	4.7005
5002	0.7612	0.0129	0.3837
5003	3.4014	0.0583	1.2767
5004	1.2040	0.0201	0.8106
5005	1.4580	0.0250	0.5189
5006	1.7929	0.0308	0.6201
5101	1.3850	0.0237	0.5192
5103	1.0668	0.0179	0.6669
5106	1.0668	0.0179	0.6669
5108	1.0694	0.0181	0.5377

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Class	Accident Fund	Stay at Work	Medical Aid Fund
5109	0.6970	0.0119	0.3169
5201	0.3866	0.0065	0.2317
5204	1.4608	0.0251	0.5037
5206	0.5986	0.0101	0.2974
5207	0.1670	0.0028	0.1244
5208	0.8503	0.0143	0.4640
5209	0.8527	0.0144	0.4270
5300	0.1222	0.0021	0.0684
5301	0.0424	0.0007	0.0239
5302	0.0108	0.0002	0.0058
5305	0.0528	0.0009	0.0325
5306	0.0477	0.0008	0.0343
5307	0.9725	0.0166	0.4025
5308	0.1040	0.0017	0.0790
6103	0.0973	0.0016	0.0849
6104	0.4609	0.0077	0.2876
6105	0.7730	0.0132	0.3255
6107	0.1504	0.0024	0.1663
6108	0.3019	0.0049	0.2545
6109	0.1532	0.0026	0.0715
6110	0.5664	0.0096	0.2721
6120	0.4423	0.0075	0.2135
6121	0.6271	0.0107	0.2653
6201	0.6791	0.0115	0.3381
6202	0.9753	0.0164	0.5739
6203	0.0985	0.0016	0.1170
6204	0.1602	0.0027	0.1165
6205	0.2298	0.0038	0.1428
6206	0.2424	0.0040	0.1658
6207	1.2195	0.0204	0.7399
6208	0.2468	0.0040	0.2304
6209	0.3080	0.0050	0.2675
6301	0.1886	0.0032	0.0837
6303	0.0678	0.0011	0.0365
6305	0.1060	0.0018	0.0783
6306	0.4144	0.0070	0.2445
6308	0.0791	0.0013	0.0413
6309	0.2634	0.0044	0.1662
6402	0.2893	0.0048	0.2264
6403	0.1611	0.0027	0.1167
6404	0.3365	0.0056	0.2533
6405	0.8387	0.0142	0.4162
6406	0.1710	0.0028	0.1165
6407	0.3541	0.0059	0.2179
6408	0.7968	0.0134	0.4419

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Class	Accident Fund	Stay at Work	Medical Aid Fund
6409	0.8619	0.0146	0.4190
6410	0.4017	0.0068	0.2217
6411	0.0485	0.0008	0.0385
6501	0.1335	0.0023	0.0695
6502	0.0363	0.0006	0.0189
6503	0.1192	0.0020	0.0489
6504	0.2851	0.0046	0.2889
6505	0.1603	0.0026	0.1528
6506	0.1533	0.0026	0.0963
6509	0.2792	0.0046	0.2321
6510	0.6030	0.0104	0.2058
6511	0.3210	0.0053	0.2331
6512	0.1253	0.0021	0.0617
6601	0.2270	0.0038	0.1545
6602	0.6798	0.0113	0.4650
6603	0.3406	0.0057	0.2367
6604	0.0891	0.0015	0.0594
6605	0.3725	0.0062	0.2269
6607	0.1185	0.0020	0.0912
6608	0.8288	0.0143	0.2324
6620	4.4416	0.0754	2.1299
6704	0.1530	0.0025	0.1027
6705	0.7044	0.0114	0.7009
6706	0.2880	0.0047	0.2248
6707	11.9160	0.1944	10.5239
6708	9.6752	0.1558	9.8167
6709	0.3220	0.0054	0.2143
6801	1.0296	0.0178	0.3030
6802	1.0340	0.0175	0.5129
6803	0.8745	0.0151	0.2339
6804	0.3417	0.0057	0.2141
6809	4.4187	0.0725	3.6843
6901	0.0000	0.0000	0.0670
6902	1.1296	0.0192	0.5239
6903	7.3824	0.1269	2.5581
6904	1.8754	0.0322	0.6760
6905	1.3846	0.0238	0.4990
6906	0.0000	0.0000	0.4513
6907	1.0289	0.0172	0.6362
6908	0.4864	0.0082	0.2549
6909	0.1454	0.0024	0.0895
7100	0.0277	0.0005	0.0119
7101	0.0331	0.0006	0.0157
7103	1.5366	0.0264	0.5442
7104	0.0317	0.0005	0.0180

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Class	Accident Fund	Stay at Work	Medical Aid Fund
7105	0.0207	0.0003	0.0131
7106	0.3382	0.0056	0.2177
7107	0.4918	0.0082	0.3060
7108	0.2963	0.0049	0.2175
7109	0.1278	0.0022	0.0726
7110	0.6091	0.0103	0.3004
7111	0.4726	0.0081	0.1602
7112	0.7800	0.0130	0.5501
7113	0.5321	0.0089	0.3292
7114	0.8828	0.0146	0.6422
7115	0.6127	0.0101	0.4934
7116	0.6595	0.0112	0.3312
7117	1.3602	0.0227	0.8744
7118	2.2303	0.0377	1.1628
7119	2.4177	0.0411	1.1075
7120	7.1065	0.1212	3.0718
7121	11.8028	0.2021	4.5366
7122	0.4190	0.0069	0.3307
7200	3.2292	0.0557	0.9720
7201	2.3223	0.0398	0.8636
7202	0.0327	0.0006	0.0162
7203	0.1058	0.0017	0.1100
7204	0.0000	0.0000	0.0000
7205	0.0000	0.0000	0.0000
7301	0.7736	0.0127	0.6313
7302	0.9579	0.0159	0.7061
7307	0.6028	0.0101	0.3922
7308	0.2704	0.0044	0.2498
7309	0.2665	0.0043	0.2377
7400	3.7135	0.0641	1.1178))
<u>101</u>	<u>1.4355</u>	<u>0.0234</u>	<u>0.5240</u>
<u>103</u>	<u>1.5658</u>	<u>0.0251</u>	<u>0.8182</u>
<u>104</u>	<u>1.2396</u>	<u>0.0202</u>	<u>0.4606</u>
<u>105</u>	<u>1.2645</u>	<u>0.0202</u>	<u>0.6855</u>
<u>106</u>	<u>2.9430</u>	<u>0.0466</u>	<u>1.8831</u>
<u>107</u>	<u>1.2170</u>	<u>0.0197</u>	<u>0.4776</u>
<u>108</u>	<u>1.2396</u>	<u>0.0202</u>	<u>0.4606</u>
<u>112</u>	<u>0.9580</u>	<u>0.0154</u>	<u>0.4448</u>
<u>201</u>	<u>3.1875</u>	<u>0.0522</u>	<u>0.9727</u>
<u>202</u>	<u>2.6725</u>	<u>0.0436</u>	<u>0.9114</u>
<u>210</u>	<u>1.3632</u>	<u>0.0221</u>	<u>0.5211</u>
<u>212</u>	<u>1.1705</u>	<u>0.0189</u>	<u>0.5169</u>
<u>214</u>	<u>2.4333</u>	<u>0.0398</u>	<u>0.7488</u>
<u>217</u>	<u>1.4027</u>	<u>0.0227</u>	<u>0.6107</u>
<u>219</u>	<u>0.9948</u>	<u>0.0161</u>	<u>0.4080</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>301</u>	<u>1.1791</u>	<u>0.0188</u>	<u>0.6610</u>
<u>302</u>	<u>2.7434</u>	<u>0.0446</u>	<u>1.0005</u>
<u>303</u>	<u>2.3240</u>	<u>0.0376</u>	<u>0.9498</u>
<u>306</u>	<u>1.0399</u>	<u>0.0169</u>	<u>0.4191</u>
<u>307</u>	<u>1.0218</u>	<u>0.0165</u>	<u>0.4798</u>
<u>308</u>	<u>0.6698</u>	<u>0.0106</u>	<u>0.4502</u>
<u>403</u>	<u>2.1140</u>	<u>0.0342</u>	<u>0.8931</u>
<u>502</u>	<u>1.1690</u>	<u>0.0190</u>	<u>0.4360</u>
<u>504</u>	<u>2.4599</u>	<u>0.0397</u>	<u>1.0714</u>
<u>507</u>	<u>3.6696</u>	<u>0.0587</u>	<u>1.9822</u>
<u>508</u>	<u>2.2812</u>	<u>0.0374</u>	<u>0.6474</u>
<u>509</u>	<u>1.3855</u>	<u>0.0227</u>	<u>0.3819</u>
<u>510</u>	<u>2.9145</u>	<u>0.0468</u>	<u>1.4344</u>
<u>511</u>	<u>1.7012</u>	<u>0.0275</u>	<u>0.7322</u>
<u>512</u>	<u>1.4801</u>	<u>0.0238</u>	<u>0.7252</u>
<u>513</u>	<u>1.1159</u>	<u>0.0180</u>	<u>0.4893</u>
<u>514</u>	<u>1.4943</u>	<u>0.0239</u>	<u>0.7772</u>
<u>516</u>	<u>1.9538</u>	<u>0.0315</u>	<u>0.8606</u>
<u>517</u>	<u>2.2573</u>	<u>0.0366</u>	<u>0.9251</u>
<u>518</u>	<u>1.6616</u>	<u>0.0270</u>	<u>0.6106</u>
<u>519</u>	<u>2.0796</u>	<u>0.0337</u>	<u>0.8328</u>
<u>521</u>	<u>0.8495</u>	<u>0.0136</u>	<u>0.4286</u>
<u>601</u>	<u>0.7015</u>	<u>0.0114</u>	<u>0.2693</u>
<u>602</u>	<u>1.0776</u>	<u>0.0177</u>	<u>0.2826</u>
<u>603</u>	<u>1.1826</u>	<u>0.0193</u>	<u>0.3902</u>
<u>604</u>	<u>1.3520</u>	<u>0.0217</u>	<u>0.6950</u>
<u>606</u>	<u>0.6786</u>	<u>0.0109</u>	<u>0.3413</u>
<u>607</u>	<u>0.9974</u>	<u>0.0161</u>	<u>0.4308</u>
<u>608</u>	<u>0.5994</u>	<u>0.0098</u>	<u>0.2109</u>
<u>701</u>	<u>2.3587</u>	<u>0.0386</u>	<u>0.7199</u>
<u>803</u>	<u>0.8124</u>	<u>0.0131</u>	<u>0.3627</u>
<u>901</u>	<u>1.6616</u>	<u>0.0270</u>	<u>0.6106</u>
<u>1002</u>	<u>1.1206</u>	<u>0.0182</u>	<u>0.4512</u>
<u>1003</u>	<u>0.8210</u>	<u>0.0132</u>	<u>0.3726</u>
<u>1004</u>	<u>0.6458</u>	<u>0.0105</u>	<u>0.2226</u>
<u>1005</u>	<u>12.4814</u>	<u>0.2032</u>	<u>4.4519</u>
<u>1006</u>	<u>0.3028</u>	<u>0.0049</u>	<u>0.1482</u>
<u>1007</u>	<u>0.4355</u>	<u>0.0070</u>	<u>0.2054</u>
<u>1101</u>	<u>1.5212</u>	<u>0.0246</u>	<u>0.6742</u>
<u>1102</u>	<u>2.4883</u>	<u>0.0406</u>	<u>0.8153</u>
<u>1103</u>	<u>1.4402</u>	<u>0.0233</u>	<u>0.5914</u>
<u>1104</u>	<u>0.7953</u>	<u>0.0127</u>	<u>0.4488</u>
<u>1105</u>	<u>1.0969</u>	<u>0.0177</u>	<u>0.4625</u>
<u>1106</u>	<u>0.4441</u>	<u>0.0070</u>	<u>0.2903</u>
<u>1108</u>	<u>0.5887</u>	<u>0.0093</u>	<u>0.3671</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>1109</u>	<u>2.7517</u>	<u>0.0446</u>	<u>1.1376</u>
<u>1301</u>	<u>0.9224</u>	<u>0.0149</u>	<u>0.3778</u>
<u>1303</u>	<u>0.5236</u>	<u>0.0085</u>	<u>0.2196</u>
<u>1304</u>	<u>0.0253</u>	<u>0.0004</u>	<u>0.0119</u>
<u>1305</u>	<u>0.6803</u>	<u>0.0110</u>	<u>0.2691</u>
<u>1401</u>	<u>0.3508</u>	<u>0.0055</u>	<u>0.2668</u>
<u>1404</u>	<u>0.9080</u>	<u>0.0144</u>	<u>0.5397</u>
<u>1405</u>	<u>0.9461</u>	<u>0.0152</u>	<u>0.4921</u>
<u>1407</u>	<u>0.8403</u>	<u>0.0135</u>	<u>0.4035</u>
<u>1501</u>	<u>1.1870</u>	<u>0.0193</u>	<u>0.4697</u>
<u>1507</u>	<u>0.5570</u>	<u>0.0089</u>	<u>0.3109</u>
<u>1701</u>	<u>1.1388</u>	<u>0.0184</u>	<u>0.4894</u>
<u>1702</u>	<u>2.0459</u>	<u>0.0337</u>	<u>0.5147</u>
<u>1703</u>	<u>1.3503</u>	<u>0.0221</u>	<u>0.4382</u>
<u>1704</u>	<u>1.1388</u>	<u>0.0184</u>	<u>0.4894</u>
<u>1801</u>	<u>0.7347</u>	<u>0.0120</u>	<u>0.2654</u>
<u>1802</u>	<u>1.1756</u>	<u>0.0191</u>	<u>0.4247</u>
<u>2002</u>	<u>0.9922</u>	<u>0.0159</u>	<u>0.4866</u>
<u>2004</u>	<u>0.7153</u>	<u>0.0114</u>	<u>0.4301</u>
<u>2007</u>	<u>0.9063</u>	<u>0.0145</u>	<u>0.4990</u>
<u>2008</u>	<u>0.3840</u>	<u>0.0061</u>	<u>0.2403</u>
<u>2009</u>	<u>0.4689</u>	<u>0.0074</u>	<u>0.3141</u>
<u>2101</u>	<u>0.7510</u>	<u>0.0119</u>	<u>0.4809</u>
<u>2102</u>	<u>0.8699</u>	<u>0.0138</u>	<u>0.5072</u>
<u>2103</u>	<u>1.9870</u>	<u>0.0320</u>	<u>0.9149</u>
<u>2104</u>	<u>0.3998</u>	<u>0.0061</u>	<u>0.3889</u>
<u>2105</u>	<u>0.9380</u>	<u>0.0151</u>	<u>0.4400</u>
<u>2106</u>	<u>0.7094</u>	<u>0.0113</u>	<u>0.4134</u>
<u>2201</u>	<u>0.3945</u>	<u>0.0062</u>	<u>0.2893</u>
<u>2202</u>	<u>0.9423</u>	<u>0.0151</u>	<u>0.4659</u>
<u>2203</u>	<u>0.6215</u>	<u>0.0098</u>	<u>0.4090</u>
<u>2204</u>	<u>0.3945</u>	<u>0.0062</u>	<u>0.2893</u>
<u>2401</u>	<u>0.6566</u>	<u>0.0106</u>	<u>0.2895</u>
<u>2903</u>	<u>0.7765</u>	<u>0.0122</u>	<u>0.5221</u>
<u>2904</u>	<u>1.0000</u>	<u>0.0161</u>	<u>0.4615</u>
<u>2905</u>	<u>0.6490</u>	<u>0.0103</u>	<u>0.4111</u>
<u>2906</u>	<u>0.7160</u>	<u>0.0113</u>	<u>0.4597</u>
<u>2907</u>	<u>0.5414</u>	<u>0.0085</u>	<u>0.3654</u>
<u>2908</u>	<u>1.0914</u>	<u>0.0172</u>	<u>0.7109</u>
<u>2909</u>	<u>0.5012</u>	<u>0.0079</u>	<u>0.3670</u>
<u>3101</u>	<u>1.0199</u>	<u>0.0164</u>	<u>0.4998</u>
<u>3102</u>	<u>0.3876</u>	<u>0.0063</u>	<u>0.1713</u>
<u>3103</u>	<u>0.4891</u>	<u>0.0079</u>	<u>0.2409</u>
<u>3104</u>	<u>0.8821</u>	<u>0.0140</u>	<u>0.5531</u>
<u>3105</u>	<u>1.0513</u>	<u>0.0166</u>	<u>0.7134</u>

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<u>3303</u>	<u>0.4879</u>	<u>0.0078</u>	<u>0.2711</u>
<u>3304</u>	<u>0.8750</u>	<u>0.0138</u>	<u>0.5574</u>
<u>3309</u>	<u>0.5323</u>	<u>0.0085</u>	<u>0.2772</u>
<u>3402</u>	<u>0.5639</u>	<u>0.0090</u>	<u>0.3231</u>
<u>3403</u>	<u>0.1883</u>	<u>0.0030</u>	<u>0.0924</u>
<u>3404</u>	<u>0.6827</u>	<u>0.0109</u>	<u>0.3609</u>
<u>3405</u>	<u>0.3674</u>	<u>0.0059</u>	<u>0.1947</u>
<u>3406</u>	<u>0.3455</u>	<u>0.0055</u>	<u>0.1995</u>
<u>3407</u>	<u>1.1144</u>	<u>0.0180</u>	<u>0.4601</u>
<u>3408</u>	<u>0.3721</u>	<u>0.0060</u>	<u>0.1695</u>
<u>3409</u>	<u>0.2113</u>	<u>0.0033</u>	<u>0.1337</u>
<u>3410</u>	<u>0.2113</u>	<u>0.0033</u>	<u>0.1337</u>
<u>3411</u>	<u>0.7077</u>	<u>0.0114</u>	<u>0.3014</u>
<u>3412</u>	<u>1.0731</u>	<u>0.0175</u>	<u>0.3677</u>
<u>3414</u>	<u>1.1398</u>	<u>0.0184</u>	<u>0.4952</u>
<u>3415</u>	<u>1.6180</u>	<u>0.0260</u>	<u>0.7871</u>
<u>3501</u>	<u>0.5467</u>	<u>0.0086</u>	<u>0.3710</u>
<u>3503</u>	<u>0.4392</u>	<u>0.0070</u>	<u>0.2503</u>
<u>3506</u>	<u>1.2007</u>	<u>0.0195</u>	<u>0.4803</u>
<u>3509</u>	<u>0.6088</u>	<u>0.0097</u>	<u>0.3265</u>
<u>3510</u>	<u>0.4614</u>	<u>0.0073</u>	<u>0.3156</u>
<u>3511</u>	<u>1.0584</u>	<u>0.0168</u>	<u>0.6174</u>
<u>3512</u>	<u>0.4515</u>	<u>0.0071</u>	<u>0.3063</u>
<u>3513</u>	<u>0.5636</u>	<u>0.0090</u>	<u>0.3307</u>
<u>3602</u>	<u>0.1330</u>	<u>0.0021</u>	<u>0.0751</u>
<u>3603</u>	<u>0.6200</u>	<u>0.0099</u>	<u>0.3530</u>
<u>3604</u>	<u>1.0620</u>	<u>0.0170</u>	<u>0.5859</u>
<u>3605</u>	<u>0.5639</u>	<u>0.0090</u>	<u>0.3231</u>
<u>3701</u>	<u>0.3876</u>	<u>0.0063</u>	<u>0.1713</u>
<u>3702</u>	<u>0.4712</u>	<u>0.0075</u>	<u>0.2832</u>
<u>3708</u>	<u>0.8790</u>	<u>0.0141</u>	<u>0.4591</u>
<u>3802</u>	<u>0.2659</u>	<u>0.0042</u>	<u>0.1648</u>
<u>3808</u>	<u>0.5347</u>	<u>0.0086</u>	<u>0.2856</u>
<u>3901</u>	<u>0.1692</u>	<u>0.0026</u>	<u>0.1308</u>
<u>3902</u>	<u>0.5841</u>	<u>0.0092</u>	<u>0.3943</u>
<u>3903</u>	<u>0.7621</u>	<u>0.0120</u>	<u>0.5146</u>
<u>3905</u>	<u>0.1494</u>	<u>0.0023</u>	<u>0.1255</u>
<u>3906</u>	<u>0.5744</u>	<u>0.0090</u>	<u>0.4079</u>
<u>3909</u>	<u>0.3140</u>	<u>0.0049</u>	<u>0.2242</u>
<u>4101</u>	<u>0.2826</u>	<u>0.0045</u>	<u>0.1733</u>
<u>4103</u>	<u>0.6950</u>	<u>0.0110</u>	<u>0.4295</u>
<u>4107</u>	<u>0.2742</u>	<u>0.0044</u>	<u>0.1292</u>
<u>4108</u>	<u>0.2035</u>	<u>0.0032</u>	<u>0.1246</u>
<u>4109</u>	<u>0.2627</u>	<u>0.0041</u>	<u>0.1833</u>
<u>4201</u>	<u>1.3468</u>	<u>0.0221</u>	<u>0.3764</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>4301</u>	<u>0.9912</u>	<u>0.0155</u>	<u>0.7316</u>
<u>4302</u>	<u>1.0189</u>	<u>0.0163</u>	<u>0.5216</u>
<u>4304</u>	<u>1.0641</u>	<u>0.0166</u>	<u>0.8518</u>
<u>4305</u>	<u>1.5664</u>	<u>0.0254</u>	<u>0.6292</u>
<u>4401</u>	<u>0.4879</u>	<u>0.0078</u>	<u>0.2711</u>
<u>4402</u>	<u>0.8963</u>	<u>0.0144</u>	<u>0.4163</u>
<u>4404</u>	<u>0.6449</u>	<u>0.0103</u>	<u>0.3544</u>
<u>4501</u>	<u>0.2142</u>	<u>0.0034</u>	<u>0.1287</u>
<u>4502</u>	<u>0.0863</u>	<u>0.0014</u>	<u>0.0440</u>
<u>4504</u>	<u>0.1425</u>	<u>0.0022</u>	<u>0.1056</u>
<u>4802</u>	<u>0.5612</u>	<u>0.0089</u>	<u>0.3580</u>
<u>4803</u>	<u>0.5040</u>	<u>0.0078</u>	<u>0.4083</u>
<u>4804</u>	<u>0.6330</u>	<u>0.0099</u>	<u>0.4849</u>
<u>4805</u>	<u>0.4214</u>	<u>0.0065</u>	<u>0.3454</u>
<u>4806</u>	<u>0.1525</u>	<u>0.0024</u>	<u>0.1236</u>
<u>4808</u>	<u>0.6863</u>	<u>0.0110</u>	<u>0.3820</u>
<u>4809</u>	<u>0.3211</u>	<u>0.0051</u>	<u>0.2068</u>
<u>4810</u>	<u>0.3188</u>	<u>0.0050</u>	<u>0.2277</u>
<u>4811</u>	<u>0.5554</u>	<u>0.0086</u>	<u>0.4494</u>
<u>4812</u>	<u>0.5829</u>	<u>0.0093</u>	<u>0.3338</u>
<u>4813</u>	<u>0.3073</u>	<u>0.0047</u>	<u>0.2679</u>
<u>4900</u>	<u>0.1777</u>	<u>0.0029</u>	<u>0.0792</u>
<u>4901</u>	<u>0.0628</u>	<u>0.0010</u>	<u>0.0249</u>
<u>4902</u>	<u>0.1145</u>	<u>0.0018</u>	<u>0.0560</u>
<u>4903</u>	<u>0.2539</u>	<u>0.0041</u>	<u>0.1112</u>
<u>4904</u>	<u>0.0181</u>	<u>0.0003</u>	<u>0.0111</u>
<u>4905</u>	<u>0.4317</u>	<u>0.0067</u>	<u>0.3268</u>
<u>4906</u>	<u>0.1497</u>	<u>0.0024</u>	<u>0.0716</u>
<u>4907</u>	<u>0.0635</u>	<u>0.0010</u>	<u>0.0659</u>
<u>4908</u>	<u>0.1099</u>	<u>0.0017</u>	<u>0.1077</u>
<u>4909</u>	<u>0.0440</u>	<u>0.0007</u>	<u>0.0430</u>
<u>4910</u>	<u>0.6523</u>	<u>0.0105</u>	<u>0.3177</u>
<u>4911</u>	<u>0.0888</u>	<u>0.0014</u>	<u>0.0418</u>
<u>5001</u>	<u>12.2119</u>	<u>0.1986</u>	<u>4.4736</u>
<u>5002</u>	<u>0.7949</u>	<u>0.0128</u>	<u>0.3816</u>
<u>5003</u>	<u>3.6063</u>	<u>0.0587</u>	<u>1.2922</u>
<u>5004</u>	<u>1.2489</u>	<u>0.0197</u>	<u>0.8567</u>
<u>5005</u>	<u>1.5000</u>	<u>0.0244</u>	<u>0.5433</u>
<u>5006</u>	<u>1.9028</u>	<u>0.0311</u>	<u>0.6321</u>
<u>5101</u>	<u>1.4197</u>	<u>0.0231</u>	<u>0.5173</u>
<u>5103</u>	<u>1.1324</u>	<u>0.0180</u>	<u>0.6845</u>
<u>5106</u>	<u>1.1324</u>	<u>0.0180</u>	<u>0.6845</u>
<u>5108</u>	<u>1.1242</u>	<u>0.0181</u>	<u>0.5329</u>
<u>5109</u>	<u>0.7102</u>	<u>0.0115</u>	<u>0.3092</u>
<u>5201</u>	<u>0.3914</u>	<u>0.0062</u>	<u>0.2269</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>5204</u>	<u>1.6089</u>	<u>0.0263</u>	<u>0.5075</u>
<u>5206</u>	<u>0.5906</u>	<u>0.0095</u>	<u>0.2845</u>
<u>5207</u>	<u>0.1733</u>	<u>0.0027</u>	<u>0.1270</u>
<u>5208</u>	<u>0.8737</u>	<u>0.0140</u>	<u>0.4353</u>
<u>5209</u>	<u>0.8582</u>	<u>0.0137</u>	<u>0.4461</u>
<u>5300</u>	<u>0.1277</u>	<u>0.0020</u>	<u>0.0652</u>
<u>5301</u>	<u>0.0419</u>	<u>0.0007</u>	<u>0.0221</u>
<u>5302</u>	<u>0.0103</u>	<u>0.0002</u>	<u>0.0049</u>
<u>5305</u>	<u>0.0573</u>	<u>0.0009</u>	<u>0.0328</u>
<u>5306</u>	<u>0.0493</u>	<u>0.0008</u>	<u>0.0313</u>
<u>5307</u>	<u>1.0288</u>	<u>0.0167</u>	<u>0.4087</u>
<u>5308</u>	<u>0.1068</u>	<u>0.0017</u>	<u>0.0749</u>
<u>6103</u>	<u>0.1022</u>	<u>0.0016</u>	<u>0.0842</u>
<u>6104</u>	<u>0.4848</u>	<u>0.0077</u>	<u>0.2882</u>
<u>6105</u>	<u>0.7673</u>	<u>0.0124</u>	<u>0.3322</u>
<u>6107</u>	<u>0.1754</u>	<u>0.0027</u>	<u>0.1810</u>
<u>6108</u>	<u>0.3003</u>	<u>0.0047</u>	<u>0.2504</u>
<u>6109</u>	<u>0.1749</u>	<u>0.0028</u>	<u>0.0754</u>
<u>6110</u>	<u>0.5747</u>	<u>0.0092</u>	<u>0.2715</u>
<u>6120</u>	<u>0.4665</u>	<u>0.0075</u>	<u>0.2157</u>
<u>6121</u>	<u>0.6743</u>	<u>0.0109</u>	<u>0.2716</u>
<u>6201</u>	<u>0.7242</u>	<u>0.0117</u>	<u>0.3397</u>
<u>6202</u>	<u>1.1183</u>	<u>0.0179</u>	<u>0.6068</u>
<u>6203</u>	<u>0.0979</u>	<u>0.0015</u>	<u>0.1133</u>
<u>6204</u>	<u>0.1557</u>	<u>0.0024</u>	<u>0.1133</u>
<u>6205</u>	<u>0.2242</u>	<u>0.0036</u>	<u>0.1401</u>
<u>6206</u>	<u>0.2503</u>	<u>0.0040</u>	<u>0.1607</u>
<u>6207</u>	<u>1.2645</u>	<u>0.0201</u>	<u>0.7255</u>
<u>6208</u>	<u>0.2431</u>	<u>0.0037</u>	<u>0.2296</u>
<u>6209</u>	<u>0.3127</u>	<u>0.0049</u>	<u>0.2583</u>
<u>6301</u>	<u>0.2043</u>	<u>0.0033</u>	<u>0.0888</u>
<u>6303</u>	<u>0.0694</u>	<u>0.0011</u>	<u>0.0339</u>
<u>6305</u>	<u>0.1181</u>	<u>0.0019</u>	<u>0.0855</u>
<u>6306</u>	<u>0.4843</u>	<u>0.0077</u>	<u>0.2755</u>
<u>6308</u>	<u>0.0924</u>	<u>0.0015</u>	<u>0.0461</u>
<u>6309</u>	<u>0.2775</u>	<u>0.0044</u>	<u>0.1722</u>
<u>6402</u>	<u>0.3001</u>	<u>0.0047</u>	<u>0.2254</u>
<u>6403</u>	<u>0.1738</u>	<u>0.0027</u>	<u>0.1181</u>
<u>6404</u>	<u>0.3661</u>	<u>0.0058</u>	<u>0.2576</u>
<u>6405</u>	<u>0.8973</u>	<u>0.0144</u>	<u>0.4281</u>
<u>6406</u>	<u>0.1883</u>	<u>0.0030</u>	<u>0.1230</u>
<u>6407</u>	<u>0.3588</u>	<u>0.0057</u>	<u>0.2206</u>
<u>6408</u>	<u>0.8774</u>	<u>0.0140</u>	<u>0.4795</u>
<u>6409</u>	<u>1.0273</u>	<u>0.0166</u>	<u>0.4536</u>
<u>6410</u>	<u>0.4090</u>	<u>0.0065</u>	<u>0.2220</u>

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Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>6411</u>	<u>0.0494</u>	<u>0.0008</u>	<u>0.0385</u>
<u>6501</u>	<u>0.1361</u>	<u>0.0022</u>	<u>0.0686</u>
<u>6502</u>	<u>0.0316</u>	<u>0.0005</u>	<u>0.0160</u>
<u>6503</u>	<u>0.1276</u>	<u>0.0021</u>	<u>0.0474</u>
<u>6504</u>	<u>0.2983</u>	<u>0.0046</u>	<u>0.2835</u>
<u>6505</u>	<u>0.1617</u>	<u>0.0025</u>	<u>0.1552</u>
<u>6506</u>	<u>0.1595</u>	<u>0.0025</u>	<u>0.0918</u>
<u>6509</u>	<u>0.2773</u>	<u>0.0043</u>	<u>0.2240</u>
<u>6510</u>	<u>0.6657</u>	<u>0.0109</u>	<u>0.2072</u>
<u>6511</u>	<u>0.3309</u>	<u>0.0052</u>	<u>0.2263</u>
<u>6512</u>	<u>0.1331</u>	<u>0.0021</u>	<u>0.0634</u>
<u>6601</u>	<u>0.2526</u>	<u>0.0040</u>	<u>0.1581</u>
<u>6602</u>	<u>0.7505</u>	<u>0.0119</u>	<u>0.4893</u>
<u>6603</u>	<u>0.3639</u>	<u>0.0057</u>	<u>0.2463</u>
<u>6604</u>	<u>0.0880</u>	<u>0.0014</u>	<u>0.0564</u>
<u>6605</u>	<u>0.4142</u>	<u>0.0066</u>	<u>0.2308</u>
<u>6607</u>	<u>0.1297</u>	<u>0.0020</u>	<u>0.0958</u>
<u>6608</u>	<u>0.8589</u>	<u>0.0141</u>	<u>0.2279</u>
<u>6620</u>	<u>4.9072</u>	<u>0.0792</u>	<u>2.1672</u>
<u>6704</u>	<u>0.1555</u>	<u>0.0025</u>	<u>0.0998</u>
<u>6705</u>	<u>0.7603</u>	<u>0.0116</u>	<u>0.7794</u>
<u>6706</u>	<u>0.2943</u>	<u>0.0046</u>	<u>0.2225</u>
<u>6707</u>	<u>10.7450</u>	<u>0.1644</u>	<u>10.3227</u>
<u>6708</u>	<u>10.0959</u>	<u>0.1545</u>	<u>9.7385</u>
<u>6709</u>	<u>0.3399</u>	<u>0.0054</u>	<u>0.2124</u>
<u>6801</u>	<u>1.0422</u>	<u>0.0171</u>	<u>0.3036</u>
<u>6802</u>	<u>1.2009</u>	<u>0.0194</u>	<u>0.5510</u>
<u>6803</u>	<u>0.9011</u>	<u>0.0148</u>	<u>0.2340</u>
<u>6804</u>	<u>0.3376</u>	<u>0.0054</u>	<u>0.2007</u>
<u>6809</u>	<u>4.4435</u>	<u>0.0694</u>	<u>3.3972</u>
<u>6901</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0730</u>
<u>6902</u>	<u>1.1239</u>	<u>0.0181</u>	<u>0.5000</u>
<u>6903</u>	<u>7.0300</u>	<u>0.1148</u>	<u>2.2825</u>
<u>6904</u>	<u>2.1247</u>	<u>0.0347</u>	<u>0.6933</u>
<u>6905</u>	<u>1.6436</u>	<u>0.0269</u>	<u>0.5200</u>
<u>6906</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.4692</u>
<u>6907</u>	<u>1.0370</u>	<u>0.0165</u>	<u>0.6361</u>
<u>6908</u>	<u>0.5278</u>	<u>0.0084</u>	<u>0.2812</u>
<u>6909</u>	<u>0.1501</u>	<u>0.0024</u>	<u>0.0864</u>
<u>7100</u>	<u>0.0266</u>	<u>0.0004</u>	<u>0.0111</u>
<u>7101</u>	<u>0.0369</u>	<u>0.0006</u>	<u>0.0155</u>
<u>7103</u>	<u>1.6253</u>	<u>0.0265</u>	<u>0.5475</u>
<u>7104</u>	<u>0.0350</u>	<u>0.0006</u>	<u>0.0179</u>
<u>7105</u>	<u>0.0235</u>	<u>0.0004</u>	<u>0.0129</u>
<u>7106</u>	<u>0.3432</u>	<u>0.0054</u>	<u>0.2127</u>

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<u>7107</u>	<u>0.5524</u>	<u>0.0088</u>	<u>0.3024</u>
<u>7108</u>	<u>0.3425</u>	<u>0.0054</u>	<u>0.2370</u>
<u>7109</u>	<u>0.1327</u>	<u>0.0021</u>	<u>0.0705</u>
<u>7110</u>	<u>0.6587</u>	<u>0.0106</u>	<u>0.3070</u>
<u>7111</u>	<u>0.5157</u>	<u>0.0084</u>	<u>0.1658</u>
<u>7112</u>	<u>0.7911</u>	<u>0.0125</u>	<u>0.5382</u>
<u>7113</u>	<u>0.5187</u>	<u>0.0083</u>	<u>0.3019</u>
<u>7114</u>	<u>0.9638</u>	<u>0.0152</u>	<u>0.6707</u>
<u>7115</u>	<u>0.7473</u>	<u>0.0117</u>	<u>0.5529</u>
<u>7116</u>	<u>0.7556</u>	<u>0.0121</u>	<u>0.3658</u>
<u>7117</u>	<u>1.3440</u>	<u>0.0213</u>	<u>0.8243</u>
<u>7118</u>	<u>2.3717</u>	<u>0.0381</u>	<u>1.1455</u>
<u>7119</u>	<u>2.4925</u>	<u>0.0403</u>	<u>1.0894</u>
<u>7120</u>	<u>7.8320</u>	<u>0.1269</u>	<u>3.1459</u>
<u>7121</u>	<u>12.0262</u>	<u>0.1959</u>	<u>4.2225</u>
<u>7122</u>	<u>0.4200</u>	<u>0.0065</u>	<u>0.3327</u>
<u>7200</u>	<u>3.7539</u>	<u>0.0616</u>	<u>1.0589</u>
<u>7201</u>	<u>2.6641</u>	<u>0.0435</u>	<u>0.8917</u>
<u>7202</u>	<u>0.0309</u>	<u>0.0005</u>	<u>0.0153</u>
<u>7203</u>	<u>0.1098</u>	<u>0.0017</u>	<u>0.1067</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7301</u>	<u>0.8438</u>	<u>0.0132</u>	<u>0.6478</u>
<u>7302</u>	<u>0.9909</u>	<u>0.0155</u>	<u>0.7219</u>
<u>7307</u>	<u>0.5920</u>	<u>0.0094</u>	<u>0.3765</u>
<u>7308</u>	<u>0.2906</u>	<u>0.0045</u>	<u>0.2528</u>
<u>7309</u>	<u>0.2659</u>	<u>0.0041</u>	<u>0.2356</u>
<u>7400</u>	<u>4.3170</u>	<u>0.0708</u>	<u>1.2178</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-895, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-895, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-895, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-895, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-895, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-895, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-895, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-895, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-895, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035 and 51.04.020(1). WSR 13-10-080, § 296-17-895, filed 5/1/13, effective 7/1/13. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-895, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-895, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-895, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-895, filed 11/30/09, effective 1/1/10; WSR

08-24-074, § 296-17-895, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-895, filed 12/1/07, effective 1/1/08. Statutory Authority: RCW 51.06.035, 51.08.010, 51.04.020. WSR 07-12-045, § 296-17-895, filed 5/31/07, effective 7/1/07; WSR 07-07-032 and 07-07-129, § 296-17-895, filed 3/12/07 and 3/21/07, effective 7/1/07. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 06-24-054, § 296-17-895, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-895, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-895, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 04-13-017, § 296-17-895, filed 6/4/04, effective 7/5/04. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-895, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-895, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-895, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-895, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-895, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-895, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-895, filed 12/1/98, effective 1/1/99. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-895, filed 8/28/98, effective 10/1/98. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 97-24-062, § 296-17-895, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-895, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.16.035. WSR 96-12-039, § 296-17-895, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 51.16.035 and 51.32.073. WSR 96-06-025, § 296-17-895, filed 2/28/96, effective 4/1/96. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-895, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-895, filed 11/28/94, effective 1/1/95. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 94-12-051, § 296-17-895, filed 5/27/94, effective 7/1/94. Statutory Authority: RCW 51.04.020. WSR 93-24-114, § 296-17-895, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 93-12-093, § 296-17-895, filed 5/31/93, effective 7/1/93; WSR 92-24-063, § 296-17-895, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-895, filed 11/27/91, effective 1/1/92; WSR 91-12-014, § 296-17-895, filed 5/31/91, effective 7/1/91; WSR 90-24-042, § 296-17-895, filed 11/30/90, effective 1/1/91; WSR 90-13-018, § 296-17-895, filed 6/8/90, effective 7/9/90; WSR 89-24-051 (Order 89-22), § 296-17-895, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.04.020(1). WSR 89-16-001 (Order 89-07), § 296-17-895, filed 7/20/89, effective 8/20/89. Statutory Authority: RCW 51.16.035 and 51.04.020. WSR 88-24-012 (Order 88-30), § 296-17-895, filed 12/1/88, effective 1/1/89. Statutory Authority: RCW 51.16.035. WSR 88-12-065 (Order 88-05), § 296-17-895, filed 5/31/88; WSR 88-12-050 (Order 88-06), § 296-17-895, filed 5/31/88, effective 7/1/88; WSR 88-06-047 (Order 87-33), § 296-17-895, filed 3/1/88; WSR 87-24-060 (Order 87-26), § 296-17-895, filed 12/1/87, effective 1/1/88; WSR 87-12-032 (Order 87-12), § 296-17-895, filed 5/29/87, effective 7/1/87. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 86-24-042 (Order 86-41), § 296-17-895, filed 11/26/86. Statutory Authority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-895, filed 5/30/86, effective 7/1/86; WSR 85-24-032 (Order 85-33), §

296-17-895, filed 11/27/85, effective 1/1/86; WSR 85-13-046 (Order 85-13), § 296-17-895, filed 6/17/85; WSR 85-06-026 (Order 85-7), § 296-17-895, filed 2/28/85, effective 4/1/85; WSR 84-24-016 (Order 84-23), § 296-17-895, filed 11/28/84, effective 1/1/85. Statutory Authority: RCW 51.04.020(1). WSR 84-12-048 (Order 84-12), § 296-17-895, filed 6/1/84. Statutory Authority: RCW 51.16.035. WSR 83-24-017 (Order 83-36), § 296-17-895, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-895, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-895, filed 11/30/81, effective 1/1/82; WSR 81-04-024 (Order 81-02), § 296-17-895, filed 1/30/81; WSR 80-17-016 (Order 80-23), § 296-17-895, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-895, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-895, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-895, filed 11/30/77, effective 1/1/78; Emergency Order 77-25, § 296-17-895, filed 12/1/77; Order 77-10, § 296-17-895, filed 5/31/77; Order 76-36, § 296-17-895, filed 11/30/76; Order 76-18, § 296-17-895, filed 5/28/76, effective 7/1/76; Order 75-38, § 296-17-895, filed 11/24/75, effective 1/1/76; Order 75-28, § 296-17-895, filed 8/29/75, effective 10/1/75; Order 74-40, § 296-17-895, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-895, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
((540	0.0248	0.0004	0.0116	0.0013
541	0.0118	0.0002	0.0057	0.0013
550	0.0510	0.0009	0.0199	0.0013
551	0.0171	0.0003	0.0076	0.0013))
<u>540</u>	<u>0.0234</u>	<u>0.0004</u>	<u>0.0111</u>	<u>0.0013</u>
<u>541</u>	<u>0.0124</u>	<u>0.0002</u>	<u>0.0057</u>	<u>0.0013</u>
<u>550</u>	<u>0.0548</u>	<u>0.0009</u>	<u>0.0197</u>	<u>0.0013</u>
<u>551</u>	<u>0.0175</u>	<u>0.0003</u>	<u>0.0074</u>	<u>0.0013</u>

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-89502, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-89502, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-89502, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-89502, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-89502, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-89502, filed

11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-89502, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-89502, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-89502, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-89502, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17-89502, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-89502, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-89502, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-89502, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-89502, filed 12/1/07, effective 1/1/08. Statutory Authority: RCW 51.06.035, 51.08.010, 51.04.020. WSR 07-12-045, § 296-17-89502, filed 5/31/07, effective 7/1/07; WSR 07-07-032 and 07-07-129, § 296-17-89502, filed 3/12/07 and 3/21/07, effective 7/1/07. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 06-24-054, § 296-17-89502, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-89502, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-89502, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-89502, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-89502, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010; WSR 01-23-061, § 296-17-89502, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-89502, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-89502, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-89502, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-89502, filed 12/1/97, effective 1/1/98; WSR 97-12-011, § 296-17-89502, filed 5/27/97, effective 7/1/97; WSR 97-06-007, § 296-17-89502, filed 2/24/97, effective 4/1/97.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-89507 Horse racing rates. Horse racing industry industrial insurance accident fund, stay at work fund, medical aid fund, supplemental pension fund and composite rate by class.

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
((6618	74.00*	1.00*	74.00*	1.00*	150.00*
6625	76.67**	1.48**	74.66**	15.64**	168.45**
6626	0.6102***	0.0118***	0.6316***	0.1564***	1.4100***
6627	11.0140****	0.2130****	8.7400****	1.1730****	21.1400****))
<u>6618</u>	<u>74.00*</u>	<u>1.00*</u>	<u>74.00*</u>	<u>1.00*</u>	<u>150.00*</u>
<u>6625</u>	<u>83.87**</u>	<u>1.55**</u>	<u>79.38**</u>	<u>16.74**</u>	<u>181.54**</u>
<u>6626</u>	<u>0.6561***</u>	<u>0.0121***</u>	<u>0.6444***</u>	<u>0.1674***</u>	<u>1.4800***</u>
<u>6627</u>	<u>11.9010****</u>	<u>0.2190****</u>	<u>8.9540****</u>	<u>1.2560****</u>	<u>22.3300****</u>

*This rate is calculated on a percentage of ownership in a horse or horses.

**This rate is calculated per month.

***This rate is calculated per horse per day.

****This rate is calculated per day.

Note: These rates are not subject to experience rating or retrospective rating.

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-89507, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-89507, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-89507, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-89507, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-89507, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-89507, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-89507, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-89507, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-89507, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.16.210. WSR 12-24-067, § 296-17-89507, filed 12/4/12, effective 1/4/13.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class.

**Base Rates Effective
January 1, ((2022)) 2023**

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund	Supplemental Pension Fund
((4814	0.1163	0.0019	0.1309	0.1564
4815	0.2157	0.0034	0.2739	0.1564
4816	0.3480	0.0056	0.3676	0.1564))
4814	0.1214	0.0018	0.1300	0.1674
4815	0.2253	0.0034	0.2722	0.1674
4816	0.3633	0.0055	0.3658	0.1674

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-89508, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-89508, filed 11/30/20, effective 1/1/21. Statutory Authority: RCW 51.16.035, 51.04.020(1), and 2020 c 212. WSR 20-12-086, § 296-17-89508, filed 6/2/20, effective 7/3/20.]

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17-920 Assessment for supplemental pension fund. The amount of ((78.2)) 83.7 mils (((\$0.0782)) \$0.0837) shall be retained

by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July, and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-229. All such moneys shall be deposited in the supplemental pension fund.

[Statutory Authority: Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17-920, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17-920, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17-920, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17-920, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17-920, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17-920, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17-920, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17-920, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17-920, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17-920, filed 11/30/12, effective 1/1/13. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.16.100. WSR 12-11-109, § 296-17-920, filed 5/22/12, effective 7/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, and 51.04.020(1). WSR 11-24-057, § 296-17-920, filed 12/5/11, effective 1/5/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17-920, filed 1/28/11, effective 2/28/11; WSR 09-24-086, § 296-17-920, filed 11/30/09, effective 1/1/10; WSR 08-24-074, § 296-17-920, filed 12/1/08, effective 1/1/09; WSR 07-24-046, § 296-17-920, filed 12/1/07, effective 1/1/08; WSR 06-24-054, § 296-17-920, filed 12/1/06, effective 1/1/07. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.32.073. WSR 05-23-162, § 296-17-920, filed 11/22/05, effective 1/1/06; WSR 04-24-025, § 296-17-920, filed 11/23/04, effective 1/1/05. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, and 51.18.010. WSR 03-24-066, § 296-17-920, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 02-24-029, § 296-17-920, filed 11/27/02, effective 1/1/03. Statutory Authority: RCW 51.04.020, 51.16.035, 51.32.073, 51.18.010. WSR 01-23-061, § 296-17-920, filed 11/20/01, effective 1/1/02; WSR 00-23-101, § 296-17-920, filed 11/21/00, effective 1/1/01. Statutory Authority: RCW 51.04.020, 51.16.035 and 51.32.073. WSR 99-24-055, § 296-17-920, filed 11/29/99, effective 12/31/99; WSR 98-24-094, § 296-17-920, filed 12/1/98, effective 1/1/99; WSR 97-24-062, § 296-17-920, filed 12/1/97, effective 1/1/98; WSR 96-24-063, § 296-17-920, filed 11/29/96, effective 1/1/97. Statutory Authority: RCW 51.16.035 and 51.32.073. WSR 96-06-025, § 296-17-920, filed 2/28/96, effective 4/1/96. Statutory Authority: RCW 51.04.020. WSR 95-23-080, § 296-17-920, filed 11/20/95, effective 1/1/96; WSR 94-24-007, § 296-17-920, filed 11/28/94, effective 1/1/95; WSR 93-24-114, § 296-17-920, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 92-24-063, § 296-17-920, filed 11/30/92, effective 1/1/93; WSR 91-24-053, § 296-17-920, filed 11/27/91, effective 1/1/92; WSR 89-24-051 (Order 89-22), § 296-17-920, filed 12/1/89, effective 1/1/90. Statutory Authority: RCW 51.04.020 and 51.32.073. WSR 87-04-006 (Order 86-49), § 296-17-920, filed 1/23/87. Statutory Au-

thority: RCW 51.16.035. WSR 86-12-041 (Order 86-18), § 296-17-920, filed 5/30/86, effective 7/1/86; WSR 83-24-017 (Order 83-36), § 296-17-920, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-920, filed 11/29/82, effective 1/1/83; WSR 81-24-042 (Order 81-30), § 296-17-920, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-920, filed 11/13/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-920, filed 11/30/79, effective 1/1/80. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-920, filed 11/27/78, effective 1/1/79; Order 77-27, § 296-17-920, filed 11/30/77, effective 1/1/78; Order 77-10, § 296-17-920, filed 5/31/77; Order 76-36, § 296-17-920, filed 11/30/76; Order 75-38, § 296-17-920, filed 11/24/75, effective 1/1/76; Order 75-28, § 296-17-920, filed 8/29/75, effective 10/1/75; Order 74-40, § 296-17-920, filed 11/27/74, effective 1/1/75; Order 74-6, § 296-17-920, filed 1/23/74.]

OTS-4080.1

AMENDATORY SECTION (Amending WSR 21-24-066, filed 11/30/21, effective 1/1/22)

WAC 296-17B-540 Determining loss incurred for each claim. (1)

Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate discounted loss development factors to determine the initial loss incurred.

If you have a fatality, we will use (~~(\$474,400)~~) \$521,600 as the claim's initial incurred loss for the claim, with (~~(\$440,900)~~) \$486,600 for accident fund incurred loss and \$33,500 for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is greater than your selected single loss occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident fund and medical aid fund portions of each claim will have separate expected loss ratio factors applied.

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 21-24-066, § 296-17B-540, filed 11/30/21, effective 1/1/22; WSR 20-24-094, § 296-17B-540, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17B-540, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17B-540, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17B-540, filed 11/30/17, effective

1/1/18; WSR 16-24-014, § 296-17B-540, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17B-540, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17B-540, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17B-540, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17B-540, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17B-540, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.16.100, 51.04.020(1), and 51.18.010. WSR 10-21-086, § 296-17B-540, filed 10/19/10, effective 11/19/10.]

AMENDATORY SECTION (Amending WSR 20-24-094, filed 11/30/20, effective 1/1/21)

WAC 296-17B-900 Retrospective rating plans standard premium size ranges.

**RETROSPECTIVE RATING STANDARD PREMIUM SIZE RANGES
Effective January 1, (~~2021~~) 2023**

Size Group Number	Standard Premium Range	
	From:	To:
1	5,120 -	5,979
2	5,980 -	6,759
3	6,760 -	7,609
4	7,610 -	8,529
5	8,530 -	9,499
6	9,500 -	10,539
7	10,540 -	11,659
8	11,660 -	12,839
9	12,840 -	14,099
10	14,100 -	15,419
11	15,420 -	16,819
12	16,820 -	18,329
13	18,330 -	19,919
14	19,920 -	21,609
15	21,610 -	23,389
16	23,390 -	25,279
17	25,280 -	27,279
18	27,280 -	29,399
19	29,400 -	31,639
20	31,640 -	33,999
21	34,000 -	36,539
22	36,540 -	39,209
23	39,210 -	42,049
24	42,050 -	45,069
25	45,070 -	48,279
26	48,280 -	51,699
27	51,700 -	55,339
28	55,340 -	59,189
29	59,190 -	63,319
30	63,320 -	67,729

Size Group Number	Standard Premium Range	
	From:	To:
31	67,730	72,439
32	72,440	77,489
33	77,490	82,889
34	82,890	88,699
35	88,700	94,949
36	94,950	101,699
37	101,700	108,999
38	109,000	116,799
39	116,800	125,199
40	125,200	134,299
41	134,300	144,099
42	144,100	154,599
43	154,600	165,899
44	165,900	178,299
45	178,300	191,699
46	191,700	206,099
47	206,100	221,799
48	221,800	239,299
49	239,300	258,099
50	258,100	278,699
51	278,700	301,599
52	301,600	326,999
53	327,000	355,599
54	355,600	387,199
55	387,200	422,799
56	422,800	463,299
57	463,300	509,099
58	509,100	561,799
59	561,800	622,699
60	622,700	693,899
61	693,900	777,399
62	777,400	876,499
63	876,500	996,999
64	997,000	1,145,999
65	1,146,000	1,330,999
66	1,331,000	1,570,999
67	1,571,000	1,886,999
68	1,887,000	2,327,999
69	2,328,000	2,977,999
70	2,978,000	4,049,999
71	4,050,000	6,070,999
72	6,071,000	11,109,999
73	11,110,000	28,419,999
74	28,420,000	and over))
<u>1</u>	<u>5,340</u>	<u>6,229</u>
<u>2</u>	<u>6,230</u>	<u>7,039</u>

Size Group Number	Standard Premium Range	
	From:	To:
<u>3</u>	<u>7,040</u>	<u>7,929</u>
<u>4</u>	<u>7,930</u>	<u>8,889</u>
<u>5</u>	<u>8,890</u>	<u>9,899</u>
<u>6</u>	<u>9,900</u>	<u>10,979</u>
<u>7</u>	<u>10,980</u>	<u>12,149</u>
<u>8</u>	<u>12,150</u>	<u>13,379</u>
<u>9</u>	<u>13,380</u>	<u>14,689</u>
<u>10</u>	<u>14,690</u>	<u>16,069</u>
<u>11</u>	<u>16,070</u>	<u>17,529</u>
<u>12</u>	<u>17,530</u>	<u>19,099</u>
<u>13</u>	<u>19,100</u>	<u>20,759</u>
<u>14</u>	<u>20,760</u>	<u>22,519</u>
<u>15</u>	<u>22,520</u>	<u>24,369</u>
<u>16</u>	<u>24,370</u>	<u>26,339</u>
<u>17</u>	<u>26,340</u>	<u>28,429</u>
<u>18</u>	<u>28,430</u>	<u>30,629</u>
<u>19</u>	<u>30,630</u>	<u>32,969</u>
<u>20</u>	<u>32,970</u>	<u>35,429</u>
<u>21</u>	<u>35,430</u>	<u>38,069</u>
<u>22</u>	<u>38,070</u>	<u>40,859</u>
<u>23</u>	<u>40,860</u>	<u>43,819</u>
<u>24</u>	<u>43,820</u>	<u>46,959</u>
<u>25</u>	<u>46,960</u>	<u>50,309</u>
<u>26</u>	<u>50,310</u>	<u>53,869</u>
<u>27</u>	<u>53,870</u>	<u>57,659</u>
<u>28</u>	<u>57,660</u>	<u>61,679</u>
<u>29</u>	<u>61,680</u>	<u>65,979</u>
<u>30</u>	<u>65,980</u>	<u>70,569</u>
<u>31</u>	<u>70,570</u>	<u>75,479</u>
<u>32</u>	<u>75,480</u>	<u>80,739</u>
<u>33</u>	<u>80,740</u>	<u>86,369</u>
<u>34</u>	<u>86,370</u>	<u>92,429</u>
<u>35</u>	<u>92,430</u>	<u>98,939</u>
<u>36</u>	<u>98,940</u>	<u>105,999</u>
<u>37</u>	<u>106,000</u>	<u>113,599</u>
<u>38</u>	<u>113,600</u>	<u>121,699</u>
<u>39</u>	<u>121,700</u>	<u>130,499</u>
<u>40</u>	<u>130,500</u>	<u>139,899</u>
<u>41</u>	<u>139,900</u>	<u>150,199</u>
<u>42</u>	<u>150,200</u>	<u>161,099</u>
<u>43</u>	<u>161,100</u>	<u>172,899</u>
<u>44</u>	<u>172,900</u>	<u>185,799</u>
<u>45</u>	<u>185,800</u>	<u>199,799</u>
<u>46</u>	<u>199,800</u>	<u>214,799</u>
<u>47</u>	<u>214,800</u>	<u>231,099</u>
<u>48</u>	<u>231,100</u>	<u>249,399</u>

Size Group Number	Standard Premium Range	
	From:	To:
<u>49</u>	<u>249,400</u>	= <u>268,899</u>
<u>50</u>	<u>268,900</u>	= <u>290,399</u>
<u>51</u>	<u>290,400</u>	= <u>314,299</u>
<u>52</u>	<u>314,300</u>	= <u>340,699</u>
<u>53</u>	<u>340,700</u>	= <u>370,499</u>
<u>54</u>	<u>370,500</u>	= <u>403,499</u>
<u>55</u>	<u>403,500</u>	= <u>440,599</u>
<u>56</u>	<u>440,600</u>	= <u>482,799</u>
<u>57</u>	<u>482,800</u>	= <u>530,499</u>
<u>58</u>	<u>530,500</u>	= <u>585,399</u>
<u>59</u>	<u>585,400</u>	= <u>648,899</u>
<u>60</u>	<u>648,900</u>	= <u>722,999</u>
<u>61</u>	<u>723,000</u>	= <u>810,099</u>
<u>62</u>	<u>810,100</u>	= <u>913,299</u>
<u>63</u>	<u>913,300</u>	= <u>1,038,999</u>
<u>64</u>	<u>1,039,000</u>	= <u>1,193,999</u>
<u>65</u>	<u>1,194,000</u>	= <u>1,386,999</u>
<u>66</u>	<u>1,387,000</u>	= <u>1,636,999</u>
<u>67</u>	<u>1,637,000</u>	= <u>1,965,999</u>
<u>68</u>	<u>1,966,000</u>	= <u>2,425,999</u>
<u>69</u>	<u>2,426,000</u>	= <u>3,102,999</u>
<u>70</u>	<u>3,103,000</u>	= <u>4,219,999</u>
<u>71</u>	<u>4,220,000</u>	= <u>6,325,999</u>
<u>72</u>	<u>6,326,000</u>	= <u>11,579,999</u>
<u>73</u>	<u>11,580,000</u>	= <u>29,609,999</u>
<u>74</u>	<u>29,610,000</u>	= <u>and over</u>

[Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010 and 51.04.020(1). WSR 20-24-094, § 296-17B-900, filed 11/30/20, effective 1/1/21; WSR 19-24-029, § 296-17B-900, filed 11/25/19, effective 1/1/20; WSR 18-24-073, § 296-17B-900, filed 11/30/18, effective 1/1/19; WSR 17-24-041, § 296-17B-900, filed 11/30/17, effective 1/1/18; WSR 16-24-014, § 296-17B-900, filed 11/29/16, effective 1/1/17; WSR 15-24-103, § 296-17B-900, filed 12/1/15, effective 1/1/16; WSR 14-24-084, § 296-17B-900, filed 12/1/14, effective 1/1/15; WSR 13-24-073, § 296-17B-900, filed 11/30/13, effective 1/1/14. Statutory Authority: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1). WSR 12-24-048, § 296-17B-900, filed 11/30/12, effective 1/1/13; WSR 11-24-026, § 296-17B-900, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 51.16.035, 51.32.073, 51.18.010, and 51.04.020(1). WSR 11-04-069, § 296-17B-900, filed 1/28/11, effective 2/28/11.]

WSR 22-24-021
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket TR-200536, General Order R-606—Filed November 30, 2022, 10:41 a.m., effective December 31, 2022]

In the Matter of Amending and Adopting Rules in chapter 480-62 WAC pertaining to the establishment of minimum crew sizes on certain trains.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 22-19-024, filed with the code reviser on March 18, 2022. The commission has authority to take this action pursuant to RCW 80.01.040, 81.01.010, 81.04.160, and chapter 81.40 RCW. Specifically, RCW 81.40.015(1) provides that except under certain circumstances "any person, corporation, company, or officer of the court operating any railroad, railway, or any part of any railroad or railway, in the state of Washington, and engaged, as a common carrier, in the transportation of freight or passengers, shall operate and manage all trains and switching assignments over its road with crews consisting of no less than two crewmembers." RCW 81.40.025 (4) (a) also provides that the commission "may order railroad carriers to increase the number of railroad employees in areas of increased risk to the public, passengers, railroad employees, or the environment."

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete, but concise, explanation of the agency's actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends WAC 480-62-125 Definitions; and adopts WAC 480-62-255 Minimum crew size on certain trains.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on July 20, 2020, at WSR 20-15-127. The statement advised interested persons that the commission was considering a rule making to implement provisions of HB 1841, chapter 170, Laws of 2020, which pertains to the establishment of minimum crew size on certain trains. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), and by sending notice to all railroad companies operating in the state and the commission's list of

transportation attorneys. The commission posted the relevant rule-making information on its website at www.utc.wa.gov/200536. Pursuant to the notice, the commission noticed an opportunity to provide written comments by September 4, 2020, and the commission convened a workshop for interested stakeholders on November 19, 2020. The commission received written comments from several stakeholders, most of whom also participated in the workshop.

8 On May 6, 2021, the commission issued a notice of the opportunity to provide written comments on draft rules and a notice of an opportunity to respond to a small business economic impact statement (SBEIS) questionnaire. The commission indicated that comments were due by June 7, 2021. The commission received written comments on the draft rules but no responses to the SBEIS questionnaire.

9 On November 15, 2021, the commission issued a notice of the opportunity to respond to a supplemental SBEIS questionnaire. The commission indicated that responses were due by December 15, 2021. The commission received no responses.

10 **Small Business Economic Impact.** The proposed rules implement the legislature's specific requirements in the statute, but the commission nevertheless undertook a small business economic impact analysis. The commission received no responses to the SBEIS questionnaire or the supplemental SBEIS questionnaire, nor did any interested person provide information concerning the potential economic impact of the proposed rules on small businesses. Based on the information available to the commission, the commission has concluded that any economic impact on small businesses that may result from adoption of the proposed rules is attributable solely to the statute that the proposed rules implement.

11 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on March 18, 2022, at WSR 22-07-071. The commission scheduled this matter for oral comment and adoption under that notice at 9:30 a.m., Thursday, May 19, 2022. This was a virtual hearing using the Zoom videoconferencing software. The notice also provided interested persons the opportunity to submit written comments to the commission by April 18, 2022.

12 In June 2022, the commission became aware that interested persons had not been served with the CR-102 and had been aware of neither the date of the adoption hearing nor the opportunity to comment on the proposed rules. To rectify the omission and provide ample opportunity for all interested persons and stakeholders to comment on the proposed rules, the commission filed a supplemental notice of proposed rule making (supplemental CR-102) with the code reviser on June 22, 2022, at WSR 22-13-173. The supplemental CR-102 established a deadline for comments of July 18, 2022, and scheduled an adoption hearing on August 1, 2022, at 1:30 p.m. The commission received substantive comments from interested persons in response to the supplemental CR-102.

13 On July 22, 2022, the commission advised interested persons that it was withdrawing the supplemental CR-102 and canceling the adoption hearing. The commission advised that it intended to file a new CR-102 with revised proposed rules at a later date.

14 On September 13, 2022, the commission filed a CR-102 with the office of the code reviser at WSR 22-19-024. The commission also issued a notice of opportunity to comment seeking written comments on the proposed rules. The commission indicated that any written comments should be submitted by November 7, 2022.

15 **WRITTEN COMMENTS:** The commission received written comments in response to the WSR 22-07-071 notice from Cascade and Columbia River

Railroad (CSCD), Olympia and Belmore Railroad (OYLO), Puget Sound and Pacific Railroad (PSAP), American Short Line and Regional Railroad Association (ASLRRA), and the Association of American Railroads.

16 CSCD, OYLO, PSAP, and ASLRRA raised concerns with the definition of a short line railroad under the proposed rules set forth in WSR 22-07-071, indicating that these short line railroads operated independently and that it was problematic to classify them based on their ownership structure. CSCD, OYLO, and PSAP commented further that the proposed definitions for Class I, Class II, and Class III railroads depart from the definitions used by the United States Surface Transportation Board.

17 CSCD, OYLO, PSAP, and ASLRRA raised concerns that the proposed rules would incentivize short line railroads to limit their maximum speed to 25 m.p.h. ASLRRA observed that this may create a disincentive to invest in infrastructure upgrades.

18 CSCD, OYLO, and PSAP submit that the proposed rules could lead to arbitrary decisions requiring railroads to use additional crew members. ASLRRA similarly suggested that the proposed rules provided little guidance to railroads and would give the commission unfettered discretion.

19 Finally, CSCD, OYLO, PSAP, ASLRRA, and the Association of American Railroads all raised concerns that this rule making is preempted by federal law.

20 The commission has considered each of these comments. The commission observes, however, that it must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.

21 The commission received written comments in response to the supplemental CR-102, at WSR 22-13-173. Mike Elliott, a member of the Seattle freight advisory board, commented in favor of HB 1841 and argued that the commission should not allow single-person remote control operations of any kind. Elliott discussed railroads' opposition to similar rules at the federal level and directed the commission to relevant resources.

22 The United Transportation Union, Sheet Metal, Air, Rail and Transportation (SMART Transportation Division) also submitted written comments in response to the supplemental CR-102, expressing opposition to amending proposed WAC 480-62-255 (3)(c) to allow one-person remote control operations under certain circumstances and explaining the dangers of remote control operations.

23 The commission has considered these comments. The commission must exercise its authority consistent with the legislature's directive. Furthermore, we observe that the current version of the proposed rules, as set forth at WSR 22-19-024, and adopted by the commission in this order, do not provide the exception for one-person remote control operations that concerned SMART Transportation Division.

24 The commission also received written comments in response to the WSR 22-19-024 notice from SMART Transportation Division, expressing no concerns or objections to the proposed rules.

25 Summaries of all written comments in response to the WSR 22-07-071 notice, the WSR 22-19-024 notice, and commission staff's responses are contained in Appendix A, attached to, and made part of, this order.

26 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on November 22, 2022, before Chair David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Milton

H. Doumit. A staff representative briefly summarized the proposed rules and recommended that the commission adopt them without change. Herb Krohn, Washington state legislative director for SMART Transportation Division, provided brief comments in support of the proposed rules. No other person appeared or commented on the proposed rules.

27 COMMISSION ACTION: The commission adopts as its own staff's responses to the written comments the commission received contained in Appendix A. After considering this and all other information regarding the proposed rules, the commission adopts the proposed rules as noticed at WSR 22-19-024 without change.

28 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that the proposed provisions of chapter 480-62 WAC should be amended and adopted to read as set forth in Appendix B, as rules of the commission, to take effect pursuant to RCW 34.05.380(2) 31 days after filing with the code reviser.

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

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

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

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

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

ORDER

29 THE COMMISSION ORDERS:

30 The commission amends WAC 480-62-125, and adopts WAC 480-62-255 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect 31 days after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

31 This order and the rule set out below, after being recorded in the order register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, November 30, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Appendix A (Comment Summary Matrix)

	Question/Topic	Commenter	Comment	UTC Staff Response
1.	Definitions	Cascade and Columbia River Railroad (CSCD), Olympia and Belmore Railroad (OYLO), and Puget Sound and Pacific Railroad (PSAP)	<ul style="list-style-type: none"> • The definition of a short line company in the proposed rule is perplexing. To be clear, CSCD, OYLO, and PSAP are individually their own legal entities, and are considered as such by both the Federal Railroad Administration (FRA) and the Surface Transportation Board (STB). Each is considered a separate Class III short line common carrier freight railroad. They do not physically connect, and each have their own unique sets of on-line customers. Each has its own financial statements, and the revenue earned by each railroad determines the amount of capital reinvested by that railroad. Employees of each railroad operate under operating timetables specific to their own railroad. Furthermore, there is no legitimate basis to attempt to classify a short line railroad based on its ownership structure for the purpose of operational regulations. • The proposed regulation arbitrarily and needlessly attempts to redefine "Class I," "Class II," and "Class III" railroads. These definitions are determined by STB under section 1201.1-1 of Title 49, C.F.R. The proposed language is not compliant with the current definitions as provided by STB. 	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.
		American Short Line and Regional Railroad Association (ASLRRA)	WAC 480-62-255 is inconsistent with established STB railroad classifications. WAC 480-62-255 uses ambiguous phrases such as "owned" and "operated" to distinguish certain short lines that may be affiliated with other short lines through a holding company structure without an appropriate understanding of the fact that these short lines are discrete legal entities. There is no justification offered in the proposed rule making, based on relevant safety and performance history, to differentiate between Class III short line railroads based on ownership structure.	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.

	Question/Topic	Commenter	Comment	UTC Staff Response
2.	Operations	CSCD, OYLO, PSAP	The proposed rule would arbitrarily require a specific train crew size based on train speed. This could lead a small freight railroad to maintain its tracks to a lower speed limit. Unfortunately, the result would be a freight service that is less competitive with trucking, and Washington residents coping with an ever-increasing number of trucks on public roadways.	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.
ASLRRRA		WAC 480-62-255 suggests that Class III short line operations would be excluded from the crew size restrictions because they would choose to operate at speeds less than 25 mph, qualifying for an exemption from the minimum crew size requirement. The regulations therefore create a financial disincentive for small railroads to invest in their infrastructure, upgrade their track, and improve their performance times.	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.	
3.	Train crew size	CSCD, OYLO, PSAP	The proposed rule would create an arbitrary and erratic process resulting in new operating mandates. Concerningly, there is no requirement for the mandates to be based on an unbiased factual analysis. Railroads could be required to use additional crew members simply at the behest of the commission without any guidance on how the process would work or how the commission would determine that more crew members are needed.	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.
ASLRRRA		WAC 480-62-255 states that the commission may order railroad carriers to increase the number of railroad employees, to require additional crew members, or direct the placement of additional crew members. It does not provide any regulatory guidance on how this process would work, nor does it provide any process by which a railroad may appeal any such order. WAC 480-62-255 gives the commission unfettered ability to dictate train crew staffing in Washington, which will result in an increase in the cost of shipping commodities by rail in Washington, which could then force a modal shift of traffic from rail to the less-environmentally friendly and more dangerous option of trucks on the highway.	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.	

	Question/Topic	Commenter	Comment	UTC Staff Response
4.	Preemption	Association of American Railroads	<ul style="list-style-type: none"> • The draft rules remain preempted by federal law. • FRA has announced its intention to promulgate rules addressing minimum crew size under authority delegated to the agency in the Federal Railroad Safety Act. • UTC should withdraw the rule making. 	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.
		ASLRRA	<ul style="list-style-type: none"> • The rules remain preempted by federal law. • UTC should withdraw the rule making. 	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.
		CSCD, OYLO, PSAP	<ul style="list-style-type: none"> • The proposed rule making serves as a significant contradiction to the authority of FRA in determining minimum crew size standards. • UTC should withdraw the rule making. 	The commission must exercise its authority in accordance with the legislature's directives. The proposed rule implements chapter 170, Laws of 2020, in language that tracks the language of the statute.

David W. Danner, Chair
Anne E. Rendahl, Commissioner
Milton H. Doumit, Commissioner

Appendix B

(CHAPTER 480-62 WAC - RULES)

OTS-3674.2

AMENDATORY SECTION (Amending WSR 18-10-001, filed 4/18/18, effective 5/19/18)

WAC 480-62-125 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Class I railroad company" means a railroad company having annual operating revenues of (~~(\$250 million)~~) \$250,000,000 or more;

"Class II railroad company" means a railroad company having annual operating revenue of less than (~~(\$250 million)~~) \$250,000,000, but more than (~~(\$20 million)~~) \$20,000,000; and

"Class III railroad company" means a railroad company having annual operating revenues of (~~(\$20 million)~~) \$20,000,000 or less.

"Commission" means the Washington utilities and transportation commission.

"Contract crew transportation company" means any person, organization, company or other entity that operates one or more contract crew transportation vehicles.

"Contract crew transportation vehicle" means every motor vehicle designed to transport (~~(fifteen)~~) 15 or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, sub-contractors, vendors, subvendors, secondary vendors, or subcarriers and used primarily to provide railroad crew transportation.

"Department of labor and industries" means the Washington state department of labor and industries.

"Department of transportation" means the Washington state department of transportation.

"On track equipment" means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

"Passenger carrying vehicle" means those buses, vans, trucks, and cars owned, operated, and maintained by a railroad company primarily used to transport railroad employees, other than in the cab of such vehicles, and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

"Railroad" means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

"Railroad company" means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

"Railroad police officer" means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

"Remote-control area" means any place remote-control operations are conducted on a railroad.

"Remote-control operations" means (~~(controlling)~~) control of the movement of locomotives through the use of radio transmitter and receiver systems by persons not physically located at the controls within the confines of a locomotive cab.

"Remote-control zone" means a designated restricted access area (~~(where access is restricted)~~) in which remote-control operations may occur under alternative point protection procedures.

"State" means the state of Washington.

[Statutory Authority: RCW 80.01.040, 81.04.160, and 81.61.050. WSR 18-10-001 (Docket TR-170780, General Order R-591), § 480-62-125, filed 4/18/18, effective 5/19/18. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 04-11-023 (Docket No. TR-021465, General Order No. R-514), § 480-62-125, filed 5/11/04, effective 6/11/04. Statutory Authority: RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW. WSR 01-04-026 (Docket No.

TR-981102, General Order No. R-477), § 480-62-125, filed 1/30/01, effective 3/2/01.]

NEW SECTION

WAC 480-62-255 Minimum crew size on certain trains. (1) For the purpose of this section, unless the language or context indicates that a different meaning is clearly intended, the following definitions apply:

"Class I" means a railroad carrier designated as a class I railroad by the United States surface transportation board and its subsidiaries or is owned and operated by entities whose combined total railroad operational ownership and controlling interest meets the United States surface transportation board designation as a class I railroad carrier.

"Class III" means a railroad carrier designated as a class III railroad by the United States surface transportation board.

"Crewmember" has the same meaning as "operating craft employee" as defined in this section.

"Operating craft employee" means a person employed by a railroad carrier and identified as train or yard crew as defined in 49 C.F.R. Part 218.5.

"Other railroad carrier" means a railroad carrier that is not a class I carrier.

"Railroad carrier" means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns. "Railroad carrier" includes any officers and agents of the railroad carrier.

(2) Any person, corporation, company, or officer of the court operating any railroad, railway, or any part of any railroad or railway, in the state as a common carrier of freight or passengers shall operate and manage all trains and switching assignments over its road with no less than two crewmembers.

(3) The minimum crew size requirement of subsection (2) of this section does not apply to:

(a) Class III railroad carriers operating on their roads while at a speed of 25 miles per hour or less; or

(b) Other railroad carriers in possession of an effective automatic waiver issued under subsection (4) of this section.

(4) Other railroad carriers operating in the state on or after June 11, 2020, receive an automatic waiver of the minimum train crew size requirements of subsection (2) of this section that shall remain in effect until the commission terminates the effectiveness of such a waiver by order.

(5) The commission may order railroad carriers to increase the number of railroad employees, to require additional crewmembers, or direct the placement of additional crewmembers if the commission determines that the increase is necessary to protect the safety, health, and welfare of the public, passengers, or railroad employees, to prevent harm to the environment or to address site specific safety or security hazards. In issuing any order to increase the number of railroad employees, the commission may consider, but is not limited to, the factors found in RCW 81.40.025 (4)(b).

(6) Any railroad carrier in violation of this section may be subject to fines of not less than \$1,000 and not more than \$100,000 for each offense, as determined by the commission through order. In the event of a serious injury or fatality the commission may impose fines exceeding \$100,000 per offense.

[]

WSR 22-24-025
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed November 30, 2022, 1:32 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: Housekeeping in nature. The amendment to WAC 357-13-090 stems from the new IT professional structure implementation that went into effect on July 1, 2019, to clarify that when an employee is reallocated to a higher class, the employee must advance to a step of the range for the new class that is nearest to five percent above their previous salary, not to exceed step M of the range as provided in WAC 357-28-115. The amendment to WAC 357-28-190 is to align with the compensation plan by adding the word "regularly" to subsection (1)(a) and add subsection (1)(c) to clarify that the compensation plan allows for day shift employees who are temporarily assigned to work the majority of their hours between 6:00 p.m. and 6:00 a.m. to receive a shift premium. The amendment to WAC 357-28-203 is to clarify when an employee must receive location-based premium pay by changing the word "and" to "or." This will clarify that location-based premium must be paid when an employee is assigned to work on McNeil Island or when an employee is assigned to a permanent duty station in King County. The amendment to WAC 357-28-215 is to correct the reference from base pay to base salary. The amendment to WAC 357-31-133 is to fix an oversight from renumeration of the section stemming from rule changes in 2019. Repeal of WAC 357-31-345 is to remove redundant language as reflected in WAC 357-31-350. WAC 357-31-350 addresses how leave without pay affects a general government employee's seniority date; therefore, WAC 357-31-345 is no longer needed. The retention of WAC 357-31-345 was an oversight when rules were amended effective July 1, 2022, as reflected on WSR 22-06-006.

Citation of Rules Affected by this Order: Repealing WAC 357-31-345; and amending WAC 357-13-090, 357-28-190, 357-28-203, 357-28-215, and 357-31-133.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Adopted under notice filed as WSR 22-20-095 on October 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 1.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 1.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 1.

Date Adopted: November 30, 2022.

Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-4039.3

AMENDATORY SECTION (Amending WSR 16-17-089, filed 8/18/16, effective 9/20/16)

WAC 357-13-090 How is an employee affected when ((his/her)) their position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and ((he/she)) has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list and in the general government transition pool; and has ((his/her)) <u>their</u> salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i> Upon appointment to the higher class, the ((employee's base salary must be increased a minimum of a two step increase)) <u>employee must advance to a step of the range for the new class that is nearest to five percent above their previous salary, not to exceed step M of the range as provided in WAC 357-28-115.</u>	<i>If the employee meets the competencies and other position requirements:</i> → The employer's layoff procedure applies.	<i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

[Statutory Authority: Chapter 41.06 RCW. WSR 16-17-089, § 357-13-090, filed 8/18/16, effective 9/20/16; WSR 14-24-026, § 357-13-090, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-13-090, filed 9/13/13, effective 10/18/13; WSR 11-23-054, § 357-13-090, filed 11/10/11, effective 12/13/11; WSR 06-23-090, § 357-13-090, filed 11/14/06, effective 12/18/06; WSR 05-12-088, § 357-13-090, filed 5/27/05, effective 7/1/05; WSR 05-01-201, § 357-13-090, filed 12/21/04, effective 7/1/05.]

OTS-4040.1

AMENDATORY SECTION (Amending WSR 20-24-025, filed 11/20/20, effective 12/28/20)

WAC 357-28-190 When must an employee receive shift premium? (1)

Shift premium at the rate specified in the compensation plan must be paid when:

(a) An employee is regularly scheduled to work a shift in which the majority of hours worked daily or weekly are between 6:00 p.m. and 6:00 a.m.; (~~(or)~~)

(b) An employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked; or

(c) An employee is regularly scheduled to work a day shift but is assigned to work a night or evening shift in which the majority of hours worked are between 6:00 p.m. and 6:00 a.m.

(2) Shift premium must be paid for the entire daily or weekly shift that qualifies under subsection (1) of this section. Additionally, these employees are entitled to shift premium for all hours that the employees work adjoining that evening or night shift.

(3) Shift premium may be paid at a monthly rate as specified in the compensation plan for full time employees regularly assigned to a qualifying shift.

(4) An employee assigned to a shift that qualifies for shift premium pay must receive the same shift premium for authorized periods of paid leave and holidays and for up to five days of a temporary assignment to a shift that does not qualify. Continued payment of shift premium for a temporary assignment exceeding five days is at the discretion of the employer.

(5) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

(6) Exceptions to shift premium provisions may be approved by the director.

(7) For higher education employers, shift premium must not apply to police and fire officers where special pay salaries are correlated with a rotating shift in accordance with local practice.

(8) Employees may waive shift premium.

(9) Employees who voluntarily request to work a shift as described in subsection (1) (a) (~~and~~), (b), and (c) of this section will not be eligible for shift premium.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-025, § 357-28-190, filed 11/20/20, effective 12/28/20; WSR 05-01-205, § 357-28-190, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 19-17-040, filed 8/15/19, effective 9/23/19)

WAC 357-28-203 When must an employee receive location based premium pay? Location based premium pay at the rate specified in the compensation plan must be paid when an employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; (~~and~~) or

(2) Assigned to a permanent duty station in King County.

(a) This subsection does not apply to employees who are employed by the University of Washington.

(b) When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-17-040, § 357-28-203, filed 8/15/19, effective 9/23/19.]

AMENDATORY SECTION (Amending WSR 19-11-134, filed 5/22/19, effective 7/1/19)

WAC 357-28-215 When must an employee receive supervisory pay differential? Employees within the information technology professional structure who are in the entry, journey and senior/specialist levels designated as and performing all the duties of a supervisor, in accordance with WAC 357-01-317, must receive a five percent supervisory pay differential in addition to their base ((pay)) salary as long as they meet the definition of supervisor.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.150. WSR 19-11-134, § 357-28-215, filed 5/22/19, effective 7/1/19.]

OTS-4085.2

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-133 When may an employer allow an employee to use their accrued sick leave? The employer may require verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

Employers **may** allow the use of accrued sick leave under the following conditions:

- (1) For condolence or bereavement;
- (2) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255;
- (3) To bond with a newborn, adoptive or foster child for a period beyond 18 weeks as allowed in WAC 357-31-130 ((~~(1)-(j)~~)) (12). Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond WAC 357-31-130 ((~~(1)-(i)~~)) (12) must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or
- (4) When a child is a family member of an employee or member of an employee's household and:
 - (a) The child's school or place of care has been closed by order or recommendation of a public official for any health-related reason; or
 - (b) The child has been exposed to a contagious disease and is required to quarantine.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-133, filed 5/27/22, effective 7/1/22.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-31-345

How does leave without pay affect a
general government employee's seniority
date?

WSR 22-24-026
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed November 30, 2022, 1:33 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: Washington's paid family and medical leave, or PFML insurance program, as codified in Title 50A RCW, became effective on October 19, 2017. Beginning January 1, 2020, the PFML program provides a partial wage replacement for Washington workers for an employee's own medical condition, to care for family members, bonding with a child or for certain military-related events. Under the PFML program, the employment security department will replace up to 90 percent of an employee's average weekly wage (up to \$1,000 per week). During the 2019 legislative session, the law was amended to allow the employer to offer a "supplemental benefit" to employees while they are on approved PFML. Chapter 233, Laws of 2022 (2SSB 5649), effective June 9, 2022, expanded Title 50A RCW to provide seven calendar days of leave to an employee following the death of their child when the employee would have (1) been approved for medical leave for the birth of their child; or (2) approved for family leave to bond with their child during the first 12 months after the child's birth or placement. Amend WAC 357-31-248 to add bereavement leave as a supplemental benefit during a period an employee is receiving partial wage replacement for paid family and/or medical leave for the death of an employee's family member or household member in accordance with WAC 357-31-250.

Citation of Rules Affected by this Order: Amending WAC 357-31-248.

Statutory Authority for Adoption: RCW 41.06.133.

Adopted under notice filed as WSR 22-20-097 on October 4, 2022.

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

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

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

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

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

Date Adopted: November 30, 2022.

Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-4084.1

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

WAC 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW? An employee may use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, bereavement leave, or holiday pay during a period when the employee is receiving partial wage replacement under Title 50A RCW as a supplemental benefit. The use of bereavement leave as a supplemental benefit is limited to the death of an employee's family member or household member in accordance with WAC 357-31-250.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-248, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-248, filed 2/20/20, effective 5/1/20.]

WSR 22-24-027
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed November 30, 2022, 1:35 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: Chapter 271, Laws of 2022 (HB 1927), passed during the 2022 legislative session with an effective date of June 9, 2022. HB 1927 adds a new chapter to Title 49 RCW (Labor regulations), encouraging citizens to serve in the legislature by creating leave provisions for legislative service. Section 3 requires an employer to grant a temporary leave of absence without loss of **job status** or **seniority** to an employee who is a member of the state legislature to perform any official duty during regular and special legislative sessions. The leave granted may be unpaid, or the employee may substitute **any** accrued paid leave. In addition, RCW 41.04.120 (chapter 164, Laws of 1957) allows for leave of absence by reason of having been elected or appointed to an elective office (service in an elective office) preserving an employee's civil service status and seniority. Unlike HB 1927, RCW 41.04.120 is not restricted to regular and special legislative sessions. The purpose is to align Title 357 WAC with the requirements of the new and existing laws specifically to: (1) Require an employer to grant an employee's request to use their accrued leave or leave without pay for legislative service leave in accordance with chapter 49.100 RCW; (2) require an employer to grant an employee's request to use leave without pay for service in an elective office in accordance with RCW 41.04.120; (3) allow an employee who is serving a probationary period, trial service period, transitional review period or Washington management service review period to resume/complete their review period when the employee returns from the leave of absence due to legislative service and due to service in an elective office; (4) state that employees who are on an approved leave of absence must not have their seniority date adjusted for time spent during a leave of absence for legislative service and for service in an elective office; and (5) exclude legislative service leave violations under chapter 49.100 RCW from rule violation appeals.

Citation of Rules Affected by this Order: New WAC 357-31-374, 357-31-3745; and amending WAC 357-01-304, 357-31-027, 357-31-070, 357-31-100, 357-31-130, 357-31-200, 357-31-230, 357-31-327, 357-31-567, 357-46-053, 357-46-055, 35-52-010, and 357-58-300.

Statutory Authority for Adoption: RCW 41.06.133.

Other Authority: RCW 41.04.120; and chapter 49.100 RCW.

Adopted under notice filed as WSR 22-20-096 on October 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 13, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 13, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 13, Repealed 0.

Date Adopted: November 30, 2022.

Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-4087.1

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

WAC 357-01-304 Seniority date (higher education). For higher education employees, the seniority date is determined in accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules. (~~Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.~~) Seniority dates will not be adjusted for any time period an employee is on approved leave without pay for reasons defined in WAC 357-46-053.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-06-007, § 357-01-304, filed 2/20/14, effective 3/24/14.]

OTS-4088.3

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

WAC 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit? Higher education employers must allow a part-time employee as defined in WAC 357-01-2290(2) to use accrued holiday credit for the following reasons:

(1) Employees must request to use accrued holiday credit in accordance with the employer's leave policy. When considering employees' requests to use accrued holiday credit, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued holiday credit to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued holiday credit may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued holiday credit if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or

stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued holiday credit to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) An employee must be granted the use of accrued holiday credit when requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Employers may require that accumulated holiday credit be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) If the employee requests to use their accrued holiday credit when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-027, filed 12/3/21, effective 7/1/22.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday? (1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an

impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW; ((~~or~~))

(f) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; or

(g) If the employee requests to use their personal holiday when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-070, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-070, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-070, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-070, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-070, filed 7/11/08, effective 10/1/08; WSR 07-03-054, § 357-31-070, filed 1/12/07, effective 2/15/07; WSR 05-08-136, § 357-31-070, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

(5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy

must state the total amount of sick leave allowed to be used beyond 18 weeks in accordance with WAC 357-31-133;

(6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC;

(7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC;

(8) Address whether a general government employee may take additional accrued leave beyond 30 days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570;

((and))

(9) Allow a high-risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave and leave without pay if the employer determines no other accommodation is reasonable besides the use of leave;

(10) Allow an employee to use unpaid leave when the employee is granted a temporary leave of absence for service in an elective office in accordance with WAC 357-31-374(1); and

(11) Allow an employee to use unpaid and/or accrued paid leave when the employee is granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2). The policy must state employees who request a leave of absence for legislative service must provide notice to the employer at least 30 days in advance for a regular legislative session or as soon as the session is proclaimed for a special session.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-100, filed 5/27/22, effective 7/1/22; WSR 20-24-019, § 357-31-100, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-100, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-100, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-100, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-100, filed 5/14/14, effective 6/16/14; WSR 10-11-071, § 357-31-100, filed 5/14/10, effective 6/15/10; WSR 09-03-013, § 357-31-100, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-100, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-100, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

Employers **must** allow the use of accrued sick leave under the following conditions:

(1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical

diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(3) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (6) of this section.

(a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for

a period up to 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-130, filed 5/27/22, effective 7/1/22; WSR 20-24-025, § 357-31-130, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-130, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-130, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-130, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-130, filed 5/14/14, effective 6/16/14; WSR 09-17-057 and 09-18-112, § 357-31-130, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-130, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-130, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-130, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-200 When must an employer grant the use of vacation leave? (1) An employee's request to use vacation leave must be approved under the following conditions:

- (a) As a result of the employee's serious health condition.
- (b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.
- (c) To care for a minor/dependent child with a health condition that requires treatment or supervision.
- (d) For parental leave as provided in WAC 357-31-460.
- (e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.
- (f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
- (g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.
- (h) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.
- (i) When the employee requests to use their vacation leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1) (a) through (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-200, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-200, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-200, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-200, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-200, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-200, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-230 When must an employee be granted the use of accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final 60 days of a biennium.

(7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(8) A high-risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

(9) An employee must be granted the use of compensatory time when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-230, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-230, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 11-23-054, § 357-31-230, filed 11/10/11, effective 12/13/11; WSR 10-23-120, § 357-31-230, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-230, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-230, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-230, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-230, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-327 When must an employer grant leave without pay?

An employer must grant leave without pay under the following conditions:

- (1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;
- (2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or
- (3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
- (4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.
- (5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010.
- (6) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(7) When an employee is granted a temporary leave of absence for service in an elective office or for legislative service in accordance with WAC 357-31-374.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-327, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-327, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 14-24-024, § 357-31-327, filed 11/21/14, effective 12/22/14; WSR 09-17-057 and 09-18-112, § 357-31-327, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-327, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-327, filed 7/11/08, effective 10/1/08; WSR 07-17-129, § 357-31-327, filed 8/20/07, effective 9/20/07.]

NEW SECTION

WAC 357-31-374 When must an employer grant a temporary leave of absence for service in an elective office or for legislative service?

An employer must grant a temporary leave of absence for:

(1) Service in an elective office without loss of job status or seniority to an employee by reason of having been elected or appointed to an elective office in accordance with RCW 41.04.120.

(2) Legislative service without loss of job status or seniority to an employee who is a member of the state legislature in order for the employee to perform any special duty as a member of the legislature during regular and special legislative sessions in accordance with chapter 49.100 RCW.

(a) The leave of absence may be unpaid or the employee may substitute any combination of accrued paid leave.

(b) An employee seeking a temporary leave of absence must provide notice to the employer:

(i) At least 30 days in advance for a regular legislative session; or

(ii) As soon as the session is proclaimed for a special session.

[]

NEW SECTION

WAC 357-31-3745 How does a temporary leave of absence for service in an elective office or for legislative service impact an employee's probationary period, trial service period, or transition review period? When an employee is granted a temporary leave of absence for service in an elective office or for legislative service during a probationary period, trial service period, or transition review period, the employer must suspend the employee's probationary period, trial service period, or transition review period and allow the employee to resume when they return from their leave of absence.

[]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment;

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW; (~~and~~)

(d) When a high-risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; and

(e) When an employee requests to use recognition leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-567, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-567, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-567, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-567, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-567, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-567, filed 7/11/08, effective 10/1/08.]

OTS-4089.3

AMENDATORY SECTION (Amending WSR 21-18-038, filed 8/24/21, effective 9/24/21)

WAC 357-46-053 How is a higher education employee's seniority date determined? For higher education employees, the seniority date is determined as follows:

(1) In accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules.

(2) Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

(3) Employees on leave without pay as authorized by a proclamation issued by the governor directly related to health and safety must not have their seniority date adjusted for the time spent on leave without pay.

(4) Employees on an approved leave of absence in accordance with WAC 357-31-374 must not have their seniority date adjusted for time spent on the leave of absence.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-18-038, § 357-46-053, filed 8/24/21, effective 9/24/21; WSR 05-12-075, § 357-46-053, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-18-038, filed 8/24/21, effective 9/24/21)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds (~~(fifteen)~~) 15 consecutive calendar days except when the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;
 (b) Compensable work-related injury or illness leave;
 (c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework;

(e) Reducing the effects of layoff; (~~(and/or)~~)

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety; and/or

(g) Leave for service in an elective office or legislative service as provided in WAC 357-31-374.

(2) When an employee is on leave without pay for more than (~~(fifteen)~~) 15 consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(3) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours

worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework;
- (e) Reducing the effects of layoff; (~~and/or~~)
- (f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety; and/or
- (g) Leave for service in an elective office or legislative service as provided in WAC 357-31-374.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-18-038, § 357-46-055, filed 8/24/21, effective 9/24/21; WSR 14-06-007, § 357-46-055, filed 2/20/14, effective 3/24/14; WSR 09-11-063, § 357-46-055, filed 5/14/09, effective 6/16/09; WSR 05-08-135, § 357-46-055, filed 4/6/05, effective 7/1/05.]

OTS-4091.1

AMENDATORY SECTION (Amending WSR 14-24-023, filed 11/21/14, effective 12/22/14)

WAC 357-52-010 What actions may be appealed? (1) Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee may appeal directly to the board, except as provided in WAC 357-49-010(1) and chapter 49.100 RCW.

(c) An employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter 41.06 RCW or the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) For a violation of state civil service law or rules pertaining to WMS employees, a WMS employee who is adversely affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules pertaining to WMS employees (chapter 357-58 WAC) may appeal directly to the board, except violations under chapter 49.100 RCW.

(c) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-023, § 357-52-010, filed 11/21/14, effective 12/22/14; WSR 09-17-065, § 357-52-010, filed 8/13/09, effective 9/16/09; WSR 06-03-072, § 357-52-010, filed 1/12/06, effective 2/13/06; WSR 05-19-011, § 357-52-010, filed 9/8/05, effective 10/10/05; WSR 05-01-190, § 357-52-010, filed 12/21/04, effective 7/1/05.]

OTS-4090.3

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-58-300 Does time spent on leave without pay ((or)), shared leave, or time spent on a temporary leave of absence for service in an elective office or legislative service count towards completion of an employee's review period? (1) Time spent on leave without pay or shared leave counts towards completion of the employee's review period if the total time does not exceed ((one hundred seventy-four)) 174 hours. If the total time on leave without pay or shared leave exceeds ((one hundred seventy-four)) 174, the employer determines whether or not the time in excess of ((one hundred seventy-four)) 174 hours will count towards completion of the review period. The granting of leave shall be in compliance with chapter 357-31 WAC and the Fair Labor Standards Act.

(2) Time spent on a temporary leave of absence for service in an elective office or legislative service does not count towards the completion of the employee's review period. Employees who are granted a temporary leave of absence for service in an elective office or legislative service while serving a review period must have their review period suspended and be allowed to resume when they return from their leave of absence.

[Statutory Authority: Chapter 41.06 RCW. WSR 08-07-062, § 357-58-300, filed 3/17/08, effective 4/18/08; WSR 05-12-070, § 357-58-300, filed 5/27/05, effective 7/1/05.]

WSR 22-24-029
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 30, 2022, 1:42 p.m., effective December 31, 2022]

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

Purpose: The office of superintendent of public instruction (OSPI) added new sections to chapter 392-122 WAC to describe the compliance rules and calculations concerning provisions in SSHB [2SHB] 1664 (2022) and the 2022 supplemental budget (ESSB 5693) related to physical, social, and emotional support in schools. The legislation provided for increased funding allocations for physical, social, and emotional support through the prototypical school funding model beginning with the 2022-23 school year. The new rules ensure that local education agencies receive an allocation for basic education that is in alignment with the state budget.

Citation of Rules Affected by this Order: New WAC 392-122-430, 392-122-440, 392-122-445, 392-122-450, and 392-122-455.

Statutory Authority for Adoption: RCW 28A.150.260.

Other Authority: RCW 28A.150.260.

Adopted under notice filed as WSR 22-17-159 on August 24, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 30, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3884.1

PHYSICAL, SOCIAL, AND EMOTIONAL SUPPORT

NEW SECTION

WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys. (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

[]

NEW SECTION

WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment. (1) Grade level enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

[]

NEW SECTION

WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff. (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01 or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;

- Duty root 42 - All activities - Counselor;

- Duty root 43 - All activities - Occupational therapist;

- Duty root 44 - All activities - Social worker;

- Duty root 45 - All activities - Speech, language pathology/ audio;

- Duty root 46 - All activities - Psychologists;

- Duty root 47 - All activities - Nurse;
- Duty root 48 - All activities - Physical therapist;
- Duty root 49 - All activities - Behavior therapist;
- Duty root 64 - All activities - Contractor ESA;
- Duty root 96 - Activity 24 - Family engagement coordinator;
- Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
- Duty roots 91 - 99 - Activity 26 - Health/related services.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.

(4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

[]

NEW SECTION

WAC 392-122-445 Physical, social, and emotional support (PSES) compliance—Contracted and supplemental staff. (1) Eligible staff working under contract and staff not required to be reported in the S-275 must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered.

(2) The full-time equivalency of supplemental staff reported must be reported as less than a 1.0 full-time equivalent (FTE).

(3) The full-time equivalency (FTE) of staff providing services under contract should be reported as determined in the contracting agreement or defined at the local school district level.

(4) Supplemental staff reporting should include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignments of staff.

[]

NEW SECTION

WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations. (1) Funded staffing units will be calculated using each grade level funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

[]

NEW SECTION

WAC 392-122-455 Physical, social, and emotional support (PSES)—Penalty for noncompliance. (1) Penalty units identified by the calculations will be split between certificated instructional staff and classified staff based on the percentage that each contributes to the combined total of certificated instructional staff and classified staff in the physical, social, and emotional support staff for that school year at the state level.

(2) Any adjustments to those calculations will be made in January, March, and June apportionment payments.

[]

WSR 22-24-030
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 30, 2022, 1:45 p.m., effective December 31, 2022]

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

Purpose: The office of superintendent of public instruction is repealing WAC 392-162-100 and 392-162-115 to eliminate redundancies in language that already exists in statute and guidance concerning the learning assistance program (LAP). For WAC 392-162-115, the language is already stated in RCW 28A.165.065. For WAC 392-162-100, the language makes recommendations that already exist in federal and state guidance provided to districts concerning implementation of LAP. Repealing these sections does not make any substantive change to the LAP program.

Citation of Rules Affected by this Order: Repealing WAC 392-162-100 and 392-162-115.

Statutory Authority for Adoption: RCW 28A.165.075.

Adopted under notice filed as WSR 22-17-163 on August 24, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 2.

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

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

Date Adopted: November 30, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3987.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-162-100	Federal and state program coordination.
WAC 392-162-115	Monitoring of districts.

WSR 22-24-031
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 30, 2022, 1:48 p.m., effective December 31, 2022]

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

Purpose: The office of superintendent of public instruction is amending rules concerning the Washington state honors awards program to update the process and procedures for the program. The changes update the process by which students are identified as being eligible for the award, expand testing and assessment options to be considered for qualification of the award, and update processes concerning notifications and award certificates. Further, this rule making repeals sections which are already identified in RCW or WAC.

Citation of Rules Affected by this Order: Repealing 392-210-025, 392-210-030 and 392-210-040; and amending WAC 392-210-015, 392-210-020, 392-210-035, and 392-210-045.

Statutory Authority for Adoption: RCW 28A.600.070.

Adopted under notice filed as WSR 22-17-160 on August 24, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 3.

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

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

Date Adopted: November 30, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-2985.2

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-015 Criteria for the selection of Washington state honors award students. The Washington state honors award program shall recognize the top ten percent of the students in the state in each year's public and private high school graduating class who have demonstrated outstanding academic achievement. Outstanding academic achievement shall be determined by the following criteria:

(1) ~~((An academic achievement index based upon a combination of the combined))~~ The office of superintendent of public instruction shall identify the top ten percent of students in the state using the cumulative high school grade point average (calculated as provided in WAC 180-57-055) ((in)) including, but not limited to, the academic

core subjects of English, mathematics, science, social studies, the arts, and languages other than English which may include American Indian languages ((and the combined verbal and quantitative composite scores on));

(2) For students with a grade point average (GPA) in the top ten percent in the state, high schools shall use at least one of the assessments available for students, which can include the Scholastic Aptitude Test (SAT) ((or)), the American College Test (ACT), the state-wide English language arts and mathematics assessments, or local assessments to evaluate students' academic achievement;

~~((2) Credits (as defined in WAC 180-51-050) earned in grades nine through twelve in the academic core subjects of English, mathematics, science, social studies, the arts, and foreign language;))~~

(3) Completion of at least seventy-five percent of the graduation requirements for the high school in which the candidate is enrolled; and

(4) Enrollment in at least three academic core subjects in grade twelve.

~~((In order to be considered for a Washington honors award, students must have taken the Scholastic Aptitude Test (SAT) or the American College Test (ACT) prior to January 31 of the year of graduation and be enrolled in a participating high school as indicated by the principal on forms provided by the superintendent of public instruction.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-015, filed 11/3/06, effective 12/4/06. Statutory Authority: RCW 28A.150.220. WSR 93-23-038 (Order 93-24), § 392-210-015, filed 11/10/93, effective 12/11/93. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-015, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-020 ((Determination of)) Identification of students for the Washington state honors award ((academic achievement index)).

~~((The superintendent of public instruction shall calculate the academic achievement index based upon an equivalent numeric weighting of the combined high school grade point average in academic core subjects and the combined verbal and quantitative composite scores on the Scholastic Aptitude Test (SAT) or the American College Test (ACT). The superintendent of public instruction shall determine the top ten percent of each year's graduating class based upon a ranking of all participating students on the academic achievement index.)) All participating high schools shall use the eligibility criteria to identify the qualifying students for the award on or before the date provided by the superintendent of public instruction.~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-020, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-020, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-035 Notification of students eligible for honors award. Commencing with the ninth grade, and each year thereafter, each participating high school shall provide each enrolled student with a copy of the eligibility criteria for the Washington state honors award. ~~((The superintendent of public instruction shall provide schools with a suggested format that may be used to notify students.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-035, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-035, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

WAC 392-210-045 Washington honors award certificate. The superintendent of public instruction shall prepare annually for each honors award recipient a suitable ~~((printed))~~ certificate which shall describe the purposes of the award, indicate the year in which the award was given, and be signed by the superintendent of public instruction. The certificate for each honors award recipient shall be delivered to the participating high school principal on or before May 30 of each school year. ~~((Each participating principal shall provide for issuing the certificate to each recipient at the regular high school commencement or other appropriate time prior to high school commencement.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-045, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-045, filed 12/9/85.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-210-025	Credits earned in academic core subjects.
WAC 392-210-030	Enrollment in academic core subjects during grade twelve required.
WAC 392-210-040	Notification of Washington honors award recipients.

WSR 22-24-034
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 30, 2022, 2:04 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The Washington state legislature passed ESHB 2076 during the 2022 legislative session. ESHB 2076 sets new requirements for transportation network companies and gives drivers new rights and protections. Section 1 (13)(f) of ESHB 2076, now codified in RCW 49.46.300 (13)(f), requires the department of labor and industries (L&I) to conduct rule making regarding the reimbursements from the newly created driver resource center (DRC) to a transportation network company (TNC) for costs associated with deduction and remittance. ESHB 2076 also gave L&I broad authority to promulgate rules to implement the new statutory requirements and enforce its provisions. See RCW 49.46.300(16), 49.46.320 (16)(c), 49.46.210 (5)(q), and 49.46.350(6). Additional rules are needed to clarify the new requirements for TNCs and new driver protections relating to minimum compensation, paid sick time, retaliation and deactivations, and administrative violations. The new rules carry out and enforce the new requirements and help L&I coordinate with the DRC. The rules also provide additional detail regarding L&I's role in enforcement and enforcement processes.

This rule making creates new rule sections and does not change any existing rules.

Citation of Rules Affected by this Order: New WAC 296-128-99010, 296-128-99020, 296-128-99030, 296-128-99040, 296-128-99050, 296-128-99060, 296-128-99070, 296-128-99080, 296-128-99090, 296-128-99100, 296-128-99110, 296-128-99120, 296-128-99130, 296-128-99140, 296-128-99150, 296-128-99160, 296-128-99170, 296-128-99180, 296-128-99190, 296-128-99200, 296-128-99210, 296-128-99220, 296-128-99230, 296-128-99240, 296-128-99250, 296-128-99260, 296-128-99270, 296-128-99280, and 296-128-99290.

Statutory Authority for Adoption: RCW 49.46.300(16); chapter 49.46 RCW.

Adopted under notice filed as WSR 22-19-099 on September 21, 2022.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-128-99010 Definitions:

- **Proposed language:** Subsection (19) "Minimum compensation" means the minimum payment for passenger platform time and mileage set forth in RCW 49.46.300(4). Incentives, bonuses, premium pay, and tips are in addition to, and may not count towards, minimum compensation.
- **Adopted language:** Subsection (19) "Minimum compensation" means the minimum payment for passenger platform time and mileage set forth in RCW 49.46.300(4). "Minimum compensation" may include incentives or premium pay specific to a particular trip in which the incentive or premium pay is earned if the transportation network company discloses to the driver upon each offer of such pay the amount and terms of such pay and that such pay will be used to satisfy part or all of the minimum compensation requirement in RCW 49.46.300 for that particular trip. "Minimum compensation" does not include any incentive or premium pay not specific to a

particular trip, any incentive or premium pay offered without the above disclosure, any bonuses, or any tips.

This proposed rule was changed due to comments received from both the TNCs and driver representatives who provided alternatives for language that would change the department's proposed rule that did not allow incentive or premium pay to count towards minimum compensation. The proposed rule was changed to reflect that TNCs may include incentive and premium pay in "minimum compensation" on a per-trip basis, given the TNC has provided a notice and disclaimer to the driver. This is an approach currently used under Seattle's ordinance with little to no complaints. Workweek averaging is prohibited.

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements:

- **Proposed language:** Subsection (4) Shared rides. The per-trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any pick-up location, passenger platform time, or mileage within the shared ride meets the requirements of subsection (1)(a) or (b) of this section.
- **Adopted language:** Subsection (4) Shared rides. The greater of the per-trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any portion of the shared ride meets the requirements of subsection (1)(a) or (b) of this section.

This proposed rule was changed due to comments received showing general misunderstandings of the department's intended interpretation of the proposed language. The proposed rule was changed in order to ensure the department is aligning with RCW 49.46.300 (4)(c) and clearly communicating expectation regarding minimum compensation rates for shared rides. The intent of this rule is to make it clear that the higher of the minimum compensation rates apply to the entirety of a shared ride, not just a portion of the ride.

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements:

- **Proposed language:** Subsection (5) More favorable standards. If any portion of a dispatched trip or shared ride is subject to a standard established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which is more favorable to drivers than these minimum compensation requirements, such standard shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.
- **Adopted language:** Subsection (5) More favorable standards. If any portion of a dispatched trip or shared ride is subject to a standard established by any applicable federal, state, or local law or ordinance in a locality outside of Washington, or any rule or regulation issued under such law or ordinance, which is more favorable to drivers than these minimum compensation requirements, such standard shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

This proposed rule was changed due to comments received showing general misunderstanding of the department's intended interpretation of the proposed language. The proposed rule was changed in order to

further clarify that the local laws or ordinances referenced are in relation to those outside of the state of Washington, and is not intended to conflict with the preemption language in RCW 46.72B.190.

WAC 296-128-99100 Deactivations:

- **Proposed language:** Subsection (1) A transportation network company must enter into an agreement with the driver resource center regarding the driver account deactivation appeals process for eligible account deactivations.
- **Adopted language:** Subsection (1) A transportation network company must enter into an agreement with the driver resource center regarding the driver account deactivation appeals process for eligible account deactivations, including an expeditious process for determining whether an account deactivation is an eligible account deactivation.

This proposed rule was changed due to public comments received expressing concern with ambiguity in the proposed language relating to how and when eligible account deactivations are determined to be "eligible" by a TNC. The proposed rule was changed in order to further clarify the department's expectations for our approval of a deactivation appeals process agreement between the TNC and DRC. The updated rule maintains TNC and DRC authority to set the exact terms of the agreement between the two parties, but provides clarity around elements of the process that should be established by the parties and included in the agreement. Further clarity is provided in the concise explanatory statement.

WAC 296-128-99290 Enforcement—Administrative enforcement supplemental and variance for delayed implementation of accessible system and communication system requirements:

- Subsection (2) was added due to public comments received from TNCs who previously met exemption requirements under Seattle ordinance due to not meeting the minimum annual trip threshold. This rule will allow TNCs who meet certain requirements to apply for a temporary variance to delay their requirements related to accessible and communication systems.

This order has been updated to renumber the variance section to WAC 296-128-99290(2).

The department updated its small business economic impact statement (SBEIS) to reflect the changes above and comments received; a copy of the updated SBEIS can be obtained by requesting a copy from the department.

A final cost-benefit analysis is available by contacting Bridget Osborne, L&I, Employment Standards, P.O. Box 44540 [44510], Olympia, WA 98504-4510, phone 360-902-5552, fax 360-902-5300, email esrules@Lni.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 29, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 29, Amended 0, Repealed 0.

Date Adopted: November 30, 2022.

Joel Sacks
Director

OTS-4075.7

TRANSPORTATION NETWORK COMPANIES

NEW SECTION

WAC 296-128-99010 Definitions. (1) "Absence" means any period of time in which the driver is unable to perform passenger platform time on the transportation network company's driver platform due to an authorized purpose defined in RCW 49.46.210.

(2) An "accessible system" is:

(a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;

(b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;

(c) Available in a driver's preferred language and English;

(d) Provided in plain language;

(e) Available to the driver via smartphone application and online web portal; and

(f) Available from any location and must not be inaccessible due to geo-fencing.

(3) "Account deactivation" means one or more of the following actions with respect to an individual driver or group of drivers that is implemented by a transportation network company and lasts for more than three consecutive days:

(a) Blocking access to the transportation network company driver platform;

(b) Changing a driver's status from eligible to provide transportation network company services to ineligible; or

(c) Any other material restriction in access to the transportation network company's driver platform.

(4) A "communication system" is:

(a) A platform through which the driver accesses, receives, and sends notices and communications with the transportation network company in compliance with chapter 49.46 RCW;

- (b) A platform through which the transportation network company accesses, receives, sends, and stores notices and communications with a driver in compliance with chapter 49.46 RCW;
- (c) Available in a downloadable comma-separated values file format, except as provided in WAC 296-128-99030(1);
- (d) Available to the driver via smartphone application and online web portal; and
- (e) Available from any location and must not be inaccessible due to geo-fencing.
- (5) "Compensation" means payment owed to a driver by reason of providing network services including, but not limited to, the minimum payment for passenger platform time and mileage, incentives, and tips. Compensation does not include driver reimbursements.
- (6) "Department" means the department of labor and industries.
- (7) "Digital network" means any online-enabled application, website, or system offered or used by a transportation network company that enables the prearrangement of rides between drivers and passengers.
- (8) "Director" means the director of the department of labor and industries, or the director's authorized representative.
- (9) "Dispatch location" means the location of the driver at the time the driver accepts a trip request through the driver platform.
- (10) "Dispatch platform time" means the time a driver spends traveling from a dispatch location to a passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip or the driver begins the trip through the driver platform. A driver cannot simultaneously be engaged in dispatch platform time and passenger platform time for the same transportation network company. For shared rides, dispatch platform time means the time a driver spends traveling from the first dispatch location to the first passenger pick-up location.
- (11) "Dispatched trip" means the provision of transportation by a driver for a passenger through the use of a transportation network company's application dispatch system.
- (12) "Driver" has the same meaning as "commercial transportation services provider driver" in RCW 48.177.005. Except as otherwise specified in WAC 296-128-99010 through 296-128-99290, for purposes of Titles 48, 50A, 50B, and 51 RCW, and chapter 49.46 RCW, and any orders, regulations, administrative policies, or opinions of any state or local agency, board, division, or commission, pursuant to those titles, a driver is not an employee or agent of a transportation network company if the following factors are met:
- (a) The transportation network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the transportation network company's online-enabled application or platform;
- (b) The transportation network company may not terminate the contract of the driver for not accepting a specific transportation service request;
- (c) The transportation network company does not contractually prohibit the driver from performing services through other transportation network companies except while performing services through the transportation network company's online-enabled application or platform during dispatch platform time and passenger platform time; and
- (d) The transportation network company does not contractually prohibit the driver from working in any other lawful occupation or business. Notwithstanding any state or local law to the contrary, any

party seeking to establish that the factors in this subsection are not met bears the burden of proof. A driver for purposes of this section shall not include any person ultimately and finally determined to be an "employee" within the meaning of section 2(3) of the National Labor Relations Act, 29 U.S.C. Sec. 152(3).

(13) "Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a driver, or which enables services to be delivered to a driver, that enables the prearrangement of passenger trips for compensation.

(14) "Driver resource center" or "center" or "DRC" means a nonprofit organization that provides services to drivers. The nonprofit organization must be registered with the Washington secretary of state, have organizational bylaws giving drivers right to membership in the organization, and have demonstrated experience:

(a) Providing services to drivers in Washington state, including representing drivers in deactivation appeals proceedings; and

(b) Providing culturally competent driver representation services, outreach, and education. The administration and formation of the driver resource center may not be funded, excessively influenced, or controlled by a transportation network company.

(15) "Driver resource center fund" or "fund" means the dedicated fund created in RCW 49.46.310, the sole purpose of which is to administer funds collected from transportation network companies to provide services, support, and benefits to drivers.

(16) "Earned paid sick time" is the time provided by a transportation network company to a driver as calculated under RCW 49.46.210 and associated rules. For each hour of earned paid sick time used by a driver, the transportation network company shall compensate the driver at a rate equal to the driver's average hourly compensation.

(17) "Eligible account deactivation" means one or more of the following actions with respect to an individual driver that is implemented by a transportation network company:

(a) Blocking or restricting access to the transportation network company driver platform for more than three consecutive days; or

(b) Changing a driver's account status from eligible to provide transportation network company services to ineligible for more than three consecutive days; but

(c) An eligible account deactivation does not include any change in a driver's access or account status that is:

(i) Related to an allegation of discrimination, harassment, including sexual harassment or harassment due to someone's membership in a protected class, or physical or sexual assault, or willful or knowing commitment of fraud;

(ii) Related to an allegation that the driver was under the influence of drugs or alcohol while a related active investigation that takes no longer than 10 business days is under way; or

(iii) Any other categories the transportation network company and the driver resource center may agree to.

(18) "Geo-fencing" means the use of technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

(19) "Minimum compensation" means the minimum payment for passenger platform time and mileage set forth in RCW 49.46.300(4). "Minimum compensation" may include incentives or premium pay specific to a particular trip in which the incentive or premium pay is earned if the transportation network company discloses to the driver upon each offer

of such pay the amount and terms of such pay and that such pay will be used to satisfy part or all of the minimum compensation requirement in RCW 49.46.300 for that particular trip. "Minimum compensation" does not include any incentive or premium pay not specific to a particular trip, any incentive or premium pay offered without the above disclosure, any bonuses, or any tips.

(20) "Network services" means services related to the transportation of passengers through the driver platform that are provided by a driver while logged in to the driver platform, including services provided during available platform time, dispatch platform time, and passenger platform time.

(21) "Passenger" has the same meaning as "commercial transportation services provider passenger" in RCW 48.177.005.

(22) "Passenger drop-off location" means the location of a driver's vehicle when the passenger leaves the vehicle.

(23) "Passenger pick-up location" means the location of the driver's vehicle at the time the driver starts the trip in the driver platform.

(24) "Passenger platform miles" means all miles driven during passenger platform time as recorded in a transportation network company's driver platform.

(25) "Passenger platform time" means the period of time when the driver is transporting one or more passengers on a trip, or portion of a trip, as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington, the portion of passenger platform time and mileage that occurs within Washington.

(26) "Payday" means a specific day or date established by the transportation network company on which compensation, bonuses, incentives, tips, and other owed amounts are paid to a driver during a pay period.

(27) "Payment interval" means the amount of time between established paydays. A payment interval may be instant, daily, weekly, or bi-weekly.

(28) "Pay period" means a defined time frame for which a driver will receive a payment. A pay period may be instant, daily, weekly, or bi-weekly.

(29) "Personal vehicle" has the same meaning as "personal vehicle" in RCW 48.177.005.

(30) "Plain language" is language that is clear, concise, and visually easy to read. It must use common words, rather than jargon, acronyms, or unnecessary legal language.

(31) "Preferred language" is the driver's language choice provided in response to a transportation network company's request for their preferred language. Each transportation network company must make a good faith effort to learn a driver's preferred language. A transportation network company must translate documents available via an accessible system into the driver's preferred language, provided that the preferred language has been identified as the preferred language of at least two percent of drivers who utilize the transportation network company's driver platform in Washington. The transportation network companies and the driver resource center must work with the department to identify the preferred languages that meet the two percent threshold(s), at least every two years.

(32) "Shared ride" means a dispatched trip in which, prior to its commencement, a passenger requests through the transportation network company's digital network to share the dispatched trip with one or more passengers and each passenger is charged a fare that is calculated, in whole or in part, based on the passenger's request to share all or a part of the dispatched trip with one or more passengers, regardless of whether the passenger actually shares all or a part of the dispatched trip.

(33) "Tips" means a verifiable sum to be presented by a passenger as a gift or gratuity in recognition of service performed for the passenger by the driver receiving the tip.

(34) "Transportation network company" has the same meaning as defined in RCW 46.04.652. A transportation network company does not provide for hire transportation service and includes a third-party administrator when a transportation network company contracts with a third-party administrator for the purposes of providing paid sick time.

(35) "Verification" means evidence that establishes or confirms that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210.

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GENERAL REQUIREMENTS

NEW SECTION

WAC 296-128-99020 Fees collected and remitted for the driver resource center fund. Transportation network companies must collect and remit per trip fee amounts from passenger fares to the driver resource center fund as follows:

(1) Beginning July 1, 2024, the per trip fee amount is \$0.15.

(2) Beginning January 1, 2025, and every January 1st thereafter, the per trip fee amount is as adjusted and published by the department in accordance with RCW 49.46.300 (12) (b).

(3) Each transportation network company shall submit to the fund, with its remittance under RCW 49.46.300(12), a report detailing the number of trips in the previous quarter and the total amount of the surcharge charged to customers. The first payment and accounting is due on the 30th day of the quarter following the collection of the surcharge. The department may request records from a transportation network company in order to confirm accuracy of remittance payments and reports submitted to the department.

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NEW SECTION

WAC 296-128-99030 Driver electronic receipts and weekly trip notices. (1) **Electronic receipts.** Within 24 hours of each dispatched trip, a transportation network company must transmit to the driver an electronic receipt, available in a communication system, for each unique trip or portion of a unique trip. For the purposes of an electronic receipt, a transportation network company may either provide a downloadable comma-separated values file or searchable PDF format containing a table with rows for each unique trip or portion of the trip and columns for each itemized element contained in the trip receipt. Electronic receipts must be available to the driver for at least two years following the date the transportation network company provided the receipt to the driver. The electronic receipt must itemize the following information for each unique trip, or portion of a unique trip:

- (a) The total amount of passenger platform time;
- (b) The total mileage driven during passenger platform time;
- (c) The applicable rate(s) of pay including, but not limited to, the rate(s) per minute, rate(s) per mile, percentage of passenger fare, and any applicable price multiplier(s) or variable pricing policy in effect including variable rates based on geographic location;
- (d) Any tip compensation paid by the passenger within 24 hours of the dispatched trip;
- (e) Gross payment;
- (f) Net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
- (g) Itemized deductions or fees, including any tolls, surcharges, commissions, lease fees, and other charges;
- (h) The applicable date and time frame for each trip and each portion of a trip; and
- (i) The passenger pick-up and passenger drop-off locations for each trip and each portion of a trip as described by the street, city, and state in which the passenger pick-up and passenger drop-off occurred; however, if the passenger is an unaccompanied minor, only the city and state need be disclosed.

(2) **Weekly trip notices.** At least once a week, a transportation network company must transmit to the driver a written notice, available in a communication system, that contains the following information for trips, or portions of trips, which occurred in the prior week:

- (a) The driver's total passenger platform time;
- (b) Total mileage driven by the driver during passenger platform time;
- (c) The driver's total tip compensation received from passengers within the prior week, itemized by the date of each dispatched trip or portion of a dispatched trip;
- (d) The driver's gross payment, itemized by:
 - (i) Rate(s) per minute;
 - (ii) Rate(s) per mile; and
 - (iii) Any other method used to calculate pay including, but not limited to, base pay, percentage of passenger fare, or any applicable price multiplier(s) or variable pricing policy in effect for the trip, including variable rates based on geographic location;
- (e) The driver's net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;

(f) An itemization of deductions or fees, including all tolls, surcharges, commissions, lease fees, and other charges, from the driver's payment; and

(g) The total passenger platform time performed within the past 365 calendar days.

[]

NEW SECTION

WAC 296-128-99040 Payment requirements. (1) A transportation network company must establish regularly scheduled payment intervals for compensation, tips and gratuities, reimbursements, or any other amounts due to a driver. The scheduled interval must occur at least bi-weekly. Nothing in this provision prevents a transportation company from establishing a more frequent interval or paying in advance of a scheduled payday, such as an instant payment.

(2) A transportation network company must pay the driver amounts owed no later than 10 calendar days after the end of the pay period.

(3) Transportation network companies may pay drivers by direct deposit or other electronic means on the established payday. If a transportation network makes a payment by mail, any mailed payment must be postmarked no later than the established payday. If the established payday falls on a weekend day or holiday when the business office is not open, mailed paychecks must be postmarked no later than the next business day.

(4) If any applicable federal, state, or local law or ordinance in a locality outside of Washington provides specific payment interval requirements that are more favorable to a driver than the payment interval requirements provided under this rule, that law shall apply.

[]

NEW SECTION

WAC 296-128-99050 Geographic application of RCW 49.46.300 minimum compensation requirements. (1) A transportation network company must pay drivers in accordance with RCW 49.46.300(4) as follows:

(a) For a dispatched trip with a passenger pick-up location in Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the entirety of the trip, regardless of the passenger drop-off location; and

(b) For a dispatched trip with a passenger pick-up location outside of Washington all minimum compensation requirements under RCW 49.46.300(4) apply for the portion of a trip that occurs within Washington.

(2) For a dispatched trip with a passenger pick-up location in a city in the state of Washington with a population above 600,000, all minimum compensation requirements under RCW 49.46.300 (4)(a)(i) apply, regardless of the passenger drop-off location.

(3) For a trip with a passenger pick-up location in the state of Washington outside a city with a population above 600,000 and a pas-

senger drop-off location inside a city with a population above 600,000 in the state of Washington, the greater of:

(a) The combined total of:

(i) The per minute and per mile minimum compensation requirements under RCW 49.46.300 (4) (a) (i) applied to the portion of passenger platform time or mileage that occurs within the city with a population above 600,000; and

(ii) The per minute and per mile compensation requirements under RCW 49.46.300 (4) (a) (ii) applied to the portion of passenger platform time or mileage that occurs outside the city with a population above 600,000; or

(b) The per trip minimum for a dispatched trip under RCW 49.46.300 (4) (a) (1) (B).

(4) **Shared rides.** The greater of the per trip minimums in subsections (1), (2), and (3) of this section apply to the entirety of the shared ride if any portion of the shared ride meets the requirements of subsection (1) (a) or (b) of this section.

(5) **More favorable standards.** If any portion of a dispatched trip or shared ride is subject to a standard established by any applicable federal, state, or local law or ordinance in a locality outside of Washington, or any rule or regulation issued under such law or ordinance, which is more favorable to drivers than these minimum compensation requirements, such standard shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

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NEW SECTION

WAC 296-128-99060 Tips and gratuities. (1) A transportation network company shall remit to drivers all tips, except as provided in WAC 296-128-99080. Tips paid to a driver are in addition to, and may not count towards, the driver's minimum compensation under RCW 49.46.300(4) or associated rules.

(2) All tips must be paid in regular intervals in accordance with WAC 296-128-99040, upon payment from the passenger.

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NEW SECTION

WAC 296-128-99070 Driver reimbursements. (1) "Driver reimbursement" is an amount charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges.

(2) A transportation network company must pay driver reimbursements in an amount at least equal to the amount charged to the passenger for tolls, fees, or any other charges or surcharges.

(3) Amounts charged to a passenger and remitted to the driver for tolls, fees, or any other charges or surcharges must be paid in accordance with WAC 296-128-99040.

[]

NEW SECTION

WAC 296-128-99080 Deductions from driver compensation. (1) **Mandatory deductions.** A transportation network company may deduct any portion of a driver's compensation, without a driver's prior written authorization, for the following reasons:

(a) If the deduction is required by state or federal law; or

(b) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

(2) A mandatory deduction may reduce a driver's compensation below the minimum compensation requirements in RCW 49.46.300(4) and associated rules.

(3) **Voluntary deductions.** Except as required by law, a transportation network company may only deduct compensation when the driver expressly authorizes the deduction in writing and does so in advance and for a lawful purpose. Voluntary deductions may reduce the driver's per trip earnings below the minimum compensation requirements set forth in chapter 49.46 RCW and associated rules. Any authorization by a driver must be voluntary and knowing.

(a) Voluntary deductions that may be authorized by a driver include, but are not limited to:

(i) Voluntary per trip earnings deduction contributions in accordance with WAC 296-128-99090; or

(ii) Voluntary deductions for a lease or rental car program.

(b) A driver's written authorization for deductions is valid if it:

(i) Is written in either English or the driver's preferred language;

(ii) States that the driver authorizes a deduction from the driver's compensation;

(iii) States the deduction amount(s), interval(s) of deductions, and nature of any deductions;

(iv) States the effective date(s) of a deduction;

(v) States the estimated end date of a deduction, if any;

(vi) Includes sufficient information to identify the driver;

(vii) Is submitted in advance of the deduction; and

(viii) Is submitted by the driver or the driver's authorized representative.

(c) A "voluntary and knowing" deduction means:

(i) The driver was informed via an accessible system that the deduction may reduce their compensation below the minimum compensation requirements in RCW 49.46.300 or associated rules; and

(ii) The driver was not pressured, manipulated, or coerced into authorizing the deduction.

(d) A driver may rescind a voluntary deduction with notice, written in either English or the driver's preferred language, at least 10 days before a scheduled deduction.

(4) **No financial benefit for any deduction.** A transportation network company, or any person acting in the interest of the transportation network company, may not derive any financial profit or benefit from any deduction.

(a) A deduction will be considered for financial profit or benefit only if it results in a gain over and above the fair market value of the goods or services for which the deduction was made.

(b) In determining whether a deduction resulted in a financial profit or benefit to the transportation network company, or any person

acting in the interest of the transportation network company, the department may consider any of the following nonexhaustive factors:

(i) The cost of the goods or services incurred by the transportation network company, including reasonable administrative costs to provide the goods or services to the transportation network company driver;

(ii) The fair market value for the goods or services; and

(iii) Whether the deduction resulted in a gain over and above expenditures.

(5) **No deductions for loss or breakage.** In no case may a transportation network company deduct the cost of damage to or loss of transportation network company equipment, software, intellectual property, or other tangible or intangible property from a driver's compensation.

(6) A transportation network company must not deduct from a driver's tips, unless required by law or expressly authorized under the voluntary deduction provisions of this section.

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NEW SECTION

WAC 296-128-99090 Voluntary per trip earnings deduction contributions and reimbursements—Driver resource center. (1) Beginning no later than June 9, 2023, each transportation network company must provide an opportunity for drivers to make voluntary per trip earnings deduction contributions to the driver resource center, if the transportation network company has 100 or more drivers authorize such a deduction.

(2) The driver resource center will administer driver authorizations and revocations of the voluntary per trip earnings deduction contributions subject to the following:

(a) Each driver must expressly authorize the deduction in writing;

(b) Each deduction authorization must include sufficient information to identify the driver and driver's per trip deduction amount;

(c) Such a deduction may reduce the driver's per trip earnings below the minimum compensation requirements set forth in RCW 49.46.300 (13)(a) and all associated rules; and

(d) A driver's authorization will remain in effect until the driver or driver resource center provides the driver's express revocation to the transportation network company.

(3) The driver resource center must inform drivers that deductions will continue unless the driver requests express revocation or an adjustment of the deduction amount. The driver resource center may choose to meet this requirement by providing a standard form to drivers. If the driver resource center chooses to develop a standard form, it must:

(a) Be made available in English and the driver's preferred language; and

(b) Include the driver's requested per trip deduction amount.

(4) Transportation network companies must rely on the information provided by the driver resource center regarding any authorization or revocation of a deduction.

(5) A transportation network company may seek reimbursement from the driver resource center for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions. Costs associated with deductions and remittances eligible for reimbursement include:

(a) Administrative costs; and

(b) Any transfer fees, charges, or other costs associated with any bank fees.

(6) The transportation network company must submit any reimbursement requests for costs associated with the deduction and remittance of voluntary per-trip earnings deduction contributions to the driver resource center by no later than 28 calendar days following the end of the month in which costs were accrued.

(7) With each reimbursement request, a transportation network company must provide the following supporting documents:

(a) A list of the drivers from whose compensation such deductions were made and the amounts deducted during that month; and

(b) Supporting documentation showing any claimed administrative costs, transfer fees, charges, or other associated costs.

(8) The driver resource center must issue a reimbursement to the transportation network company by no later than 28 calendar days following the reimbursement request.

(9) The driver resource center may deny a transportation network company's request for reimbursement of costs associated with deduction and remittance, if the request does not include supporting records sufficient to show the costs are reasonably related to the deduction or remittance of voluntary per-trip earnings deductions.

(10) The transportation network company may resubmit the request within 30 days of the rejection with additional supporting documents for further consideration.

(11) If the driver resource center denies a transportation network company's request for reimbursement of costs associated with deduction and remittance after providing further documentation, the transportation network company may request the department review the submissions and issue an order determining whether the reimbursement should be paid. Such an order will be subject to review under the provisions of chapter 34.05 RCW.

(12) The transportation network company must keep records of all costs associated with reimbursement requests for deduction and remittance costs for three years.

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NEW SECTION

WAC 296-128-99100 Deactivations. (1) A transportation network company must enter into an agreement with the driver resource center regarding the driver account deactivation appeals process for eligible account deactivations, including an expeditious process for determining whether an account deactivation is an eligible account deactivation. Any agreement must be approved by the department. The department may approve an agreement only if the agreement is consistent with RCW 49.46.300 (15) (a) (iv) and associated rules, as set forth under RCW 49.46.300 (15) (c).

(2) Upon a driver's account deactivation, the transportation network company must provide notification via email and an accessible system to the driver that includes:

(a) Notification that the driver may have the right to appeal the account deactivation and receive representation by the driver resource center in an appeal;

(b) Contact information for the driver resource center, as specified by the driver resource center;

(c) A written statement describing the reason for deactivation and the internal policy violated;

(d) The effective start date of deactivation;

(e) The anticipated end date of deactivation or confirmation that the deactivation is permanent;

(f) Any action necessary for the driver to remedy the deactivation; and

(g) Notification of the driver's right to use earned accrued paid sick time during a deactivation period.

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NEW SECTION

WAC 296-128-99110 Notice of rights. (1) **Notice of rights requirements.** A transportation network company must provide each driver with a written notice of rights as established by RCW 49.46.300(7) and associated rules. The notice must inform drivers of:

(a) The right to the applicable per minute rate, per mile rate, or per trip rate guaranteed by RCW 49.46.300 or associated rules;

(b) The right to be protected from retaliation for exercising in good faith the rights protected by RCW 49.46.300 or associated rules; and

(c) The right to seek legal action or file a complaint with the department for violation of the requirements of RCW 49.46.300 or associated rules, including a transportation network company's failure to pay the minimum per minute rate, per mile rate, or per trip rate, or a transportation network company's retaliation against a driver or other person for engaging in an activity protected by RCW 49.46.300 or associated rules.

(2) **Sample notice.** The department may develop a sample notice of rights that meets the department's standard for compliance with RCW 49.46.300(7) and associated rules. If the department provides such a notice:

(a) The department may provide the sample notice of rights in English and the five most common languages spoken in the state, but may also consult with the driver resource center and transportation network company representatives to identify other common languages spoken by drivers in the state of Washington to provide additional translated sample notices of rights;

(b) Each transportation network company may satisfy its obligation to distribute the written notice of rights by providing the department's sample notice in an accessible system; and

(c) Each transportation network company should make additional efforts to provide access to the notice of rights in a driver's preferred language when a transportation network company knows or has reason to know the driver's preferred language.

(3) **Manner of distribution.** The transportation network company must distribute the notice of rights as follows:

(a) The written notice of rights must be made available and remain accessible to the driver in an electronic format that is readily accessible for at least three years. A transportation network company must make the notice of rights available to the driver via smartphone application or online web portal, in English and the five most common foreign languages spoken in this state. A transportation network company may meet this requirement by distributing the notice of rights via an accessible system;

(b) For a new driver or a driver who has not begun a period of passenger platform time for a 90 day period, the transportation network company shall affirmatively provide the driver with the notice of rights within 48 hours of the driver beginning a period of passenger platform time in Washington.

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NEW SECTION

WAC 296-128-99120 Retaliation. (1) It is unlawful for a transportation network company to interfere with, restrain, or deny the exercise of any driver right provided under or in connection with chapter 49.46 RCW or associated rules. This means a transportation network company may not use a driver's exercise of any of their rights provided under chapter 49.46 RCW or associated rules as a negative factor in any account deactivation, restriction in account access, or other adverse action, or otherwise subject a driver to an adverse action for the exercise of any rights provided under chapter 49.46 RCW or associated rules.

(2) It is unlawful for a transportation network company to adopt or enforce any policy that counts the use of paid sick time for a purpose authorized under RCW 49.46.210 (1)(b), (c), or (5)(h) as an absence that may lead to or result in any account deactivation or other adverse action.

(3) It is unlawful for a transportation network company to deactivate, restrict account access, or take any adverse action against a driver because the driver has exercised their rights provided under chapter 49.46 RCW or associated rules. Such rights include, but are not limited to: Filing an action, filing a complaint with the department or driver resource center, or otherwise instituting or causing to be instituted any proceeding under or related to chapter 49.46 RCW or associated rules; exercising their right to paid sick time, compensation, tips and gratuities, reimbursements or other amounts due to a driver; utilizing the driver resource center; or testifying or offering or intending to testify in any such proceeding related to any driver rights provided under chapter 49.46 RCW or associated rules.

(4) Adverse action means any action taken or threatened by a transportation network company against a driver for the driver's exercise of chapter 49.46 RCW or associated rule rights, which actions may include, but is not limited to:

(a) Denying use of or delaying payment for paid sick time, compensation, all tips and gratuities, reimbursements, or any other amounts due to a driver;

- (b) Deactivating an account as defined by RCW 49.46.300 (1) (a) and associated rules;
- (c) Restricting any account access;
- (d) Altering any of the driver's rates of pay;
- (e) Preventing a driver's alternate compensation rate tier opportunities;
- (f) Threatening to take, or taking, action based upon the immigration status of a driver or a driver's family member;
- (g) Preventing a driver from working in any other lawful occupation or business; or
- (h) Altering a driver's rating.

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TNC—PAID SICK TIME STANDARDS

NEW SECTION

WAC 296-128-99130 Paid sick time accrual. (1) Drivers accrue earned paid sick time for all passenger platform time worked. A driver must accrue at least one hour of paid sick time for every 40 hours of passenger platform time worked. Transportation network companies may provide drivers with a more generous paid sick time accrual rate.

(2) Drivers who provide network services on a driver platform shall accrue paid sick time for all passenger platform hours performed on or after January 1, 2023.

(3) Transportation network companies are not required to allow drivers to accrue paid sick time for any time not considered passenger platform time. Transportation network companies are not required but may choose to allow drivers to accrue paid sick time for time not considered passenger platform time.

(4) Transportation network companies must allow drivers to carry over at least 40 hours of accrued, unused paid sick time to the following calendar year. However, a transportation network company may allow for more than 40 hours of accrued, unused paid sick time to carry over to the following calendar year. If a driver carries over unused paid sick time to the following calendar year, accrual of paid sick time in the subsequent year would be in addition to the hours accrued in the previous calendar year and carried over.

(5) Transportation network companies may cap carryover of accrued, unused paid sick time to the following calendar year at 40 hours. Transportation network companies may allow for a more generous carryover of accrued, unused paid sick time to the following calendar year.

(6) If a driver does not record any passenger platform time on a transportation network company's driver platform for 365 consecutive calendar days, the transportation company may choose to allow any earned paid sick time to expire. A transportation network company must

make available for use any unused earned paid sick time to a driver with less than a consecutive 365-day gap between recording passenger platform time for the transportation network company.

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NEW SECTION

WAC 296-128-99140 Paid sick time usage. (1) A driver is entitled to use earned paid sick time for the following purposes authorized in RCW 49.46.210(5):

(a) An absence resulting from the driver's mental or physical illness, injury, or health condition; to accommodate the driver's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or a driver's need for preventive medical care;

(b) To allow the driver to provide care for an authorized family member under RCW 49.46.210 with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care;

(c) When the driver's child's school or place of care has been closed by order of a public official for any health-related reason;

(d) For absences for which an employee would be entitled to leave under RCW 49.76.030;

(e) During an account deactivation or other status that prevents the driver from performing network services on the transportation network company's platform, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver; and

(f) A transportation company may provide more generous paid sick time policies or permit use of paid sick time for additional purposes or family members.

(2) After three consecutive days of account deactivation, a driver may request paid sick time for any portion of the deactivation period, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver.

(3) A driver is entitled to use accrued earned paid sick time upon recording 90 hours of passenger platform time on the transportation network company's driver platform. Transportation network companies may allow drivers to use accrued, unused paid sick time prior to recording 90 hours of passenger platform time.

(4) Upon recording 90 hours of passenger platform time on the transportation network company's driver platform, a transportation network company must make earned accrued paid sick time available for use to the driver.

(5) A driver is entitled to use earned paid sick time if the driver has recorded passenger platform time as a driver within 90 calendar days preceding the driver's request to use earned paid sick time.

(6) Earned paid sick time must be made available for use within a communication system for drivers.

(7) A transportation network company must allow drivers to use paid sick time in four-hour increments, not to exceed eight hours

within one day. A transportation network company may allow paid sick time usage in shorter increments.

(8) A transportation network company must allow drivers to claim earned paid sick time through a communication system within a time frame during which a driver was eligible to use their earned paid sick time and projected absences, so long as the absence is for an authorized purpose under RCW 49.46.210.

(9) A driver may choose to use earned paid sick time simultaneously for multiple transportation network companies during the same time period for a purpose authorized under RCW 49.46.210.

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NEW SECTION

WAC 296-128-99150 Paid sick time rate of pay. (1) A transportation network company must pay drivers their average hourly compensation for each hour of paid sick time used, as established by RCW 49.46.210.

(2) "Average hourly compensation" means a driver's compensation during passenger platform time for, or facilitated by, the transportation network company during the 365 days immediately prior to the day that paid sick time is used, divided by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. A transportation network company may also calculate the "average hourly compensation" by adopting a consistent practice of dividing the last 12 full calendar months immediately prior to the day that paid sick time is used by the total hours of passenger platform time worked by the driver on that transportation network company's driver platform during that period. "Average hourly compensation" includes bonus and incentive pay. "Average hourly compensation" does not include tips or reimbursements.

(3) Nothing in this section prevents a transportation network company from providing a more generous rate of average hourly compensation.

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NEW SECTION

WAC 296-128-99160 Reasonable notice. (1) A transportation network company may not require advanced notice of paid sick time use from a driver for an authorized purpose under RCW 49.46.210.

(2) A transportation network company's request or requirement for advanced notice of paid sick time from a driver is considered an interference with a driver's lawful use of paid sick time and is subject to enforcement procedures under chapter 49.46 RCW and associated rules.

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NEW SECTION

WAC 296-128-99170 Paid time off (PTO) programs. (1) Paid time off (PTO) provided to drivers by a transportation network company's PTO program (i.e., a program that combines leave for multiple purposes into one pool), created by a written policy or agreement with a third-party administrator, satisfies the requirement to provide paid sick time if the PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules, including:

- (a) Accrual of PTO leave at a rate of not less than one hour for every 40 hours of passenger platform time worked as a driver;
- (b) Payment for PTO leave at a rate of no less than the driver's average hourly compensation;
- (c) Carryover of at least 40 hours of unused earned PTO leave to the next calendar year;
- (d) Access to use PTO leave for all the purposes authorized under RCW 49.46.210 (5) (h); and
- (e) Transportation network company notification and recordkeeping requirements set forth in RCW 49.46.210 and all applicable rules.

(2) If a driver chooses to use PTO leave for purposes other than those authorized under RCW 49.46.210 and the need for use of paid sick time later arises when no additional PTO leave is available, the transportation network company is not required to provide any additional PTO leave to the driver as long as the transportation network company's PTO program meets or exceeds the provisions of RCW 49.46.210 and all applicable rules.

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NEW SECTION

WAC 296-128-99180 Verification for paid sick time usage. (1) A transportation network company must not request or require verification of a driver's authorized use except as permitted under RCW 49.46.210.

(2) For a driver's use of paid sick time for an absence exceeding three calendar days, a transportation network company may require verification that a driver's use of paid sick time is for an authorized purpose under RCW 49.46.210(5), except during an account deactivation as provided in subsection (3) of this section. "Exceeding three calendar days" means a driver spends more than three consecutive calendar days using earned paid sick time without recording passenger platform time on the transportation network company's driver platform.

(3) A transportation network company must not request verification if the paid sick time usage occurs during a deactivation period that prevents the driver from providing network services to the transportation network company.

(4) Before a transportation network company requires verification for the use of paid sick time under RCW 49.46.210, the transportation network company must:

- (a) Provide a written policy or agreement with a third-party administrator in advance to the driver via an accessible system, outlining any such requirements; and
- (b) Notify the driver of such policy or agreement with a third-party administrator, including the driver's right to assert that the

verification requirement results in an unreasonable burden or expense on the driver, prior to the driver requesting the paid sick time.

(5) If a transportation network company requires verification from a driver, the verification must be provided to the transportation network company within a reasonable time period during or after the use of the paid sick time. For driver use of paid sick time under RCW 49.46.210, "reasonable time period" is a period of time defined by a transportation network company's written policy or agreement with a third-party administrator, but may not be less than 10 calendar days following the first day upon which the driver uses paid sick time.

(6) A transportation network company's requirements for verification may not result in an unreasonable burden or expense on the driver and may not exceed privacy or verification requirements otherwise established by law.

(7) If a transportation network company requires verification and the driver anticipates that the requirement will result in an unreasonable burden or expense:

(a) The driver must be allowed to provide a written explanation via an accessible system which asserts:

(i) The driver's use of paid sick time was for an authorized purpose under RCW 49.46.210; and

(ii) How the transportation network company's verification requirement creates an unreasonable burden or expense on the driver;

(b) The transportation network company must consider the driver's explanation. Within 10 calendar days of the driver providing an explanation to the transportation network company about the existence of an unreasonable burden or expense, the transportation network company must make a reasonable effort to identify and provide alternatives for the driver to meet the transportation network company's verification requirement in a manner which does not result in an unreasonable burden or expense on the driver. A reasonable effort by the transportation network company to identify and provide alternatives could include, but is not limited to:

(i) Accepting the written explanation provided by the driver as a form of verification that meets the transportation network company's verification requirement; or

(ii) Mitigating the driver's out-of-pocket expenses associated with obtaining medical verification, by no later than the driver's next regularly scheduled date of compensation or no more than 14 calendar days, whichever occurs first; and

(c) If after the transportation network company considers the driver's explanation, the transportation network company and driver disagree on whether the transportation network company's verification requirement results in an unreasonable burden or expense on the driver:

(i) The transportation network company and driver may consult with the department regarding verification requirements; and

(ii) A driver may file a complaint with the department.

(8) If a transportation network company requires a driver to provide verification from a health care provider identifying the need for use of paid sick time for an authorized purpose under RCW 49.46.210, the transportation network company must not require that the information provided explain the nature of the condition. If the transportation network company obtains any health information about a driver or a driver's family member, the transportation network company must treat such information in a confidential manner consistent with applicable privacy laws.

(9) If a transportation network company requires verification pursuant to this subsection, the transportation network company must compensate the driver for the requested hours or days of earned paid sick time no later than the driver's next regularly scheduled date of compensation or no more than 14 calendar days after verification is provided.

(10) If a transportation network company requires verification that the use of paid sick time is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070.

(11) For use of paid sick time for purposes authorized under federal, state, or other local laws outside of Washington that permit transportation network companies to make medical inquiries, a transportation network company may require verification from a driver that complies with such certification requirements.

(12) Nothing in this section prevents a transportation network company from providing a more favorable verification process as long as such process meets or exceeds the requirements of this section and RCW 49.46.210.

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NEW SECTION

WAC 296-128-99190 Frontloading. (1) A transportation network company may, but is not required to, frontload paid sick time to a driver in advance of accrual.

(2) If a transportation network company frontloads paid sick time, the transportation network company must ensure that such frontloaded paid sick time complies with the provisions of RCW 49.46.210 and all applicable rules.

(3) If a transportation network company frontloads paid sick time, the transportation network company must do so by using a reasonable calculation, consistent with the accrual requirement set forth under RCW 49.46.210(5), to determine the amount of paid sick time the driver would be projected to accrue during the period of time for which paid sick time is being frontloaded.

(a) If the transportation network company calculates and frontloads, and a driver subsequently uses, an amount of paid sick time which exceeds the paid sick time the driver would have otherwise accrued absent frontloading, the transportation network company must not seek reimbursement from the driver for such paid sick time.

(b) If a transportation network company frontloads paid sick time to a driver, but such frontloaded paid sick time is less than the amount the driver was entitled to accrue under RCW 49.46.210(5), the transportation network company must make such additional amounts of earned paid sick time available for use by the driver as soon as practicable, but no later than 30 calendar days after identifying the discrepancy.

(4) If a transportation network company frontloads paid sick time, the company must have a written policy or an agreement with a third-party administrator which addresses the requirements for use of frontloaded paid sick time. A transportation network company must notify drivers of such policy or an agreement with a third-party admin-

istrator prior to frontloading a driver paid sick time, and must make this information readily available to all drivers via an accessible system.

(5) A transportation network company may not seek reimbursement from a driver for frontloaded paid sick time used prior to accrual under RCW 49.46.210(5), unless there is a specific agreement with a third-party administrator in place allowing for such a reimbursement.

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NEW SECTION

WAC 296-128-99200 Third-party administrators. (1) Transportation network companies may contract with a third-party administrator in order to administer the earned paid sick time requirements under RCW 49.46.210 and applicable rules. A transportation network company may contract with the driver resource center to act as a third-party administrator.

(2) With the consent of transportation network companies, third-party administrators may pool a driver's earned paid sick time from multiple transportation network companies as long as the accrual rate is at least equal to one hour of earned paid sick time for every 40 hours of passenger platform time worked. For example, if a group of transportation network companies has drivers who perform work for various transportation network companies at different times, the transportation network companies may choose to contract with a third-party administrator to track the hours worked and rate of accrual for earned paid sick time for each driver, and pool such earned paid sick time for use by the driver when the driver is working for any transportation network companies in the same third-party administrator network.

(3) A transportation network company must have a written policy or third-party administrator agreement that outlines the provisions for a transportation network company to use a third-party administrator. Such written policies must meet all of the paid sick time requirements under RCW 49.46.210 and all applicable rules, inform drivers of any other transportation network companies within the same third-party administrator network, and be made available via an accessible system.

(4) Transportation network companies are not relieved of their obligations under RCW 49.46.210, and all applicable rules, if they elect to contract with a third-party administrator to administer earned paid sick time requirements.

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NEW SECTION

WAC 296-128-99210 Paid sick time notifications. (1) Transportation network companies must notify each driver of the driver's entitlement to paid sick time, the rate at which the driver will accrue paid sick time, the authorized purposes for which paid sick time may be used, and that retaliation by the transportation network company

for the driver's lawful use of paid sick time and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.

(2) Transportation network companies must provide such a notification via an accessible system. For drivers hired on or after January 1, 2023, transportation network companies must notify each driver of such rights no later than the commencement of the driver performing passenger platform time. For existing drivers, the transportation network company must notify each driver no later than January 1, 2023.

(3) No less than monthly, transportation network companies must provide each driver with notification via a communication system detailing:

(a) The amount of paid sick time accrued since the last notification;

(b) The amount of paid sick time reductions since the last notification;

(c) The amount of unused earned paid sick time available for use;

(d) The average hourly compensation rate applied to any paid sick time used since the last notification and the calculation used to identify such rate; and

(e) The driver's expected average hourly rate of compensation for paid sick time use during the month following the statement, and the calculation used to identify such rate.

(4) Transportation network companies may satisfy the notification requirements by providing this information in regular pay statements.

(5) If a transportation network company chooses to frontload paid sick time to a driver in advance of accrual:

(a) The transportation network company must make notification to a driver via an accessible system no later than the end of the period for which the frontloaded paid sick time was intended to cover, establishing that the amount of paid sick time frontloaded to the driver was at least equal to the accrual rate under RCW 49.46.210; and

(b) The transportation network company is not relieved of its obligation to provide notification, not less than monthly, of the paid sick time available for use by the driver.

(6) A transportation network company must satisfy all notification requirements in RCW 49.46.210(5) and related rules for drivers with an account deactivation.

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NEW SECTION

WAC 296-128-99220 Shared paid sick time. (1) A transportation network company may, but is not required to, establish a shared paid sick time program in which a driver may choose to donate paid sick time to another driver.

(2) If a transportation network company establishes a shared paid sick time program, the company must have a written policy or third-party administrator agreement which specifies that a driver may donate accrued earned paid sick time to another driver for purposes authorized under RCW 49.46.210(5).

(3) The transportation network company must notify drivers of such policy or third-party administrator agreement via an accessible system prior to allowing a driver to donate or use shared paid sick time.

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NEW SECTION

WAC 296-128-99230 Driver use of paid sick time for unauthorized purposes. (1) If a transportation network company can demonstrate that a driver's use of paid sick time was for a purpose not authorized under RCW 49.46.210(5), the transportation network company may withhold payment of paid sick time for such hours, but may not subsequently deduct those hours from a driver's legitimately unused accrued earned paid sick time hours.

(2) If a transportation network company withholds payment for the use of paid sick time for purposes not authorized under RCW 49.46.210(5), the transportation network company must provide notification that includes a description of the reason the purpose was considered unauthorized via an accessible system to the driver. If the driver maintains that the use of paid sick time was for an authorized purpose, the driver may file a complaint with the department.

(3) If a driver accepts an offer of prearranged services for compensation from a transportation network company during the period of time for which the driver requested earned paid sick time, a transportation network company may determine that the driver did not use earned paid sick time for an authorized purpose.

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TNC—ENFORCEMENT STANDARDSNEW SECTION

WAC 296-128-99240 Enforcement—Complaints by driver—Additional investigations by department for amounts owed to drivers. (1) If a driver files a complaint with the department alleging a transportation network company violated any compensation-related requirements of RCW 49.46.300, or any associated rules, the department will investigate the complaint under the provisions of RCW 49.46.320. "Compensation-related requirements" include compensation, improper deductions, or any other amounts owed to the driver.

(2) During an investigation, if the department discovers information suggesting additional violations of any compensation-related requirements of RCW 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of any compensation-related requirements of RCW 49.46.300, or any associated rules,

when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged compensation-related violations identified under RCW 49.46.300, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

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NEW SECTION

WAC 296-128-99250 Enforcement—Remittances. (1) Upon receiving information suggesting that a transportation network company may have violated the remittance provisions of RCW 49.46.330, the department will investigate the applicable provisions of that section.

(2) If the department determines that a transportation network company has violated the remittance provisions of RCW 49.46.330 and issues a citation and notice of assessment, the department may order the transportation network company to pay all owed remittance payments as required under RCW 49.46.330. The department shall deposit all owed remittance payments into the driver resource center fund.

(3) Failure to accurately remit all applicable per trip fees is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(4) Failure to remit payments by the deadlines is deemed a delinquency subject to the penalties and interest provided in RCW 49.46.330 and associated rules.

(5) The department may, for the purposes of enforcing RCW 49.46.330 or the associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a

transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(6) All remittance fees under RCW 49.46.330 for a calendar quarter are due the day immediately following the last day of the month following the calendar quarter. Any remittance fees not paid the day they are due are delinquent.

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NEW SECTION

WAC 296-128-99260 Enforcement—Complaint by driver—Paid sick time. (1) If a driver files a complaint with the department alleging that the transportation network company failed to provide the driver with earned paid sick time as provided in RCW 49.46.210, or any associated rules, the department will investigate the complaint as an alleged violation of a compensation-related requirement of RCW 49.46.300.

(2) If the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover as required by RCW 49.46.210, the driver may elect to:

(a) Receive full access to the balance of accrued earned paid sick time hours withheld by the transportation network company, based on a calculation of at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance; or

(b) Receive payment from the transportation network company at the driver's average hourly compensation for each hour of earned paid sick time that the driver would have used or have been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the driver would have otherwise accrued. The driver will receive full access to the balance of accrued paid sick time hours unlawfully withheld by the transportation network company, less the number of paid sick time paid out to the driver pursuant to this subsection.

(3) When the department's investigation results in a finding that the transportation network company failed to provide the driver with earned paid sick time accrual, use, or carryover, and the driver has a deactivated account, the driver may elect to receive payment at the driver's average hourly compensation for each hour of earned paid sick time; receive reinstatement of the balance of paid sick time hours; or receive a combination of payment and reinstatement from the transportation network company for all hours of earned paid sick time that would have accrued during the period of noncompliance, unless such reinstatement is prohibited by law. Such hours must be based on a calculation at least one hour of earned paid sick time for every 40 hours of passenger platform time worked during the period of noncompliance.

(4) The department's notice of assessment may order the transportation network company to provide the driver any combination of rein-

statement and payment of accrued, unused paid sick leave hours assessed pursuant to subsection (2) or (3) of this section.

(5) For the purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to access any unused earned paid time ordered by the department for 365 days following the reinstatement of the earned paid sick time.

(6) For purposes of this section, a transportation network company found to be out of compliance must allow an affected driver to carryover over any additional earned paid sick time ordered by the department to the next calendar year in addition to the carryover of 40 hours of unused earned sick time required by RCW 49.46.210.

(7) The department may conduct a consolidated investigation for any alleged violations identified in RCW 49.46.210 or any associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(8) The department may, for the purposes of enforcing RCW 49.46.210 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(9) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[]

NEW SECTION

WAC 296-128-99270 Enforcement—Retaliation investigations. (1)

The department will investigate any allegations that a transportation network company violated any of the protections of RCW 49.46.340, or any associated rules, pursuant to the enforcement procedures outlined in RCW 49.46.340.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.340 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.340, or associated rules,

when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, and 49.46.340, or associated rules, when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.340 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[]

NEW SECTION

WAC 296-128-99280 Enforcement—Administrative violations. (1)

If a driver files a complaint with the department alleging a violation of any noncompensation requirement of RCW 49.46.210, 49.46.300 or any associated rules, the department will investigate the complaint under RCW 49.46.330.

(2) During an investigation, if the department discovers information suggesting additional violations of any of the protections of RCW 49.46.210, 49.46.300, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more drivers for a violation of RCW 49.46.210, 49.46.300, or any associated rules, when the director otherwise has reason to believe that a violation has occurred or will occur.

(3) The department may conduct a consolidated investigation for any alleged violations identified under RCW 49.46.210, 49.46.300, or associated rules when there are common questions of law or fact involving drivers who provide passenger platform services for the same transportation network company. If the department consolidates such matters into a single investigation, it will provide notice to the transportation network company.

(4) The department may, for the purposes of enforcing RCW 49.46.300 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request a transportation network company perform a self-audit of any records, which must be provided within a reasonable time. Reasonable timelines

will be specified in the self-audit request. The records examined by the transportation network company in order to perform the self-audit must be made available to the department upon request.

(5) Upon the department's request, a transportation network company must notify drivers via an accessible system that the department is conducting an investigation. The department may require the transportation network company to include a general description of each investigation as part of the notification, including the allegations and whether the notified driver may be affected. The department may consult with the transportation network company to provide the information for the description.

[]

NEW SECTION

WAC 296-128-99290 Enforcement—Administrative enforcement supplemental and variance for delayed implementation of accessible system and communication system requirements. (1) Nothing in these rules limits the department's authority to enforce RCW 49.46.200 through 49.46.350, or associated rules, as otherwise provided under Title 49 RCW.

(2) (a) A transportation network company that qualifies under (b) of this subsection may seek a temporary variance on the requirements for an accessible system or a communication system under this chapter by submitting a written application to the director.

(b) A transportation network company who provides less than 1,000,000 dispatched trips within the state in the preceding calendar year qualifies for the variance in this section. Separate entities that form an integrated enterprise shall be considered a single transportation network company under this rule as provided by RCW 49.46.300 (3) (b).

(c) This variance is limited to the requirements to use an accessible system or a communication system to communicate with drivers. The variance does not change the transportation network company's obligations to provide all notices, receipts, paid sick time balances and any other communications required by chapter 49.46 RCW and associated rules to the driver in an electronic format that is readily accessible through either a smartphone application or an online web portal.

(d) A written application for a variance must contain the following:

(i) A description of the specific requirements the qualifying transportation network company seeks to delay;

(ii) Reasons for the variance request, including good cause for the delayed implementation of the requirements for an accessible system or a communication system being sought;

(iii) The length of delay being sought for the requirement(s) and a timeline showing how the transportation network company plans to come into compliance with the applicable requirements of this chapter;

(iv) An explanation of how the transportation network company will ensure drivers are provided the required notifications under this chapter during the variance period; and

(v) Evidence confirming that the transportation network company qualifies under this subsection are met.

(e) After reviewing the application, the director may grant a temporary variance to remain valid for up to one year if the director determines that the transportation network company meets the requirements of this section, will ensure that drivers are being provided all required notices under this chapter during the variance period, and has established good cause. The director will take into consideration the timeline provided in the variance application in determining the length of the variance.

(f) "Good cause" means the transportation network company can establish that it is infeasible for the company to come into full compliance with the requirements for the use of an accessible system or a communication system within the necessary time frame.

(g) The director may revoke or terminate the variance order at any time, upon at least 30 days' notice to the transportation network company.

(h) Upon further request by a transportation network company, the director may approve an extension of the variance for up to an additional year. An extension request must contain the information outlined in (d) of this subsection.

(i) If a transportation network company obtains a variance under these rules, within 15 days of being granted the variance the transportation network company must provide drivers notice indicating how they will be receiving the required notifications under this chapter. The transportation network company must make this information readily available to all drivers.

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WSR 22-24-035

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 30, 2022, 2:18 p.m., effective December 31, 2022]

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

Purpose: The department is making changes to chapter 308-104 WAC to adopt new requirements established in ESSB 5226 related to suspensions resulting from an accumulation of traffic offenses and a required safe driving course. The law decreases the number of accumulated traffic offenses that result in a license suspension and requires individuals who are suspended under this law to complete a safe driving course. Section 7 of the bill states "Whenever the official records of the department show that a person has committed a traffic infraction for a moving violation on three or more occasions within a one-year period, or on four or more occasions within a two-year period, the department must suspend the license of the driver for a period of 60 days and establish a period of probation for one calendar year to begin when the suspension ends. Prior to reinstatement of a license, the person must complete a safe driving course as recommended by the department."

Citation of Rules Affected by this Order: New WAC 308-104-026 Safe driving course and 308-104-027 Effect of accumulation of traffic infractions; and amending WAC 308-104-025 Effect of accumulation of traffic offenses.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and 46.20.119 Reasonable rules.

Other Authority: ESSB 5226.

Adopted under notice filed as WSR 22-21-141 on October 19, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: November 30, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-4134.3

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-104-025 Effect of accumulation of traffic offenses. (1)
For the purposes of RCW 46.20.291(3), whenever the official records of

the department show that a person has committed four or more traffic offenses within a one-year period, or five or more traffic offenses within a two-year period, the department may provide notice to the driver warning them of the risk of crash involvement and the possible consequences of further action against the person's license under this section or chapter 46.65 RCW.

(2) Whenever the official records of the department show that a person has committed six or more traffic offenses within a one-year period, or seven or more traffic offenses within a two-year period, the department must issue a notice of suspension denying the person's driving privilege for ~~((sixty))~~ 60 days and establishing a ~~((three hundred sixty-five))~~ 365 day period of probation to begin when the period of suspension ends. During the period of probation, a person must not be convicted of an additional traffic offense.

(3) At a hearing requested by the driver to contest the notice of suspension, the accumulation of violations in subsection (2) of this section shall be considered prima facie evidence of violations of such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways.

(4) If a person is convicted of a traffic offense during the period of ~~((suspension or))~~ probation, the department must impose an additional ~~((thirty-day))~~ 30-day suspension to run consecutively with any suspension already being served under this section ~~((and the period of probation must be extended for three hundred sixty-five days from the date the additional suspension period ends. A person shall have the opportunity to contest the additional period of suspension under the procedure authorized by RCW 46.20.245))~~.

(5) For purposes of this section "traffic offense" means a conviction as defined in RCW 46.20.270(3), or a finding that a traffic infraction has been committed as defined in RCW 46.20.270(5), of a moving violation as defined in WAC 308-104-160. A traffic offense committed under the provisions of chapter 46.37 RCW by a commercial driver with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-104-025, filed 5/21/18, effective 9/4/18; WSR 00-18-069, § 308-104-025, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 46.01.110 and 1989 c 178 §§ 3, 5, 8 and 16. WSR 89-18-003, § 308-104-025, filed 8/24/89, effective 9/24/89. Statutory Authority: RCW 46.01.110. WSR 82-03-046 (Order 668 DOL), § 308-104-025, filed 1/19/82.]

NEW SECTION

WAC 308-104-026 Safe driving course. (1) The department recommends safe driving courses so that a driver can learn how to:

- (a) Correct and rehabilitate driving performance;
- (b) Learn safe, responsible, and respectful driving behaviors;

and

(c) Avoid danger potentials, risks to drivers, and other road users.

(2) To receive a recommendation for a safe driving course, an entity or individual offering a safe driving course must apply on a form prescribed by the department and include copies of course materials.

(3) The department considers the following factors when determining whether to recommend a course:

(a) A need exists for a course in the geographic location the course will be offered, or a need exists to provide options to problem drivers.

(b) The entity or individual offering the course is doing so as a part of a larger driver improvement or education program that has demonstrated success in correcting driving performance and behaviors.

(c) The safe driving course educates and assesses student comprehension about the following driving behaviors:

(i) Dangers associated with impaired driving including prescription and over-the-counter drugs, as well as other illicit substances;

(ii) Dangers of driving at excessive speeds;

(iii) Dangers of right-of-way violations including merging, improper turns, roundabouts, and intersections;

(iv) Dangers of distracted driving;

(v) Dangers of improper passing and following vehicles too closely;

(vi) Dangers of aggressive driving;

(vii) Dangers of fatigued driving;

(viii) Passenger safety to include child restraints and seatbelt use;

(ix) Operating around vulnerable road users; and

(x) Hazard awareness: Maintenance and emergency, school zones, construction zones, and weather conditions.

(4) The department may recommend a course that is substantially like the course described in subsection (3) of this section and the course is recommended or approved by another governmental entity.

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NEW SECTION

WAC 308-104-027 Effect of accumulation of traffic infractions.

(1) The department shall send the driver a notice of suspension listing the qualifying occasions when the records of the department indicate that a person qualifies for a suspension under RCW 46.20.2892.

(2) The exclusive remedy for contesting a notice of suspension is the administrative review described in RCW 46.20.245.

(3) When a driver seeks an administrative review on the limited issue of whether information reported to the department accurately describes the action taken by the court, the department may consider as a part of that review:

(a) Whether each individual traffic infraction reported to the department accurately describes the action taken by a court;

(b) Whether multiple traffic infractions reported by a court should be counted as one occasion.

(4) When the department receives notice that a person has committed an additional traffic infraction during the period of probation, the department shall issue a notice of probation violation informing the person of a 30-day suspension as required by RCW 46.20.2892. The 30-day suspension shall run consecutively with any suspension already being served but consecutively with any other suspension or revocation a person is serving under a separate provision of law. The exclusive

remedy for contesting a notice of probation violation is the administrative review procedure described in RCW 46.20.245.

(5) For the purposes of RCW 46.20.2892, a traffic infraction shall have the same meaning as RCW 46.63.020. To determine whether a traffic infraction is a moving violation, the department shall use the definition provided by WAC 308-104-160.

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WSR 22-24-036

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 30, 2022, 2:20 p.m., effective December 31, 2022]

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

Purpose: The department is amending WAC 308-104-160 Moving and nonmoving violations defined, to add additional qualifying offenses in compliance with ESSB 5226.

Citation of Rules Affected by this Order: Amending WAC 308-104-160 Moving and nonmoving violations defined.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and 46.20.119 Reasonable rules.

Other Authority: ESSB 5226.

Adopted under notice filed as WSR 22-21-140 on October 19, 2022.

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

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

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

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

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

Date Adopted: November 30, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-4144.2

AMENDATORY SECTION (Amending WSR 17-21-026, filed 10/10/17, effective 11/10/17)

WAC 308-104-160 Moving and nonmoving violations defined. For purposes of RCW 46.20.2891, 46.65.020, 46.20.2892, and this chapter, the term "moving violation" means any violation of vehicle laws listed in this section that is committed by the driver of a vehicle, while the vehicle is moving. However, being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is also considered a moving violation for the purposes of this section. Parking violations, equipment violations or paperwork violations relating to insurance, registration, licensing and inspection are considered "nonmoving violations." Moving violations are those violations included in the following list or violations of substantially similar laws, administrative regulations, local laws, ordinances, regulations, or resolutions of a political subdivision of this state, the federal government, or any other state:

- (1) Criminal traffic infractions, as defined by RCW 46.63.020:

- (a) Driving while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502;
- ~~((2))~~ (b) Physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.504;
- ~~((3))~~ (c) Vehicular homicide, as defined by RCW 46.61.520;
- ~~((4))~~ (d) Vehicular assault, as defined by RCW 46.61.522;
- ~~((5))~~ (e) Reckless driving, as defined by RCW 46.61.500;
- ~~((6))~~ (f) Racing, as defined by RCW 46.61.530;
- ~~((7) Embracing, as defined by RCW 46.61.665;~~
- ~~(8))~~ (g) Hit and run (injury, death, striking the body of a deceased person, or occupied vehicle), as defined by RCW 46.52.020;
- ~~((9))~~ (h) Attempting to elude a police vehicle, as defined by RCW 46.61.024;
- ~~((10))~~ (i) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.342 ~~((r))~~ or 46.20.345 ~~((r or~~ 46.20.394));
- ~~((11))~~ (j) Reckless endangerment of roadway workers, as defined in RCW 46.61.527(4);
- ~~((12))~~ (k) Driver under ~~((twenty-one))~~ 21 driving or being in physical control of a motor vehicle after consuming alcohol or marijuana, as defined in RCW 46.61.503;
- ~~((13) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;~~
- ~~(14) Open container violation (driver), as defined by RCW 46.61.519 or 46.61.745;~~
- ~~(15) Negligent driving in the first degree, as defined by RCW 46.61.5249;~~
- ~~(16) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;~~
- ~~(17) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;~~
- ~~(18) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;~~
- ~~(19))~~ (l) Negligent driving in the first degree, as defined by RCW 46.61.5249;
- (m) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;
- (n) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.015, 46.61.020, ~~((46.61.021,))~~ or 46.61.022;
- ~~((20) Disobey school patrol, as defined by RCW 46.61.385;~~
- ~~(21) Speed too fast for conditions, as defined by RCW 46.61.400;~~
- ~~(22) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;~~
- ~~(23) Speeding in a school zone, as defined by RCW 46.61.440;~~
- ~~(24) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;~~
- ~~(25))~~ (o) Failure to yield right of way, as defined by RCW ~~((46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;~~
- ~~(26))~~ 46.61.212(4);
- (p) Violation of license restriction(s), as defined by RCW 46.20.740;
- (q) Spilling load, as defined by RCW 46.61.655 (7) (a) and (b);
- (2) Violation of traffic infraction, as defined in RCW 46.63.020;

- (a) Embracing, as defined by RCW 46.61.665;
- (b) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.394;
- (c) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;
- (d) Open container violation (driver), as defined by RCW 46.61.519 or 46.61.745;
- (e) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;
- (f) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;
- (g) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.021;
- (h) Disobey school patrol, as defined by RCW 46.61.385;
- (i) Speed too fast for conditions, as defined by RCW 46.61.400;
- (j) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;
- (k) Speeding in a school zone, as defined by RCW 46.61.440;
- (l) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;
- (m) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;
- (n) Failure to keep to the right, as defined by RCW 46.61.100 or 46.61.105;
- ~~((+27))~~ (o) Wrong way on a one-way street or rotary traffic island, as defined by RCW 46.61.135;
- ~~((+28))~~ (p) Improper lane change or travel, as defined by RCW 46.61.140;
- ~~((+29))~~ (q) Straddling or driving over centerline, as defined by RCW 46.61.140;
- ~~((+30))~~ (r) Driving on the wrong side of the road, as defined by RCW 46.61.150;
- ~~((+31))~~ (s) Crossing divider, as defined by RCW 46.61.150;
- ~~((+32))~~ (t) Improper entrance to or exit from freeway, as defined by RCW 46.61.155;
- ~~((+33))~~ (u) Violating restrictions on a limited access highway while driving a motor vehicle, as defined by RCW 46.61.160;
- ~~((+34))~~ (v) High occupancy vehicle lane violation, as defined by RCW 46.61.165;
- ~~((+35))~~ (w) Improper overtaking or passing, as defined by RCW 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, or 46.61.428;
- ~~((+36))~~ (x) Passing stopped school bus, as defined by RCW 46.61.370;
- ~~((+37))~~ (y) Passing stopped private carrier bus, as defined by RCW 46.61.375;
- ~~((+38))~~ (z) Following too closely, as defined by RCW 46.61.145;
- ~~((+39))~~ (aa) Following fire apparatus, as defined by RCW 46.61.635;
- ~~((+40))~~ (bb) Crossing fire hose, as defined by RCW 46.61.640;
- ~~((+41))~~ (cc) Driving on sidewalk, as defined by RCW 46.61.606;
- ~~((+42))~~ (dd) Driving through safety zone, as defined by RCW 46.61.260;
- ~~((+43))~~ (ee) Driving with wheels off roadway, as defined by RCW 46.61.670;

((44)) (ff) Impeding traffic, as defined by RCW 46.61.100, 46.61.425, or 46.20.427;

((45)) (gg) Improper turn, as defined by RCW 46.61.290;

((46)) (hh) Prohibited turn, as defined by RCW 46.61.295;

((47)) (ii) Failure to signal or improper signal, as defined by RCW 46.61.305, 46.61.310, or 46.61.315;

((48)) (jj) Improper backing, as defined by RCW 46.61.605;

((49)) (kk) Unlawful operation of motorcycle on roadway, as defined by RCW 46.61.608, 46.61.612, or 46.61.614;

((50)) (ll) Reckless endangerment, as defined by RCW 9A.36.050;

((51)) (mm) Failure to maintain control, as defined by RCW 46.61.445;

((52)) (nn) Violation of license restriction(s), as defined by RCW 46.20.041 (~~or 46.20.740~~);

((53)) (oo) Violation of instruction permit restrictions, as defined by RCW 46.20.055;

((54)) (pp) Violation of out-of-service order, as defined by RCW 46.25.090;

((55)) (qq) Obstructed vision or control, as defined by RCW 46.61.615;

((56)) (rr) Carrying persons or animals outside of vehicle, as defined by RCW 46.61.660;

((57)) (ss) Carrying passenger in towed vehicle, as defined by RCW 46.61.625;

((58)) (tt) Coasting on downgrade, as defined by RCW 46.61.630;

((59)) (uu) Violation of child restraint requirements, as defined by RCW 46.61.687;

((60)) (vv) Carrying child under the age of five years old on motorcycle, as defined by RCW 46.37.530;

((61)) (ww) Carrying passenger improperly on motorcycle, as defined by RCW 46.61.610;

((62)) (xx) No helmet, goggles, mirrors, windshield or face shield, as defined by RCW 46.37.530;

((63)) (yy) Operating moped on freeway or sidewalk, as defined by RCW 46.61.710;

((64)) (zz) Driving without lights, as defined by RCW 46.37.020;

((65)) (aaa) Failure to dim lights, as defined by RCW 46.37.230;

((66)) (bbb) Operating motorcycle without lights, as defined by RCW 46.37.522;

((67)) (ccc) No lamp, reflector, or flag on extended load, as defined by RCW 46.37.140;

((68)) (ddd) Wearing earphones or viewing television in vehicle, as defined by RCW 46.37.480;

((69)) (eee) Failure to secure load, as defined by RCW 46.37.490;

((70)) (fff) Spilling load, as defined by RCW 46.61.655;

((71)) (ggg) Improper towing, as defined by RCW 46.44.070;

((72)) (hhh) Reckless endangerment of roadway workers, as defined in RCW 46.61.527;

(iii) Using a personal electronic device while driving, as defined by RCW 46.61.672;

((73)) (jjj) Dangerously distracted driving, as defined by RCW 46.61.673;

((74)) (kkk) Using a hand-held mobile telephone while driving, as defined by RCW 46.61.667 (1)(b) (repealed by 2017 c 334 § 2); and

((75)) (111) Texting while driving a commercial motor vehicle, as defined by RCW 46.61.668 (1)(b) (repealed by 2017 c 334 § 2).

[Statutory Authority: RCW 46.01.110, 46.20.2891, 46.82.290, and 46.90.010. WSR 17-21-026, § 308-104-160, filed 10/10/17, effective 11/10/17. Statutory Authority: RCW 46.01.110 and 46.20.2891. WSR 16-16-101, § 308-104-160, filed 8/2/16, effective 9/2/16. Statutory Authority: RCW 46.01.110, 46.20.2891, 46.20.291, and 46.65.020. WSR 14-04-014, § 308-104-160, filed 1/24/14, effective 2/24/14; WSR 13-04-059, § 308-104-160, filed 2/1/13, effective 3/4/13. Statutory Authority: RCW 46.01.110. WSR 00-18-070, § 308-104-160, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 46.10.110. WSR 92-08-045, § 308-104-160, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.100 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-104-160, filed 3/12/86. Statutory Authority: RCW 46.01.110. WSR 82-21-002 (Order 697-DOL), § 308-104-160, filed 10/7/82; WSR 82-03-046 (Order 668 DOL), § 308-104-160, filed 1/19/82.]

WSR 22-24-037

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 30, 2022, 2:23 p.m., effective December 31, 2022]

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

Purpose: The department is increasing fees to cover the cost of administering the architects program.

Citation of Rules Affected by this Order: Amending WAC 308-12-205 Architect fees.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Adopted under notice filed as WSR 22-21-136 on October 19, 2022.

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

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

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

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

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

Date Adopted: November 30, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-4155.2

AMENDATORY SECTION (Amending WSR 21-01-127, filed 12/15/20, effective 1/15/21)

WAC 308-12-205 Architect fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Examination application	((\$100.00)) <u>\$105.00</u>
Reciprocity application	((390.00)) <u>410.00</u>
Initial licensure	((99.00)) <u>104.00</u>
License renewal (2 years)	((99.00)) <u>109.00</u>
Late renewal fee	((33.00)) <u>36.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>
Business entities:	
Certificate of authorization	((278.00)) <u>292.00</u>

Title of Fee	Fee
Certificate of authorization renewal	((139.00)) <u>146.00</u>

[Statutory Authority: RCW 18.08.340. WSR 21-01-127, § 308-12-205, filed 12/15/20, effective 1/15/21. Statutory Authority: RCW 18.08.340 and 43.24.086. WSR 15-15-034, § 308-12-205, filed 7/8/15, effective 8/8/15. Statutory Authority: RCW 18.220.040 and 43.24.086. WSR 13-16-018, § 308-12-205, filed 7/26/13, effective 8/26/13. Statutory Authority: RCW 18.08.340 and 43.24.086. WSR 11-11-019, amended and re-codified as § 308-12-205, filed 5/9/11, effective 7/1/11. Statutory Authority: RCW 18.08.430 (1) and (2), 43.24.086 and 43.24.140. WSR 99-08-062, § 308-12-326, filed 4/2/99, effective 5/3/99. Statutory Authority: RCW 43.24.086. WSR 98-12-064, § 308-12-326, filed 6/1/98, effective 7/2/98. Statutory Authority: RCW 43.24.086. WSR 97-13-095, § 308-12-326, filed 6/18/97, effective 7/19/97. Statutory Authority: RCW 18.03.350. WSR 97-06-064, § 308-12-326, filed 2/27/97, effective 3/30/97. Statutory Authority: RCW 18.08.340 and 18.08.370. WSR 91-13-055, § 308-12-326, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 43.24.086. WSR 90-03-032, § 308-12-326, filed 1/12/90, effective 2/12/90; WSR 87-10-028 (Order PM 650), § 308-12-326, filed 5/1/87.]

WSR 22-24-038

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 30, 2022, 2:28 p.m., effective December 31, 2022]

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

Purpose: The department is increasing fees to cover the cost of administering the landscape architects program.

Citation of Rules Affected by this Order: Amending WAC 308-13-150 What are the landscape architect fees and charges?

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Adopted under notice filed as WSR 22-21-133 on October 19, 2022.

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

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

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

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

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

Date Adopted: November 30, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-3943.3

AMENDATORY SECTION (Amending WSR 12-12-034, filed 5/30/12, effective 7/1/12)

WAC 308-13-150 ((What are the landscape architect fees and charges?)) Fees. ((-1) Suspension of fees. Effective July 1, 2012, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Title of Fee	Fee
Application fee	\$225.00
Renewal (2 years)	360.00
Late renewal penalty	120.00
Initial license (2 years)	360.00
Reciprocity application fee	325.00

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, 2016.

(-2)) The following fees will be collected:

Title of Fee	Fee
Application fee	(\$250.00) <u>\$328.00</u>
Renewal (2 years)	((450.00)) <u>590.00</u>
Late renewal penalty	((150.00)) <u>197.00</u>
((Duplicate)) <u>License print fee</u>	((25.00)) <u>5.00</u>
Initial license (2 years)	((450.00)) <u>590.00</u>
Reciprocity application fee	((450.00)) <u>590.00</u>
Replacement wall certificate	20.00

You will submit any examination fees directly to CLARB.

[Statutory Authority: Chapter 18.96 RCW and RCW 43.24.086. WSR 12-12-034, § 308-13-150, filed 5/30/12, effective 7/1/12. Statutory Authority: RCW 18.96.060. WSR 10-12-116, § 308-13-150, filed 6/2/10, effective 7/3/10. Statutory Authority: RCW 18.96.080, 18.96.090, 18.96.100, 18.96.110, 43.24.086. WSR 09-15-124, § 308-13-150, filed 7/17/09, effective 8/17/09. Statutory Authority: RCW 18.96.060. WSR 07-05-039, § 308-13-150, filed 2/15/07, effective 3/18/07. Statutory Authority: RCW 18.96.080 and 43.24.086. WSR 05-17-004, § 308-13-150, filed 8/3/05, effective 9/3/05; WSR 05-04-050, § 308-13-150, filed 1/28/05, effective 2/28/05; WSR 04-17-026, § 308-13-150, filed 8/9/04, effective 9/9/04; WSR 03-11-074, § 308-13-150, filed 5/20/03, effective 6/20/03; WSR 02-16-018, § 308-13-150, filed 7/26/02, effective 8/26/02. Statutory Authority: RCW 18.96.060 and 43.24.086. WSR 01-15-034, § 308-13-150, filed 7/12/01, effective 8/12/01; WSR 01-04-002, § 308-13-150, filed 1/25/01, effective 2/25/01; WSR 99-23-025, § 308-13-150, filed 11/9/99, effective 11/9/99. Statutory Authority: RCW 18.96.080 and 43.24.086. WSR 96-11-132, § 308-13-150, filed 5/22/96, effective 6/22/96; WSR 95-20-026, § 308-13-150, filed 9/27/95, effective 10/28/95. Statutory Authority: RCW 43.24.086. WSR 94-23-031, § 308-13-150, filed 11/8/94, effective 12/9/94. Statutory Authority: RCW 18.96.080. WSR 94-04-044, § 308-13-150, filed 1/27/94, effective 2/27/94. Statutory Authority: RCW 43.24.086 and 18.96.080. WSR 91-23-021, § 308-13-150, filed 11/8/91, effective 12/9/91; WSR 90-15-039, § 308-13-150, filed 7/13/90, effective 8/13/90. Statutory Authority: RCW 43.24.086. WSR 90-03-031, § 308-13-150, filed 1/12/90, effective 2/12/90; WSR 88-04-027 (Order PM 702), § 308-13-150, filed 1/26/88. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-13-150, filed 8/10/83. Formerly WAC 308-13-120.]

WSR 22-24-039

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 30, 2022, 2:47 p.m., effective December 31, 2022]

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

Purpose: The department is increasing fees to cover the cost of administering the scrap metal businesses program.

Citation of Rules Affected by this Order: Amending WAC 308-70-130 Fees.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Adopted under notice filed as WSR 22-21-131 on October 19, 2022.

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

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

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

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

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

Date Adopted: November 30, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-3955.2

AMENDATORY SECTION (Amending WSR 13-24-014, filed 11/21/13, effective 1/1/14)

WAC 308-70-130 Fees. The following fees shall be charged by the department of licensing:

Processor and Recycler Application, Initial	(\$1,250.00) <u>\$1,290.00</u>
Processor and Recycler Application, Renewal	(\$625.00) <u>\$665.00</u>
Supplier Application, Initial	(\$350.00) <u>\$390.00</u>
Supplier Application, Renewal	(\$175.00) <u>\$205.00</u>

[Statutory Authority: Chapter 19.290 RCW and RCW 43.24.086. WSR 13-24-014, § 308-70-130, filed 11/21/13, effective 1/1/14.]

WSR 22-24-040

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 30, 2022, 2:49 p.m., effective December 31, 2022]

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

Purpose: The department is increasing fees to cover the cost of administering the whitewater river outfitters program.

Citation of Rules Affected by this Order: Amending WAC 308-312-060 Fees.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Adopted under notice filed as WSR 22-21-135 on October 19, 2022.

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

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

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

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

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

Date Adopted: November 30, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-3959.1

AMENDATORY SECTION (Amending WSR 98-03-055, filed 1/16/98, effective 2/16/98)

WAC 308-312-060 Fees. (1) The following fees apply to the whitewater river outfitter license:

(a) New application, (~~(\$25.00)~~) \$35.00 per business location.

(b) Annual renewal, (~~(\$25.00)~~) \$35.00 per business location.

(2) New and renewal applications are charged the application handling fee listed in RCW 19.02.075.

Delinquent renewal applications may be charged the delinquency fee listed in RCW 19.02.085.

[Statutory Authority: RCW 88.12.276 and 1997 c 391 § 9. WSR 98-03-055, § 308-312-060, filed 1/16/98, effective 2/16/98.]

WSR 22-24-048
PERMANENT RULES
DEPARTMENT OF

FINANCIAL INSTITUTIONS

(Division of Consumer Services)

[Filed November 30, 2022, 3:55 p.m., effective December 31, 2022]

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

Purpose: Amending the rules (chapter 208-620 WAC) under the Consumer Loan Act (chapter 31.04 RCW) to implement amendments (SB 5077, chapter 15, Laws of 2021) which provide authority, under certain circumstances, for licensed companies to allow licensed mortgage loan originators to work from their residences without the company licensing the residence as a branch office. Additionally, technical changes will be made for clarity and consistency.

Citation of Rules Affected by this Order: New WAC 208-620-660; and amending WAC 208-620-010, 208-620-250, 208-620-251, 208-620-300, 208-620-301, 208-620-310, 208-620-510, and 208-620-700.

Statutory Authority for Adoption: RCW 43.320.040 and 31.04.165.

Adopted under notice filed as WSR 22-20-106 on October 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: November 30, 2022.

Charlie Clark
Director

OTS-4123.1

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Act" means the Consumer Loan Act, chapter 31.04 RCW.

(2) "Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or

other audio broadcasts; internet pages, social media, instant messages, or electronic bulletin boards.

(3) "Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Part 1026, implementing the Truth in Lending Act.

(4) "Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(5) "Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Part 103.

(6) "Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

(7) "Business day" means Monday through Friday excluding federally recognized bank holidays.

(8) "Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

(9) "Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

(10) "Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. Part 1026.

(11) "Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. Sec. 1735f-7a.

(12) "Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. Sec. 1026.2.

(13) "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 and Regulation B, 12 C.F.R. Part 1002.

(14) "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

(15) "Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692, 12 C.F.R. Part 1006.

(16) "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

(17) "Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

(18) "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

(19) "Higher education institution" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the council for higher education. RCW 28B.07.020(4).

(20) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Secs. 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 203).

(21) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(22) "Lender" means any person that extends money to a borrower with the expectation of being repaid.

(23) "License number" means your NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

(24) "Licensed location" means a main office or branch office, including an individual loan originator's residence, where the licensee conducts business under the act with Washington residents or Washington residential real estate and the licensee has obtained a main or branch license through NMLS for that location.

(25) "Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

(26) "Loan originator" means the same as mortgage loan originator.

(27) "Loan originator's residence" means a loan originator's primary or secondary residence located in the United States.

(28) "Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

(29) "Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

(30) "NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

(31) "Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

(32) "Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

(33) "Principal balance" means the principal amount plus any allowable origination fee.

(34) "RCW" means the *Revised Code of Washington*.

(35) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including ~~((+1))~~ (a) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; ~~((+2))~~ (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; ~~((+3))~~ (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; ~~((+4))~~ (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and ~~((+5))~~ (e) offering to engage in any activity, or act in any capacity, described in ~~((+1))~~ (a) through ~~((+4))~~ (d) of this ~~((definition))~~ subsection.

(36) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024.

(37) "Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

(38) "Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

(39) "State" means the state of Washington.

(40) "Student education loan borrower" means:

(a) Any resident of this state who has received or agreed to pay a student education loan; or

(b) Any person who shares responsibility with such resident for repaying the student education loan.

(41) "Student education loan servicing" or "service a student education loan" means:

(a) Receiving any scheduled periodic payments from a student education loan borrower pursuant to the terms of a student education loan;

(b) Applying the payments of principal and interest and such other payments with respect to the amounts received from a student education loan borrower, as may be required pursuant to the terms of a student education loan;

(c) Working with the student education loan borrower to collect data, or collecting data, to make decisions to modify the loan; or

(d) Performing other administrative services with respect to a student education loan including collection activities. "Student education loan servicing" does not include third-party student education loan modification services.

(42) "Subsidiary" means a person that is controlled by another.

(43) "Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(44) "Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. Sec. 6101 to 6108.

(45) "Telemarketing Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

(46) "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026.

[Statutory Authority: RCW 43.320.040, and 31.04.165. WSR 18-24-013, § 208-620-010, filed 11/27/18, effective 1/1/19; WSR 18-16-024, § 208-620-010, filed 7/24/18, effective 9/1/18. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-010, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-010, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-010, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-010, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-010, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-010, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-010, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. WSR 96-04-013, § 208-620-010, filed 1/26/96, effective 2/26/96.]

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-250 ((If my out-of-state company applies for a license under the Consumer Loan Act do we have)) Is my company required to have a ((branch)) licensed location in the state of Washington?

(1) No. You are not required to maintain a physical presence in this state to hold a license but any location doing business under the act, wherever located, must be licensed, except those locations consistent with subsection (2) of this section. Your company's main office (headquarters), wherever located, must have a license.

(2) If you employ mortgage loan originators, those licensed ((employees)) loan originators must work from a licensed location ((A licensed location is a main or branch office and an individual loan originator's home can be licensed as a branch office)) or from the loan originator's residence pursuant to WAC 208-620-660.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-250, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-250, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-250, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 18-16-024, filed 7/24/18, effective 9/1/18)

WAC 208-620-251 Are there any additional requirements for out-of-state licensees? (1) ~~((All locations must be licensed. Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310. The main office (headquarters), wherever located, must be licensed.~~

~~(2))~~ **Keeping records out-of-state.** You must keep your books and records location information updated in the NMLS and provide the director with access to the books and records.

~~((3))~~ **(2) Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 18-16-024, § 208-620-251, filed 7/24/18, effective 9/1/18; WSR 13-24-024, § 208-620-251, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-251, filed 10/5/10, effective 11/5/10.]

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-300 If I want to operate my business from more than one ((office)) location, do I have to license each location? Yes. You must submit a branch office application through the NMLS for each branch office, residential mortgage loan servicing location, student education loan servicing location, or direct solicitation location. You may not operate from a location until a license is granted for that location. However, a branch license is not required for a loan originator to conduct activities under the act from the loan originator's residence pursuant to WAC 208-620-660.

[Statutory Authority: RCW 43.320.040, and 31.04.165. WSR 18-24-013, § 208-620-300, filed 11/27/18, effective 1/1/19. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-300, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-300, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-300, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 19-21-157, filed 10/22/19, effective 11/24/19)

WAC 208-620-301 If I make residential mortgage loans and employ managers, must they license individually as mortgage loan originators?

(1) Your managers, including branch managers, must license individually as mortgage loan originators if they conduct any one of the following activities:

~~((1))~~ (a) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;

~~((2))~~ (b) Supervise your loan processor or underwriting employees; or

~~((3))~~ (c) Supervise your licensed mortgage loan originators.

~~((4))~~ (2) Specifically:

(a) Any manager or any person who takes a residential mortgage loan application in Washington, negotiates the terms or conditions of a residential mortgage loan on Washington property, or holds themselves out as being able to conduct those activities, must have a Washington mortgage loan originator license. Washington licensed loan originators must work from a licensed location or the loan originator's residence pursuant to WAC 208-620-660.

(b) Any manager who directly supervises loan processor or underwriting employees must hold a mortgage loan originator license. The loan originator license can be from any state. Washington licensed loan originators must work from a licensed location or the loan originator's residence pursuant to WAC 208-620-660.

(c) Any manager who directly supervises Washington licensed mortgage loan originators must themselves hold a Washington loan originator license. Washington licensed loan originators must work from a licensed location or the loan originator's residence pursuant to WAC 208-620-660.

~~((5))~~ (3) As to ~~((subsections (2) and (3) of this section))~~ subsection (1)(a) and (b) of this section, licensure is for the day-to-day operational supervisors.

~~((6))~~ (4) Each licensed manager must prepare and maintain written supervisory plan for the employees they supervise. The details of the plan must include the number of employees supervised and their physical location, how the supervisor will adequately supervise the employees if an employee is not in the same location as the supervisor, and the type and volume of work performed by the supervised employees. Supervisory plans must be maintained as part of the business books and records.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 19-21-157, § 208-620-301, filed 10/22/19, effective 11/24/19. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-301, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-301, filed 11/22/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services? A location that is solely providing loan processing or underwriting or other back-office services on Washington loans and has only incidental contact with the borrower after an application has been taken, is not required to be licensed. Back office services do not include loan servicing. (~~However, any location where a licensed mortgage loan originator works must be licensed. Also, your company's main office (headquarters), wherever located, must be licensed.~~)

[Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-310, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-310, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-310, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-310, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 19-21-157, filed 10/22/19, effective 11/24/19)

WAC 208-620-510 What are my disclosure obligations to consumers?

Some types of loans may not be covered by the integrated TILA-RESPA rule. Examples include: Reverse mortgages and (~~HELOCs~~) HELOCs. Creditors originating these types of mortgages must continue to use, as applicable, the federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures. Creditors are not prohibited from using the integrated TILA-RESPA disclosures. However, they cannot replace the required federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures.

(1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three business days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Residential mortgage loans—Rate locks.** Within three business days of receipt of a residential mortgage loan application you must

provide the borrower with the following disclosure about the interest rate:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the federal good faith estimate or loan estimate is considered compliance.

(b) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(i) The number of days in the rate lock period;

(ii) The date of the rate lock and expiration date of the rate lock;

(iii) The rate of interest locked;

(iv) Any other terms and conditions of the rate lock agreement;

and

(v) The date the rate lock agreement was provided to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection.

(d) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(e) You may rely on a broker's rate lock agreement if it complies with this subsection.

(4) Residential mortgage loans—Loans brokered to other creditors. Within three business days following receipt of a residential mortgage loan application you must provide to each borrower or potential borrower:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the federal good faith estimate or loan estimate is considered compliance with this subsection;

(b) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(c) A good faith estimate or loan estimate that conforms with RE-SPA, Regulation X, 12 C.F.R. Part 1024 and TILA, Regulation Z, 12 C.F.R. Part 1026;

(d) A rate lock disclosure containing the following:

(i) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, the name of the company providing the guarantee, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(A) The number of days in the rate lock period;

(B) The date of the rate lock and the expiration date of the rate lock;

(C) The rate of interest locked;

(D) The date the rate lock was provided to the borrower; and

(E) Any other terms and conditions of the rate lock agreement.

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the items from (d) of this subsection.

(e) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(f) You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(5) **Are there additional disclosure requirements related to interest rate locks?** Yes. You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(b) of this section. Changes to a locked interest rate can occur only if the borrower requests the change or for valid reasons such as changes in loan to value, credit scores, or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate. You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(6) **Residential mortgage loans—Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, in addition to the disclosures required by federal law or by this chapter, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(7) **Residential mortgage loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(8) **Student education loans.**

(a) All loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, the licensee making a loan to a (~~service~~) service member must disclose to the service members their rights under state and federal service member laws and regulations.

(b) Refinance loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, for all consumer

loans made by a licensee that are a refinance of a federal student education loan, the licensee must provide to the borrower a clear and conspicuous disclosure that some repayment and forgiveness options available under federal student education loan programs, including without limitation, income-driven repayment plans, economic hardship deferments, or public service loan forgiveness, will no longer be available to the borrower if he or she chooses to refinance federal student education loans with one or more consumer loans.

(9) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 19-21-157, § 208-620-510, filed 10/22/19, effective 11/24/19; WSR 18-24-013, § 208-620-510, filed 11/27/18, effective 1/1/19. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-510, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-510, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-510, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-510, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-510, filed 1/27/06, effective 2/27/06.]

NEW SECTION

WAC 208-620-660 What is required for a Washington licensed loan originator to work from their residence without licensing the residence as a branch location? A licensed company may permit a sponsored and licensed loan originator to work from the loan originator's residence without licensing it as a branch location under RCW 31.04.075 and subject to the following conditions:

(1) The company must have written policies and procedures that include appropriate risk-based monitoring and oversight processes for the supervision of loan originators working from their residence without licensing it as a branch location. The loan originator must comply with the licensee's policies and procedures.

(2) Access to the company platforms and customer information must be in accordance with the licensee's comprehensive written information security plan, as required by WAC 208-620-571, which must include safeguards that protect borrower information.

(3) Communications that contain a customer's protected personal information must be in compliance with federal and state information security requirements, including the applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule. See WAC 208-620-571 and 208-620-572 for more information.

(4) The loan originator's residence may not be held out in any manner, directly or indirectly, as a licensed main or branch location unless it is licensed as a main or branch location. The following is not allowed at the loan originator's residence unless it is licensed as a main or branch location:

(a) Conducting in-person customer interactions;

- (b) Storing physical records containing customer information;
 - (c) Receiving physical records containing customer information;
- and
- (d) Advertising the location as a licensed main or branch office.
 - (5) The NMLS record of the loan originator must designate the licensed main office headquarters or a licensed branch office as their registered location.
 - (6) The loan originator must use their registered location from NMLS in the "loan originator information" section on residential mortgage loan applications.

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AMENDATORY SECTION (Amending WSR 19-21-157, filed 10/22/19, effective 11/24/19)

WAC 208-620-700 Mortgage loan originator—General. (1) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location (~~. The licensed location can be the main office, or any licensed branch~~) unless you conduct activity under the act from your residence pursuant to WAC 208-620-660.

(2) **May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

(3) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

(4) **As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

(5) **May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

(6) **May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

(7) **May I work as a licensed loan originator for a licensed consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by as long as ~~((the out-of-state company licenses a branch in Washington for you to))~~ you work from a licensed location or your residence pursuant to WAC 208-620-660. See subsection (1) of this section.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can hire employees or independent contractors to work for the company. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors and underwriters whose work is related to the consumer loan company's activities.

(9) **Do loan processors and underwriters have to be licensed as loan originators?** W-2 employee loan processors and underwriters are not required to have a loan originator license provided they work under the supervision and instruction of an individual licensed or exempt from licensing and do not hold themselves out as able to conduct the activities of a loan originator.

(10) **May loan processors and underwriters work on files from an unlicensed location?** A loan processor or underwriter may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor or underwriter accesses the files directly from the licensee's main computer system. The loan processor or underwriter may not maintain any electronic files on any computer system other than the system belonging to the licensee;

(b) The loan processor or underwriter does not conduct any of the activities of a licensed loan originator;

(c) The licensee must have safeguards in place for the computer system that safeguards borrower information; and

(d) The loan processor or underwriter is not a licensed mortgage loan originator who supervises other loan processors or underwriters.

(11) **May I work as a licensed loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate loans from any licensed location or your residence pursuant to WAC 208-620-660, inside or outside of Washington, as long as the company that sponsors you is licensed to do business in Washington.

[Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 19-21-157, § 208-620-700, filed 10/22/19, effective 11/24/19; WSR 13-24-024, § 208-620-700, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-700, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-700, filed 12/1/09, effective 1/1/10.]

WSR 22-24-049
PERMANENT RULES
DEPARTMENT OF

FINANCIAL INSTITUTIONS

(Division of Consumer Services)

[Filed November 30, 2022, 3:56 p.m., effective December 31, 2022]

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

Purpose: Amending the rules (chapter 208-660 WAC) under the Mortgage Broker Practices Act (chapter 19.146 RCW) to implement amendments (SB 5077, chapter 15, Laws of 2021) which provide authority, under certain circumstances, for licensed companies to allow licensed mortgage loan originators to work from their residences without the company licensing the residence as a branch office. Additionally, technical changes will be made for clarity and consistency.

Citation of Rules Affected by this Order: New WAC 208-660-505; and amending WAC 208-660-006, 208-660-106, 208-660-300, and 208-660-420.

Statutory Authority for Adoption: RCW 43.320.040 and 19.146.225.

Adopted under notice filed as WSR 22-20-107 on October 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 30, 2022.

Charlie Clark
Director

OTS-4122.2

AMENDATORY SECTION (Amending WSR 19-21-142, filed 10/22/19, effective 11/24/19)

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

(1) "Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

(2) "Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other prin-

ted materials; radio, television, public address system, or other audio broadcasts; or internet pages or social media pages.

(3) "Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(4) "Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

(5) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

(6) "Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

(7) "Business day" means Monday through Friday excluding federally recognized bank holidays.

(8) "Compensation or gain" means remuneration, benefits, or an increase in something having monetary value including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

(9) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

(10) "Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

(11) "Consumer Protection Act" means chapter 19.86 RCW.

(12) "Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

((+)) (a) A general partner, officer, director, or employer of another person;

((+)) (b) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than (~~twenty~~) 20 percent of the voting interests of another person; or

((+)) (c) Has similar status or function in the business as a person in this definition.

(13) "Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

((+)) (a) Has been convicted of the crime in any jurisdiction;

((+)) (b) Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

((+)) (c) Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

((+)) (d) Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

(14) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

(15) "Discount points" or "points" means a fee paid by a borrower, upfront or at closing, to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate or loan estimate and applicable settlement statement as points and as a dollar amount.

(16) "Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(17) "Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. 1026.2.

(18) "Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

(19) "Federal statutes and regulations" includes, among others, the following:

((+)) (a) "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

((+)) (b) "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 1002.

((+)) (c) "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

((+)) (d) "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 41-58.

((+)) (e) "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

((+)) (f) "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

((+)) (g) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

((+)) (h) "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

((+)) (i) "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

((+)) (j) "MAP" means the Mortgage Acts and Practices - Advertising, Regulation N, 12 C.F.R. Part 1014.

((+)) (k) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 12 C.F.R. Part 1024.

((+)) (l) "S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008, codified at 12 U.S.C. 5101; Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

((+)) (m) "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telemarketing Sales Rule, 16 C.F.R. Part 310.

((+)) (n) "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 1026.

(20) "Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

(21) "Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

((+)) (a) Any conduct prohibited by the act;

((+)) (b) Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

((+)) (c) Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

((+)) (d) Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or

wire fraud, insider trading, money laundering, check fraud, or similar crimes.

(22) "License number" means the NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

(23) "Licensed location" means a main office or branch office, including an individual loan originator's residence, where the licensee conducts business under the act with Washington residents or Washington residential real estate and the licensee has obtained a main or branch license through NMLS for that location.

(24) "Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

(25) "Loan originator's residence" means a loan originator's primary or secondary residence located in the United States.

(26) "Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

(27) "Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

(28) "Mortgage Broker Practices Act" means chapter 19.146 RCW.

(29) "NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

(30) "Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

(31) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

(32) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ~~((ten))~~ 10 percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(33) "Rate lock agreement" means an agreement with a borrower made by a mortgage broker, loan originator, or lender in which the mortgage broker, loan originator, or lender agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(34) "Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

(35) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking

agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the NMLS.

(36) "Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

(*) (a) Residential real estate includes, but is not limited to:

(-) (i) A single family home;

(-) (ii) A duplex;

(-) (iii) A triplex;

(-) (iv) A fourplex;

(-) (v) A single condominium in a condominium complex;

(-) (vi) A single unit within a cooperative;

(-) (vii) A manufactured home; or

(-) (viii) A fractile, fee simple interest in any of the above.

(*) (b) Residential real estate does not include:

(-) (i) An apartment building or dwelling of five or more units; or

(-) (ii) A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

(~~"Table-funding"~~) (37) "Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

(38) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(39) "Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

[Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 19-21-142, § 208-660-006, filed 10/22/19, effective 11/24/19. Statutory Authority: Chapter 43.320 RCW, RCW 19.146.223. WSR 16-08-027, § 208-660-006, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 13-24-023, § 208-660-006, filed 11/22/13, effec-

tive 1/1/14. Statutory Authority: Chapter 43.320 RCW and RCW 19.146.223. WSR 12-18-048, § 208-660-006, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. WSR 10-20-125, § 208-660-006, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-006, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. WSR 09-01-156, § 208-660-006, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. WSR 08-11-103, § 208-660-006, filed 5/20/08, effective 6/20/08; WSR 08-05-126, § 208-660-006, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-006, filed 11/21/06, effective 1/1/07.]

AMENDATORY SECTION (Amending WSR 19-21-142, filed 10/22/19, effective 11/24/19)

WAC 208-660-106 How does the department interpret the definition of loan processor in RCW 19.146.010(12)? "Loan processor" (~~(or "underwriter")~~) means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. A loan processor (~~(or underwriter)~~) engaged as an independent contractor by a licensee must hold a mortgage loan originator license. See WAC 208-660-300(13).

[Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 19-21-142, § 208-660-106, filed 10/22/19, effective 11/24/19; WSR 13-24-023, § 208-660-106, filed 11/22/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-300 Loan originators—General. (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Using the NMLS, the company will submit a sponsorship request. The department will notify you and others associated with your license upon approval of your request. The NMLS will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mort-

gage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location (~~(. The licensed location can be the main company office, or any licensed branch)~~) unless you conduct activity under the act from your residence pursuant to WAC 208-660-505.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) **Who owns loan files?** Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents.

(7) **May I act as a loan originator and a real estate agent or with someone in the same real estate agency in the same transaction or for the same borrower in different transactions?** Yes, for required disclosure language see RCW 19.146.0201(14).

(8) **As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

(9) **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(10) **May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

(11) **May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker who sponsors you and who is licensed under Washington law.

(12) **May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(13) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed mortgage loan originator (including the designated broker) and do not hold themselves out as able to conduct the activities of a licensed mortgage broker or loan originator. Independent contractor loan processing companies must be licensed as a mortgage broker, have a designated broker, and have at least one licensed mortgage loan originator (who can be the designated broker). The W-2 employee loan

processors are not then required to be licensed mortgage loan originators. Individual independent contractor loan processors must be licensed as mortgage loan originators, be sponsored by a licensed mortgage broker, and be supervised by that licensee's licensed mortgage loan originator (including the designated broker).

(14) May loan processors work on files from an unlicensed location? A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

[Statutory Authority: Chapter 43.320 RCW, RCW 19.146.223. WSR 16-08-027, § 208-660-300, filed 3/30/16, effective 4/30/16; WSR 12-18-048, § 208-660-300, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. WSR 09-01-156, § 208-660-300, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. WSR 08-05-126, § 208-660-300, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-300, filed 11/21/06, effective 1/1/07.]

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any licensed location (~~(licensed under the act)~~) or your residence pursuant to WAC 208-660-505, inside or outside of Washington, as long as the company that sponsors you is licensed to do business in Washington.

(5) **May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as (~~(the location from which)~~) you work (~~(is)~~) from a licensed (~~(under the act)~~) location or your residence pursuant to WAC 208-660-505.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the NMLS, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must update the information in the NMLS within (~~ten~~) 10 business days from the change.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least (~~thirty-one~~) 31 days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the (~~thirty-first~~) 31st day after the date on which the statement of resignation was delivered.

[Statutory Authority: Chapter 43.320 RCW and RCW 19.146.223. WSR 12-18-048, § 208-660-420, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-420, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. WSR 09-01-156, § 208-660-420, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-420, filed 11/21/06, effective 1/1/07.]

NEW SECTION

WAC 208-660-505 What is required for a Washington licensed loan originator to work from their residence without licensing the residence as a branch location? A licensed company may permit a sponsored and licensed loan originator to work from the loan originator's residence without licensing it as a branch location under RCW 19.146.265 and subject to the following conditions:

(1) The company must have written policies and procedures that include appropriate risk-based monitoring and oversight processes for the supervision of loan originators working from their residence without licensing it as a branch location. The loan originator must comply with the licensee's policies and procedures.

(2) Access to the company platforms and customer information must be in accordance with the licensee's comprehensive written information security plan, as required by WAC 208-660-460, which must include safeguards that protect customer information.

(3) Communications that contain a customer's protected personal information must be in compliance with federal and state information security requirements, including the applicable provisions under the

Gramm-Leach-Bliley Act and the Safeguards Rule. See WAC 208-660-460 and 208-660-470 for more information.

(4) The loan originator's residence may not be held out in any manner, directly or indirectly, as a licensed main or branch location unless it is licensed as a main or branch location. The following is not allowed at the loan originator's residence unless it is licensed as a main or branch location:

- (a) Conducting in-person customer interactions;
- (b) Storing physical records containing customer information;
- (c) Receiving physical records containing customer information;

and

- (d) Advertising the location as a licensed main or branch office.

(5) The NMLS record of the loan originator must designate the licensed main office headquarters or a licensed branch office as their registered location.

(6) The loan originator must use their registered location from NMLS in the "loan originator information" section on residential mortgage loan applications.

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WSR 22-24-050

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 30, 2022, 4:36 p.m., effective December 31, 2022]

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

Purpose: The department is increasing fees to cover the cost of administering the collection agencies program.

Citation of Rules Affected by this Order: Amending WAC 308-29-045 Collection agency fees.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Adopted under notice filed as WSR 22-21-132 on October 19, 2022.

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

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

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

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

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

Date Adopted: November 30, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-3951.5

AMENDATORY SECTION (Amending WSR 11-23-159, filed 11/22/11, effective 12/23/11)

WAC 308-29-045 Collection agency fees. The following fees will be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Collection agency—Main office:	
Original application	((\$850.00)) <u>\$890.00</u>
Renewal	((\$475.00)) <u>\$515.00</u>
Reregistration fee after 30 days	((\$1,325.00)) <u>\$1,405.00</u>
Branch office (with WA main office):	
Original application	((\$550.00)) <u>\$590.00</u>
Renewal	((\$300.00)) <u>\$340.00</u>

Title of Fee	Fee
Reregistration fee after 30 days	((\$850.00)) <u>\$930.00</u>
Out-of-state collection agency—Main office:	
Original application	((\$425.00)) <u>\$445.00</u>
Renewal	((\$237.50)) <u>\$257.50</u>
Reregistration fee after 30 days	((\$662.50)) <u>\$702.50</u>
Branch office—With out-of-state main office:	
Original application	((\$275.00)) <u>\$295.00</u>
Renewal	((\$150.00)) <u>\$170.00</u>
Reregistration fee after 30 days	((\$425.00)) <u>\$465.00</u>
<u>License print fee</u>	<u>\$5.00</u>

[Statutory Authority: RCW 19.16.140, 43.24.086, and 2011 1st sp.s. c 50. WSR 11-23-159, § 308-29-045, filed 11/22/11, effective 12/23/11. Statutory Authority: RCW 19.16.140, 43.24.086. WSR 04-18-043, § 308-29-045, filed 8/26/04, effective 10/1/04. Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-045, filed 5/22/01, effective 6/22/01. Statutory Authority: RCW 43.24.086. WSR 90-06-052, § 308-29-045, filed 3/2/90, effective 4/2/90; WSR 87-10-028 (Order PM 650), § 308-29-045, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-22-060 (Order PL 446), § 308-29-045, filed 11/2/83; WSR 83-17-031 (Order PL 442), § 308-29-045, filed 8/10/83. Formerly WAC 308-29-040.]

WSR 22-24-055

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 1, 2022, 10:02 a.m., effective January 1, 2023]

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

Purpose: The purpose of this proposal is to adjust several business license application handling fees, required business license application, and renewal application filings. These fees are being revised under RCW 19.02.075.

Citation of Rules Affected by this Order: Amending WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees.

Statutory Authority for Adoption: RCW 19.02.030, 19.02.075.

Adopted under notice filed as WSR 22-21-121 on October 18, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 1, 2022.

Atif Aziz
Rules Coordinator

OTS-4149.2

AMENDATORY SECTION (Amending WSR 20-24-067, filed 11/24/20, effective 12/25/20)

WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees. (1) **Introduction.** This rule provides information about business license application handling fees, renewal application handling fees, and late filing delinquency fees as described in chapter 19.02 RCW. Information about individual licenses may be obtained from the business licensing service (BLS) of the department of revenue (department) and is available online at dor.wa.gov.

(2) **Definitions.** The definitions in RCW 19.02.020 apply to this rule.

(3) **What fee do I need to pay when applying for or renewing a license?** Individual license fees vary depending on the license(s) for which you are applying or renewing. The fee payable is the total amount of all applicable individual license fees, business license application handling fees, renewal application handling fees, late filing delinquency fees, and other penalty fees. The method of payment may result in additional charges for credit or debit card processing.

(4) **What does the department do with the fees?** The department will distribute the fees received for individual licenses to the respective regulatory agencies. The application and renewal handling fees and the late filing delinquency fees support the operation of the BLS. Credit or debit card payment processing fees are charged and retained by a third-party payment processor.

(5) **When do I get my business license?** A business license will not be issued until the total fees due are collected and all required information has been submitted. Some individual licenses require review and approval by the regulating authorities, and the business license will not be issued until the regulating authorities have approved them.

(6) **Can I get a refund?** The business license application handling fee and renewal application handling fee collected under RCW 19.02.075 are not refundable. The late filing delinquency fee under RCW 19.02.085 may not be waived or refunded unless the department determines that the licensee failed to renew a license by the business license expiration date due to an undisputable error or failure by the department that caused the late filing. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(7) **What are the fees?** The business license application handling fee, renewal application handling fee, late renewal filing delinquency fee, and individual license fee amounts are as follows:

Type of fee:	Fee amount:
Business license application handling fee to open the first business location of a new business, or to reopen a closed business:	((\$90.00) \$50.00)
Business license application handling fee for an existing business adding a new business location or requesting a city's license endorsement for a nonresident business:	\$0
Business license application handling fee for any other purpose(s):	((\$19.00) \$10.00)
Business license renewal application handling fee:	((\$10.00) \$5.00)
Late renewal filing delinquency fee:	Up to \$150.00 per business location. See subsection (9)(b) of this rule.
Individual license fee:	Varies depending on type of license.

(8) **What should I do with my business license?** The business license document must be displayed in a conspicuous place at the business location for which the license is issued.

(9) **Do I need to renew my business license?**

(a) The various licenses endorsed and displayed on the business license may each have a requirement to be renewed periodically. The department may prorate the terms of individual licenses and associated

fees as needed so that all requested licenses on the account are due for renewal at the same time.

(b) Licenses requiring renewal must be renewed by the expiration date or the department will assess a delinquency fee. The delinquency fee is calculated according to RCW 19.02.085 and must be paid by the licensee before a business license is renewed. Other regulatory agencies may also assess delinquency fees and/or penalties for late renewal, and may cancel the individual licenses for nonrenewal. Reissuance of individual licenses canceled for nonrenewal may require the filing of a new business license application.

[Statutory Authority: RCW 19.02.030(3). WSR 20-24-067, § 458-02-200, filed 11/24/20, effective 12/25/20. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 14-08-010, § 458-02-200, filed 3/20/14, effective 4/20/14.]

WSR 22-24-056

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 1, 2022, 10:36 a.m., effective January 1, 2023]

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

Purpose: RCW 82.49.040 requires the department of revenue to prepare a depreciation schedule (at minimum annually) for use in the determination of the fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The purpose of this rule-making effort is to adopt watercraft excise tax depreciation values for the 2023 calendar year based on watercraft valuation, sales, and registration data.

In addition, this rule-making effort reduces the number of columns in the watercraft excise tax depreciation schedule from three to two. Beginning January 1, 2023, and moving forward, the watercraft excise tax depreciation schedule will be based on the length of a vessel only.

Finally, this rule making expands the number of years within the watercraft excise tax depreciation schedule from 17 to 25.

Citation of Rules Affected by this Order: Amending WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.49.040.

Adopted under notice filed as WSR 22-19-070 on September 19, 2022.

A final cost-benefit analysis is available by contacting Brenton M. Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606, TTY 1-800-451-7985, email BrentonM@dor.wa.gov, website dor.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 1, 2022.

Atif Aziz
Rules Coordinator

OTS-3988.3

AMENDATORY SECTION (Amending WSR 21-22-009, filed 10/21/21, effective 1/1/22)

WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule. (1) **Introduction.** This rule addresses the watercraft excise tax, including an overview of the tax, exemptions from the tax, and the watercraft depreciation schedule used to determine a watercraft's fair market value. The rule also addresses administrative issues including payment, interest, and penalties (~~(, and includes examples)~~).

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions and terms.** The following definitions and terms apply throughout this rule.

(a) **"Dealer"** means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state. RCW 88.02.310.

(b) **"Fair market value."**

(i) In cases where the most recent purchase price of a vessel is known to the vessel owner, "fair market value" means the purchase price of the vessel in the year it was purchased. For subsequent years, "fair market value" means the purchase price of the vessel depreciated according to the schedule in subsection (6) of this rule. RCW 82.49.040.

(ii) In cases where a vessel has been acquired by lease or gift, or the most recent purchase price of the vessel is not known to the vessel owner, "fair market value" means the appraised value of the vessel determined according to subsection (7) of this rule. RCW 82.49.050(1).

(iii) In cases where the department determines that the purchase price stated by the owner is not a reasonable representation of the true "fair market value" of the vessel, the department must appraise the vessel according to subsection (7) of this rule. RCW 82.49.050(2).

(c) **"Owner"** means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner. RCW 88.02.310.

~~(d) ("**Powerboat**" means any vessel 16 feet or longer, other than a sailboat, that uses mechanical power as a method of propulsion.~~

~~(e) "**Sailboat**" means any vessel 16 feet or longer that is capable of using sails as a method of propulsion. A vessel is considered a sailboat regardless of whether the vessel is also capable of using mechanical power as a method of propulsion.~~

~~(f))~~ **"Vessel"** means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. RCW 88.02.310.

~~((g))~~ (e) **"Waters of this state"** means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. RCW 88.02.310.

(4) **Overview of the watercraft excise tax.**

(a) The watercraft excise tax generally applies to vessels measuring 16 feet or more in overall length. The tax is imposed for the privilege of using a vessel upon the waters of this state, except those vessels which are exempt from the tax under subsection (5) of

this rule and under RCW 82.49.020. The tax is imposed on an annual basis and is equal to the greater of five dollars or one-half of one percent of a vessel's fair market value.

(b) Persons required to register a vessel with this state under chapter 88.02 RCW who fail to register their vessel and avoid paying the watercraft excise tax are guilty of a gross misdemeanor and are liable for any unpaid excise tax. The department must also impose the penalties authorized under subsection (9) of this rule and under RCW 82.49.080 and chapter 82.32 RCW.

(c) When a person first registers a vessel in this state, the watercraft excise tax is imposed beginning with the month in which the vessel is registered through the following June 30th. In cases where the initial registration period is less than 12 months, the watercraft excise tax is prorated according to the number of months covered by the registration period. The initial registration is valid from the month of registration through the following June 30th.

(i) The department of licensing may extend or diminish the initial registration period for purposes of staggered renewal periods under RCW 88.02.560.

(ii) A vessel is considered first registered in this state if in the immediately preceding 12 month period the vessel was not registered in this state or was registered in another jurisdiction during the same period.

(iii) **Example 1. Watercraft excise tax computation - Initial vessel registration.**

Facts: Dan Carter purchases a 20 foot powerboat from a Washington dealer in April 2022. The purchase price is \$20,000. Dan is a resident of Washington. Dan registers the vessel with the department of licensing shortly after his purchase, in April 2022.

Result: The department of licensing will issue a registration decal for the vessel covering the registration period of July 2021 through June 2022 and collect the annual watercraft excise tax liability for this registration period in the amount of \$25 (\$20,000 (purchase price) x .005 (watercraft excise tax rate) x .25 (3 month prorated period April - June 2022)).

(5) **Exemptions.** The following types of vessels are exempt from watercraft excise tax:

- (a) Those exempt from vessel registration under RCW 88.02.570;
- (b) Those used exclusively for commercial fishing purposes;
- (c) Those measuring less than 16 feet in overall length, including personal watercraft;
- (d) Those owned and operated by the United States, another state, or any municipality or subdivision thereof;
- (e) Those owned by a nonprofit organization or association engaged in character building of children under 18 years of age and solely used for such purposes;
- (f) Those held for sale by a dealer, but not rented on a regular commercial basis; and
- (g) Those owned by Indian tribes and tribal members, used in the exercise of treaty fishing rights, and exempt under WAC 308-93-720.

(6) **Depreciation schedule.**

(a) RCW 82.49.040 requires the department to prepare a depreciation schedule annually, for use in determining the fair market value of vessels, which is the measure of the watercraft excise tax. The following schedule includes separate depreciation rates for ~~((three))~~ two categories of vessels, including a column for the vessel's year of ownership and columns for the depreciated percentage of the vessel's

value by vessel (~~(type)~~) length. First, vessel owners must determine the appropriate column to use, depending on the (~~(type)~~) length of the vessel they own. Second, vessel owners must identify the depreciated percentage of value for their vessel according to the row which corresponds to the number of years they have owned the vessel.

Year of Ownership	((Sailboat))	((Powerboat)) Vessels less than 30 feet	((Powerboat)) Vessels 30 feet or more
1	((1.00))	1.00	1.00
2	((0.90))	((0.84)) <u>0.85</u>	0.83
3	((0.85))	0.76	((0.74)) <u>0.75</u>
4	((0.79))	0.70	((0.67)) <u>0.68</u>
5	((0.74))	0.65	((0.62)) <u>0.63</u>
6	((0.68))	0.61	((0.58)) <u>0.59</u>
7	((0.63))	0.57	0.55
8	((0.60))	0.54	((0.52)) <u>0.53</u>
9	((0.58))	0.51	((0.49)) <u>0.50</u>
10	((0.54))	0.49	((0.47)) <u>0.48</u>
11	((0.51))	0.47	0.46
12	((0.48))	0.45	0.45
13	((0.44))	0.43	((0.44)) <u>0.43</u>
14	((0.44))	((0.39)) <u>0.42</u>	0.42
15	((0.44))	((0.39)) <u>0.40</u>	0.42
16	((0.44))	((0.38)) <u>0.39</u>	0.41
<u>17</u>		<u>0.37</u>	<u>0.41</u>
<u>18</u>		<u>0.35</u>	<u>0.40</u>
<u>19</u>		<u>0.34</u>	<u>0.39</u>
<u>20</u>		<u>0.33</u>	<u>0.39</u>
<u>21</u>		<u>0.32</u>	<u>0.38</u>
<u>22</u>		<u>0.31</u>	<u>0.37</u>
<u>23</u>		<u>0.30</u>	<u>0.36</u>
<u>24</u>		<u>0.29</u>	<u>0.35</u>
((17)) <u>25</u> or more	((0.43))	((0.36)) <u>0.28</u>	((0.41)) <u>0.34</u>

(b) **Example 2. Standard (~~(sailboat)~~) vessel registration renewal.**

Facts: Deborah Peters purchased a 28-foot sailboat in September 2017. The purchase price of the sailboat was \$40,000. Deborah is a Washington resident and the sailboat is used exclusively upon Washing-

ton waters. In June 2022, Deborah renews the vessel's registration for the upcoming annual period of July 2022 through June 2023.

Result: Deborah will use the column titled "~~((Sailboat))~~ Vessels less than 30 feet" to determine the fair market value of her sailboat. Since Deborah bought the sailboat within the annual period of July 2017 through June 2018, that period is considered Year 1 for purposes of ownership. Accordingly, the period of July 2022 through June 2023 is considered Year 6 for purposes of ownership. The depreciated value of the sailboat in Year 6 is equal to ~~((68))~~ 61 percent of Deborah's initial purchase price of \$40,000, or ~~((27,200))~~ \$24,400. Deborah is subject to watercraft excise tax in the amount of ~~((136))~~ \$122 ~~((27,200))~~ \$24,400 (fair market value) x .005 (watercraft excise tax rate)).

(7) **Vessel appraisal.**

(a) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department must appraise the vessel before it can be registered for use upon the waters of this state.

(b) If the department determines the purchase price of a vessel reported by the vessel's owner at the time of its registration is not representative of its fair market value, the department must appraise the vessel to determine its fair market value. If the appraised value is less than the reported purchase price, the department will issue a refund of the overpaid tax. If the appraised value is greater than the reported purchase price, the department will notify the vessel owner of the additional tax liability, which must be paid within 30 days of the department's notice.

(c) If a vessel is homemade, the vessel's owner must make a notarized declaration of its value. See RCW 82.49.050(3) for more information.

(d) For purposes of this subsection, "appraisal" includes the use of industry pricing guides, other evaluation tools, and independent appraisals in order to ascertain the fair market value of a vessel.

(8) **Disputes related to a vessel's ~~((fair market value,))~~ appraised value~~((,))~~ or taxability.**

(a) Any vessel owner who disputes a vessel's ~~((computed fair market value under RCW 82.49.040,))~~ appraised value under RCW 82.49.050, or taxable status, may request a review of a tax assessment by filing a petition with the department as provided in WAC 458-20-100 (Informal administrative reviews).

(b) If the vessel owner's petition is denied, the vessel owner may appeal to the board of tax appeals as provided in RCW 82.03.190. In deciding the case, the board of tax appeals may require an independent appraisal of the vessel, the cost of which must be shared between the vessel owner and the department.

(9) **Administration.**

(a) **Payment of tax.** The watercraft excise tax is due and payable to the department of licensing, county auditor, or other appointed agent at the time the vessel is registered. A registration will not be issued or renewed until the watercraft excise tax is paid in full. For previously registered vessels, watercraft excise tax is due at the time of the vessel's registration renewal and must be paid prior to the start of the vessel registration period, which covers the period of July 1st through June 30th of the following year.

(b) **Refunds.** Taxpayers who overpay the watercraft excise tax in full or in part at the time of a vessel's registration are eligible for a refund of the overpaid tax. Taxpayers are also entitled to re-

ceive interest according to RCW 82.32.060. See RCW 82.49.065 for more information regarding refunds.

(c) **Penalties and interest.** An owner of a vessel that is not registered as required under chapter 88.02 RCW and that avoided payment of the watercraft excise tax is liable for the following penalties and interest:

- (i) One hundred dollars for the owner's first violation;
- (ii) Two hundred dollars for the owner's second violation;
- (iii) Four hundred dollars for the owner's third violation and any successive violations;
- (iv) The penalties prescribed under chapter 82.32 RCW; and
- (v) The interest prescribed under chapter 82.32 RCW.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, and 82.49.040. WSR 21-22-009, § 458-20-23801, filed 10/21/21, effective 1/1/22.]

WSR 22-24-058
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 1, 2022, 11:57 a.m., effective January 1, 2023]

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

Purpose: Amending WAC 388-06-0030, 388-06-0500, 388-06-0510, 388-06-0525 and 388-06-0530; repealing WAC 388-06-0520, 388-06-0535 and 388-06-0540; and new WAC 388-06-0550 in chapter 388-06 WAC, One hundred and twenty-day provisional hire—Pending FBI background check results. The department's purpose for rule making under chapter 203, Laws of 2021, is to allow a long-term care worker or service provider to work on a conditional basis pending the completion of a background check. The long-term care worker or service provider may have unsupervised access to vulnerable adults pending the results of a fingerprint-based background check required under RCW 43.43.837 and 74.39A.056.

Citation of Rules Affected by this Order: New WAC 388-06-0550; repealing WAC 388-06-0020, 388-06-0535 and 388-06-0540; and amending WAC 388-06-0030, 388-06-0500, 388-06-0510, 388-06-0525, and 388-06-0530.

Statutory Authority for Adoption: RCW 43.20A.710, 43.43.837, 74.08.090, 74.09.520, 74.39A.056; ESHB 1120, chapter 203, Laws of 2021.

Other Authority: RCW 43.43.837 and 74.39A.056.

Adopted under notice filed as WSR 22-20-088 on October 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 5, Repealed 3.

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 5, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 5, Repealed 3.

Date Adopted: December 1, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4874.7

AMENDATORY SECTION (Amending WSR 15-05-030, filed 2/10/15, effective 3/13/15)

WAC 388-06-0030 What is the purpose of this chapter? (1) WAC 388-06-500 through ((388-06-0540 defines)) 388-06-0550 define when ((the one hundred twenty-day provisional hire is allowed by DSHS)) an

applicant, long-term care worker, or service provider may have unsupervised access to vulnerable adults and children pending the results of a fingerprint-based background check required by RCW 74.39A.056 or RCW 43.43.837.

(2) WAC 388-06-0700 through 388-06-0720 ((describes)) describe the responsibilities of the background check central unit.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 43.43.837. WSR 15-05-030, § 388-06-0030, filed 2/10/15, effective 3/13/15.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

WAC 388-06-0500 What is the purpose of the ((one hundred twenty)) 120-day provisional ((hire)) period? The ((one hundred and twenty)) 120-day provisional ((hire)) period allows ((an employee)) applicants, long-term care workers, and service providers to have unsupervised access to vulnerable adults and children((, juveniles and vulnerable adults on a provisional basis)) pending the results of ((their Federal Bureau of Investigation (FBI))) a fingerprint-based background check.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0500, filed 7/10/01, effective 8/10/01.]

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

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

WAC 388-06-0510 What definitions apply to ((one hundred twenty)) 120-day provisional ((hires)) period rules? ((("Agency" means any agency of the state or any private agency providing services to children, juveniles, and vulnerable adults.

"Background check central unit (BCCU)" means the DSHS program responsible for conducting background checks for DSHS administrations.

"Disqualified" means the results of an individual's background check disqualifies them from a position which will or may provide unsupervised access to children, juveniles, and vulnerable adults.

"Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.

"Hiring individual" means a DSHS client who is eligible to hire an individual to provide in-home service with state funding.

"Individual" means an employee, a contract employee, a volunteer, or a student intern.

"Qualified" means an individual can be hired into a position that includes unsupervised access to children, juveniles, and vulnerable

adults because the results of their background check are not disqualifying.

~~"Unsupervised access" means that:~~

~~(1) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and~~

~~(2) Neither a qualified employee, contract employee, volunteer, or student intern of the agency, or entity nor a relative or guardian of the child, juvenile or vulnerable adult is present))~~ **"Applicant"** has the same meaning as defined in RCW 43.43.830.

"Completed fingerprint check" means the applicant has a final fingerprint notification from the background check central unit that is not disqualifying.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with, the department of social and health services or its designee, to provide services to vulnerable adults or children.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0510, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 14-14-026, filed 6/24/14, effective 7/25/14)

WAC 388-06-0525 When are ((individuals)) applicants, long-term care workers, and service providers eligible for the ((one hundred twenty)) 120-day provisional ((hire)) period? ~~((Individuals)) Applicants, long-term care workers, and service providers are eligible for the ((one hundred twenty)) 120-day provisional ((hire immediately. The signed)) period once they have passed a state name and date of birth background check ((application and fingerprinting process must be completed as required by the applicable DSHS program)) and have scheduled their appointment to have their fingerprints taken for the fingerprint-based background check.~~

[Statutory Authority: RCW 43.43.832, 74.15.030 and 43.43.837. WSR 14-14-026, § 388-06-0525, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0525, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0525, filed 7/30/10, effective 8/30/10. Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0525, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

WAC 388-06-0530 When does the ((one hundred twenty)) 120-day provisional ((hire)) period begin? ~~The ((one hundred twenty)) 120-day provisional ((hire may begin from either:~~

~~(1)) period begins on the date ((of hire of an individual; or
(2) After completion of a state background check on an individu-
al.~~

~~The agency, entity, or hiring individual makes this decision)) an applicant, long-term care worker, or service provider begins providing care to a vulnerable adult or child.~~

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0530, filed 7/10/01, effective 8/10/01.]

NEW SECTION

WAC 388-06-0550 How does the state of emergency declared in response to the COVID-19 pandemic affect the provisional period for applicants, long-term care workers, and service providers? Notwithstanding WAC 388-06-0530, applicants, long-term care workers, and service providers who began providing care to vulnerable adults between November 1, 2019, and April 30, 2022, will have until August 28, 2022, to complete the fingerprint background check. Providers who begin providing care on or after May 1, 2022, are subject to the rules set forth in WAC 388-06-0525 and WAC 388-06-0530.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-06-0520 Who is responsible for approving the one hundred twenty-day provisional hire?
- WAC 388-06-0535 Who approves one hundred twenty-day provisional hire extensions?
- WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available?

WSR 22-24-059
PERMANENT RULES
NOXIOUS WEED
CONTROL BOARD

[Filed December 1, 2022, 1:36 p.m., effective January 1, 2023]

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

Purpose: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards, as well as other entities. This rule-making order amends WAC 16-750-011 Proposed Class B designation changes:

- Common tansy, Tanacetum vulgare: Undesignate in Lewis County.
Spotted knapweed, Cenaurea stoebe: Designate in Douglas County.
Shiny geranium, Geranium lucidum: Undesignate in King County.
Scotch Thistle, Onopordum acanthium: Designate in Douglas County.

Citation of Rules Affected by this Order: Amending WAC 16-750-011.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 22-19-100 on September 21, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: December 1, 2022.

William C. Agosta
Chairman

OTS-4100.2

AMENDATORY SECTION (Amending WSR 22-01-040, filed 12/7/21, effective 1/1/22)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Table with 2 columns: Name and Will be a "Class B designate" in all lands lying within:
(1) blueweed, Echium vulgare (a) regions 1, 2, 3, 4, 6 (b) region 5, except Spokane County
(2) Brazilian elodea, Egeria densa (a) region 1, except Grays Harbor County (b) region 2, except Kitsap County

Name		Will be a "Class B designate" in all lands lying within:	
		(c)	King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d)	region 3, except Wahkiakum County
		(e)	regions 4, 5, and 6
(3)	bugloss, annual, <i>Lycopsis arvensis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(4)	bugloss, common, <i>Anchusa officinalis</i>	(a)	regions 1, 2, 3, and 6
		(b)	All of region 4 except those areas lying within the Entiat River Valley between the Columbia River confluence and Stormy Creek in Chelan County
		(c)	region 5, except Spokane County
(5)	butterfly bush, <i>Buddleja davidii</i>	(a)	Grays Harbor County of region 1
		(b)	San Juan County of region 2
		(c)	Cowlitz County of region 3
(6)	camelthorn, <i>Alhagi maurorum</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(7)	common fennel, <i>Foeniculum vulgare</i> (except bulbous fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a)	region 1, except Jefferson County
		(b)	region 2, except King and Skagit counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6
(9)	common tansy, <i>Tanacetum vulgare</i>	(a)	Clallam County of region 1
		(b)	Kitsap and San Juan counties of region 2
		(c)	Cowlitz (and Lewis counties) County of region 3
		(d)	Adams and Lincoln counties of region 5
(10)	Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a)	regions 1, 2, and 3
		(b)	Adams, Kittitas, and Lincoln counties of region 5
		(c)	Benton, Franklin, and Walla Walla counties of region 6
(11)	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(a)	region 1, except Pacific County
		(b)	Island, Kitsap, and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams, Kittitas, Lincoln, and Whitman counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(12)	European coltsfoot, <i>Tussilago farfara</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(13)	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Cowlitz County
(14)	gorse, <i>Ulex europaeus</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	regions 2, 3, 4, 5, 6
(15)	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(a)	region 1
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6

Name		Will be a "Class B designate" in all lands lying within:	
(16)	hairy willow-herb, <i>Epilobium hirsutum</i>	(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	region 6, except Benton and Franklin counties
(17)	hanging sedge, <i>Carex pendula</i> , <i>Carex pendula</i> subsp. <i>pendula</i> and <i>Carex pendula</i> subsp. <i>agastachys</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(18)	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(19)	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
(20)	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)	(a)	region 1
		(b)	region 2, except Thurston County
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6
(21)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except King, Skagit, Snohomish, and Whatcom counties
		(c)	region 4, except Stevens County
(22)	herb-Robert, <i>Geranium robertianum</i>	(a)	regions 4, 5, and 6
(23)	hoary alyssum, <i>Berteroa incana</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Pend Oreille and Ferry counties
		(c)	region 5, except Klickitat County
(24)	houndstongue, <i>Cynoglossum officinale</i>	(a)	regions 1, 2, and 3
		(b)	Chelan and Douglas counties of region 4
		(c)	Yakima, Grant and Adams counties of region 5
		(d)	Benton and Franklin counties of region 6
(25)	indigobush, <i>Amorpha fruticosa</i>	(a)	regions 1, 2, and 4
		(b)	Lewis County of region 3
		(c)	region 5, except Klickitat County
(26)	knapweed, black, <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(27)	knapweed, brown, <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(28)	knapweed, diffuse, <i>Centaurea diffusa</i>	(a)	region 1
		(b)	region 2
		(c)	region 3, except Cowlitz County

Name		Will be a "Class B designate" in all lands lying within:	
(29)	knapweed, meadow, <i>Centaurea x gerstlaueri</i>	(d)	Adams County of region 5
		(a)	regions 1 and 4
		(b)	region 2, except Whatcom County
		(c)	Thurston County of region 2, except below the ordinary high-water mark of the Nisqually River
		(d)	Lewis and Wahkiakum counties of region 3
		(e)	region 5, except Kittitas and Klickitat counties
(30)	knapweed, Russian, <i>Rhaponticum repens</i>	(f)	region 6, except Franklin and Walla Walla counties
		(a)	regions 1, 2, and 3
		(b)	Ferry and Pend Oreille counties of region 4
		(c)	Lincoln, Spokane, and Whitman counties of region 5
		(d)	Adams County of region 5, except for the area west of Highway 17 and north of Highway 26
		(e)	Asotin and Garfield counties of region 6
(31)	knapweed, spotted, <i>Centaurea stoebe</i>	(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	Clark, Lewis, and Wahkiakum counties of region 3
		(d)	Ferry ((County)) and Douglas counties of region 4
		(e)	Adams, Grant and Yakima counties of region 5
		(f)	region 6, except Columbia and Walla Walla counties
(32)	knotweed, Bohemian, <i>Fallopia x bohémica</i>	(a)	Island and San Juan counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, 5, and 6
(33)	knotweed, giant, <i>Fallopia sachalinensis</i>	(a)	region 2, except King, Pierce, and Snohomish counties
		(b)	region 3, except Cowlitz and Lewis counties
		(c)	regions 4, 5, and 6
(34)	knotweed, Himalayan, <i>Persicaria wallichii</i>	(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
		(c)	region 3, except Wahkiakum County
		(d)	region 4, 5, and 6
(35)	knotweed, Japanese, <i>Fallopia japonica</i>	(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, except Okanogan County
		(d)	region 5, except Spokane County
		(e)	region 6
(36)	kochia, <i>Bassia scoparia</i>	(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4
		(c)	Adams County of region 5
(37)	lesser celandine, <i>Ficaria verna</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except King and Whatcom counties
(38)	loosestrife, garden, <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 5, 6
(39)	loosestrife, purple, <i>Lythrum salicaria</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties

Name		Will be a "Class B designate" in all lands lying within:	
(40)	loosestrife, wand, <i>Lythrum virgatum</i>	(f)	region 6, except Asotin and Franklin counties
		(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
(41)	Malta starthistle, <i>Centaurea melitensis</i>	(f)	region 6, except Asotin and Franklin counties
		(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
(42)	parrotfeather, <i>Myriophyllum aquaticum</i>	(c)	region 5, except Klickitat and Whitman counties
		(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
(43)	perennial pepperweed, <i>Lepidium latifolium</i>	(c)	Clark and Skamania counties of region 3
		(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
(44)	poison hemlock, <i>Conium maculatum</i>	(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
		(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
(45)	policeman's helmet, <i>Impatiens glandulifera</i>	(c)	Clark and Skamania counties of region 3
		(d)	Chelan, Douglas, and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
(46)	puncturevine, <i>Tribulus terrestris</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except Thurston and Whatcom counties
(47)	Ravenna grass, <i>Tripsidium ravennae</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
(48)	rough chervil, <i>Chaerophyllum temulum</i>	(a)	Cowlitz County of region 3
		(b)	region 4
		(c)	region 5, except Yakima County
		(d)	region 6, except Benton County
(49)	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except for King County
(50)	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 2, and 3
		(b)	region 4, except all areas of Stevens County south of Township 29
		(c)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(d)	Asotin County of region 6
(51)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except King and Thurston counties
(51)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County

Name		Will be a "Class B designate" in all lands lying within:	
(52)	shiny geranium, <i>Geranium lucidum</i>	(a)	regions 1, 4, 5, and 6
		(b)	region((s)) 2, except <u>King and Thurston</u> ((County)) <u>counties</u>
		(c)	region 3, except Clark County
(53)	spurge flax, <i>Thymelaea passerina</i>	(a)	region 4, except Okanogan County
		(b)	regions 5 and 6
(54)	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3
		(d)	regions 4, 5, and 6
(55)	spurge, leafy, <i>Euphorbia virgata</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane County
		(c)	region 6, except Columbia County
(56)	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, Pierce, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan County
(57)	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
(58)	tansy ragwort, <i>Jacobaea vulgaris</i>	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4, 5, and 6
(59)	thistle, musk, <i>Carduus nutans</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County
(60)	thistle, plumeless, <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except those areas north of State Highway 20 in Stevens County
(61)	thistle, Scotch, <i>Onopordum acanthium</i>	(a)	regions 1, 2, ((and)) 3, and 4
		(b)	((region 4, except Douglas County
		(e))	region 5, except Spokane and Whitman counties
(62)	velvetleaf, <i>Abutilon theophrasti</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Yakima County
(63)	water primrose, <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(64)	white bryony, <i>Bryonia alba</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton and Garfield counties of region 6
(65)	Wild basil/basil savory, <i>Clinopodium vulgare</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except for Skamania County
(66)	wild chervil, <i>Anthriscus sylvestris</i>	(a)	regions 1, 3, 4, and 6
		(b)	region 2, except Whatcom County
		(c)	region 5, except Whitman County

Name		Will be a "Class B designate" in all lands lying within:	
(67)	yellow archangel, <i>Lamiastrum galeobdolon</i>	(a)	Clallam County of region 1
		(b)	Island, San Juan, Skagit, and Whatcom counties of region 2
		(c)	Cowlitz, Skamania, and Wahkiakum counties of region 3
		(d)	regions 4, 5, and 6
(68)	yellow floating heart, <i>Nymphoides peltata</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Stevens County
		(c)	region 5, except Spokane County
(69)	yellow nutsedge, <i>Cyperus esculentus</i>	(a)	regions 1 and 4
		(b)	region 2, except Skagit and Thurston counties
		(c)	region 3, except Clark County
		(d)	region 5, except Klickitat and Yakima counties
		(e)	region 6, except Franklin and Walla Walla counties
(70)	yellow starthistle, <i>Centaurea solstitialis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat, and Whitman counties

[Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 22-01-040, § 16-750-011, filed 12/7/21, effective 1/1/22; WSR 20-24-098, § 16-750-011, filed 11/30/20, effective 1/1/21; WSR 19-24-052, § 16-750-011, filed 11/26/19, effective 1/1/20; WSR 18-24-010, § 16-750-011, filed 11/26/18, effective 1/1/19; WSR 17-24-035, § 16-750-011, filed 11/29/17, effective 1/1/18; WSR 16-24-031, § 16-750-011, filed 11/30/16, effective 1/1/17; WSR 15-24-078, § 16-750-011, filed 11/30/15, effective 12/31/15; WSR 14-24-103, § 16-750-011, filed 12/2/14, effective 1/2/15; WSR 14-02-072, § 16-750-011, filed 12/30/13, effective 1/30/14; WSR 13-01-038, § 16-750-011, filed 12/12/12, effective 1/12/13; WSR 12-01-050, § 16-750-011, filed 12/15/11, effective 1/15/12; WSR 10-24-037, § 16-750-011, filed 11/22/10, effective 12/23/10; WSR 09-01-071, § 16-750-011, filed 12/15/08, effective 1/16/09; WSR 07-24-023, § 16-750-011, filed 11/28/07, effective 1/1/08; WSR 06-24-056, § 16-750-011, filed 12/4/06, effective 1/4/07; WSR 05-24-026, § 16-750-011, filed 11/30/05, effective 12/31/05; WSR 05-01-012, § 16-750-011, filed 12/2/04, effective 1/2/05. Statutory Authority: Chapter 17.10 RCW. WSR 04-13-014, § 16-750-011, filed 6/4/04, effective 7/5/04. Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 03-24-012, § 16-750-011, filed 11/20/03, effective 12/21/03; WSR 03-04-001, § 16-750-011, filed 1/22/03, effective 2/22/03. Statutory Authority: Chapter 17.10 RCW. WSR 01-24-035, § 16-750-011, filed 11/28/01, effective 12/29/01; WSR 00-24-017, § 16-750-011, filed 11/28/00, effective 1/2/01; WSR 99-24-029, § 16-750-011, filed 11/23/99, effective 1/3/00; WSR 98-24-026, § 16-750-011, filed 11/23/98, effective 1/2/99; WSR 97-24-051, § 16-750-011, filed 11/26/97, effective 1/2/98; WSR 97-06-108, § 16-750-011, filed 3/5/97, effective 4/5/97. Statutory Authority: RCW 17.10.080. WSR 96-06-030, § 16-750-011, filed 2/29/96, effective 3/31/96. Statutory Authority: Chapter 17.10 RCW. WSR 95-06-002, § 16-750-011, filed 2/16/95, effective 3/19/95; WSR 94-01-076, § 16-750-011, filed 12/10/93, effective 1/10/94; WSR 93-01-004, § 16-750-011, filed 12/2/92, effective 1/2/93;

WSR 91-24-072, § 16-750-011, filed 12/2/91, effective 1/2/92; WSR 91-01-016, § 16-750-011, filed 12/7/90, effective 1/7/91; WSR 90-01-004, § 16-750-011, filed 12/7/89, effective 1/7/90; WSR 88-24-002 (Order 26, Resolution No. 26), § 16-750-011, filed 11/29/88; WSR 88-18-001 (Order 24, Resolution No. 24), § 16-750-011, filed 8/25/88. Statutory Authority: RCW 17.10.080. WSR 88-07-016 (Order 22, Resolution No. 22), § 16-750-011, filed 3/7/88.]

WSR 22-24-061

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 2, 2022, 8:53 a.m., effective January 2, 2023]

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

Purpose: WAC 246-310-290 Hospice services—Standards and need forecasting method. The department of health (department) is adopting changes intended to provide a more accurate measurement of hospice service using reported admissions in calculating need within Washington communities. This rule change allows for more accurate measurement and projection of hospice utilization within the state, which results in a more accurate numeric need calculation, and helps to ensure enough hospice providers are available in local communities.

Citation of Rules Affected by this Order: Amending WAC 246-310-290.

Statutory Authority for Adoption: RCW 70.38.115, 70.38.135, and 43.70.040.

Adopted under notice filed as WSR 22-20-109 on October 5, 2022.

A final cost-benefit analysis is available by contacting Eric Hernandez, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2956, TTY 711, email CNRulemaking@doh.wa.gov, website <https://doh.wa.gov>.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 2, 2022.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4010.1

AMENDATORY SECTION (Amending WSR 18-19-051, filed 9/14/18, effective 10/15/18)

WAC 246-310-290 Hospice services—Standards and need forecasting method. The following rules apply to any in-home services agency licensed or an applicant intending to become licensed to provide hospice services, and intending to become a medicare certified or medicaid contracted service provider in a designated planning area.

(1) The definitions in this subsection apply throughout this section unless the context clearly indicates otherwise:

(a) "ADC" means average daily census and is calculated by:

(i) Multiplying projected annual hospice agency admissions by the most recent average length of stay in Washington, based on the most recent data reported to the Centers for Medicare and Medicaid Services (CMS) to derive the total annual days of care;

(ii) Dividing the total calculated in (a)(i) of this subsection by three hundred sixty-five (days per year) to determine the ADC.

(b) "Average length of stay" means the average covered days of care per person for Washington state as reported by CMS.

(c) "Base year" means the most recent calendar year for which hospice survey data is available as of September 30th of each year.

(d) "CMS" means the Centers for Medicare and Medicaid Services.

(e) "Current supply of hospice providers" means all providers of hospice services that have received certificate of need approval to provide services within a planning area. State licensed only and volunteer hospices are excluded from the current supply of hospice providers.

(f) "Hospice services" means symptom and pain management provided to a terminally ill person, and emotional, spiritual and bereavement support for the terminally ill person and family in a place of temporary or permanent residence provided under the direction of an interdisciplinary team composed of at least a registered nurse, social worker, physician, spiritual counselor, and a volunteer.

(g) "OFM" means the Washington state office of financial management.

(h) "Planning area" or "service area" means an individual geographic area designated by the department for which hospice need projections are calculated. For the purposes of hospice services, planning area and service area have the same meaning.

(i) "Projection year" means the third calendar year after the base year. For example, reviews using 2016 survey data as the base year will use 2019 as the projection year.

(2) The department will review a hospice application using the concurrent review cycle described in subsection (3) of this section, except when the sole hospice provider in the service area ceases operation. Applications to meet this need may be accepted and reviewed in accordance with the regular review process described in WAC 246-310-110 (2)(c).

(3) Applications must be submitted and reviewed according to Table A:

Table A

		Application Submission Period			Department Action	Application Review Period		
Concurrent Review Cycle	Letters of Intent Due	Receipt of Initial Application	End of Screening Period	Applicant Response	Beginning of Review	Public Comment	Rebuttal	Ex Parte Period
Cycle 1 (Chelan, Douglas, Clallam, Clark, Skamania, Cowlitz, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Okanogan, Pacific, San Juan, Skagit, Spokane, and Yakima).	Last working day of November of each year.	Last working day of December of each year.	Last working day of January of each year.	Last working day of February of each year.	March 16 of each year or the first working day thereafter.	45-Day public comment period (including public hearing). Begins March 17 or the first working day thereafter.	30-Day rebuttal period. Applicant and affected person response to public comment.	75-Day ex parte period. Department evaluation and decision.
Cycle 2 (Adams, Asotin, Benton, Columbia, Ferry, Franklin, Garfield, Kitsap, Lewis, Lincoln, Mason, Pend Oreille, Pierce, Snohomish, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, and Whitman).	Last working day of December of each year.	Last working day of January of each year.	Last working day of February of each year.	Last working day of March of each year.	April 16 of each year or the first working day thereafter.	45-Day public comment period (including public hearing). Begins April 17 or the first working day thereafter.	30-Day rebuttal period. Applicant and affected person response to public comment.	75-Day ex parte period. Department evaluation and decision.

(4) Pending certificate of need applications. A hospice service application submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the application was received.

(5) The department will notify applicants fifteen calendar days prior to the scheduled decision date if it is unable to meet the decision deadline on the application(s). In that event, the department will establish and commit to a new decision date.

(6) When an application initially submitted under the concurrent review cycle is deemed not to be competing, the department may convert the review to a regular review process.

(7) Current hospice capacity will be determined as follows:

(a) For hospice agencies that have operated in a planning area for three years or more, current hospice capacity is calculated by determining the average number of unduplicated admissions for the last three years of operation;

(b) For hospice agencies that have operated (or been approved to operate) in a planning area for less than three years, an ADC of thirty-five and the most recent Washington average length of stay data will be used to calculate assumed annual admissions for the hospice agency as a whole for the first three years to determine current hospice capacity. If a hospice agency's reported admissions exceed an ADC of thirty-five, the department will use the actual reported admissions to determine current hospice capacity;

(c) For a hospice agency that is no longer in operation, the department will use the historical three-year admissions to calculate the statewide use rates, but will not use the admissions to calculate planning area capacity;

(d) For a hospice agency that has changed ownership, the department will use the historical three-year admissions to calculate the

statewide use rates, and will use the admissions to calculate planning area capacity.

(8) Need projection. The following steps will be used to project the need for hospice services.

(a) Step 1. Calculate the following two statewide predicted hospice use rates using department of health survey and vital statistics death data:

(i) The percentage of patients age sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of unduplicated admissions over the last three years for patients sixty-five and over by the average number of past three years statewide total deaths age sixty-five and over.

(ii) The percentage of patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of unduplicated admissions over the last three years for patients under the age of sixty-five by the average number of past three years statewide total deaths under sixty-five.

(b) Step 2. Calculate the average number of total resident deaths over the last three years for each planning area by age cohort.

(c) Step 3. Multiply each hospice use rate determined in Step 1 by the planning areas average total resident deaths determined in Step 2, separated by age cohort.

(d) Step 4. Using the projected patients calculated in Step 3, calculate a use rate by dividing projected patients by the three-year historical average population by county. Use this use rate to determine the potential volume of hospice use by the projected population by the two age cohorts identified in Step 1, (a)(i) and (ii) of this subsection using OFM data.

(e) Step 5. Combine the two age cohorts. (~~Subtract~~)

(i) Calculate the most recent three-year average hospice capacity in each planning area using hospice agency admissions. Subtract the calculated hospice capacity from the projected volumes calculated in Step 4 to determine the number of projected admissions beyond the planning area capacity.

(ii) For hospice agencies qualified under subsection (7)(b) of this section, and whose recent three-year average hospice capacity is below an ADC of 35, replace any reported admissions with default admissions for each year over which the three-year average is calculated.

(f) Step 6. Multiply the unmet need from Step 5 by the statewide average length of stay as determined by CMS to determine unmet need patient days in the projection years.

(g) Step 7. Divide the unmet patient days from Step 6 by 365 to determine the unmet need ADC.

(h) Step 8. Determine the number of hospice agencies in the planning areas that could support the unmet need with an ADC of thirty-five.

(9) If the department becomes aware of a facility closure fifteen calendar days or more prior to the letter of intent submission period, the department will update the methodology for the application cycle. If a closure occurs fewer than fifteen calendar days prior to the letter of intent submission period, the department will not update the methodology until the next year.

(10) In addition to demonstrating numeric need under subsection (7) of this section, applicants must meet the following certificate of need requirements:

(a) Determination of need under WAC 246-310-210;

(b) Determination of financial feasibility under WAC 246-310-220;
(c) Criteria for structure and process of care under WAC 246-310-230; and

(d) Determination of cost containment under WAC 246-310-240.

(11) To conduct the superiority evaluation to determine which competing applications to approve, the department will use only the criteria and measures in this section to compare two or more applications to each other.

(a) The following measures must be used when comparing two or more applications to each other:

(i) Improved service to the planning area;

(ii) Specific populations including, but not limited to, pediatrics;

(iii) Minimum impact on existing programs;

(iv) Greatest breadth and depth of hospice services; and

(v) Published and publicly available quality data.

(b) An application will be denied if it fails to meet any criteria under WAC 246-310-210, 246-310-220, 246-310-230, or 246-310-240 (2) or (3).

(12) The department may grant a certificate of need for a new hospice agency in a planning area where there is not numeric need.

(a) The department will consider if the applicant meets the following criteria:

(i) All applicable review criteria and standards with the exception of numeric need have been met;

(ii) The applicant commits to serving medicare and medicaid patients; and

(iii) A specific population is underserved; or

(iv) The population of the county is low enough that the methodology has not projected need in five years, and the population of the county is not sufficient to meet an ADC of thirty-five.

(b) If more than one applicant applies in a planning area, the department will give preference to a hospice agency that proposes to be physically located within the planning area.

(c) The department has sole discretion to grant or deny application(s) submitted under this subsection.

(13) Any hospice agency granted a certificate of need for hospice services must provide services to the entire county for which the certificate of need was granted.

(14) Failure to operate the hospice agency as approved in the certificate of need may be a basis for revocation or suspension of a hospice agency's certificate of need, or other appropriate action.

[Statutory Authority: RCW 70.38.135 and 70.38.115. WSR 18-19-051, § 246-310-290, filed 9/14/18, effective 10/15/18. Statutory Authority: Chapters 70.127 and 70.38 RCW. WSR 03-07-096, § 246-310-290, filed 3/19/03, effective 4/19/03.]

WSR 22-24-089
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 6, 2022, 8:24 a.m., effective January 6, 2023]

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

Purpose: The legislature passed HB 1975 relating to property management services provided to housing authority properties; amending RCW 35.82.070. HB 1975 specifies that certain revenues collected by a property management services company from housing project tenants, when used to pay for administrative operating and ordinary maintenance costs, are treated as private funds. HB 1975 also includes a definition of what "ordinary maintenance" is specific to housing authorities. The adopted amendment to WAC 296-127-010 ensures the rule definition of ordinary maintenance is consistent with the definition in statute.

Citation of Rules Affected by this Order: Amending WAC 296-127-010.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Adopted under notice filed as WSR 22-20-112 on October 5, 2022.

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

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

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

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

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

Date Adopted: December 6, 2022.

Joel Sacks
Director

OTS-3890.2

AMENDATORY SECTION (Amending WSR 19-15-119, filed 7/23/19, effective 8/23/19)

WAC 296-127-010 Definitions for chapter 296-127 WAC. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the department.

(4) "Assistant director" means the assistant director of the fraud prevention and labor standards (FPLS) division or his or her duly authorized deputy or representative.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7) (a) The term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least (~~(fifty)~~) 50 percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b) (~~((iii))~~) (ii) (A) and (B) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a) (i) through (v) of this subsection.

(b) The term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278; or

(ii) Ordinary maintenance.

(A) Ordinary maintenance is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

(B) For housing authorities when contracting with a property management services company for purposes of operating a housing project, as defined in RCW 35.82.030. Rental and other project revenues collected by a property management services company from the housing project's tenants and used to pay administrative operating and ordinary maintenance costs incurred by the company under the terms of the contract with the authority shall be treated as private funds, and any resulting services as executed at the cost of the property management services company and the housing project's tenants, until the net operating revenues are distributed to the authority for its exclusive use and control. For the purposes of this subsection, "ordinary maintenance" only includes: Routine repairs related to unit turnover work; grounds and parking lot upkeep; and repairs and cleaning work needed to keep a property in a clean, safe, sanitary, and rentable condition that are customarily undertaken or administered by residential property management services companies. "Ordinary maintenance" does not include repairs that would be considered replacement capital repairs or scheduled regular maintenance work on plumbing, electrical, or HVAC/R systems or their components.

(8) "Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, when used solely as permanent residences. It does not include the utilities construction (water and sewer lines), or work on streets, or work on other structures (e.g., for recreation and business.)

[Statutory Authority: Chapter 39.12 RCW. WSR 19-15-119, § 296-127-010, filed 7/23/19, effective 8/23/19. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-010, filed 12/16/93, effective 1/16/94. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 92-01-104, § 296-127-010, filed 12/18/91, effective 1/31/92; WSR 88-22-046 (Order 88-22), § 296-127-010, filed 10/31/88. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. WSR 86-03-063 (Order 85-28), § 296-127-010, filed 1/17/86. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-010, filed 8/27/82.]

WSR 22-24-091
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 6, 2022, 10:25 a.m., effective December 10, 2022 and May 1, 2023]

Effective Date of Rule: WAC 246-341-0342 will become effective on December 10, 2022. The remainder of the WAC sections affected by this order will become effective on May 1, 2023.

Other findings required by other provisions of law as precondition to adoption or effectiveness of rule: Revisions to WAC 246-341-0342 align department rules with recently updated federal rules in Title 21 C.F.R., which allow opioid treatment programs (OTPs) to add and operate a mobile unit under their existing Drug Enforcement Administration license. Enacting these rules on December 10, 2022, will eliminate the need for the department to continue an emergency rule on this topic and will ensure that OTPs will be in compliance with the most recent version of federal regulations.

Purpose: Chapter 246-341 WAC, Behavioral health agency licensing and certification requirements. The department of health (department) is updating the chapter of rules for licensed and certified behavioral health agencies as the next step in a multi-phase plan to modernize licensing and certification requirements. The adopted rules streamline and improve licensing regulations and the licensing process with the goal of decreasing regulatory burden and redundancy while increasing access to high-quality behavioral health services. The rules increase flexibility and decrease the administrative burden associated with licensing processes. New compliance requirements were added to provide certain services to align requirements for substance use disorder and mental health services, making it easier for agencies to provide co-occurring services. This also ensures that similar standards are applied to both services.

Citation of Rules Affected by this Order: New WAC 246-341-0660, 246-341-0670, 246-341-0680, 246-341-0715, 246-341-0737, 246-341-0739, 246-341-0901, 246-341-0912, 246-341-1105, 246-341-1131, 246-341-1133, 246-341-1135, 246-341-1200 and 246-341-1300; repealing WAC 246-341-0650, 246-341-0702, 246-341-0704, 246-341-0706, 246-341-0708, 246-341-0710, 246-341-0712, 246-341-0714, 246-341-0718, 246-341-0724, 246-341-0728, 246-341-0738, 246-341-0742, 246-341-0744, 246-341-0748, 246-341-0750, 246-341-0754 and 246-341-0800; and amending WAC 246-341-0100, 246-341-0110, 246-341-0200, 246-341-0300, 246-341-0310, 246-341-0320, 246-341-0335, 246-341-0342, 246-341-0365, 246-341-0370, 246-341-0420, 246-341-0425, 246-341-0510, 246-341-0515, 246-341-0600, 246-341-0605, 246-341-0640, 246-341-0700, 246-341-0713, 246-341-0720, 246-341-0722, 246-341-0725, 246-341-0730, 246-341-0740, 246-341-0746, 246-341-0805, 246-341-0815, 246-341-0820, 246-341-1015, 246-341-1020, 246-341-1100, 246-341-1108, 246-341-1118, 246-341-1124, 246-341-1137, 246-341-1140, 246-341-1154, 246-341-1156, and 246-341-1158.

Statutory Authority for Adoption: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160.

Other Authority: Chapters 71.05, 71.12, 71.24 and 71.34 RCW; RCW 43.70.080(5), 41.05.750, 43.70.250, 74.09.520.

Adopted under notice filed as WSR 22-17-140 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: The following clarifying changes were made to the proposed rule upon adoption, as a result of suggestions received during the public comment period as well as additional internal review:

WAC TITLE	CHANGE MADE
WAC 246-341-0110 Behavioral health— Available certifications.	<ul style="list-style-type: none"> • In subsection (1)(i), replaced the term "medically supported withdrawal management" with "withdrawal management," to be consistent with WAC 246-341-1100.
WAC 246-341-0200 Behavioral health— Definitions.	<ul style="list-style-type: none"> • Updated the reference to RCW 43.20A.890 in the definition of "licensed" or "licensure." This statute has been recodified as RCW 41.05.750. • Added a reference to RCW 43.70.080(5), regarding the department's authority to certify problem gambling and gambling disorder treatment programs.
WAC 246-341-0300 Agency licensure and certification—General information.	<ul style="list-style-type: none"> • Removed the word "treatment" from "behavioral health treatment services" to be consistent with the rest of the chapter as there is a spectrum of behavioral health services, such as support and peer services, in this chapter. • Clarified that the references to "30 days" throughout this section are to calendar days. • In subsection (6)(b), adding a certification, clarified that agencies must submit an application for certification before providing the services listed under that certification. In the proposed language, the department incorrectly stated that agencies must "obtain" certification first, which did not align with what is allowed in chapter 71.24 RCW. • In subsection (10), effective date, clarified that the certification is effective for up to 12 months from the "date of issuance," rather than the "effective date."
WAC 246-341-0320 Agency licensure and certification—On-site reviews and plans of correction.	<ul style="list-style-type: none"> • In subsection (4)(a), removed the term "negotiated" as it pertains to the time frame agreed upon by the agency and the department, as it is redundant.
WAC 246-341-0335 Agency licensure and certification—Denials, suspensions, revocations, and penalties.	<ul style="list-style-type: none"> • Throughout this section, as a technical correction, deleted the reference to the department suspending or revoking an agency's ability to provide specific behavioral health services, as the department technically only takes enforcement action on licenses or certifications. This includes modifying a certification, which has the same effect as the proposed language. • In subsection (1)(a), clarified the existing requirement that the department can take enforcement action if the agency fails to meet the "applicable" requirements in chapter 246-341 WAC and added chapters 71.24 RCW, 71.05, 71.34, and 71.12 RCW; or RCW 41.05.750.
WAC 246-341-0342 Agency licensure and certification—Off-site locations.	<ul style="list-style-type: none"> • In subsection (6)(b), clarified that an opioid treatment program must comply with 21 C.F.R. Parts 1300, 1301, and 1304 "and any applicable rules of the Pharmacy Quality Assurance Commission."
WAC 246-341-0370 Agency licensure and certification—Appealing a department decision.	<ul style="list-style-type: none"> • As in WAC 246-341-0335, deleted the reference to the agency appealing the department's decision regarding an agency's ability to provide specific behavioral health services, as the department can technically only take enforcement action on licenses or certifications, including modifying a certification. Agencies may appeal decisions regarding modifications to certifications.
WAC 246-341-0425 Agency administration— Individual service record system.	<ul style="list-style-type: none"> • In subsection (10), removed the term "mental health," so that it refers more generally to services provided under the supervision of the department of corrections, and added the phrase "except as restricted by federal law or regulation" to clarify that there are cases in which individual consent is required for the release of information. This clarifying change was made as a result of a suggestion from an interested party that was received during the public comment period.
WAC 246-341-0600 Individual rights.	<ul style="list-style-type: none"> • In subsection (2)(h)(i), deleted the reference to RCW 71.32.150, as that is specific to conditions for noncompliance, and replaced it with a reference to chapter 71.32 RCW.
WAC 246-341-0605 Complaint process.	<ul style="list-style-type: none"> • In subsection (5), corrected the reference to the department's ability to assess a fee under RCW 43.70.250.
WAC 246-341-0640 Individual service record content.	<ul style="list-style-type: none"> • In subsection (2)(g), inserted language that clarifies in which instance the individual service record should include the required documentation. Additionally, deleted the word "permission" and replaced it with "consent, or if applicable, the consent of the individual's parent or legal representation" when describing the release of the information to the new service provider. • In subsection (2)(h), inserted language that clarifies in which instance the individual service record should include a copy of a third-party report. • In subsection (2)(j), clarified that the individual service record must include a crisis plan, if one has been developed "or obtained."
WAC 246-341-0650 Access to individual service records.	<ul style="list-style-type: none"> • This section is being repealed. The contents of this section were moved to WAC 246-341-0425. References to WAC 246-341-0650 have been updated throughout the chapter.

WAC TITLE	CHANGE MADE
WAC 246-341-0713 Psychiatric medication monitoring services— Service standards.	<ul style="list-style-type: none"> • In subsection (3), clarified that "a support plan or individual service plan is not required when an individual is only receiving psychiatric medication monitoring services."
WAC 246-341-0715 Crisis support services— Service standards.	<ul style="list-style-type: none"> • In subsection (2)(c), deleted the reference to RCW 71.05.710, as that statute is specific to home visits by mental health professionals and this rule has broader applicability.
WAC 246-341-0720 Supported employment behavioral health services— Service standards.	<ul style="list-style-type: none"> • Updated the caption of this section to reference "behavioral health" rather than "mental health and substance use disorder," to be consistent with the rest of the chapter. Similarly, the department updated the description of these services.
WAC 246-341-0722 Supportive housing behavioral health services— Service standards.	<ul style="list-style-type: none"> • Updated the caption of this section to reference "behavioral health" rather than "mental health and substance use disorder," to be consistent with the rest of the chapter. Similarly, the department updated the description of these services.
WAC 246-341-0725 Mental health peer respite— Certification standards.	<ul style="list-style-type: none"> • In subsection (3)(c)(i), updated the term "governing board" to "governing body."
WAC 246-341-0730 Clubhouses.	<ul style="list-style-type: none"> • In subsection (2)(e), clarified that clubhouses must comprise structured activities "in accordance with RCW 71.24.650(5)," which includes the activities that were listed in subsections (2)(e)(i) through (vii).
WAC 246-341-0737 Behavioral health outpatient intervention, assessment and treatment services— Certification standards.	<ul style="list-style-type: none"> • In subsection (4), corrected a reference to RCW 71.05.445.
WAC 246-341-0901 Behavioral health outpatient crisis outreach, observation and intervention services— Certification standards.	<ul style="list-style-type: none"> • In subsection (7)(c), deleted the reference to RCW 71.05.710, as that statute is specific to home visits by mental health professionals and this rule has broader applicability.
WAC 246-341-1105 Behavioral health residential and inpatient intervention, assessment and treatment services— Certification standards.	<ul style="list-style-type: none"> • In subsection (4)(c), clarified that when the discharge is unplanned and the parent or legal guardian is unavailable, the agency must contact the "relevant state's child protective services."
WAC 246-341-1108 Residential and inpatient substance use disorder treatment services— Service standards.	<ul style="list-style-type: none"> • In subsection (7), clarified that the documentation requirements listed in this subsection are in addition to the general documentation requirements listed in WAC 246-341-0640.
WAC 246-341-1131 Involuntary behavioral health residential and inpatient services— Certification standards.	<ul style="list-style-type: none"> • Clarified that the individuals served under this certification are either those subject to a civil commitment or court-order under chapters 71.05 or 71.34 RCW or those "who have been court ordered to receive treatment at a certified agency pursuant to chapter 10.77 RCW" to align with statutory authority. • In subsection (1)(c), replaced "NGRI behavioral health treatment" with "court ordered treatment at a certified agency pursuant to chapter 10.77 RCW."
WAC 246-341-1137 Intensive behavioral health treatment services— Certification standards.	<ul style="list-style-type: none"> • In subsection (12)(e), replaced the term "permission" with "consent." • In subsection (13)(d)(ii), clarified that "the individual may consent or refuse to consent" to the release of records. • In subsection (13)(e), replaced the term "residents" with "individuals receiving services at the agency."
WAC 246-341-1140 Crisis stabilization unit and triage— Certification standards.	<ul style="list-style-type: none"> • In subsection (6), replaced the term "mental health" with "behavioral health."

A final cost-benefit analysis is available by contacting Julie Tomaro, P.O. Box 47843, Olympia, WA 98504, phone 360-236-2937, fax 360-236-2321, TTY 711, email julie.tomaro@doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 38, Repealed 32.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 38, Repealed 32.

Date Adopted: December 6, 2022.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3709.5

BEHAVIORAL HEALTH ((SERVICES))—PURPOSE AND SCOPE

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

WAC 246-341-0100 Behavioral health ((services))—Purpose and scope. (1) This chapter establishes state minimum standards for licensed behavioral health agencies.

(2) This chapter does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW or facilities owned or operated by the department of veterans affairs or other agencies of the United States government.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0100, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0100, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0110 Behavioral health ((services))—Available certifications. ~~(1) A behavioral health agency licensed by the department ((may become certified to provide one or more of the mental health, substance use disorder, and problem gambling and gambling disorder services listed below:~~

- ~~(1) Outpatient and recovery support:~~
 - ~~(a) Individual mental health treatment services;~~
 - ~~(b) Brief mental health intervention treatment services;~~
 - ~~(c) Group mental health therapy services;~~
 - ~~(d) Family therapy mental health services;~~
 - ~~(e) Rehabilitative case management mental health services;~~
 - ~~(f) Psychiatric medication management services;~~
 - ~~(g) Medication monitoring services;~~
 - ~~(h) Day support mental health services;~~
 - ~~(i) Recovery support: Supported employment mental health services;~~
 - ~~(j) Recovery support: Supported employment substance use disorder services;~~
 - ~~(k) Recovery support: Supportive housing mental health services;~~
 - ~~(l) Recovery support: Supportive housing substance use disorder services;~~
 - ~~(m) Recovery support: Peer support mental health services;~~
 - ~~(n) Recovery support: Peer support substance use disorder services;~~
 - ~~(o) Recovery support: Mental health peer respite center;~~
 - ~~(p) Recovery support: Applied behavior analysis (ABA) mental health services;~~
 - ~~(q) Consumer-run recovery support: Clubhouse mental health services;~~
 - ~~(r) Substance use disorder level one outpatient services;~~
 - ~~(s) Substance use disorder level two intensive outpatient services;~~
 - ~~(t) Substance use disorder assessment only services;~~
 - ~~(u) Substance use disorder alcohol and drug information school services;~~
 - ~~(v) Substance use disorder information and crisis services;~~
 - ~~(w) Substance use disorder emergency service patrol services; and~~
 - ~~(x) Problem gambling and gambling disorder services.~~
- ~~(2) Involuntary and court-ordered outpatient services:~~
 - ~~(a) Less restrictive alternative (LRA) or conditional release support behavioral health services;~~
 - ~~(b) Designated crisis responder (DCR) services;~~
 - ~~(c) Substance use disorder counseling services subject to RCW 46.61.5056; and~~
 - ~~(d) Driving under the influence (DUI) substance use disorder assessment services.~~
- ~~(3) Crisis mental health services:~~
 - ~~(a) Crisis mental health telephone support services;~~
 - ~~(b) Crisis mental health outreach services; and~~
 - ~~(c) Crisis mental health stabilization services.~~
- ~~(4) Opioid treatment program (OTP) services.~~
- ~~(5) Withdrawal management, residential substance use disorder treatment, and mental health inpatient services:~~

- ~~(a) Withdrawal management facility services:
 (i) Withdrawal management services — Adult;
 (ii) Withdrawal management services — Youth;
 (iii) Secure withdrawal management and stabilization services — Adult; and
 (iv) Secure withdrawal management and stabilization services — Youth.
 (b) Residential substance use disorder treatment services:
 (i) Intensive substance use disorder inpatient services;
 (ii) Low-intensity (recovery house) residential treatment services;
 (iii) Long-term treatment services; and
 (iv) Youth residential services.
 (c) Mental health inpatient services:
 (i) Evaluation and treatment services — Adult;
 (ii) Evaluation and treatment services — Youth;
 (iii) Intensive behavioral health treatment services;
 (iv) Child long-term inpatient program services;
 (v) Crisis stabilization unit services;
 (vi) Triage — Involuntary services;
 (vii) Triage — Voluntary services; and
 (viii) Competency evaluation and restoration treatment services))~~
- must hold one or more of the following certifications:
- (a) Behavioral health information and assistance;
(b) Behavioral health support;
(c) Mental health peer respite;
(d) Clubhouse;
(e) Behavioral health outpatient intervention, assessment and treatment;
(f) Behavioral health outpatient crisis, observation, and intervention;
(g) Designated crisis responder services;
(h) Opioid treatment program;
(i) Withdrawal management;
(j) Behavioral health residential or inpatient intervention, assessment and treatment;
(k) Involuntary behavioral health residential or inpatient;
(l) Intensive behavioral health treatment;
(m) Crisis stabilization unit and triage;
(n) Competency restoration;
(o) Problem gambling and gambling disorder; or
(p) Applied behavior analysis.
- (2) The type of certification(s) held by the agency determines which behavioral health services the agency is approved to provide.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0110, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0110, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0110, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES))—DEFINITIONS

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

WAC 246-341-0200 Behavioral health ((services))—Definitions.

The definitions in this section and RCW ((71.05.010)) 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "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.

(2) "Adult" means an individual ((eighteen)) 18 years of age or older. For purposes of the medicaid program, adult means an individual ((twenty-one)) 21 years of age or older.

(3) "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).

(4) "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.

(5) "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.

(6) "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.

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

(8) "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.

((8)) (9) "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.

((9)) (10) "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.

((10)) (11) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific

~~((substance use disorder, mental health, and problem gambling and gambling disorder program-specific services))~~ types of behavioral health services included under the certification category.

~~((11))~~ (12) "Child," "minor," and "youth" mean:

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

(b) An individual age ~~((eighteen to twenty-one))~~ 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 ~~((eighteen to twenty-one))~~ 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

~~((12) "Clinical record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.))~~

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

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

(22) "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.

(23) "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 ((43.20A.890)) 43.70.080(5) and 41.05.750.

~~((22))~~ (24) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A ((or 18.57A)) RCW.

~~((23))~~ (25) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

~~((24))~~ (26) "Mental health professional" or "MHP" means a person who meets the qualifications in WAC 246-341-0515((+5)) (4).

~~((25))~~ (27) "Peer counselor" means the same as defined in WAC 182-538D-0200.

~~((26))~~ (28) "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.

(29) "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.

~~((27))~~ (30) "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.

~~((28))~~ (31) "Secretary" means the secretary of the department of health.

~~((29))~~ (32) "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.

~~((30))~~ (33) "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.

~~((31))~~ (34) "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.

~~((32))~~ (35) "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.

~~((33))~~ (36) "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.

~~((34))~~ (37) "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.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0200, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0200, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0200, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES))—AGENCY LICENSURE AND CERTIFICATION

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

WAC 246-341-0300 Agency licensure and certification—General information. The department licenses behavioral health agencies and certifies them to provide behavioral health ~~((treatment))~~ services. To obtain and maintain licensure and certification, an applicant ~~((must))~~ shall meet the requirements of this chapter, applicable local and state rules, and applicable state and federal statutes and regulations. ~~((In addition, the applicant must meet the applicable specific service requirements for all behavioral health treatment services certified by the department.))~~

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

~~((1))~~ (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) ~~((A list of the specific services for which the applicant is seeking certification;))~~ 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 ~~((elin-eat))~~ 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 ~~((certification))~~ approval that address all of the applicable requirements of this chapter.

~~((2))~~ (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.

~~((3))~~ (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)(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 ~~((is))~~ 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.

~~((4))~~ (5) License renewal. ~~((a))~~ 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:

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

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

~~((b) The department shall renew an agency's main site or branch site license if all the requirements for renewal are met and the renewal request is received before the expiration date of the agency's current license.~~

~~(5))~~ (6) 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 (~~(process)~~) 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 ~~((thirty))~~ 30 calendar days of the change;

(b) Adding a ~~((service))~~ 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 ~~((thirty))~~ 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.

~~((d))~~ (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 ~~((clinical))~~ 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 ~~((thirty))~~ 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.

~~((6))~~ (7) 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 ~~((shall require))~~:

(i) An initial license application from the new owner in accordance with subsection ~~((1))~~ (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 ~~((clinical))~~ individual service records in accordance with applicable state and federal statutes and regulations.

~~((7))~~ (8) 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 ~~((clinical))~~ 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.

~~((8))~~ (9) Granting a license. A new or amended license or ~~((service-specific))~~ 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 ~~((services))~~ certifications that demonstrate that the agency will operate in compliance with the licensure and ~~((service-specific))~~ certification standards.

~~((9))~~ (10) Effective date. An agency's license and any behavioral health services certification is effective for up to ~~((twelve))~~ 12 months from the ~~((effective))~~ date of issuance, subject to the agency maintaining compliance with the minimum license and certification standards in this chapter.

~~((10))~~ (11) 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.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0300, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0300, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0310 Agency licensure and certification—Deeming.

(1) The department shall deem an agency or branch site as meeting state minimum standards for licensing and certification described in this chapter as a result of accreditation by a national accreditation organization that is recognized by and has a current agreement with the department.

(2) To implement deemed status when opening a new main site agency, adding a new type of certification or behavioral health service to a main site agency, or adding a new type of certification or behavioral health service to a branch site location that is not currently offered at the main site agency, an agency must:

(a) Submit proof of accreditation for the services provided by the agency to the department; and

(b) Complete a department initial on-site review.

(3) To implement deemed status when opening a new branch site location that is providing the same services as a deemed main site agency, or a certification or behavioral health service is being added to a branch site location that is a deemed service at a main site location, an agency must submit proof of accreditation for the services provided by the agency to the department.

(4) The department will not conduct an on-site review as part of the deeming process for tribal behavioral health agencies who seek licensure pursuant to WAC 246-341-0310.

(5) Deeming will be in accordance with the established written agreement between the national accreditation organization and the department.

(6) Specific licensing and certification requirements of any:

(a) State rule may only be waived through a deeming process consistent with the established written agreement between the recognized behavioral health accrediting body and the department.

(b) State or federal statute or regulation will not be waived through a deeming process.

(7) A deemed main site agency or branch site must submit to the department a copy of any relevant reports such as audits, findings, or documentation related to accreditation status.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0310, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0310, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0320 Agency licensure and certification—On-site reviews and plans of correction. Each agency is subject to an initial on-site review and each agency that is not deemed in accordance with WAC 246-341-0310 is subject to routine, ongoing on-site reviews to determine if the agency is in compliance with the minimum licensure and certification standards.

(1) ~~((A department review team representative(s) conducts))~~ The agency shall participate in an entrance conference ((with the agency)) conducted by the department review team representative(s) and an on-site review ((that)). This may include:

(a) A review of:

(i) Agency policies and procedures;

(ii) Personnel records;

(iii) ~~((Clinical))~~ Individual service records;

(iv) Facility accessibility;

(v) The agency's internal quality management plan, process, or both, that demonstrates how the agency evaluates program effectiveness and individual participant satisfaction; and

(vi) Any other information, including the criteria in WAC 246-341-0335 (1)(b), that the department determines to be necessary to confirm compliance with the minimum standards of this chapter; and

(b) Interviews with:

(i) Individuals served by the agency; and

(ii) Agency staff members.

(2) ~~The ((department review team representative(s) concludes an on-site review with))~~ agency shall participate in an exit conference ((that)) with the department review team representative(s) at the conclusion of the on-site review which includes a discussion of any findings.

(3) The department will send the agency a statement of deficiencies report that will include instructions and time frames for submission of a plan of correction.

(4) ~~The ((department requires the))~~ agency ~~((to))~~ shall correct the deficiencies listed on the plan of correction:

(a) By the ~~((negotiated))~~ time frame agreed upon by the agency and the department review team representative; or

(b) Immediately if the department determines health and safety concerns require immediate corrective action.

(5) On-site reviews of branch sites will occur at the same time as the main site review and take place at the main site location so long as the department can access the following either electronically or by hard copies brought to the main site agency location:

- (a) Personnel records of employees hired since the previous review;
- (b) A sample of individual ((clinical)) service records that reflect the services provided at each branch site location; and
- (c) Policies and procedures that are unique to the services provided at the branch site locations.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0320, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0320, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0335 Agency licensure and certification—Denials, suspensions, revocations, and penalties. (1) The department will deny issuing or renewing an agency's license or ((specific service)) certification(s), place an agency on probation, or suspend, or revoke an agency's license or ((specific service)) certification, for any of the following reasons:

(a) The agency fails to meet applicable requirements in this chapter, chapters 71.24, 71.05, 71.34, and 71.12 RCW, or RCW 41.05.750.

(b) The agency fails to cooperate or disrupts department representatives during an on-site review or complaint investigation.

(c) The agency fails to assist the department in conducting individual interviews with either staff members or individuals receiving services, or both.

(d) ((The)) An agency owner ((or)), governing person of a non-profit corporation or agency administrator:

(i) Had ((a)) any license or ((specific service)) certification issued by the department subsequently denied, suspended, revoked, or any other sanction placed upon a license;

(ii) Was convicted of child abuse or adjudicated as a perpetrator of a founded child protective services report;

(iii) Was convicted of abuse of a vulnerable adult or adjudicated as a perpetrator of substantiated abuse of a vulnerable adult. A vulnerable adult means the same as defined in ((chapter 74.34)) RCW 74.34.020;

(iv) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(v) Committed, permitted, aided or abetted the committing of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(vi) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of an individual or displayed acts of discrimination;

(vii) Misappropriated patient (individual) property or resources;

- (viii) Failed to meet financial obligations or contracted service commitments that affect care of individuals;
 - (ix) Has a history of noncompliance with state or federal rules in an agency with which the applicant has been affiliated;
 - (x) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:
 - (A) The submitted application or materials attached; or
 - (B) Any matter under department investigation.
 - (xi) Refused to allow the department access to view records, files, books, or portions of the premises relating to operation of the program;
 - (xii) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;
 - (xiii) Is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds (this also applies to any person or business entity named in the agency's application for licensure or certification);
 - (xiv) Does not meet background check requirements;
 - (xv) Fails to provide satisfactory application materials; or
 - (xvi) Advertises the agency as certified when licensing or certification has not been granted, or has been revoked or canceled.
- (e) The department determines there is imminent risk to health and safety.
- (f) The agency's licensure or (~~specific service~~) certification is in probationary status and the agency fails to correct the noted health and safety deficiencies within the agreed-upon time frames.
- (2) The department may deny issuing or renewing an agency's license or (~~specific service~~) certification(s), place an agency on probation, or suspend or revoke an agency's license or (~~specific service~~) certification(s) for any of the following reasons:
- (a) The agency voluntarily cancels licensure or certification(s).
 - (b) The agency fails to pay the required license or certification fees.
 - (c) The agency stops providing the services for which the agency is certified.
 - (d) The agency fails to notify the department before changing ownership.
 - (e) The agency fails to notify the department before relocating its licensed location.
- (3) If the department denies, suspends, revokes, or modifies the agency's license or (~~specific service~~) certification, the department will send a written notice including the reason(s) for the decision and the agency's right to appeal a department decision according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.
- (4) The department may summarily suspend an agency's license or (~~specific service~~) certification(s) (~~of a behavioral health service~~) when an immediate danger to the public health, safety, or welfare requires emergency action.
- (5) If an agency fails to comply with the requirements of this chapter, the department may:
- (a) Assess fees to cover costs of added licensing and (~~service-specific~~) certification activities, including when the department determines a corrective action is required due to a complaint or incident investigation; and

(b) ~~((Stop referral(s) of an individual who is a service recipient of either a state or federally funded service or both; and (e-))~~ Notify the health care authority and the managed care organization of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or ~~((service-specific))~~ certification(s).

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0335, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0335, filed 4/16/19, effective 5/17/19.]

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

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 ~~((outpatient))~~ 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.

~~((2))~~ (4) In addition to meeting the requirements in subsection ~~((1))~~ (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.

~~((3) 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.)~~ (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.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0342, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0342, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0365 Agency licensure and certification—Fee requirements. (1) ~~((Payment of licensing and specific service certification fees required under this chapter must be included))~~ An agency must include payment of licensing and certification fees required under this chapter with the initial application, renewal application, or with requests for other services.

~~(2) ((Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.~~

~~(3))~~ The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

~~((4) Fees))~~ (3) The department will not ((be refunded)) refund fees when licensure or certification is denied, revoked, or suspended.

~~((5) The department charges))~~ (4) The applicant shall submit the following fees for approved substance use disorder treatment programs:

((Application fees for agency certification for approved substance use disorder treatment programs))	
New agency application	\$1,000
Branch agency application	\$500
Application to add one or more ((services)) <u>certifications</u>	\$200
Application to change ownership	\$500
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
Withdrawal management and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 246-341-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 246-341-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

~~((6) Agencies))~~ (5) An agency providing substance use disorder treatment programs must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

(a) The number of licensed withdrawal management and residential beds; and

(b) The agency provider's national accreditation status.

~~((7) The department charges))~~ (6) The applicant shall submit the following fees for approved mental health treatment programs:

((Initial licensing application fee for mental health treatment programs))	
<u>Initial licensing application fee</u>	\$1,000 ((initial licensing fee))
Initial and annual licensing fees for agencies not deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575

((Initial licensing application fee for mental health treatment programs))	
Annual licensing fees for deemed agencies	
<u>Annual licensing fee for deemed agencies licensed by the department</u>	\$500 ((annual licensing fee))
Complaint/critical incident investigation fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

~~((+8))~~ (7) Agencies providing nonresidential mental health services or inpatient or residential mental health services in accordance with WAC 246-341-1118 must report the number of annual service hours provided.

(a) Existing licensed agencies must compute the annual service hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first ~~((twelve))~~ 12 months of operation.

~~((+9))~~ (8) Agencies providing mental health peer respite services, intensive behavioral health treatment services, evaluation and treatment services, and competency evaluation and restoration treatment services must pay the following certification fees:

- (a) Ninety dollars initial certification fee, per bed; and
- (b) Ninety dollars annual certification fee, per bed.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0365, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0365, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0365, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-0370 Agency licensure and certification—Appealing a department decision. An agency may appeal a decision made by the department regarding agency licensure or certification ~~((of a behavioral health service))~~, according to WAC 246-341-0335.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0370, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES))—AGENCY ADMINISTRATION

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

WAC 246-341-0420 Agency policies and procedures. Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain policies and procedures that address all of the applicable licensing and certification requirements of this chapter including administrative and personnel policies and procedures. Administrative policies and procedures must demonstrate the following, as applicable:

(1) Ownership. Documentation of the agency's governing body, including a description of membership and authorities, and documentation of the agency's:

(a) Articles and certificate of incorporation and bylaws if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership; or

(c) Sole proprietorship if one person is the owner.

~~(2) ((Licensure. A copy of the agency's master business license that authorizes the organization to do business in Washington state that lists all addresses where the entity performs services.~~

~~(3))~~ (3) Organizational description. An organizational description detailing all positions and associated licensure or certification, updated as needed.

~~((4))~~ (3) Agency staffing. Documentation that shows the agency has adequate staffing to provide treatment in accordance with regulations relevant to their specialty or specialties and registration, certification, licensing, and trainee or volunteer status.

~~((5))~~ (4) Interpreter services for individuals with limited-English proficiency (LEP) and individuals who have sensory disabilities. Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities. This means:

(a) Certified interpreters or other interpreter services must be available for individuals with LEP and individuals who have sensory disabilities; or

(b) The agency must have the ability to effectively provide, coordinate or refer individuals in these populations for appropriate assessment or treatment.

~~((6))~~ (5) Reasonable access for individuals with disabilities. A description of how reasonable accommodations will be provided to individuals with disabilities.

~~((7))~~ (6) Nondiscrimination. A description of how the agency complies with all state and federal nondiscrimination laws, rules, and plans.

~~((8))~~ (7) State and federal rules on confidentiality. A description of how the agency implements state and federal rules on individuals' confidentiality consistent with the service or services being provided.

~~((9))~~ (8) Reporting and documentation of suspected abuse, neglect, or exploitation. A description how the agency directs staff to report and document suspected abuse, neglect, or exploitation of a child or vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

~~((10))~~ (9) Reporting of impaired practitioners in accordance with chapters 18.130 RCW and 246-16 WAC.

~~((11))~~ (10) Protection of youth. Documentation of how the agency addresses compliance with service-specific rules and the protection of youth participating in group or residential treatment with adults and how the agency will follow the requirements of chapter 71.34 RCW when an adolescent seeks treatment for themselves and for family initiated treatment of an adolescent.

~~((12))~~ (11) Completing and submitting reports. A description of how the agency directs staff to complete and submit in a timely manner, all reports required by entities such as the courts, department of corrections, department of licensing, the department of social and health services, the health care authority, and the department of health.

~~((13))~~ (12) Reporting critical incidents. A description of how the agency directs staff to report to the department within ~~((forty-eight))~~ 48 hours any critical incident that occurs involving an individual, and actions taken as a result of the incident. A critical incident is a serious or undesirable outcome that occurs in the agency including:

- (a) Allegations of abuse, neglect, or exploitation;
- (b) Death, including death by suicide;
- (c) Injuries resulting in admission to a hospital as an inpatient; or
- (d) Outbreak of communicable disease within the agency.

~~((14))~~ (13) A smoking policy. Documentation that a smoking policy consistent with chapter 70.160 RCW, and in compliance with applicable county ordinances, is in effect.

~~((15))~~ (14) Evacuation plan. Documentation that the residential or inpatient agency has an evacuation plan consistent with chapter 246-320, 246-322, 246-324, or 246-337 WAC. For a nonresidential agency, documentation of an evacuation plan for use in the event of a disaster or emergency that addresses:

- (a) Different types of disasters or emergencies;
- (b) Placement of posters showing routes of exit;
- (c) The need to mention evacuation routes at public meetings;
- (d) Communication methods for individuals, staff, and visitors, including persons with a visual or hearing impairment or limitation;
- (e) Evacuation of mobility impaired individuals; and
- (f) Evacuation of children if child care is offered.

~~((16))~~ (15) Individual rights. A description of how the agency has individual participation rights and policies consistent with WAC 246-341-0600.

~~((17))~~ (16) Individual complaints. A description of how the agency addresses an individual's right to report an alleged violation of chapter 70.41, 71.05, 71.12, 71.24, or 71.34 RCW, and this chapter consistent with WAC 246-341-0605~~((7))~~.

~~((18))~~ (17) Personnel policies and procedures must address the following:

- (a) Background checks and disclosure statements. Identification of how the agency conducts Washington state background checks and obtains disclosure statements on each agency employee with unsupervised

access to individuals receiving services, consistent with RCW 43.43.830 through 43.43.842.

(b) Drug-free workplace. Identification of how the agency provides for a drug-free workplace that includes:

(i) Agency program standards of prohibited conduct; and

(ii) Actions to be taken in the event a staff member misuses alcohol or other drugs, including referral to a department-approved impaired practitioner or voluntary substance use monitoring program.

(c) Supervision. Identification of how supervision is provided to assist clinical and nonclinical staff and volunteers to increase their skills and improve quality of services to individuals and families.

(d) Staff training. A description of how the agency provides training initial orientation and annual training thereafter in accordance with WAC 246-341-0510.

(e) Mental health advanced directives. A description of how the agency will comply with the mental health advanced directive requirements in chapter 71.32 RCW.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0420, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0420, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0425 Agency administration—Individual ((~~clinical~~)) service record system. Each behavioral health agency must:

(1) Maintain a comprehensive ((~~clinical~~)) individual service record system that includes policies and procedures that protect an individual's personal health information;

(2) Ensure that the individual's personal health information is shared or released only in compliance with applicable state and federal law;

(3) If maintaining electronic individual ((~~clinical~~)) service records:

(a) Provide secure, limited access through means that prevent modification or deletion after initial preparation;

(b) Provide for a backup of records in the event of equipment, media, or human error;

(c) Provide for protection from unauthorized access, including network and internet access;

(d) Provide that each entry made in an individual's ((~~clinical~~)) individual service record((s)) clearly identifies the author and who approved the entry, if applicable; and

(e) Prohibit agency employees from using another employee's credentials to access, author, modify, or delete an entry from an individual's ((~~clinical~~)) individual service record;

(4) Retain an individual's ((~~clinical~~)) individual service record, including an electronic record, for a minimum of six years after the most recent discharge or transfer of any individual;

(5) Retain a youth's or child's individual ((~~clinical~~)) service record, including an electronic record, for at least six years after

the most recent discharge, or until the youth's or child's (~~twenty-first~~) 21st birthday, whichever is longer; (~~and~~)

(6) Ensure secure storage of active or closed confidential records;

(7) When providing access to individual service records to an individual, the agency must allow appropriate time and privacy for the individual to review the records and have a clinical staff member available to answer questions;

(8) If the agency maintains electronic health records, the agency must make the records available to requestors in hard copy form;

(9) The agency must allow the department access to individual service records; and

(10) When an individual receiving services is under the supervision of the department of corrections (DOC), the agency must make information available to DOC, in accordance with RCW 71.05.445. The information released does not require the consent of the individual except as restricted by federal law or regulation.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0425, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0425, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES))—PERSONNEL

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

WAC 246-341-0510 Personnel—Agency record requirements.

~~((Each))~~ A behavioral health agency must maintain a personnel record for each person employed by the agency.

(1) The personnel record must contain all of the following:

(a) A signed position description.

(b) A signed and dated commitment to maintain patient (individual) confidentiality in accordance with state and federal confidentiality requirements.

(c) A record of an orientation to the agency within (~~ninety~~) 90 days of hire that includes all of the following:

(i) An overview of the agency's policies and procedures.

(ii) Staff ethical standards and conduct, including reporting of unprofessional conduct to appropriate authorities.

(iii) The process for resolving client concerns.

(iv) Cultural competency.

(v) Violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.

(vi) If providing substance use disorder services, prevention and control of communicable disease, bloodborne pathogens, and tuberculosis.

(d) A record of annual training that includes:

(i) Cultural competency; and

(ii) If providing substance use disorder services, prevention and control of communicable disease, bloodborne pathogens, and tuberculosis.

(e) A record of violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; annually for employees working directly with clients receiving mental health services per RCW 71.05.720 or according to the agency's workplace violence plan required per RCW 49.19.020.

(f) A copy of the staff member's valid current credential issued by the department if they provide clinical services.

(2) Staff members who have received services from the agency must have personnel records that:

(a) Are separate from ((clinical)) individual service records; and

(b) Have no indication of current or previous service recipient status, unless the information is shared voluntarily for the purposes of employment as a certified peer counselor.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0510, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0510, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0515 Personnel—Agency staff requirements. Each behavioral health agency must ensure that all of the following staff requirements are met:

(1) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.

(2) All staff providing clinical services receive clinical supervision((~~+~~)).

(3) ~~((All staff providing clinical mental health services have access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner, or psychologist who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.~~

~~(4))~~ An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every ~~((sixteen))~~ 16 individuals during group counseling or therapy sessions.

~~((5))~~ (4) A mental health professional is:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or

(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:

(i) Holds a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;

(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(iii) Who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.

~~((6))~~ (5) An agency providing problem gambling and gambling disorder treatment services must ensure staffing in accordance with WAC ~~((246-341-0754))~~ 246-341-1200.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0515, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0515, filed 4/16/19, effective 5/17/19.]

BEHAVIORAL HEALTH ((SERVICES—CLINICAL))—GENERAL REQUIREMENTS

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

WAC 246-341-0600 ((Clinical—))Individual rights. (1) Each behavioral health agency must protect and promote individual participant rights applicable to the services the agency is certified to provide in compliance with this chapter, and chapters 70.41, 71.05, 71.12, 71.24, and 71.34 RCW, as applicable.

(2) Each agency must develop a statement of individual participant rights applicable to the services the agency is certified to provide, to ensure an individual's rights are protected in compliance with chapters 70.41, 71.05, 71.12, 71.24, and 71.34 RCW, as applicable. To the extent that the rights set out in those chapters do not specifically address the rights in this subsection or are not applicable to all of the agency's services, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements.

"You have the right to:"

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. Individual participants have the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited-English proficiency, and cultural differences;

(d) Be treated with respect, dignity and privacy, except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises or to address risk of harm to the individual or others. "Reasonable" is defined as minimally invasive searches to detect contraband or invasive searches only upon the initial intake process or if there is reasonable suspicion of possession of contraband or the presence of other risk that could be used to cause harm to self or others;

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality regulations;

(h) Participate in the development of your individual service plan and receive a copy of the plan if desired;

(i) Make a mental health advance directive consistent with chapter 71.32 RCW;

~~(j)~~ Review your ((clinical)) individual service record in the presence of the administrator or designee and be given an opportunity to request amendments or corrections; and

~~((j))~~ (k) Submit a report to the department when you feel the agency has violated your rights or a WAC requirement regulating behavioral health agencies.

(3) Each agency must ensure the applicable individual participant rights described in subsections (1) and (2) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Available in alternative formats for individuals who are visually impaired;

(c) Translated to the most commonly used languages in the agency's service area;

(d) Posted in public areas; and

(e) Available to any participant upon request.

(4) At the time of admission and upon client request, the agency must provide each client with information on how to file a report to the department if they feel their rights or requirements of this chapter have been violated.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0600, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0600, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0605 Complaint process. (1) Any person may submit a report to the department of an alleged violation of licensing and certification laws and rules.

(2) Health care professionals credentialed by the department (~~must~~) shall comply with the mandatory reporting requirements in chapters 18.130 RCW and 246-16 WAC.

(3) If the department determines a report should be investigated, the report becomes a complaint. If the department conducts a complaint investigation, behavioral health agency representatives must cooperate to allow department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate agency records including, but not limited to:

(i) An individual's (~~clinical~~) individual service record and personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by the department to determine compliance and to resolve the complaint; and

(c) Conduct individual interviews with staff members and individuals receiving services.

(4) An agency or agency provider must not retaliate against any:

(a) Individual or individual's representative for making a report with the department or being interviewed by the department about a complaint;

(b) (~~A~~) Witness involved in the complaint issue; or

(c) (~~An~~) Employee of the agency.

(5) The department may assess a (~~fine~~) fee under RCW 43.70.250, or deny, suspend, or modify a license or certification under RCW 43.70.115, if:

(a) Any allegation within the complaint is substantiated; or

(b) The (~~department's finding~~) department finds that the individual or individual's representative, a witness, or employee of the agency experienced an act of retaliation by the agency as described in subsection (4) of this section during or after a complaint investigation.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0605, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0605, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0640 ((Clinical)) Individual service record content. (~~Each~~) A behavioral health agency is responsible for the components and documentation in an individual's (~~clinical~~) individual service record content unless specified otherwise in (~~specific service~~) certification or individual service requirements.

(1) The (~~clinical~~) individual service record must include:

(a) Documentation the individual received a copy of counselor disclosure requirements as required for the counselor's credential.

(b) Identifying information.

(c) An assessment which is an age-appropriate, strengths-based psychosocial assessment that considers current needs and the individual's relevant behavioral and physical health history according to best practices, completed by a person appropriately credentialed or qualified to provide the type of assessment pertaining to the service(s) being sought, which includes:

(i) Presenting issue(s);

(ii) An assessment of any risk of harm to self and others, including suicide, homicide, and a history of self-harm and, if the assessment indicates there is such a risk, a referral for provision of emergency/crisis services;

(iii) Treatment recommendations or recommendations for additional program-specific assessment; ~~((and))~~

(iv) A diagnostic assessment statement, including sufficient information to determine a diagnosis supported by the current and applicable *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, or *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood (DC:0-5)*;

(v) A placement decision, using ASAM criteria dimensions, when the assessment indicates the individual is in need of substance use disorder services.

(d) Individual service plan that:

(i) Is completed or approved by a person appropriately credentialed or qualified to provide mental health, substance use, co-occurring, or problem gambling disorder services;

(ii) Addresses issues identified in the assessment and by the individual or, if applicable, the individual's parent(s) or legal representative;

(iii) Contains measurable goals or objectives and interventions;

(iv) Must be mutually agreed upon and updated to address changes in identified needs and achievement of goals or at the request of the individual or, if applicable, the individual's parent or legal representative;

(v) Must be in a terminology that is understandable to the individuals and the individual's family or legal representative, if applicable.

(e) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative.

(f) Progress and group notes including the date, time, duration, participant's name, response to interventions or clinically significant behaviors during the group session, and a brief summary of the individual or group session and the name and credential of the staff member who provided it.

(g) If treatment is for a substance use disorder, documentation that ASAM criteria was used for admission, continued services, referral, and discharge planning and decisions.

(h) Discharge information as follows:

(i) A discharge statement if the individual left without notice;
or

(ii) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including:

(A) The date of discharge;

- (B) Continuing care plan; and
- (C) If applicable, current prescribed medication.

(2) When the following situations apply, the ~~((clinical))~~ individual service record must include:

(a) Documentation of confidential information that has been released without the consent of the individual under:

- (i) RCW 70.02.050;
- (ii) The Health Insurance Portability and Accountability Act (HIPAA); ~~((and))~~
- (iii) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services; and
- (iv) 42 C.F.R. Part 2.

(b) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred.

- (c) If treatment is court-ordered, a copy of the order.
- (d) Medication records.
- (e) Laboratory reports.
- (f) Properly completed authorizations for release of information.

(g) If the individual engages in services or is referred to a new service provider, the individual service record should include documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider with the individual's ~~((permission))~~ consent or if applicable, the consent of the individual's parent or legal representation.

(h) If a report is required by a third-party, a copy of any report required by third-party entities such as the courts, department of corrections, department of licensing, and the department of health, and the date the report was submitted.

(i) Documentation of coordination with any systems or organizations the individual identifies as being relevant to treatment, with the individual's consent or if applicable, the consent of the individual's parent or legal representation.

- (j) A crisis plan, if one has been developed or obtained.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0640, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0640, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH INFORMATION AND ASSISTANCE SERVICES

NEW SECTION

WAC 246-341-0660 Behavioral health information and assistance—Certification standards. (1) Agencies certified for behavioral health

information and assistance services provide information and assistance services that are considered nontreatment behavioral health services that support an individual who has a need for interventions related to behavioral health. Behavioral health information and assistance services under this certification include services such as:

(a) Crisis telephone support in accordance with the service standards in WAC 246-341-0670; and

(b) Emergency service patrol in accordance with the service standards in WAC 246-341-0680.

(2) Agencies providing information and assistance services are not required to meet the requirements under WAC 246-341-0640.

(3) Agencies providing information and assistance services must maintain and provide a list of resources, including self-help groups, behavioral health services referral options, legal, employment, education, interpreter, and social and health services that can be used by staff members to refer an individual to appropriate services.

[]

NEW SECTION

WAC 246-341-0670 Crisis telephone support services—Service standards. Crisis telephone support services are services provided as a means of first contact for an individual in crisis or need of assistance. These services may include de-escalation and referral.

(1) A behavioral health agency providing crisis telephone support services must:

(a) Have services available 24 hours per day, seven days per week;

(b) Assure communication and coordination with the individual's mental health or substance use treatment provider, if indicated and appropriate;

(c) Remain on the phone with an individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;

(d) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder; and

(e) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member to unsupervised duties.

(2) Documentation of a crisis telephone support service must include the following:

(a) A brief summary of each service encounter, including the date, time, and duration of the encounter;

(b) The names of the participants;

(c) A follow-up plan or disposition, including any referrals for services, including emergency medical services;

(d) Whether an individual has a crisis plan and any request to obtain the crisis plan; and

(e) The name and credential, if applicable, of the staff person providing the service.

(3) A behavioral health agency providing crisis telephone services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available or on staff 24 hours a day, seven days a week.

[]

NEW SECTION

WAC 246-341-0680 Emergency service patrol—Service standards.

Emergency service patrol services provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. A behavioral health agency providing emergency service patrol services must:

- (1) Ensure the staff member providing the service:
 - (a) Has proof of a valid Washington state driver's license;
 - (b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training; and
 - (c) Has completed 40 hours of training in substance use disorder crisis intervention techniques and alcoholism and substance use disorder, to improve skills in handling crisis situations.
- (2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place;
- (3) Patrol assigned areas and give assistance to an individual intoxicated in a public place;
- (4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention;
- (5) Transport the individual to their home or shelter, or to a substance use disorder treatment program if the individual is intoxicated, but subdued and willing to be transported;
- (6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is incapacitated, unconscious, or has threatened or inflicted harm on another person;
- (7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody; and
- (8) Maintain a log, including:
 - (a) The date, time, and origin of each call received for assistance;
 - (b) The time of arrival at the scene;
 - (c) The location of the individual at the time of the assistance;
 - (d) The name of the individual transported;
 - (e) The results of the preliminary screening;
 - (f) The destination and address of the transport and time of arrival; and
 - (g) In case of nonpickup of a person, documentation of why the pickup did not occur.

[]

((OUTPATIENT AND RECOVERY)) CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH SUPPORT SERVICES

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

WAC 246-341-0700 ~~((Outpatient and recovery)) Behavioral health support services—((General)) Certification standards.~~ ((Outpatient behavioral health services and recovery support services are intended to improve or reduce symptoms and help facilitate resolution of situational disturbances for individuals in the areas of relationships, employment, and community integration.

~~(1) Outpatient services include the certifications described in WAC 246-341-0702 through 246-341-0754.~~

~~(2) Recovery support services include the certifications described in WAC 246-341-0720 through 246-341-0730.)~~ (1) Agencies certified for behavioral health support provide services to promote socialization, recovery, self-advocacy, development of natural supports, and maintenance of community living skills for individuals with a behavioral health diagnosis. Behavioral health support services may be provided in community, outpatient, residential and inpatient settings. Behavioral health support services under this certification include services such as:

(a) Psychiatric medication monitoring in accordance with the service standards in WAC 246-341-0713;

(b) Crisis support in accordance with the service standards in WAC 246-341-0715;

(c) Peer support;

(d) Rehabilitative case management;

(e) Day support;

(f) Supported employment in accordance with the service standards in WAC 246-341-0720; and

(g) Supportive housing in accordance with the service standards in WAC 246-341-0722.

(2) An agency certified to provide behavioral health support services is not required to meet the requirements in WAC 246-341-0640, but must instead meet the requirements in subsection (3) of this section.

(3) An agency providing any behavioral health support service must:

(a) Conduct a needs assessment or screening process that determines the appropriateness of the support service(s) based on the individual's needs and goals;

(b) Develop a support plan that indicates the goal(s) the individual intends to achieve through receiving the support service(s) and the progress made toward the goal(s);

(c) Maintain an individual's individual service record that contains documentation of the following:

(i) The name of the agency or other sources through which the individual was referred, if applicable;

- (ii) Determination of the appropriateness of the support service(s);
 - (iii) A copy of the support plan and progress toward meeting the individual's goal(s);
 - (iv) Any referral made to a more intensive level of care or emergency services when appropriate;
 - (v) Consent to include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual;
 - (vi) A brief summary of each service encounter, including the date, time, and duration of the encounter;
 - (vii) Name(s) of participant(s), including the name of the individual who provided the service;
 - (viii) Any information or copies of documents shared by or with a behavioral health agency or credentialed behavioral health professional; and
 - (ix) A discharge or disposition statement if the individual left without notice, or discharge or disposition information for an individual who did not leave without notice, completed within seven working days of the individual's discharge or disposition, including the date of discharge and continuing care or follow-up plan.
- (4) An agency may use a full assessment and individual service plan if it is certified for intervention, assessment and treatment services or has an agreement with a licensed behavioral health agency certified for intervention, assessment and treatment services in order to meet the requirements in subsection (3) (a) and (b) of this section. The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements.
- (5) For the purposes of this section:
- (a) Rehabilitative case management means mental health services that meet the ongoing assessment, facilitation, care coordination and advocacy for options and services to meet an individual's needs through communication and available resources, to promote quality and effective outcomes during and following a hospitalization. Services support individual employment, education, and participation in other daily activities appropriate to the individual's age, gender, and culture, and assist individuals in resolving crises in the least restrictive setting. Services include specific rehabilitative services provided to:
 - (i) Assist in an individual's discharge from an inpatient facility; and
 - (ii) Minimize the risk of readmission to an inpatient setting.
 - (b) Day support means an intensive rehabilitative program which provides a range of integrated and varied life skills training such as health, hygiene, nutritional issues, money management, maintaining living arrangement and symptom management to promote improved functioning or a restoration to a previous higher level of functioning. If counseling or therapy is provided, the agency must obtain a certification for outpatient intervention, assessment and treatment.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0700, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0700, filed 3/17/20, effective 5/1/20. Statutory Authority:

2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0700, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0713 ((Outpatient services—)) Psychiatric medication monitoring services—Service standards. (1) Psychiatric medication monitoring services ((occur face-to-face and)):

(a) Include one-on-one cueing, observing, and encouraging an individual to take medication as prescribed;

(b) Include reporting any pertinent information related to the individual's adherence to the medication back to the agency that is providing psychiatric medication services; and

(c) May take place at any location and for as long as it is clinically necessary.

(2) An agency providing medication monitoring services must:

(a) Ensure that the staff positions responsible for providing either medication monitoring, or delivery services, or both, are clearly identified in the agency's medication monitoring services policy;

(b) Have appropriate policies and procedures in place when the agency providing medication monitoring services maintains or delivers medication to the individual that address:

(i) The maintenance of a medication log documenting the type and dosage of medications, and the time and date;

(ii) Reasonable precautions that need to be taken when transporting medications to the intended individual and to assure staff safety during the transportation; and

(iii) The prevention of contamination of medication during delivery, if delivery is provided.

(c) Ensure that the individual's ~~((clinical))~~ individual service record includes documentation of medication monitoring services.

(3) A support plan or an individual service plan is not required when an individual is only receiving psychiatric medication monitoring services.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0713, filed 5/25/21, effective 7/1/21.]

NEW SECTION

WAC 246-341-0715 Crisis support services—Service standards.

Crisis support services are short-term (less than two weeks per episode) services that include face-to-face and other means of assistance with life skills training and understanding of medication effects on an individual.

(1) An agency providing crisis support services must:

(a) Assure communication and coordination with the individual's mental health or substance use disorder treatment provider, if indicated and appropriate;

(b) If an individual is found to be experiencing an acute crisis, remain with the individual in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;

(c) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder;

(d) Transport or arrange for transport of an individual in a safe and timely manner, when necessary;

(e) Document whether the individual has a crisis plan and any request to obtain the crisis plan;

(f) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member unsupervised duties; and

(g) Maintain a current list of local resources for referrals, legal, employment, education, interpreter and social and health services.

(2) An agency providing crisis support services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available on staff 24 hours a day, seven days a week.

(3) When services are provided in a private home or nonpublic setting, the agency must:

(a) Have a written plan for training, staff back-up, information sharing and communication for staff members who respond to a crisis in an individual's personal residence or in a nonpublic location;

(b) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's personal residence or other nonpublic location;

(c) Ensure that any staff member who engages in home visits is provided access, by their employer, to a wireless telephone or comparable device for the purpose of emergency communication;

(d) Provide staff members who are sent to a personal residence or other nonpublic location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

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

WAC 246-341-0720 ((~~Outpatient services—Recovery support~~)) Supported employment ((~~mental~~)) behavioral health ((~~and substance use disorder~~)) services—Service standards. Supported employment ((~~mental~~)) behavioral health ((~~and substance use disorder~~)) services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

- (a) The department of social and health services' division of vocational rehabilitation (DVR);
- (b) The department of social and health services' community services offices;
- (c) State board for community and technical colleges;
- (d) The business community;
- (e) WorkSource, Washington state's official site for online employment services;
- (f) Washington state (~~(department of)~~) employment security department; and
- (g) Organizations that provide job placement within the community.

(2) A behavioral health agency that provides supported employment services must:

- (a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the department of social and health services' division of vocational rehabilitation;
- (b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;
- (c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;
- (d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;
- (e) Provide and document any outreach, job coaching, and support at the individual's worksite when requested by the individual or the individual's employer; and
- (f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state antidiscrimination law.

(3) Supported employment services are not required to be provided under clinical supervision.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0720, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0720, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0722 ((~~Outpatient services—Recovery support~~)) Supportive housing ((~~mental~~)) behavioral health ((~~and substance use disorder~~)) services—Service standards. Supportive housing ((~~mental~~)) behavioral health ((~~and substance use disorder~~)) services support an

individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city;

(c) Community action councils;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state antidiscrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sublease.

(3) Supportive housing services are not required to be provided under clinical supervision.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0722, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0722, filed 4/16/19, effective 5/17/19.]

CERTIFICATION STANDARDS FOR MENTAL HEALTH PEER RESPITE

AMENDATORY SECTION (Amending WSR 20-07-091, filed 3/17/20, effective 5/1/20)

WAC 246-341-0725 (~~(Recovery support services—Recovery support —)~~) **Mental health peer respite—Certification standards.** (1) Mental health peer respite (~~(services are)~~) facilities provide voluntary, holistic, trauma-informed, short-term, noncrisis, peer support services, (~~(provided)~~) in a home-like environment, which focus on recovery and wellness. These services are limited to individuals who are:

- (a) At least (~~(eighteen)~~) 18 years of age;
- (b) Experiencing psychiatric distress but who are not detained or involuntarily committed under chapter 71.05 RCW; and
- (c) Independently seeking respite services by their own choice.

(2) An agency certified to provide mental health peer respite services must (~~(be licensed according to this chapter and)~~) meet the (~~(general)~~) behavioral health support certification requirements in (~~(~~

- ~~(a) WAC 246-341-0718 for recovery support services; and~~
- ~~(b) WAC 246-341-0724 for peer support services)~~) WAC 246-341-0700.

(3) An agency certified to provide mental health peer respite services must develop and implement policies and procedures that address how the agency will:

- (a) Have (~~(a memorandum of understanding)~~) an agreement with the local crisis system, including the closest agency providing evaluation and treatment services and designated crisis responders to ensure timely response to, and assessment of, individuals who need a higher level of care;
- (b) Be staffed (~~(twenty-four hours)~~) 24 hours per day, seven days a week by certified peer counselors;
- (c) Be peer-run. This includes:
 - (i) Having a managing board, with a majority of members who are peers, that manages the day-to-day operations of the mental health peer respite center and reports to the agency's governing (~~(board)~~) body; and
 - (ii) Supervision of services by a certified peer counselor who meets the qualifications of a mental health professional.
- (d) Limit services to an individual to a maximum of seven nights in a (~~(thirty-day)~~) 30-day period; and
- (e) Develop and implement a guest agreement that establishes expectations for individuals receiving mental health peer respite services, including expectations for things such as: Cooking, cleaning, self-management of medications, and personal hygiene.

(4) An agency certified to provide mental health peer respite services must provide the services in a residence that meets local building and zoning codes and must develop and implement policies and procedures that address the following:

- (a) Kitchen environment, including kitchen equipment that is in good working repair and follows general principles of safe food handling;
- (b) Food storage, including how the agency will provide each individual with adequate storage for perishable and nonperishable food items;
- (c) Laundry facilities, including how the agency will give residents access to laundry facilities and equipment that is clean and in good repair;

(d) Housekeeping, including cleaning, maintenance, and refuse disposal;

(e) Bedding and linens, including how the agency will provide each individual with clean, sanitary bedding and linens that are in good repair;

(f) Secure storage, including how each individual is provided with secure storage for personal belongings including medications;

(g) Furnishings, including how the agency will provide appropriate furniture for bedrooms and common spaces, as well as other furnishings appropriate to create a home-like setting; and

(h) Accessibility needs of individuals with disabilities as it relates to program operations and communications.

[Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0725, filed 3/17/20, effective 5/1/20.]

CERTIFICATION AND SERVICE STANDARDS FOR CLUBHOUSES

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

WAC 246-341-0730 ((Outpatient services—Consumer-run recovery support—) Clubhouses. (1) A clubhouse is a community-based program that provides rehabilitation services.

(2) The clubhouse may be peer-operated and must:

(a) Be member-run with voluntary participation;

(b) Be recovery-focused;

(c) Focus on strengths, talents, and abilities of its members;

(d) Have a clubhouse director who:

(i) Engages members and staff in all aspects of the clubhouse operations; and

(ii) Is ultimately responsible for the operation of the clubhouse.

(e) Be comprised of structured activities (~~including~~) in accordance with RCW 71.24.650(5), including the following:

(i) Personal advocacy;

(ii) Help with securing entitlements;

(iii) Information on safe, appropriate, and affordable housing;

(iv) Community resource development;

(v) Connecting members with adult education opportunities in the community;

(vi) An active employment program that assists members to gain and maintain employment in full- or part-time competitive jobs. Employment related activities may include resume building, education on how employment will affect benefits, information on other employment services, and information regarding protections against employment discrimination; and

(vii) An array of social and recreational opportunities.

(f) Use a work-ordered day to allow all members the opportunity to participate in all the work of the clubhouse including:

- (i) Administration;
- (ii) Research;
- (iii) Intake and orientation;
- (iv) Outreach;
- (v) Training and evaluation of staff;
- (vi) Public relations;
- (vii) Advocacy; and
- (viii) Evaluation of clubhouse effectiveness.

(g) Provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community.

(3) "Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours.

(a) Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse.

(b) Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning.

(c) Members and staff work side-by-side as colleagues as evidenced by both the member and the staff signature on progress towards goals.

(d) Members participate as they feel ready and according to their individual interests.

(e) Work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards.

(f) Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

(4) Agencies certified for clubhouse services are not required to follow the requirements in WAC 246-341-0640 but instead must:

(a) Conduct a screening process that determines the appropriateness of the program based on the individual's needs and goals;

(b) Develop a support plan that indicates the goal(s) the individual plans to achieve through receiving the program and the progress made toward the goal(s);

(c) Maintain an individual's individual service record that contains documentation of the following:

(i) The name of the agency or other sources through which the individual was referred, if applicable;

(ii) Determination of the appropriateness of the program's service(s);

(iii) A copy of the support plan and progress toward meeting the individual's goal(s);

(iv) Any referral made to a more intensive level of care when appropriate;

(v) Consent to include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual;

(vi) A brief summary of each service encounter, including the date and time;

(vii) Any information or copies of documents shared by or with a behavioral health agency or credentialed behavioral health professional; and

(viii) The date the individual is no longer engaged in the program and any attempts to follow-up with the individual, if applicable.

(5) A clubhouse is not required to operate under the supervision of a mental health professional unless providing other certified services that require clinical supervision.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0730, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0730, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH OUTPATIENT INTERVENTION, ASSESSMENT AND TREATMENT SERVICES

NEW SECTION

WAC 246-341-0737 Behavioral health outpatient intervention, assessment and treatment services—Certification standards. (1) Agencies certified for intervention, assessment and treatment services provide individualized intervention, assessment and treatment for mental health, substance use, or co-occurring disorders. Intervention, assessment and treatment services under this certification include services such as:

(a) Assessments;

(b) Counseling and therapy;

(c) Psychiatric medication management in accordance with the service standards in WAC 246-341-0739; and

(d) Outpatient involuntary court-ordered services in accordance with subsection (4) of this section and the service standards for the service being provided.

(2) Agencies providing only assessment, psychiatric medication management, or alcohol and drug information school services are not required to meet the individual service plan or discharge requirements in WAC 246-341-0640.

(3) Agencies providing intervention, assessment and treatment services may choose to provide involuntary or court-ordered outpatient services to individuals for:

(a) Outpatient less restrictive alternative or conditional release under chapter 71.05 or 71.34 RCW in accordance with the service standards in WAC 246-341-0805;

(b) Counseling, assessment and education under chapter 46.61 RCW, including:

(i) Alcohol and drug information school in accordance with the service standards in WAC 246-341-0746;

(ii) Substance use disorder counseling in accordance with the service standards in WAC 246-341-0815; and

(iii) Driving under the influence (DUI) substance use assessment in accordance with the service standards in WAC 246-341-0820; or

(c) Deferred prosecution under RCW 10.05.150 in accordance with the service standards in WAC 246-341-0740.

(4) Agencies choosing to provide outpatient involuntary or court-ordered services must report noncompliance, in all levels of care, for an individual ordered into substance use disorder treatment by a court of law or other appropriate jurisdictions in accordance with RCW 71.05.445 and chapter 182-538D WAC for individuals receiving court-ordered services under chapter 71.05 RCW, RCW 10.05.090 for individuals under deferred prosecution, or RCW 46.61.5056 for individuals receiving court-ordered treatment for driving under the influence (DUI). Additionally, agencies providing services to individuals under a court-order for deferred prosecution under RCW 10.05.090 or treatment under RCW 46.61.5056 must:

(a) Report and recommend action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(i) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third-party report confirmed by the agency, or blood alcohol content or other laboratory test;

(ii) An individual's report of subsequent alcohol or drug related arrests; or

(iii) An individual's leaving the program against program advice or an individual discharged for rule violation;

(b) Report and recommend action for nonemergency, noncompliance to the court, or other appropriate jurisdiction(s) within 10 working days from the end of each reporting period, upon obtaining information on:

(i) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups; or

(ii) An individual's failure to make acceptable progress in any part of the treatment plan;

(c) Transmit information on noncompliance or other significant changes as soon as possible, but no longer than 10 working days from the date of the noncompliance, when the court does not wish to receive monthly reports;

(d) Report compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

[]

NEW SECTION

WAC 246-341-0739 Psychiatric medication management services—
Service standards. Psychiatric medication management services are a variety of activities related to prescribing and administering psychiatric medication, including monitoring an individual for side effects and changes as needed.

(1) An agency providing psychiatric medication management services must:

(a) Ensure that medical direction and responsibility are assigned to a:

(i) Physician who is licensed to practice under chapter 18.57 or 18.71 RCW, and is board-certified or board-eligible in psychiatry;

(ii) Psychiatric advanced registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW; or

(iii) Physician assistant licensed under chapter 18.71A RCW working with a supervising psychiatrist;

(b) Ensure that the services are provided by a prescriber licensed by the department who is practicing within their scope of practice;

(c) Ensure that all staff administering medications are appropriately credentialed;

(d) Have a process by which the prescriber informs either the individual, the legally responsible party, or both, and, as appropriate, family members, of the potential benefits and side effects of the prescribed medication(s);

(e) Ensure that all medications maintained by the agency are safely and securely stored, including assurance that:

(i) Medications are kept in locked cabinets within a well-lit, locked, and properly ventilated room;

(ii) Medications kept for individuals on medication administration or self-administration programs are clearly labeled and stored separately from medication samples kept on-site;

(iii) Medications marked "for external use only" are stored separately from oral or injectable medications;

(iv) Refrigerated food or beverages used in the administration of medications are kept separate from the refrigerated medications by the use of trays or other designated containers;

(v) Syringes and sharp objects are properly stored and disposed of;

(vi) Refrigerated medications are maintained at the required temperature; and

(vii) If the individual gives permission for disposal, outdated medications are disposed of in accordance with the regulations of the pharmacy quality assurance commission and no outdated medications are retained.

(2) An agency providing psychiatric medication management services may utilize a physician or ARNP without board eligibility in psychiatry if unable to employ or contract with a psychiatrist. In this case, the agency must ensure that:

(a) Psychiatrist consultation is provided to the physician or ARNP at least monthly; and

(b) A psychiatrist or psychiatric ARNP is accessible to the physician or ARNP for emergency consultation.

(3) An agency providing psychiatric medication management services must document the service in the individual service record.

[]

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

WAC 246-341-0740 (~~(Outpatient services—Level two intensive outpatient substance use disorder services.)~~) **Deferred prosecution under RCW 10.05.150—Service standards.** (~~((1) Level two intensive outpatient substance use disorder services provide a higher-intensity, concentrated level of individualized treatment that may include individual and group counseling, education, and other activities.~~

~~((2))~~) An agency providing (~~(level two intensive outpatient)~~) treatment services for deferred prosecution under RCW 10.05.150 must:

~~((a))~~) (1) Ensure that services include a minimum of (~~(seventy-two))~~) 72 hours of treatment services within a maximum of (~~(twelve))~~) 12 weeks, which consist of the following during the first four weeks of treatment:

~~((i))~~) (a) At least three sessions each week, with each session occurring on separate days of the week;

~~((ii))~~) (b) Group sessions that must last at least one hour; and

~~((iii))~~) (c) Attendance at self-help groups in addition to the (~~(seventy-two))~~) 72 hours of treatment services.

~~((b))~~) (2) There must be approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this (~~(subsection))~~) section;

~~((c))~~) (3) The agency must refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary (~~;~~ and

~~(d) The agency must report noncompliance with the court mandated treatment in accordance with WAC 246-341-0800).~~

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0740, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0740, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0746 (~~(Outpatient services—Substance use disorder information and assistance services—)~~) **Alcohol and drug information school—Service standards.** Alcohol and drug information school services provide an educational program about substance use. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. An agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a substance use disorder professional, a substance use disorder professional trainee, or a person who has received documented training in:

(a) Effects of alcohol and other drugs;

(b) Patterns of use;

(c) Current laws and regulations pertaining to substance use violations, and consequences of the violations; and

- (d) Available resources and referral options for additional services that may be appropriate for the individual.
- (2) Ensure the curriculum:
- (a) Provides no less than eight hours of instruction for each course;
- (b) Includes a post-test for each course after the course is completed;
- (c) Includes a certificate of completion; and
- (d) Covers the following topics:
- (i) Information about the effects of alcohol and other drugs;
- (ii) Patterns of use; and
- (iii) Current laws, including Washington state specific laws and regulations, and consequences related to substance use violations.
- (3) Ensure each student be advised that there is no assumption the student has a substance use disorder and that the course is not a therapy session;
- (4) Ensure each individual student record contains:
- (a) An intake form, including demographics;
- (b) The hours of attendance, including dates; and
- (c) A copy of the scored post-test.
- (5) An agency providing alcohol and drug information school services must include in the individual service record a copy of an assessment, if the individual was assessed, that indicates the individual does not have a substance use disorder.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0746, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0746, filed 4/16/19, effective 5/17/19.]

~~((INVOLUNTARY AND COURT-ORDERED OUTPATIENT TREATMENT))~~

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

WAC 246-341-0805 ~~((Involuntary and court-ordered Outpatient))~~
Less restrictive alternative (LRA) or conditional release support behavioral health services—Service standards. An agency serving individuals on a less restrictive alternative (LRA) or conditional release court order shall provide or monitor the provision of court-ordered services, including psychiatric, substance use disorder treatment, and medical components of community support services. An agency providing court-ordered LRA support and conditional release services shall:

- (1) Have a written policy and procedure that allows for the referral of an individual to an involuntary treatment facility (~~(twenty-four)~~) 24 hours a day, seven days a week.

- (2) Have a written policy and procedure for an individual who requires involuntary detention that includes procedures for:
- (a) Contacting the designated crisis responder (DCR) regarding revocations or extension of an LRA or conditional release; and
 - (b) The transportation of an individual, in a safe and timely manner, for the purpose of:
 - (i) Evaluation; or
 - (ii) Evaluation and detention.
- (3) Ensure the individual is provided everything their rights afford them to and protect them from under chapter 71.05 or 71.34 RCW, as applicable.
- (4) Include in the ~~((clinical))~~ individual service record a copy of the less restrictive alternative court order or conditional release and a copy of any subsequent modification.
- (5) Ensure the individual service plan addresses the conditions of the less restrictive alternative court order or conditional release and a plan for transition to voluntary treatment.
- (6) Ensure that the individual receives medication services including an assessment of the need for and prescription of medications to treat mental health or substance use disorders, appropriate to the needs of the individual as follows:
- (a) At least one time in the initial ~~((fourteen))~~ 14 days following release from inpatient treatment for an individual on a ~~((ninety-day or one hundred eighty-day))~~ 90-day or 180-day less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's ~~((clinical))~~ individual service record; and
 - (b) At least one time every ~~((thirty))~~ 30 days for the duration of the less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric ARNP determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's ~~((clinical))~~ individual service record.
- (7) Keep a record of the periodic evaluation of each committed individual for release from, or continuation of, an involuntary treatment order. Evaluations must occur at least every ~~((thirty))~~ 30 days for the duration of the commitments and include documentation of the evaluation and rationale:
- (a) For requesting a petition for an additional period of less restrictive or conditional release treatment under an involuntary treatment order; or
 - (b) Allowing the less restrictive court order or conditional release to expire without an extension request.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0805, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0805, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0815 ((~~Involuntary and court ordered~~)) Substance use disorder counseling for RCW 46.61.5056—Service standards. An agency providing certified substance use disorder counseling services to an individual convicted of driving under the influence or physical control under RCW 46.61.5056 must ensure treatment is completed as follows:

- (1) Treatment during the first ((~~sixty~~)) 60 days must include:
 - (a) Weekly group or individual substance use disorder counseling sessions according to the individual service plan;
 - (b) One individual substance use disorder counseling session of not less than ((~~thirty~~)) 30 minutes duration, excluding the time taken for a substance use disorder assessment, for each individual, according to the individual service plan;
 - (c) Alcohol and drug basic education for each individual;
 - (d) Participation in recovery oriented, community-based self-help groups according to the individual service plan. Participation must be documented in the individual's ((~~clinical~~)) individual service record; and
 - (e) Individuals who complete intensive inpatient substance use disorder treatment services must attend, at a minimum, weekly outpatient counseling sessions for the remainder of their first ((~~sixty~~)) 60 days of treatment according to the individual service plan.
- (2) The next ((~~one hundred twenty~~)) 120 days of treatment at a minimum shall include:
 - (a) Group or individual substance use disorder counseling sessions every two weeks according to the individual service plan;
 - (b) One individual substance use disorder counseling session of not less than ((~~thirty~~)) 30 minutes duration, every ((~~sixty~~)) 60 days according to the individual service plan; and
 - (c) Referral of each individual for ongoing treatment or support, as necessary, using ASAM criteria, upon completion of ((~~one hundred eighty~~)) 180 days of treatment.
- (3) An individual who is assessed with insufficient evidence of a substance use disorder must be referred to alcohol/drug information school.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0815, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0815, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-0820 ((~~Involuntary and court ordered~~)) Driving under the influence (DUI) substance use disorder assessment services—Service standards. Driving under the influence (DUI) assessment services, as defined in chapter 46.61 RCW, are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) An agency certified to provide DUI assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include in the assessment information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) ~~((Is not required to meet the individual service plan requirements in WAC 246-341-0640 (1)(d); and~~

~~(d))~~ Must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(2) An agency certified to provide DUI assessment services must also ensure:

(a) The assessment is conducted face-to-face and document in the assessment whether the assessment was conducted in person or by synchronous video conferencing; and

(b) The individual has a summary included in the assessment that evaluates the individual's:

(i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and

(ii) Self-reported driving record and the abstract of the individual's legal driving record.

(3) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:

(a) A copy of the police report;

(b) A copy of the court originated criminal case history;

(c) The results of a urinalysis or drug testing obtained at the time of the assessment; and

(d) A referral to alcohol and drug information school.

(4) If the information in subsection (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.

(5) Upon completion of the DUI assessment, the individual must be:

(a) Informed of the results of the assessment; and

(b) Referred to the appropriate level of care according to ASAM criteria.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0820, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0820, filed 4/16/19, effective 5/17/19.]

((CRISIS OUTPATIENT MENTAL HEALTH SERVICES)) CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH OUTPATIENT CRISIS OUTREACH, OBSERVATION AND INTERVENTION SERVICES

NEW SECTION**WAC 246-341-0901 Behavioral health outpatient crisis outreach, observation and intervention services—Certification standards.**

(1) Agencies certified for outpatient behavioral health crisis outreach, observation and intervention services provide face-to-face and other means of services to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment or intervention in the least restrictive environment at a location best suited to meet the needs of the individual which may be in the community, a behavioral health agency, or other setting.

(2) An agency certified for outpatient behavioral health crisis outreach, observation and intervention services does not need to meet the requirements in WAC 246-341-0640.

(3) An agency providing outpatient behavioral health crisis outreach, observation and intervention services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available or on staff 24 hours a day, seven days a week.

(4) An agency providing any outpatient behavioral health crisis outreach, observation and intervention services must:

(a) Provide crisis telephone support in accordance with WAC 246-341-0670;

(b) For mental health crisis, ensure face-to-face outreach services are provided by a mental health professional or department-credentialed staff person with documented training in crisis response;

(c) For a substance use disorder crisis, ensure face-to-face outreach services are provided by a professional appropriately credentialed to provide substance use disorder treatment, or individual who has completed training that covers substance use disorders;

(d) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member unsupervised duties;

(e) Resolve the crisis in the least restrictive manner possible;

(f) Require that trained staff remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;

(g) Determine if an individual has a crisis plan and request a copy if available;

(h) Assure communication and coordination with the individual's mental health or substance use treatment provider, if indicated and appropriate;

(i) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder;

(j) Maintain a current list of local resources for referrals, legal, employment, education, interpreter and social and health services;

(k) Transport or arrange for transport of an individual in a safe and timely manner, when necessary;

(l) Be available 24 hours a day, seven days a week; and

(m) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis.

(5) Documentation of a crisis service must include the following:

(a) A brief summary of each crisis service encounter, including the:

- (i) Date;
 - (ii) Time, including time elapsed from initial contact to face-to-face contact, if applicable; and
 - (iii) Nature and duration of the encounter.
- (b) The names of the participants;
- (c) A disposition including any referrals for services and individualized follow-up plan;
- (d) Whether the individual has a crisis plan and any request to obtain the crisis plan; and
- (e) The name and credential, if applicable, of the staff person providing the service.
- (6) An agency utilizing certified peer counselors to provide crisis outreach services must:
- (a) Ensure services are provided by a person recognized by the health care authority as a peer counselor, as defined in WAC 246-341-0200;
 - (b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential;
 - (c) Ensure peer counselors receive annual training that is relevant to their unique working environment.
- (7) When services are provided in a private home or nonpublic setting, the agency must:
- (a) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's personal residence or in a nonpublic location;
 - (b) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's personal residence or other nonpublic location;
 - (c) Ensure that any staff member who engages in home visits is provided access, by their employer, to a wireless telephone or comparable device, for the purpose of emergency communication;
 - (d) Provide staff members who are sent to a personal residence or other nonpublic location to evaluate an individual in crisis prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate, that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.
- (8) If utilizing peer counselors for crisis outreach response:
- (a) Ensure that a peer counselor responding to an initial crisis visit is accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatment as appropriate to the crisis;
 - (b) Develop and implement policies and procedures for determining when peer counselors may provide follow-up crisis outreach services without being accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatment as appropriate to the crisis.

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CERTIFICATION STANDARDS FOR DESIGNATED CRISIS RESPONDER SERVICESNEW SECTION

WAC 246-341-0912 Designated crisis responder (DCR) services— Certification standards. Designated crisis responder (DCR) services are services provided by a DCR to evaluate an individual in crisis and determine if involuntary services are required. An agency providing DCR services must do all of the following:

- (1) Ensure that services are provided by a DCR;
- (2) Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214;
- (3) Document that services provided to the individual were in accordance with the requirements in chapter 71.05 or 71.34 RCW, as applicable; and
- (4) Meet the outpatient behavioral health crisis outreach, observation and intervention services certification standards in WAC 246-341-0901.

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CERTIFICATION STANDARDS FOR OPIOID TREATMENT PROGRAMS (OTP)

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

WAC 246-341-1015 Opioid treatment programs (OTP)—(~~Clinical~~) Individual service record content and documentation requirements. An agency providing opioid treatment program services must maintain an individual's (~~clinical~~) individual service record. The (~~clinical~~) individual service record must contain:

- (1) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opioid treatment program and take appropriate action;
- (2) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction;
- (3) Documentation that the individual service plan was reviewed quarterly and semi-annually after two years of continuous treatment;
- (4) Documentation when an individual refuses to provide a drug testing specimen sample. The refusal is considered a positive drug screen specimen;

(5) Documentation in progress notes of timely interventions used to therapeutically address the disclosure of illicit drug use, a positive drug test, or possible diversion of opioid medication, as evidenced by the absence of opioids or related metabolites in drug toxicology test results;

(6) Documentation of all medical services including:

(a) Results of physical examination;

(b) Medical and family history;

(c) Nursing notes;

(d) Laboratory reports including results of regular toxicology screens, a problem list, and list of medications updated as clinically indicated; and

(e) Progress notes including documentation of all medications and dosages, if available.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1015, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1015, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-1020 Opioid treatment programs (OTP)—Medical director responsibility. An agency providing substance use disorder opioid treatment program services must ensure the program physician, or the medical practitioner under supervision of the medical director, performs and meets the following:

(1) The program physician or medical practitioner under supervision of the medical director:

(a) Is responsible to verify an individual is currently addicted to an opioid drug and that the individual became addicted at least (~~twelve~~) 12 months before admission to treatment; or

(b) May waive the (~~twelve~~) 12 month requirement in (a) of this subsection upon receiving documentation that the individual:

(i) Was released from a penal institution, if the release was within the previous six months;

(ii) Is pregnant; or

(iii) Was previously treated within the previous (~~twenty-four~~) 24 months.

(2) A documented physical evaluation must be completed on the individual before admission and before starting medications approved to treat opioid use disorder that includes the determination of opioid use disorder consistent with the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria;

(3) A documented review of the department prescription drug monitoring program data on the individual:

(a) At admission;

(b) Annually after the date of admission; and

(c) Subsequent to any incidents of concern.

(4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual;

- (5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:
- (a) The concerns of possible substance use disorder, health risks, and benefits the opioid treatment medication may have on the individual and the developing fetus;
 - (b) The risk of not initiating opioid treatment medication on the individual and the developing fetus;
 - (c) The potential need for the newborn baby to be treated in a hospital setting or in a specialized support environment designed to address and manage neonatal opioid or other drug withdrawal syndromes; and
 - (d) Referral options to address and manage neonatal opioid or other drug withdrawal syndromes.
- (6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment;
- (7) Within (~~fourteen~~) 14 days of admission, a medical examination must be completed that includes:
- (a) Documentation of the results of serology and other tests, as determined by the medical practitioner; and
 - (b) A documented assessment for the appropriateness of Sunday and holiday take-home medications as required by 42 C.F.R. Part 8.12(i).
- (8) When exceptional circumstances exist for an individual to be enrolled with more than one opioid treatment program agency, justification granting permission must be documented in the individual's (~~clinical~~) individual service record at each agency;
- (9) Each individual admitted to withdrawal management services must have an approved withdrawal management schedule that is medically appropriate;
- (10) Each individual administratively discharged from services must have an approved withdrawal management schedule that is medically appropriate;
- (11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful withdrawal management episodes within (~~twelve~~) 12 consecutive months; and
- (12) An annual medical examination must be completed on each individual, either in person or via telehealth technologies, that includes the individual's overall physical condition and response to medication. The medical practitioner may use their professional and clinical judgment when determining the appropriateness of telehealth technologies for the annual medical exam and must document, in the patient's record, their decision to use telehealth technologies. The initial medical exam must be completed in person as required by 42 C.F.R. Part 8.12(f)(2).

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1020, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1020, filed 4/16/19, effective 5/17/19.]

~~((GENERAL REQUIREMENTS THAT APPLY TO RESIDENTIAL AND INPATIENT SERVICES))~~

~~CERTIFICATION STANDARDS FOR WITHDRAWAL MANAGEMENT (RESIDENTIAL SUBSTANCE USE DISORDER, AND MENTAL HEALTH INPATIENT SERVICES))~~

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

WAC 246-341-1100 Withdrawal management ((services))—Certification standards. (1) Substance use disorder withdrawal management services are provided ~~((to a voluntary individual))~~ 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.
~~((1))~~ (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.
~~((2))~~ (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 ~~((forty))~~ 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 and the individual service requirements for inpatient and residential substance use disorder services in WAC 246-341-1108.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1100, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1100, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR BEHAVIORAL HEALTH RESIDENTIAL OR INPATIENT INTERVENTION, ASSESSMENT AND TREATMENT SERVICES

NEW SECTION

WAC 246-341-1105 Behavioral health residential and inpatient intervention, assessment and treatment services—Certification standards.

(1) Agencies certified for behavioral health residential and inpatient services provide behavioral health intervention, assessment and treatment services in a residential treatment facility or hospital. Residential and inpatient services under this certification include:

(a) In accordance with the service standards in WAC 246-341-1108:

- (i) Adult residential and inpatient substance use disorder treatment; and

- (ii) Youth residential and inpatient substance use disorder treatment;

(b) In accordance with the service standards in WAC 246-341-1118:

- (i) Adult residential and inpatient mental health treatment; and
- (ii) Youth residential and inpatient mental health treatment.

(2) Agencies certified for behavioral health residential and inpatient services must:

(a) Be a facility licensed by the department as:

- (i) A hospital licensed under chapter 70.41 RCW;

- (ii) A private psychiatric hospital licensed under chapter 71.12 RCW;

- (iii) A private alcohol and substance use disorder hospital licensed under chapter 71.12 RCW; or

- (iv) A residential treatment facility licensed under chapter 71.12 RCW;

- (b) Ensure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(c) Review the individual's crisis or recovery plan, if applicable and available;

(d) Determine the individual's risk of harm to self, others, or property;

(e) Coordinate with the individual's current treatment provider, if applicable, to assure continuity of care during admission and upon discharge;

(f) Develop and provide to the individual a discharge summary that must include:

(i) A continuing care recommendation; and

(ii) Scheduled follow-up appointments, including the time and date of the appointment(s), when possible.

(3) If providing services to adults and minors, an agency must ensure that a minor who is at least age 13 but not yet age 18 is served with adults only if the minor's individual service record contains:

(a) Documentation that justifies such placement;

(b) A professional judgment that placement in an inpatient facility that serves adults will not harm the minor; and

(c) Ensure the following for individuals who share a room:

(i) An individual 15 years of age or younger must not room with an individual 18 years of age or older;

(ii) Anyone under 13 years of age must be evaluated for clinical appropriateness before being placed in a room with an individual 13 to 16 years of age; and

(iii) An individual 16 or 17 years of age must be evaluated for clinical appropriateness before being placed in a room with an individual 18 years of age or older.

(4) An agency providing residential or inpatient mental health or substance use disorder services to youth must follow these additional requirements:

(a) Allow communication between the youth and the youth's parent, or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(b) Notify the parent or legal guardian within two hours of any significant decrease in the behavioral or physical health status of the youth and document all notification and attempts of notification in the individual service record.

(c) Discharge the youth to the care of the youth's parent, or if applicable, legal guardian. For an unplanned discharge and when the parent or legal guardian is not available, the agency must contact the relevant state's child protective services.

(d) Ensure a staff member who demonstrates knowledge of adolescent development and substance use disorders is available at the agency or available by phone.

(e) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:

(i) Verbal de-escalation;

(ii) Crisis intervention;

(iii) Emotional regulation;

(iv) Suicide assessment and intervention;

(v) Conflict management and problem solving skills;

(vi) Management of assaultive behavior;

(vii) Proper use of therapeutic physical intervention techniques;

and

(viii) Emergency procedures.

(f) Unless otherwise advised by the treatment provider:

- (i) Provide group meetings to promote social and emotional growth.
- (ii) Provide leisure and other therapy or related activities.
- (iii) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.
- (iv) For each youth who is unable to attend school for an estimated period of four weeks or more during the academic school year, the agency must work with the school district in which the youth is enrolled or the youth's educational provider to assure the academic needs of the youth are met.
- (g) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.
- (h) Ensure each individual's individual service record:
 - (i) Contains any consent or release forms signed by the youth and their parent or legal guardian;
 - (ii) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate, and if possible; and
 - (iii) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.
- (5) An agency that provides services to youth may continue to provide services to a youth who turns 18 years old while admitted, so long as it is documented that it is in the best interest of the individual and the agency meets the requirements in subsection (4)(h) of this section.
- (6) An agency certified for behavioral health residential and inpatient intervention, assessment and treatment services may choose to provide services to individuals on a less restrictive alternative order in accordance with the requirements in WAC 246-341-0805.

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

WAC 246-341-1108 Residential and inpatient substance use disorder treatment services—((General)) Service standards. Residential substance use disorder treatment services provide substance use disorder treatment for an individual in a facility with ~~((twenty-four))~~ 24 hours a day supervision.

~~(1) ((Residential treatment services include:~~

~~(a) Intensive inpatient services;~~

~~(b) Low intensity (recovery house) residential treatment services; and~~

~~(c) Long-term residential treatment services.~~

~~(2))~~ An agency ~~((certified to provide))~~ providing residential and inpatient substance use disorder treatment services must:

(a) Provide education to each individual admitted to the treatment facility on:

(i) Substance use disorders;

(ii) Relapse prevention;

(iii) Bloodborne pathogens;

- (iv) Tuberculosis (TB);
- (v) Emotional, physical, and sexual abuse; and
- (vi) Nicotine use disorder((-));

(b) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services; and

(c) Develop and implement written procedures for:

- (i) Urinalysis and drug testing, including laboratory testing;

and

(ii) How agency staff members respond to medical and psychiatric emergencies.

~~((3))~~ (2) An agency that provides services to a pregnant woman must:

(a) Develop and implement a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs;

(b) Provide referral information to applicable resources; and

(c) Provide education on the impact of substance use during pregnancy, risks to the developing fetus, and the importance of informing medical practitioners of ~~((chemical))~~ substance use during pregnancy.

~~((4))~~ (3) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 246-341-0820.

~~((5) An agency that provides substance use disorder residential services to youth must:~~

~~(a) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:~~

~~(i) Verbal deescalation;~~

~~(ii) Crisis intervention;~~

~~(iii) Anger management;~~

~~(vi) Suicide assessment and intervention;~~

~~(v) Conflict management and problem solving skills;~~

~~(vii) Management of assaultive behavior;~~

~~(viii) Proper use of therapeutic physical intervention techniques; and~~

~~(ix) Emergency procedures.~~

~~(b) Provide group meetings to promote personal growth.~~

~~(c) Provide leisure, and other therapy or related activities.~~

~~(d) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.~~

~~(e) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:~~

~~(i) Document the individual's most recent academic placement and achievement level; and~~

~~(ii) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.~~

~~(f) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.~~

~~(g) Ensure each individual's clinical record:~~

~~(i) Contains any consent or release forms signed by the youth and their parent or legal guardian;~~

~~(ii) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible; and~~

~~(iii) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.))~~ (4) Inform individuals of their treatment options so they can make individualized choices for their treatment. This includes, as applicable, the initiation, continuation, or discontinuation of medications for substance use disorders.

(5) For individuals choosing to initiate or continue medications for their substance use disorder, make available on-site or facilitate off-site access to continue or initiate Federal Drug Administration (FDA)-approved medication for any substance use disorder, when clinically appropriate, as determined by a medical practitioner.

(6) Provide continuity of care that allows individuals to receive timely and appropriate follow up services upon discharge and, if applicable, allows the individual to continue medications with no missed doses.

(7) In addition to the requirements in WAC 246-341-0640, document in the individual service record:

(a) The individual being informed of their treatment options, including the use of medications for substance use disorder;

(b) The continuation or initiation of FDA-approved medication for substance use disorder treatment that has been provided on-site or facilitated off-site, if applicable;

(c) Referrals made to behavioral health providers, including documentation that a discharge summary was provided to the receiving behavioral health provider as allowed under 42 C.F.R. Part 2; and

(d) Contact or attempts to follow up with the individual post-discharge, including the date of correspondence.

(8) An agency may not deny admission based solely on an individual taking FDA-approved medications, under the supervision of a medical provider, for their substance use disorder or require titration of dosages in order to be admitted or remain in the program.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1108, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1108, filed 4/16/19, effective 5/17/19.]

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

WAC 246-341-1118 Residential and inpatient mental health ((inpatient)) services—((General)) Service standards. (1) ~~((Mental health inpatient services include the following types of behavioral health services certified by the department:~~

~~(a) Evaluation and treatment services;~~

~~(b) Intensive behavioral health treatment services;~~

~~(c) Child long-term inpatient program (CLIP);~~

~~(d) Crisis stabilization units;~~

~~(e) Triage services; and~~

~~(f) Competency evaluation and restoration services.~~

~~(2))~~ An agency providing residential and inpatient mental health ((inpatient)) services must develop and implement an individualized annual training plan for agency staff members, to include at least:

(a) Least restrictive alternative options available in the community and how to access them;

(b) Methods of ~~((individual care))~~ providing individualized treatment; and

(c) ~~((Deescalation))~~ De-escalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures.

~~((3))~~ (2) If contract staff are providing direct services, the facility must ensure compliance with the training requirements outlined in subsection ~~((2))~~ (1) of this section.

~~((4))~~ (3) A behavioral health agency providing mental health inpatient services must:

(a) Document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(i) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(ii) Examination and medical evaluation within ~~((twenty-four))~~ 24 hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(iii) Consideration of less restrictive alternative treatment at the time of admission; and

(iv) The admission diagnosis and what information the determination was based upon.

(b) ~~((Ensure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150.~~

~~((e))~~ Ensure examination and evaluation of a minor by a children's mental health specialist occurs within ~~((twenty-four))~~ 24 hours of admission.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1118, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-1118, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1118, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1124 ~~((Mental health))~~ Residential and inpatient mental health services—Rights related to antipsychotic medication.
All individuals have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The provider must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including all of the following requirements:

(1) The clinical record must document all of the following:

(a) An attempt to obtain informed consent.

(b) The individual was asked if they wish to decline treatment during the ~~((twenty-four))~~ 24-hour period prior to any court proceed-

ing wherein the individual has the right to attend and is related to their continued treatment. The answer must be in writing and signed when possible. In the case of a child under the age of (~~eighteen~~) 18, the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must be able to explain to the court the probable effects of the medication.

(c) The reasons why any antipsychotic medication is administered over the individual's objection or lack of consent.

(2) The psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority may administer antipsychotic medications over an individual's objections or lack of consent only when:

(a) An emergency exists, provided there is a review of this decision by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority within (~~twenty-four~~) 24 hours. An emergency exists if all of the following are true:

(i) The individual presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, the individual's condition constitutes an emergency requiring that treatment be instituted before obtaining an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority.

(b) There is an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, for treatment up to (~~thirty~~) 30 days.

(c) For continued treatment beyond (~~thirty~~) 30 days through the hearing on any (~~one hundred eighty-day~~) 180-day petition filed under RCW 71.05.217, provided the facility medical director or director's medical designee reviews the decision to medicate an individual. Thereafter, antipsychotic medication may be administered involuntarily only upon order of the court. The review must occur at least every (~~sixty~~) 60 days.

(3) The examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must sign all (~~one hundred eighty-day~~) 180-day petitions for antipsychotic medications filed under the authority of RCW 71.05.217.

(4) Individuals committed for (~~one hundred eighty~~) 180 days who refuse or lack the capacity to consent to antipsychotic medications have the right to a court hearing under RCW 71.05.217 prior to the involuntary administration of antipsychotic medications.

(5) In an emergency, antipsychotic medications may be administered prior to the court hearing provided that an examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority files a petition for an antipsychotic medication order the next judicial day.

(6) All involuntary medication orders must be consistent with the provisions of RCW 71.05.217, whether ordered by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority or the court.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1124, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR INVOLUNTARY BEHAVIORAL HEALTH RESIDENTIAL OR INPATIENT SERVICES

NEW SECTION

WAC 246-341-1131 Involuntary behavioral health residential and inpatient services—Certification standards. (1) Agencies certified for involuntary behavioral health residential and inpatient services provide behavioral health intervention, assessment and treatment services in a residential treatment facility or hospitals to individuals subject to a civil commitment or court-order under chapter 71.05 or 71.34 RCW; or to individuals who have been court ordered to receive treatment at a certified agency pursuant to chapter 10.77 RCW. Involuntary residential and inpatient services under this certification include the following services:

- (a) In accordance with the service standards in WAC 246-341-1133:
 - (i) Adult involuntary evaluation and treatment; and
 - (ii) Youth involuntary evaluation and treatment;
- (b) In accordance with the service standards in WAC 246-341-1135:
 - (i) Adult secure withdrawal management; and
 - (ii) Youth secure withdrawal management;
- (c) Court ordered treatment at a certified agency pursuant to chapter 10.77 RCW.

(2) An agency providing involuntary behavioral health services must:

- (a) Follow the applicable statutory requirements in chapter 10.77, 71.05, or 71.34 RCW;

(b) Ensure that services are provided in a secure environment.

"Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, in a method appropriate to the individual;

(iii) A space to separate persons who are violent or may become violent from others when necessary to maintain safety of the individual and others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures;

(c) Provide services, including admissions, seven days a week, 24 hours a day;

(d) Ensure that a mental health professional, substance use disorder professional, if appropriate, and physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) are available 24 hours a day, seven days a week for consultation and communication with the staff that provide direct care of individuals.

(3) An agency providing services under chapter 71.05 or 71.34 RCW must:

(a) Ensure at least daily contact between each involuntarily admitted individual and a mental health professional, substance use disorder professional, or person with a co-occurring disorder specialist enhancement as appropriate, for the purpose of evaluation as to:

(i) The need for further treatment;

(ii) Whether there is a change in involuntary status; or

(iii) Possible discharge;

(b) For an individual who has been delivered to the facility by a peace officer for evaluation, the individual service record must contain:

(i) A statement of the circumstances under which the individual was brought to the unit;

(ii) The admission date and time;

(iii) Determination of whether to refer to a designated crisis responder (DCR) to initiate civil commitment proceedings;

(iv) If evaluated by a DCR, documentation that the evaluation was performed within the required time period, the results of the evaluation, and the disposition of the person;

(c) Upon discharge of the individual the agency shall provide notification to the DCR office responsible for the initial commitment, which may be a federally recognized Indian tribe or other Indian health care provider if the DCR is appointed by the health care authority, and the DCR office that serves the county in which the individual is expected to reside.

(4) Agencies certified for involuntary behavioral health residential and inpatient services must also follow the certification standards for residential and inpatient behavioral health services in WAC 246-341-1105.

(5) An agency certified for involuntary behavioral health residential and inpatient services may choose to provide services to individual on a less restrictive alternative order in accordance with the requirements in WAC 246-341-0805.

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NEW SECTION

WAC 246-341-1133 Evaluation and treatment services—Service standards. (1) Evaluation and treatment services are provided for individuals who are held for 120-hour detention or on 14-day, 90-day, or 180-day civil commitment orders according to chapters 71.05 and 71.34 RCW. An agency providing evaluation and treatment services may choose to serve individuals who are held for 120-hour detention, or on short-term commitment orders (14-day), long-term commitment orders (90-day and 180-day), or all three. Agencies providing evaluation and treatment services may also provide services for individuals who are not detained or committed.

(2) An agency providing evaluation and treatment services for youth must be a contracted child long-term inpatient treatment facility (CLIP), except as specified in subsection (4) of this section. The CLIP facility must develop a written plan for assuring that services provided are appropriate to the developmental needs of children, including all of the following:

(a) If there is not a child psychiatrist on the staff, there must be a child psychiatrist available for consultation.

(b) There must be a psychologist with documented evidence of skill and experience in working with children available either on the clinical staff or by consultation, responsible for planning and reviewing psychological services and for developing a written set of guidelines for psychological services.

(c) There must be a registered nurse, with training and experience in working with psychiatrically impaired children, on staff as a full-time or part-time employee who must be responsible for all nursing functions.

(d) There must be a social worker with experience in working with children on staff as a full-time or part-time employee who must be responsible for social work functions and the integration of these functions into the individual treatment plan.

(e) There must be an educational/vocational assessment of each resident with appropriate educational/vocational programs developed and implemented or assured on the basis of that assessment.

(f) There must be an occupational therapist licensed under chapter 18.59 RCW available, who has experience in working with psychiatrically impaired children, responsible for occupational therapy functions and the integration of these functions into treatment.

(g) There must be a registered recreational therapist under chapter 18.230 RCW available, who has had experience in working with psychiatrically impaired children, responsible for the recreational therapy functions and the integration of these functions into treatment.

(h) Disciplinary policies and practices must be stated in writing and all of the following must be true:

(i) Discipline must be fair, reasonable, consistent, and related to the behavior of the resident. Discipline, when needed, must be consistent with the individual treatment plan.

(ii) Abusive, cruel, hazardous, frightening, or humiliating disciplinary practices must not be used. Seclusion and restraints must not be used as punitive measures. Corporal punishment must not be used.

(iii) Disciplinary measures must be documented in the individual service record.

(i) Residents must be protected from assault, abuse, and neglect. Suspected or alleged incidents of nonaccidental injury, sexual abuse, assault, cruelty, or neglect to a child must be reported to a law enforcement agency or to the department of children, youth, and families and comply with chapter 26.44 RCW.

(j) Orientation material must be made available to any facility personnel, clinical staff, or consultants informing practitioners of their reporting responsibilities and requirements. Appropriate local police department phone numbers must be available to personnel and staff.

(k) When suspected or alleged abuse is reported, the individual service record must reflect the fact that an oral or written report has been made to the child protective services of the department of children, youth, and families, or to a law enforcement agency within the timelines identified in chapter 26.44 RCW. This note must include the date and time that the report was made, the agency to which it was made, and the signature of the person making the report. Contents of the report need not be included in the individual service record.

(3) Agencies that provide child long-term inpatient treatment services are exempt from the requirement in WAC 246-341-1131 to admit individuals needing treatment seven days a week, 24 hours a day.

(4) An agency providing short-term involuntary services to youth, which are not contracted as a CLIP facility, may provide treatment for a child on a 180-day inpatient involuntary commitment order only until the child is discharged from the order to the community, or until a bed is available for that child in a CLIP facility.

(5) An agency providing evaluation and treatment services must follow the service standards for inpatient and residential mental health services in WAC 246-341-1105.

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NEW SECTION

WAC 246-341-1135 Secure withdrawal management and stabilization services—Service standards. Secure withdrawal management and stabilization services are provided to an involuntary individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with chapters 71.05 and 71.34 RCW.

(1) An agency providing secure withdrawal management and stabilization services must develop and implement policies and procedures to assure that a substance use disorder professional and licensed physician, physician assistant, or advanced registered nurse practitioner are available 24 hours a day, seven days a week for consultation and communication with the staff that provide direct care to individuals.

(2) An agency providing secure withdrawal management and stabilization services must document that each individual has received necessary screenings, assessments, examinations, or evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening reviewed by a nurse, as defined in chapter 18.79 RCW, or medical practitioner prior to admission that in-

cludes current level of intoxication, available medical history, and known medical risks; and

(b) An examination and evaluation in accordance with RCW 71.05.210 within 24 hours of admission to the facility.

(3) For individuals admitted to the secure withdrawal management and stabilization facility, the individual service record must contain:

(a) A statement of the circumstances under which the individual was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a DCR to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a DCR within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition; and

(f) Review of the admission diagnosis and what information the determination was based upon.

(4) An agency certified to provide secure withdrawal management and stabilization services must ensure the treatment plan includes all of the following:

(a) A protocol for safe and effective withdrawal management, including medications as appropriate;

(b) Discharge assistance provided by substance use disorder professionals or persons with a co-occurring disorder specialist enhancement, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

(5) An agency providing secure withdrawal management must meet the certification standards for withdrawal management in WAC 246-341-1100.

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CERTIFICATION STANDARDS FOR INTENSIVE BEHAVIORAL HEALTH TREATMENT

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

WAC 246-341-1137 ((Behavioral health inpatient services—)) Intensive behavioral health treatment services—Certification standards.

(1) Intensive behavioral health treatment services are intended to assist individuals in transitioning to lower levels of care, including individuals on a less restrictive alternative order. These services are provided for individuals with behavioral health conditions whose impairment or behaviors do not meet or no longer meet criteria for involuntary inpatient commitment under chapter 71.05 RCW, but whose care

needs cannot be met in other community-based settings due to one or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Intrusive behaviors that put residents or staff at risk;

(c) Complex medication needs, which include psychotropic medications;

(d) A history or likelihood of unsuccessful placements in other community facilities or settings such as:

(i) Assisted living facilities licensed under chapters 18.20 RCW and 388-78A WAC;

(ii) Adult family homes licensed under chapters 70.128 RCW and 388-76 WAC;

(iii) Permanent supportive housing provided in accordance with chapter 388-106 WAC;

(iv) Supported living certified under chapter 388-101 WAC; or

(v) Residential treatment facilities licensed under chapters 71.12 RCW and 246-337 WAC providing a lower level of services.

(e) A history of frequent or protracted mental health hospitalizations; or

(f) A history of offenses against a person or felony offenses that cause physical damage to property.

(2) An agency providing intensive behavioral health treatment services must ensure services are provided:

(a) In a residential treatment facility licensed under chapters 71.12 RCW and 246-337 WAC;

(b) By a multidisciplinary team including clinicians, community supports, and those responsible within the agency for discharge planning; and

(c) With ~~((twenty-four))~~ 24 hour observation of individuals by at least two staff who are awake and on duty.

(3) The agency must meet the behavioral health residential and inpatient intervention, assessment and treatment services certification standards in WAC 246-341-1105 and the residential and inpatient mental health service standards in WAC 246-341-1118.

(4) The agency may:

(a) Only admit individuals at least ~~((eighteen))~~ 18 years of age whose primary care need is treatment for a mental health disorder that does not include a diagnosis of dementia or an organic brain disorder, but may include individuals who have a secondary diagnosis of intellectual or developmental disabilities;

(b) Only admit individuals who are capable of performing activities of daily living without direct assistance from agency staff; and

(c) Not admit individuals with a diagnosis of dementia or an organic brain disorder who can more appropriately be served in an enhanced services facility licensed under chapters 70.97 RCW and 388-107 WAC or other long-term care facility as defined in RCW 70.129.010.

~~((4))~~ (5) The agency must follow WAC 246-341-0805 regarding less restrictive alternative services.

~~((5))~~ (6) In addition to the applicable training requirements in this chapter, the agency must train all direct care staff on how to provide services and appropriate care to individuals with intellectual or developmental disabilities as described in Title 71A RCW, including:

(a) An overview of intellectual and developmental disabilities including how to differentiate intellectual or developmental disabilities from mental illness;

(b) Effective communication including methods of verbal and non-verbal communication when supporting individuals with intellectual or developmental disabilities; and

(c) How to identify behaviors in individuals that constitutes "normal stress" and behaviors that constitute a behavioral health crisis.

((+6)) (7) The agency must develop and implement policies and procedures that explain how the agency will have sufficient numbers of appropriately trained, qualified, or credentialed staff available to safely provide all of the following services in accordance with an individual's care plan and needs:

(a) Planned activities for psychosocial rehabilitation services, including:

(i) Skills training in activities of daily living; skills training may include teaching and prompting or cueing individuals to perform activities, but does not include directly assisting individuals in performing the activities;

(ii) Social interaction;

(iii) Behavioral management, including self-management and understanding of recovery;

(iv) Impulse control;

(v) Training and assistance for self-management of medications; and

(vi) Community integration skills.

(b) Service coordination provided by a mental health professional;

(c) Psychiatric services, including:

(i) Psychiatric nursing, on-site, (~~twenty-four~~) 24 hours per day, seven days per week;

(ii) Timely access to a psychiatrist, psychiatric advanced registered nurse practitioner, or physician's assistant who is licensed under Title 18 RCW and operating within their scope of practice, who by law can prescribe drugs in Washington state; and

(iii) A mental health professional on site at least eight hours per day and accessible (~~twenty-four~~) 24 hours per day, seven days per week.

(d) Access to intellectual and developmental disability services provided by a disability mental health specialist as described in WAC 182-538D-0200 or a person credentialed to provide applied behavioral analysis; and

(e) Peer support services provided by certified peer counselors.

((+7)) (8) The agency must provide access to, or a referral to, substance use disorder services, and other specialized services, as needed.

((+8)) (9) The agency must provide a system or systems within the building that give staff awareness of the movements of individuals within the facility. If a door control system is used, it shall not prevent a resident from leaving the licensed space on their own accord, except temporary delays as allowed by (a) of this subsection. Such systems include:

(a) Limited egress systems consistent with state building code, such as delayed egress;

(b) Appropriate staffing levels to address safety and security; and

(c) Policies and procedures that:

(i) Are consistent with the assessment of the individual's care needs and plan; and

(ii) Do not limit the rights of a voluntary individual.

~~((9))~~ (10) The agency must have a memorandum of understanding with the local crisis system, including the closest agency providing evaluation and treatment services and designated crisis responders to ensure timely response to and assessment of individuals who need a higher level of care.

~~((10))~~ (11) The agency must develop and implement policies and procedures regarding discharge and transfer that:

(a) Allows each individual to stay in the facility and not discharge the individual to another facility type or other level of care unless another placement has been secured, and:

(i) The individual completed their care objectives and no longer needs this level of care;

(ii) The individual has medical care needs that the agency cannot provide or needs direct assistance with activities of daily living;

(iii) The individual needs a higher level of behavioral health care, such as evaluation and treatment services, due to a change in behavioral health status or because the individual's conditional release or less restrictive alternative order is revoked; or

(iv) The individual is convicted of any gross misdemeanor or felony while being a resident in the facility where the conviction was based on conduct that caused significant harm to another individual residing in the agency or staff member and there is a likelihood the individual continues to endanger the safety and health of residents or staff. For the purposes of this subsection, conviction includes all instances in which plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence have been deferred or suspended.

(b) Allows individuals who are discharged in accordance with (a)(ii) or (iii) of this subsection to be accepted back into the facility if and when it is medically, clinically, legally, and contractually appropriate;

(c) Allows each individual to stay in the facility and not transfer to another agency providing intensive behavioral health treatment services unless the individual requests to receive services in a different agency certified to provide intensive behavioral health treatment services;

(d) Follows all transfer and discharge documentation requirements in WAC 246-341-0640 and also documents the specific time and date of discharge or transfer. Additionally, the agency must give the following information to the individual, the individual's representative, and family or guardian, as appropriate, before discharge or transfer:

(i) The name, address, and telephone number of the applicable ombuds;

(ii) For individuals with disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(iii) The mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(e) Includes transportation coordination that informs all parties involved in the coordination of care.

~~((11))~~ (12) The agency must protect and promote the rights of each individual and assist the individual to exercise their rights as an individual, as a citizen or resident of the United States and the state of Washington. To do this, the agency must:

(a) Train staff on resident rights and how to assist individuals in exercising their rights;

(b) Protect each individual's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the agency;

(c) Post names, addresses, and telephone numbers of the state review and certification agency, the state licensure office, the relevant ombuds programs, and the protection and advocacy systems;

(d) Provide reasonable access to an individual by the individual's representative or an entity or individual that provides health, social, legal, or other services to the individual, subject to the individual's right to deny or withdraw consent at any time;

(e) Allow representatives of appropriate ombuds to examine a resident's ~~((clinical))~~ individual service records with the ~~((permission))~~ consent of the individual or the individual's legal representative, and consistent with state and federal law;

(f) Not require or request individuals to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of an individual's rights;

(g) Fully disclose to individuals the agency's policy on accepting medicaid as a payment source; and

(h) Inform the individual both orally and in writing in a language that the individual understands of their applicable rights in accordance with this chapter. The notification must be made upon admission and the agency must document the information was provided.

~~((12))~~ (13) In addition to all other applicable rights, an individual receiving certified intensive behavioral health treatment services has the right to:

(a) Be free of interference, coercion, discrimination, and reprisal from the agency in exercising their rights;

(b) Choose a representative who may exercise the individual's rights to the extent provided by law;

(c) Manage their own financial affairs;

(d) Personal privacy and confidentiality, including the following considerations:

(i) Personal privacy applies to accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(ii) The individual may ~~((approve))~~ consent or refuse to consent to the release of personal and ~~((clinical))~~ individual service records to an individual outside the agency unless otherwise provided by law.

(iii) Privacy in communications, including the right to:

(A) Send and promptly receive mail that is unopened;

(B) Have access to stationery, postage, and writing implements;

and

(C) Have reasonable access to the use of a telephone where calls can be made without being overheard.

(e) Prompt resolution of voiced grievances including those with respect to treatment that has been furnished as well as that which has not been furnished and the behavior of other ~~((residents))~~ individuals receiving services at the agency;

(f) File a report with the department for any reason;

(g) Examine the results of the most recent review or inspection of the agency conducted by federal or state reviewers or inspectors and plans of correction in effect with respect to the agency;

(h) Receive information from client advocates, and be afforded the opportunity to contact these advocates;

(i) Access the following without interference:

(i) Any representative of the state;

- (ii) The individual's medical provider;
 - (iii) Ombuds;
 - (iv) The agencies responsible for the protection and advocacy system for individuals with disabilities, developmental disabilities, and individuals with mental illness created under federal law; and
 - (v) Subject to reasonable restrictions to protect the rights of others and to the individual's right to deny or withdraw consent at any time, immediate family or other relatives of the individual and others who are visiting with the consent of the resident.
 - (j) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents;
 - (k) Secure storage, upon request, for small items of personal property;
 - (l) Be notified regarding transfer or discharge;
 - (m) Be free from restraint and involuntary seclusion;
 - (n) Be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;
 - (o) Choose activities, schedules, and health care consistent with the individual's interests, assessments, and plans of care;
 - (p) Interact with members of the community both inside and outside the agency;
 - (q) Make choices about aspects of their life in the agency that are significant to the individual;
 - (r) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;
 - (s) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct their own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the individual service record of the individual;
 - (t) Participate in social, religious, and community activities that do not interfere with the rights of other individuals in the agency;
 - (u) Reside and receive services in the agency with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other individuals would be endangered; and
 - (v) Organize and participate in participant groups.
- ((~~13~~)) (14) The individual and their representative have the right to:
- (a) Access all records pertaining to the individual including ((~~clinical~~)) individual service records according to requirements in WAC ((~~246-341-0650~~)) 246-341-0425; and
 - (b) Be notified, along with interested family members, when there is:
 - (i) An accident involving the individual which requires or has the potential for requiring medical intervention;
 - (ii) A significant change in the individual's physical, mental, or psychosocial status; and
 - (iii) A change in room or roommate assignment.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1137, filed 5/25/21, effective 7/1/21. Statutory Authority:

2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-1137, filed 3/17/20, effective 5/1/20.]

CERTIFICATION STANDARDS FOR CRISIS STABILIZATION UNIT AND TRIAGE SERVICES

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

WAC 246-341-1140 ((Mental health inpatient services)) Crisis stabilization unit and triage—Certification standards. An agency certified to provide crisis stabilization unit or triage services must meet all of the following criteria:

(1) A triage facility must be licensed as a residential treatment facility under chapter 71.12 RCW.

(2) If a crisis stabilization unit or triage facility is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:

(a) Out of sight and sound of the general population at all times;

(b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and

(c) Has a secured entrance and exit between the unit and the rest of the facility.

(3) Ensure that a mental health professional is on-site at least eight hours per day, seven days a week, and accessible (~~(twenty-four)~~) 24 hours per day, seven days per week.

(4) Ensure a mental health professional assesses an individual within three hours of the individual's arrival at the facility.

(5) For persons admitted to the crisis stabilization unit or triage facility on a voluntary basis, the (~~(clinical)~~) individual service record must meet the (~~(clinical)~~) individual service record requirements in WAC 246-341-0640.

(6) An agency certified to provide crisis stabilization unit or triage services must meet the service standards for residential and inpatient behavioral health services in WAC 246-341-1105 and the applicable standards in WAC 246-341-1131 if providing involuntary crisis stabilization unit or triage services.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-1140, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1140, filed 4/16/19, effective 5/17/19.]

CERTIFICATION AND SERVICE STANDARDS FOR COMPETENCY RESTORATION SERVICES

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1154 ((Mental health inpatient services)) Competency evaluation and restoration. A behavioral health agency may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department certifies the services.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through ((246-341-0650)) 246-341-0640 and the inpatient services requirements in WAC ((246-341-1118 through 246-341-1132)) 246-341-1105 and applicable requirements in WAC 246-341-1131, an agency providing competency evaluation and restoration services must be licensed by the department as:

(a) A residential treatment facility consistent with chapter 246-337 WAC;

(b) A hospital consistent with chapter 246-320 WAC;

(c) A private psychiatric hospital consistent with chapter 246-322 WAC; or

(d) An inpatient evaluation and treatment facility as provided in WAC ((246-341-1134)) 246-341-1133 and consistent with chapter 246-337 WAC.

(2) The administrative policies and procedures must include:

(a) Designation of a psychiatrist as the professional person in charge of clinical services at the agency;

(b) Procedures to assure the protection of individual participant rights in WAC 246-341-1156; and

(c) Procedures to assure that seclusion and restraint are used only to the extent necessary to ensure the safety of the individual see WAC 246-341-1158.

(3) The ((clinical)) individual service record must include all of the following:

(a) A copy of the court order and charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to competency or criminal insanity provided by the state and a copy of any evaluation reports must be included.

(b) A copy of the discovery materials, including, at a minimum, a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(d) All diagnostic and therapeutic services prescribed by the attending clinical staff members.

(e) Specific targets and strategies for restoring competency to include periodic assessments of gains on these targets.

- (f) Participation of a multidisciplinary team that includes at a minimum:
- (i) A physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C);
 - (ii) A nurse, if the person in (f)(i) of this subsection is not an ARNP; and
 - (iii) A mental health professional.
- (g) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.
- (h) All assessments and justification for the use of seclusion or restraint.
- (4) The initial assessment must include:
- (a) The individual's:
 - (i) Identifying information;
 - (ii) Specific barriers to competence;
 - (iii) Medical provider's name or medical providers' names;
 - (iv) Medical concerns;
 - (v) Medications currently taken;
 - (vi) Brief mental health history; and
 - (vii) Brief substance use history, including tobacco use.
 - (b) The identification of any risk of harm to self and others, including suicide and homicide; and
 - (c) Treatment recommendations or recommendations for additional program-specific assessment.
- (5) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments and document in the client's record the date provided:
- (a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;
 - (b) An examination and medical evaluation within (~~twenty-four~~) 24 hours by a physician, advanced registered nurse practitioner, or physician assistant;
 - (c) A psychosocial evaluation by a mental health professional; and
 - (d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation using the most recent competency evaluation, if an evaluation has already been conducted.
- (6) If a state hospital transfers an individual to an agency for competency restoration treatment, the agency must review the individual's completed admission assessment from the state hospital to assure it meets the requirements of subsection (3) of this section for initial assessments. The agency must update the assessment as needed. If the state hospital has not completed or has only partially completed an assessment for the individual, the agency must complete the assessment according to the requirements in subsections (2) and (3) of this section.
- (7) The agency must ensure the individual service plan is completed within seven days of admission and is updated every (~~ninety~~) 90 days.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1154, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1156 (~~(Mental health inpatient services)~~) Competency evaluation and restoration—Rights. (1) An agency providing competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum all of the following. You have the right to:

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Reasonable accommodation in case of sensory or physical disability, limited ability to communicate, limited English proficiency, or cultural differences;

(d) Respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality rules and laws;

(h) Review your (~~(clinical)~~) individual service record in the presence of the administrator or the administrator's designee and the opportunity to request amendments or corrections;

(i) Upon request, receive a copy of the agency's internal procedures for addressing reported concerns that may amount to a complaint or grievance; and

(j) Submit a report to the department when you believe the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Posted in public areas;

(c) Available in alternative formats for an individual who is visually impaired;

(d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and

(e) Available to any individual upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, the protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as either a medicare or medicaid provider, or both, must ensure an individual seeking or participating in competency evaluation or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights at time of ad-

mission in a manner that is understandable to the individual or legally responsible person.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1156, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1158 (~~(Mental health inpatient services)~~) Competency evaluation and restoration—Seclusion and restraint. (1) An individual receiving either competency evaluation or restoration treatment services, or both has the right to be free from seclusion and restraint, including chemical restraint except as otherwise provided in this section or otherwise provided by law. The agency must do all of the following:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual and in accordance with WAC 246-322-180 or 246-337-110, whichever is applicable.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's (~~(clinical)~~) individual service record.

(c) Ensure staff members notify and receive authorization by a physician, physician assistant (PA) or advanced registered nurse practitioner (ARNP) within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member observes the individual at least every 15 minutes and the observation is recorded in the individual's (~~(clinical)~~) individual service record.

(f) If the use of seclusion or restraint exceeds (~~(twenty-four)~~) 24 hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be continued. This procedure must be repeated for each (~~(twenty-four)~~) 24 hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of either seclusion or restraint, or both, are documented in the individual's (~~(clinical)~~) individual service record.

[Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-1158, filed 4/16/19, effective 5/17/19.]

CERTIFICATION STANDARDS FOR PROBLEM GAMBLING AND GAMBLING DISORDER SERVICESNEW SECTION**WAC 246-341-1200 Problem gambling and gambling disorder services**

—**Certification standards.** (1) Each agency licensed by the department to provide problem gambling and gambling disorder services that includes diagnostic screening and assessment, and individual, group, couples, and family counseling and case management must ensure the following requirements are met:

(a) Meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0640;

(b) Be a problem gambling certified agency with the department;

(c) Maintain a list of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services; and

(d) Maintain a written procedure for the response to medical and psychiatric emergencies.

(2) An agency certified to provide problem gambling and gambling disorder services must ensure:

(a) All problem gambling and gambling disorder treatment services are provided by:

(i) An individual credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW and is a certified Washington state, national, or international gambling counselor; or

(ii) An individual credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified gambling counselor, and in training to become a certified gambling counselor.

(b) Before providing problem gambling and gambling disorder treatment services, an individual in training to become a certified gambling counselor must have a minimum of:

(i) At least 1,500 hours of professionally supervised postlicensure, postcertification, or postregistration experience providing mental health or substance use disorder treatment services; and

(ii) Thirty hours of unduplicated gambling specific training, including the basic training. One of the following state, national, or international organizations must approve the requirements of certification training:

(A) The Washington state gambling counselor certification committee is an independent body comprised of certified gambling counselors and advisory members as deemed appropriate by the committee and is responsible for determining the training and continuing education requirements for gambling counselor certification and gambling counselor supervision and any additional requirements not otherwise specified here;

(B) National or international gambling counselor certification board; or

(C) The health care authority problem gambling program.

(c) An individual who meets subsection (3) of this section must complete training within two years of acceptance to the certification program to become a certified gambling counselor.

(d) All staff members in training to become a certified gambling counselor must receive clinical supervision. The clinical supervisor must:

(i) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(ii) Complete training requirements on problem gambling and gambling disorder specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The health care authority problem gambling program.

(3) An agency that provides only problem gambling-related services, including diagnostic screening, brief intervention, case management, referral to certified problem gambling agencies, and educational sessions, but does not provide problem gambling assessment and treatment, is not required to be certified for problem gambling services.

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CERTIFICATION STANDARDS FOR APPLIED BEHAVIOR ANALYSIS MENTAL HEALTH SERVICES

NEW SECTION

WAC 246-341-1300 Applied behavior analysis mental health services—Certification standards. Applied behavior analysis (ABA) services assist individuals and their families using the practice of behavior analysis as defined in RCW 18.380.010.

(1) An agency providing ABA services must:

(a) Conduct an assessment that determines functional relations between behavior and environmental factors;

(b) Develop an ABA treatment plan;

(c) Maintain an individual's individual service record that contains documentation of the following:

(i) The name of the agency or other sources through which the individual was referred, if applicable;

(ii) An assessment;

(iii) A copy of the ABA treatment plan, including progress notes;

(iv) Any referral made to a more intensive level of care when appropriate;

(v) Consent to include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual;

(vi) A brief summary of each service encounter, including the date, time, and duration of the encounter;

(vii) Name(s) of participant(s), including the name of the individual who provided the service;

(viii) Any information or copies of documents shared by or with a behavioral health agency or credentialed behavioral health professional; and

(ix) Discharge information as follows:

(A) A discharge statement if the individual left without notice; or

(B) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including the date of discharge and continuing care plan.

(2) ABA agencies that bill Medicaid must also follow the requirements administered by the health care authority as described in chapter 182-531A WAC.

(3) The ABA treatment plan must:

(a) Be developed and maintained by a licensed behavior analyst (LBA);

(b) Identify the services to be delivered by the LBA, licensed assistant behavior analyst (LABA) and the certified behavior technician (CBT), if the agency employs a LABA or CBT;

(c) Be comprehensive and document treatment being provided by other health care professionals; and

(d) Document how all treatment will be coordinated, as applicable, with other members of the health care team.

(4) An agency certified to provide ABA services must employ a LBA that meets the professional requirements in chapter 246-805 WAC.

(5) All staff providing ABA services must be credentialed and supervised according to chapter 18.830 RCW and chapter 246-805 WAC.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-341-0650	Clinical—Access to clinical records.
WAC 246-341-0702	Outpatient services—Individual mental health treatment services.
WAC 246-341-0704	Outpatient services—Brief mental health intervention treatment services.
WAC 246-341-0706	Outpatient services—Group mental health therapy services.
WAC 246-341-0708	Outpatient services—Family therapy mental health services.

- WAC 246-341-0710 Outpatient services—Rehabilitative case management mental health services.
- WAC 246-341-0712 Outpatient services—Psychiatric medication management services.
- WAC 246-341-0714 Outpatient services—Day support mental health services.
- WAC 246-341-0718 Recovery support services—Recovery support—General.
- WAC 246-341-0724 Outpatient services—Recovery support—Peer support behavioral health services.
- WAC 246-341-0728 Outpatient services—Recovery support—Applied behavior analysis mental health services.
- WAC 246-341-0738 Outpatient services—Level one outpatient substance use disorder services.
- WAC 246-341-0742 Outpatient services—Substance use disorder assessment only services.
- WAC 246-341-0744 Outpatient services—Information and assistance services—Substance use disorder services—General.
- WAC 246-341-0748 Outpatient services—Substance use disorder information and assistance—Information and crisis services.
- WAC 246-341-0750 Outpatient services—Substance use disorder information and assistance—Emergency service patrol.
- WAC 246-341-0754 Outpatient services—Problem gambling and gambling disorder services.
- WAC 246-341-0800 Involuntary and court-ordered—Noncompliance reporting for outpatient court-ordered substance use disorder treatment.
- WAC 246-341-0810 Involuntary and court-ordered—Designated crisis responder (DCR) services.
- WAC 246-341-0900 Crisis mental health services—General.
- WAC 246-341-0905 Crisis mental health services—Telephone support services.
- WAC 246-341-0910 Crisis mental health services—Outreach services.
- WAC 246-341-0915 Crisis mental health services—Stabilization services.
- WAC 246-341-1050 General requirements for mental health and substance use disorder inpatient and residential services.

- WAC 246-341-1060 General requirements for mental health and substance use disorder inpatient and residential services providing services under chapter 71.05 or 71.34 RCW.
- WAC 246-341-1070 Inpatient and residential substance use disorder services—General.
- WAC 246-341-1104 Secure withdrawal management and stabilization services.
- WAC 246-341-1110 Residential substance use disorder treatment services—Intensive inpatient services.
- WAC 246-341-1112 Residential substance use disorder treatment services—Low intensity (recovery house) residential treatment services.
- WAC 246-341-1114 Residential substance use disorder treatment services—Long-term treatment services.
- WAC 246-341-1134 Mental health inpatient services—Evaluation and treatment services.
- WAC 246-341-1138 Mental health inpatient services—Child long-term inpatient program (CLIP).

WSR 22-24-096

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 1:53 p.m., effective January 6, 2023]

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

Purpose: The department of revenue is amending the below rules to recognize 2022 legislation (2SHB 1210), which changes the terminology referencing "marijuana" to "cannabis."

Citation of Rules Affected by this Order: Amending WAC 458-20-135 Extracting natural products, 458-20-136 Manufacturing, processing for hire, fabricating, 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment, 458-20-209 Farming for hire and horticultural services performed for farmers, 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers, and 458-20-244 Food and food ingredients.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Adopted under notice filed as WSR 22-20-002 on September 21, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

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

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

Date Adopted: December 6, 2022.

Atif Aziz
Rules Coordinator

OTS-4104.1

AMENDATORY SECTION (Amending WSR 14-23-060, filed 11/17/14, effective 12/18/14)

WAC 458-20-135 Extracting natural products. (1) Introduction.

This rule explains the application of the business and occupation (B&O), retail sales, and use taxes to persons extracting natural products. Persons extracting natural products often use the same extracted products in a manufacturing process. This rule provides guidance for determining when an extracting activity ends and the manufacturing activity begins. In addition to all other taxes, commercial fishermen may be subject to the enhanced food fish excise tax levied by chapter 82.27 RCW (Tax on enhanced food fish).

Persons engaging in activities associated with timber harvest operations should refer to WAC 458-20-13501 (Timber harvest operations). Persons engaged in a manufacturing activity should also refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment).

(2) **Who is an "extractor"?** RCW 82.04.100 defines the term "extractor" to mean 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, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral, or other natural resource product. The term includes a person who fells, cuts, or takes timber, Christmas trees other than plantation Christmas trees, or other natural products. It also includes any person who takes fish, shellfish, or other sea or inland water foods or products.

(a) **Persons excluded from the definition of "extractor."** The term "extractor" does not include:

(i) Persons performing under contract the necessary labor or mechanical services for others (these persons are extractors for hire, see subsection (4) of this section); or

(ii) Persons who are farmers as defined in RCW 82.04.213. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers; or

(iii) Persons producing (~~marijuana~~) cannabis.

(b) **When an extractor is also a manufacturer.** An extractor may subsequently take an extracted product and use it as a raw material in a manufacturing process. The following examples explain when an extracting process ends and a manufacturing process begins for various situations. These examples should be used only as a general guide. A determination of when extracting ends and manufacturing begins for other situations can be made only after a review of all of the facts and circumstances.

(i) **Mining and quarrying.** Mining and quarrying operations are extracting activities, and generally include the screening, sorting, and piling of rock, sand, stone, gravel, or ore. For example, an operation that extracts rock, then screens, sorts, and with no further processing places the rock into piles for sale, is an extracting operation.

(A) The crushing and/or blending of rock, sand, stone, gravel, or ore are manufacturing activities. These are manufacturing activities whether or not the materials were previously screened or sorted.

(B) Screening, sorting, piling, or washing of the material, when the activity takes place in conjunction with crushing or blending at the site where the materials are taken or produced, is considered a part of the manufacturing operation if it takes place after the first screen. If there is no separate first screen, only those activities subsequent to the materials being deposited into the screen are considered a part of the manufacturing operation.

(ii) **Commercial fishing.** Commercial fishing operations, including the taking of any fish in Washington waters (within the statutory limits of the state of Washington) and the taking of shellfish or other sea or inland water foods or products, are extracting activities. These activities often include the removal of meat from the shell and the icing of fish or sea products.

(A) A person growing, raising, or producing a product of aquaculture as defined in RCW 15.85.020 on the person's own land or on land in which the person has a present right of possession is considered a farmer. RCW 82.04.213.

(B) Cleaning (removal of the head, fins, or viscera), filleting, and/or steaking fish are manufacturing activities. The cooking of fish or seafood is also a manufacturing activity. Refer to RCW 82.04.260 and WAC 458-20-136 for information regarding the special B&O tax rate/classification that applies to the manufacturing of seafood products that remain in a raw, raw frozen, or raw salted state.

(C) The removal of meat from the shell or the icing of fish or sea products, when the activity is performed in conjunction with and at the site where manufacturing takes place (e.g., cooking the fish or seafood), is considered a part of the manufacturing operation.

(3) **Tax-reporting responsibilities for income received by extractors.** Extractors are subject to the extracting B&O tax upon the value of the extracted products. (See WAC 458-20-112 regarding "value of products.") Extractors who sell the products at retail or wholesale in this state are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the extractor must report under both the "production" (extracting) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a tax credit under the multiple activities tax credit (MATC). See also WAC 458-20-19301 (Multiple activities tax credits) for a more detailed explanation of the MATC reporting requirements. Extractors that manufacture tangible personal property that they sell to buyers who will either resell the tangible personal property without any intervening use, or will include the tangible personal property as a component or ingredient in another product for sale by the buyer to another customer, are making wholesale sales. To document the wholesale nature of any transaction, sellers making wholesale sales must obtain from the buyer a resale certificate for sales made before January 1, 2010, or reseller permit for sales made on or after January 1, 2010. See also WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits) for a more detailed explanation of a seller's obligation to document its wholesale sales. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or until December 31, 2014, whichever first occurs.

For example, Corporation quarries rock without further processing. Corporation sells and delivers the rock to Landscaper, who is located in Washington. Landscaper provides Corporation with a resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a reseller permit (WAC 458-20-102) for purchases made on or after January 1, 2010. Corporation should report under both the extracting and wholesaling B&O tax classifications, and claim a MATC per WAC 458-20-19301. Had Corporation delivered the quarried rock to an out-of-state location, Corporation would have incurred only an extracting B&O tax liability.

(a) **When extractors use their products in a manufacturing process.** Persons who extract products, use these extracted products in a manufacturing process, and then sell the products all within Washington are subject to both "production" taxes (extracting and manufacturing) and the "selling" tax (wholesaling or retailing), and may claim the appropriate credits under the MATC. (See also WAC 458-20-136 on manufacturing.)

For example, Company quarries rock (an extracting activity), crushes and blends the rock (a manufacturing activity), and sells the resulting product at retail. The taxable value of the extracted rock is \$50,000 (the amount subject to the extracting B&O tax). The taxable value of the crushed and blended rock is \$140,000 (the amount subject to the manufacturing B&O tax). The crushed and blended rock is sold for \$140,000 (the amount subject to the retailing B&O tax). Assume the tax rates for the extracting and manufacturing B&O taxes are .00484, and the tax rate for the retailing B&O tax is .00471. Company should compute its tax liability as follows:

(i) **Reporting B&O tax on the combined excise tax return:**

(A) Extracting B&O tax liability of \$242 (\$50,000 x .00484);

(B) Manufacturing B&O tax liability of \$678 (\$140,000 x .00484);

and

(C) Retailing B&O tax liability of \$659 (\$140,000 x .00471).

(ii) **Completing the multiple activities tax credit (Part II of**

Schedule C) :

Activity which results in a tax credit	Taxable Amount	Business and Occupation Tax Reported				
		Extracting	Manufacturing	Wholesaling	Retailing	Total Credit
Washington extracted products manufactured in Washington	50,000	242	242			242
Washington extracted products sold in Washington						
Washington manufactured products sold in Washington	140,000		678		659	659
					Multiple Activities Tax Credit Subtotal of taxes paid to Washington state	901
					Credit ID 800	901

Schedule C helps taxpayers calculate and claim the multiple activities tax credit provided by RCW 82.04.440. In the Schedule C example above, materials that a person extracts and then uses in a manufacturing process in Washington are entered at their value when extracting ceases and manufacturing begins (\$50,000 shown on the "Washington extracted products manufactured in Washington" line of the Schedule C). The taxable amount reported on the "Washington manufactured products sold in Washington" line of the Schedule C is the value of products at the point that manufacturing ceases (\$140,000), not simply the value added by the manufacturing activity. For more information and examples that are helpful in determining the value of products, refer to WAC 458-20-112 (Value of products).

(b) **When extractors sell their products at retail or wholesale.**

An extractor making retail sales must collect and remit retail sales tax on all sales to consumers, unless the sale is exempt by law (e.g., see WAC 458-20-244 regarding sales of certain food products). Extractors making wholesale sales must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to document the wholesale nature of any transaction as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or until December 31, 2014, whichever first occurs.

(4) **Tax-reporting responsibilities for income received by extractors for hire.** Persons performing extracting activities for extractors are subject to the extracting for hire B&O tax upon their gross income from those services.

For example, a person removing ore, waste, or overburden at a mining pit for the operator of the mining operation is an extractor for hire. Likewise, a person drilling to locate or provide access to a satisfactory grade of ore at the mining pit for the operator is also an extractor for hire. The gross income derived from these activities is subject to the extracting for hire B&O tax classification.

(5) **Mining or mineral rights.** Royalties or charges in the nature of royalties for granting another the privilege or right to remove minerals, rock, sand, or other natural resource product are subject to the service and other activities B&O tax. The special B&O tax rate provided by RCW 82.04.2907 does not apply because this statute specifically excludes compensation received for any natural resource. Refer also to RCW 82.45.035 and WAC 458-61-520 (Mineral rights and mining claims) for more information regarding the sale of mineral rights and the real estate excise tax.

Income derived from the sale or rental of real property, whether designated as royalties or another term, is exempt of the B&O tax.

(6) **Tax liability with respect to purchases of equipment or supplies and property extracted and/or manufactured for commercial or industrial use.** The retail sales tax applies to all purchases of equipment, component parts of equipment, and supplies by persons engaging in extracting or extracting for hire activities unless a specific exemption applies. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department.

(a) **Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment used by manufacturers and processors for hire. While this exemption does not extend to extractors or extractors for hire, persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

(b) **Property manufactured for commercial or industrial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use.)

If the person also extracts materials used in the manufacturing process, the extracting B&O tax is due on the value of the extracted materials and a MATC may be taken. For example, Quarry extracts rock, crushes the rock into desired size, and then uses the crushed rock in its parking lot. The use of the crushed rock by Quarry in its parking lot is a commercial or industrial use. Quarry is subject to the extracting and manufacturing B&O taxes and may claim a MATC. Quarry is also responsible for remitting use tax on the value of the crushed rock applied to the parking lot.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.04.100. WSR 14-23-060, § 458-20-135, filed 11/17/14, effective 12/18/14. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-069, § 458-20-135, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR

04-01-126, § 458-20-135, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. WSR 00-11-096, § 458-20-135, filed 5/17/00, effective 6/17/00; WSR 86-09-058 (Order ET 86-7), § 458-20-135, filed 4/17/86; WSR 83-07-034 (Order ET 83-17), § 458-20-135, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. WSR 78-07-045 (Order ET 78-4), § 458-20-135, filed 6/27/78; Order ET 70-3, § 458-20-135 (Rule 135), filed 5/29/70, effective 7/1/70.]

OTS-4105.1

AMENDATORY SECTION (Amending WSR 15-01-005, filed 12/4/14, effective 1/4/15)

WAC 458-20-136 Manufacturing, processing for hire, fabricating.

(1) **Introduction.** This rule explains the application of the business and occupation (B&O), retail sales, and use taxes to manufacturers. It identifies the special tax classifications and rates that apply to specific manufacturing activities. The law provides a retail sales and use tax exemption for certain machinery and equipment (M&E) used by manufacturers. Refer to RCW 82.08.02565, 82.12.02565, and WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for more information regarding this exemption. Effective June 12, 2014, chapter 140, Laws of 2014 (SB 6505), machinery and equipment used directly in the manufacturing, research and development, or testing of (~~marijuana~~) cannabis, including related services, are not eligible for the M&E retail sales and use tax exemption. For purposes of this rule, "~~marijuana~~) cannabis" is any product with a THC concentration greater than .03 percent. Persons engaging in both extracting and manufacturing activities should also refer to WAC 458-20-135 (Extracting natural products) and 458-20-13501 (Timber harvest operations).

(2) **Manufacturing activities.** RCW 82.04.120 explains that the phrase "to manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or articles of tangible personal property is produced for sale or commercial or industrial use. The phrase includes the production or fabrication of special-made or custom-made articles.

(a) "To manufacture" includes, but is not limited to:

(i) The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

(ii) The cutting, delimiting, and measuring of felled, cut, or taken trees;

(iii) The crushing and/or blending of rock, sand, stone, gravel, or ore;

(iv) The cleaning (removal of the head, fins, or viscera) of fish; and

(v) The production of compressed or liquefied natural gas for use as transportation fuel as defined in RCW 82.16.310.

(b) "To manufacture" does not include:

(i) The conditioning of seed for use in planting;

- (ii) The cubing of hay or alfalfa;
- (iii) The growing, harvesting, or producing of agricultural products;
- (iv) The cutting, grading, or ice glazing of seafood which has been cooked, frozen, or canned outside this state;
- (v) The packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; and
- (vi) The repairing and reconditioning of tangible personal property for others.

(3) **Manufacturers and processors for hire.** RCW 82.04.110 defines "manufacturer" to mean every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities. However, a nonresident of the state of Washington who is the owner of materials processed for it in this state by a processor for hire is not deemed to be a manufacturer in this state because of that processing. Additionally, any owner of materials from which a nuclear fuel assembly is fabricated in this state by a processor for hire is also not deemed to be a manufacturer because of such processing.

(a) The term "processor for hire" means a person who performs labor and mechanical services upon property belonging to others so that as a result a new, different, or useful article of tangible personal property is produced for sale or commercial or industrial use. Thus, a processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon his or her own materials.

(b) If a particular activity is excluded from the definition of "to manufacture," a person performing the labor and mechanical services upon materials owned by another is not a processor for hire. For example, the cutting, grading, or ice glazing of seafood that has been cooked, frozen, or canned outside this state is excluded from the definition of "to manufacture." Because of this exclusion, a person who performs these activities on seafood belonging to others is not a "processor for hire."

(c) A person who produces aluminum master alloys, regardless of the portion of the aluminum provided by that person's customer, is considered a "processor for hire." RCW 82.04.110. For the purpose of this specific provision, the term "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3.

(d) In some instances, a person furnishing the labor and mechanical services undertakes to produce an article, substance, or commodity from materials or ingredients furnished in part by the person and in part by the customer. Depending on the circumstances, this person will either be considered a manufacturer or a processor for hire.

(i) If the person furnishing the labor and mechanical services furnishes materials constituting less than (~~twenty~~) 20 percent of the value of all of the materials or ingredients which become a part of the produced product, that person will be presumed to be processing for hire.

(ii) The person furnishing the labor and mechanical services will be presumed to be a manufacturer if the value of the materials or ingredients furnished by the person is equal to or greater than (~~twen-~~

ty)) 20 percent of the total value of all materials or ingredients which become a part of the produced product.

(iii) If the person furnishing the labor and mechanical services supplies, sells, or furnishes to the customer, before processing, (~~twenty~~) 20 percent or more in value of the materials or ingredients from which the product is produced, the person furnishing the labor and mechanical services will be deemed to be the owner of the materials and considered a manufacturer.

(e) There are occasions where a manufacturing facility and ingredients used in the manufacturing process are owned by one person, while another person performs the actual manufacturing activity. The person operating the facility and performing the manufacturing activity is a processor for hire. The owner of the facility and ingredients is the manufacturer.

(4) Tax-reporting responsibilities for income received by manufacturers and processors for hire. Persons who manufacture products in this state are subject to the manufacturing B&O tax upon the value of the products, including by-products (see also WAC 458-20-112 regarding "value of products"), unless the activity qualifies for one of the special tax rates discussed in subsection (5) of this rule. See also WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

For example, Corporation A stains door panels that it purchases. Corporation A also affixes hinges, guide wheels, and pivots to unstained door panels. Corporation B shears steel sheets to dimension, and slits steel coils to customer's requirements. The resulting products are sold and delivered to out-of-state customers. Corporation A and Corporation B are subject to the manufacturing B&O tax upon the value of these manufactured products. These manufacturing activities take place in Washington, even though the manufactured product is delivered out-of-state. A credit may be available if a gross receipts tax is paid on the selling activity to another state. (See also WAC 458-20-19301 on multiple activities tax credits.)

(a) Manufacturers who sell their products at retail or wholesale in this state are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a multiple activities tax credit (MATC). See also WAC 458-20-19301 for a more detailed explanation of the MATC reporting requirements. Manufacturers are making wholesale sales when their buyer will resell the tangible personal property without intervening use, or includes the tangible personal property as a component or ingredient in another product for sale by the buyer to another customer. Sellers in these wholesale sales must obtain a reseller permit from the buyer. Reseller permits replaced resale certificates effective January 1, 2010. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014, whichever first occurs. For additional information on reseller permits see WAC 458-20-102.

For example on January 1, 2010, Raw Fish Incorporated purchases raw fish that it manufactures into fillets. The resulting product is then sold at wholesale to its customer, Fish Distributor LLC. Fish Distributor LLC resells the fillets without intervening use to its customers and provides Raw Fish Incorporated with a copy of its reseller permit. Raw Fish Incorporated is subject to both the manufacturing raw seafood B&O tax upon the value of the manufactured product,

and the wholesaling B&O tax upon the gross proceeds of sale. Raw Fish Incorporated is entitled to claim a MATC.

(b) Processors for hire are subject to the processing for hire B&O tax upon the total charge made for those services, including any charge for materials furnished by the processor. The B&O tax applies whether the resulting product is delivered to the customer within or outside this state.

(c) The measure of tax for manufacturers and processors for hire with respect to "cost-plus" or "time and material" contracts includes the amount of profit or fee above cost received, plus the reimbursements or prepayments received on account of materials and supplies, labor costs, taxes paid, payments made to subcontractors, and all other costs and expenses incurred by the manufacturer or processor for hire.

(d) A manufacturing B&O tax exemption is available for the cleaning of fish, if the cleaning activities are limited to the removal of the head, fins, or viscera from fresh fish without further processing other than freezing. RCW 82.04.2403. Processors for hire performing these cleaning activities remain subject to the processing for hire B&O tax.

(e) Amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, even though the hops have been processed into extract, pellets, or powder in this state are exempt from the B&O tax. RCW 82.04.337. However, a processor for hire with respect to hops is not exempt on amounts charged for processing these products.

(f) Manufacturers and processors for hire making retail sales must collect and remit retail sales tax on all sales to consumers, unless the sale is exempt by law (e.g., see WAC 458-20-244 regarding sales of certain food products). A manufacturer or processor for hire making wholesale sales must obtain a reseller permit from the buyer. Reseller permits replaced resale certificates effective January 1, 2010. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014, whichever first occurs. For additional information on reseller permits see WAC 458-20-102.

(g) Effective July 1, 2015, a gas distribution business manufacturing or selling liquefied natural gas or compressed natural gas for use as transportation fuel is exempt from state and local public utility taxes. The sale of natural gas from which the buyer manufactures compressed natural gas or liquefied natural gas, where the compressed natural gas or liquefied natural gas is to be sold or used as transportation fuel, is also exempt from state and local public utility taxes. The gross receipts from these activities are subject to the manufacturing, wholesaling, or retailing B&O tax and local taxes, as applicable. The retail sale of compressed natural gas or liquefied natural gas is also subject to fuel taxes, if it is used in a motor vehicle. If the fuel is not used in a motor vehicle (off-road, boat, etc.) the fuel is subject to retail sales or use tax.

(5) **Manufacturing - Special tax rates/classifications.** RCW 82.04.260 provides several special B&O tax rates/classifications for manufacturers engaging in certain manufacturing activities. In all such cases the principles set forth in subsection (4) of this rule concerning multiple activities and the resulting credit provisions are also applicable.

Special tax classifications/rates are provided for the activities of:

(a) Manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, meal, or canola by-products, or sunflower seeds into sunflower oil;

(b) Splitting or processing dried peas;

(c) Manufacturing seafood products, which remain in a raw, raw frozen, or raw salted state;

(d) Manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables ("fruits" and "vegetables" does not include (~~marijuana~~) cannabis);

(e) Slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale and not at retail; and

(f) Manufacturing nuclear fuel assemblies.

(6) **Repairing and/or refurbishing distinguished from manufacturing.** The term "to manufacture" does not include the repair or refurbishing of tangible personal property. To be considered "manufacturing," the application of labor or skill to materials must result in a "new, different, or useful article." If the activity merely restores an existing article of tangible personal property to its original utility, the activity is considered a repair or refurbishing of that property. (See WAC 458-20-173 for tax-reporting information on repairs.)

(a) In making a determination whether an activity is manufacturing as opposed to a repair or reconditioning activity, consideration is given to a variety of factors including, but not limited to:

(i) Whether the activity merely restores or prolongs the useful life of the article;

(ii) Whether the activity significantly enhances the article's basic qualities, properties, or functional nature; and

(iii) Whether the activity is so extensive that a new, different, or useful article results.

(b) The following example illustrates the distinction between a manufacturing activity resulting in a new, different, or useful article, and the mere repair or refurbishment of an existing article. This example should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances. In cases of uncertainty, persons should contact the department for a ruling.

(i) Corporation rebuilds engine cores. When received, each core is assigned an individual identification number and disassembled. The cylinder head, connecting rods, crankshaft, valves, springs, nuts, and bolts are all removed and retained for reassembly into the same engine core. Unusable components are discarded. The block is then baked to burn off dirt and impurities, then blasted to remove any residue. The cylinder walls are rebored because of wear and tear. The retained components are cleaned, and if needed straightened and/or reground. Corporation then reassembles the cores, replacing the pistons, gaskets, timing gears, crankshaft bearings, and oil pumps with new parts. The components retained from the original engine core are incorporated only into that same core.

(ii) Corporation is under these circumstances not engaging in a manufacturing activity. The engine cores are restored to their original condition, albeit with a slightly larger displacement because of wear and tear. The cores have retained their original functional nature as they run with approximately the same efficiency and horsepower. The rebuilding of these cores is not so extensive as to result in

a new, different, or useful article. Each engine core has retained its identity because all reusable components of the original core are re-assembled in the same core. Corporation has taken an existing article and extended its useful life.

(7) **Combining and/or assembly of products to achieve a special purpose as manufacturing.** The physical assembly of products from various components is manufacturing because it results in a "new, different, or useful" product, even if the cost of the assembly activity is minimal when compared with the cost of the components. For example, the bolting of a motor to a pump, whether bolted directly or by using a coupling, is a manufacturing activity. Once physically joined, the resulting product is capable of performing a pumping function that the separate components cannot.

(a) In some cases the assembly may consist solely of combining parts from various suppliers to create an entirely different product that is sold as a kit for assembly by the purchaser. In these situations, the manufacturing B&O tax applies even if the person combining the parts does not completely assemble the components, but sells them as a package. For example, a person who purchases component parts from various suppliers to create a wheelbarrow, which will be sold in a "kit" or "knock-down" condition with some assembly required by purchaser, is a manufacturer. The purchaser of the wheelbarrow kit is not a manufacturer, however, even though the purchaser must attach the handles and wheel.

(b) The department considers various factors in determining if a person combining various items into a single package is engaged in a manufacturing activity. Any single one of the following factors is not considered conclusive evidence of a manufacturing activity, though the presence of one or more of these factors raises a presumption that a manufacturing activity is being performed:

- (i) The ingredients are purchased from various suppliers;
- (ii) The person combining the ingredients attaches his or her own label to the resulting product;
- (iii) The ingredients are purchased in bulk and broken down to smaller sizes;
- (iv) The combined product is marketed at a substantially different value from the selling price of the individual components; and
- (v) The person combining the items does not sell the individual items except within the package.

(c) The following examples should be used only as a general guide. The specific facts and circumstances of each situation must be carefully examined to determine if the combining of ingredients is a manufacturing activity or merely a packaging or marketing activity. In cases of uncertainty, persons combining items into special purpose packages should contact the department for a ruling.

(i) Combining prepackaged food products and gift items into a wicker basket for sale as a gift basket is not a manufacturing activity when:

(A) The products combined in the basket retain their original packaging;

(B) The person does not attach his or her own labels to the components or the combined basket;

(C) The person maintains an inventory for sale of the individual components and does sell these items in this manner as well as the combined baskets.

(ii) Combining bulk food products and gift items into a wicker basket for sale as a gift basket is a manufacturing activity when:

(A) The bulk food products purchased by the taxpayer are broken into smaller quantities; and

(B) The taxpayer attaches its own labels to the combined basket.

(iii) Combining components into a kit for sale is not a manufacturing activity when:

(A) All components are conceived, designed, and specifically manufactured by and at the person's direction to be used with each other;

(B) The person's label is attached to or imprinted upon the components by supplier;

(C) The person packages the components with no further assembly, connection, reconfiguration, change, or processing.

(8) **Tax liability with respect to purchases of equipment or supplies and property manufactured for commercial or industrial use.** The retail sales tax applies to purchases of tangible personal property by manufacturers and processors for hire unless the property becomes an ingredient or component part of a new article produced for sale, or is a chemical used in the processing of an article for sale. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department. Refer to WAC 458-20-113 for additional information about what qualifies as an ingredient or component or a chemical used in processing.

(a) RCW 82.08.02565 and 82.12.02565 provide a retail sales and use tax exemption for certain machinery and equipment used by manufacturers and/or processors for hire. Effective June 12, 2014, machinery and equipment used directly in the manufacturing, research and development, or testing of (~~marijuana~~) cannabis, including related services, are not eligible for the M&E retail sales and use tax exemption. Refer to WAC 458-20-13601 for additional information regarding how these exemptions apply.

(b) Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O and use taxes upon the value of the property manufactured, unless a specific exemption applies. (See also WAC 458-20-134 on commercial or industrial use.) Persons who also extract the product used as an ingredient in a manufacturing process should refer to WAC 458-20-135 for additional information regarding their tax-reporting responsibilities.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.04.120, 82.04.213, 82.04.260, 82.04.4266, 82.08.02565, 82.12.022, and 82.12.02565. WSR 15-01-005, § 458-20-136, filed 12/4/14, effective 1/4/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-069, § 458-20-136, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300. WSR 00-11-096, § 458-20-136, filed 5/17/00, effective 6/17/00; WSR 88-21-014 (Order 88-7), § 458-20-136, filed 10/7/88; WSR 86-20-027 (Order 86-17), § 458-20-136, filed 9/23/86; WSR 83-07-032 (Order ET 83-15), § 458-20-136, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. WSR 78-07-045 (Order ET 78-4), § 458-20-136, filed 6/27/78; Order ET 71-1, § 458-20-136, filed 7/22/71; Order ET 70-3, § 458-20-136 (Rule 136), filed 5/29/70, effective 7/1/70.]

OTS-4109.1

AMENDATORY SECTION (Amending WSR 16-07-046, filed 3/14/16, effective 4/14/16)

WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment. (1) Introduction.

(a) This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or research and development operation. This rule explains the requirements that must be met to substantiate a claim of exemption. For information regarding the sales and use tax deferral for manufacturing and research/development activities in high unemployment counties, refer to WAC 458-20-24001 and chapter 82.60 RCW. For the high technology business sales and use tax deferral refer to chapter 82.63 RCW.

(b) Effective June 12, 2014, the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 do not apply to:

(i) Sales of machinery and equipment used directly in the manufacturing, research and development, or testing of (~~marijuana~~) cannabis; and

(ii) Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

(c) Effective August 1, 2015, an ineligible person, as defined in subsection (2)(e) of this rule, does not qualify for the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565, unless the taxpayer first used the qualifying machinery and equipment in this state prior to August 1, 2015.

(2) **Definitions.** For purposes of the manufacturing machinery and equipment tax exemptions, the following definitions apply:

(a) **Affiliated group.** "Affiliated group" means a group of two or more entities that are either:

(i) Affiliated as defined in RCW 82.32.655; or

(ii) Permitted to file a consolidated return for federal income tax purposes.

(b) **Cogeneration.** "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel. See RCW 82.08.02565.

(c) **Device.** "Device" means an item that is not attached to the building or site. Examples of devices are: Forklifts, chainsaws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys.

(d) **Industrial fixture.** "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and at the time of attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(e) **Ineligible person.** "Ineligible person" means all members of an affiliated group if all of the following apply:

(i) At least one member of the affiliated group was registered with the department of revenue (department) to do business in Washington state on or before July 1, 1981;

(ii) As of August 1, 2015, the combined employment in this state of the affiliated group exceeds (~~forty thousand~~) 40,000 full-time

and part-time employees, based on data reported to the employment security department by the affiliated group; and

(iii) The business activities of the affiliated group primarily include development, sales, and licensing of computer software and services.

(f) **Machinery and equipment (M&E).** "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. M&E includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

(g) **Manufacturer.** "Manufacturer" has the same meaning as provided in chapter 82.04 RCW. Manufacturer also includes a person that prints newspapers or other materials; and effective August 1, 2015, a person engaged in the development of prewritten computer software that is not transferred to purchasers by means of tangible storage media. RCW 82.08.02565, chapter 5, Laws of 2015 3rd sp. sess. (ESSB 6138).

(h) **Manufacturing.** "Manufacturing" has the same meaning as "to manufacture" in chapter 82.04 RCW.

(i) **Manufacturing operation.** "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The operation includes storage of raw materials at the site, the storage of in-process materials at the site, and the storage of the processed material at the site. The manufacturing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the manufacturing operation, unless specifically exempted by law. Storage of raw material or other tangible personal property, packaging of tangible personal property, and other activities that potentially qualify under the "used directly" criterion, and that do not constitute manufacturing in and of themselves, are not within the scope of the exemption unless they take place at a manufacturing site. The statute specifically allows testing to occur away from the site.

The term "manufacturing operation" also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(i) Neither duration or temporary nature of the manufacturing activity nor mobility of the equipment determine whether a manufacturing operation exists. For example, operations using portable saw mills or rock crushing equipment are considered "manufacturing operations" if the activity in which the person is engaged is manufacturing. Rock crushing equipment that deposits material onto a roadway is not used in a manufacturing operation because this is a part of the constructing activity, not a manufacturing activity. Likewise, a concrete mixer used at a construction site is not used in a manufacturing operation because the activity is constructing, not manufacturing. Other portable equipment used in nonmanufacturing activities, such as continuous gutter trucks or trucks designed to deliver and combine aggregate, or specialized carpentry tools, do not qualify for the same reasons.

(ii) Manufacturing tangible personal property for sale can occur in stages, taking place at more than one manufacturing site. For example, if a taxpayer processes pulp from wood at one site, and transfers the resulting pulp to another site that further manufactures the product into paper, two separate manufacturing operations exist. The end product of the manufacturing activity must result in an article, substance, or commodity for sale.

(j) **((Marijuana)) Cannabis.** "((Marijuana)) Cannabis" is any product with a THC concentration greater than ~~((-03))~~ .3 percent.

(k) **Processor for hire.** "Processor for hire" has the same meaning as used in chapter 82.04 RCW and as explained in WAC 458-20-136 Manufacturing, processing for hire, fabricating.

(l) **Qualifying operation.** "Qualifying operation" means a manufacturing operation, a research and development operation, or a testing operation.

(m) **Research and development operation.** "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire. RCW 82.63.010 defines "research and development" to mean: Activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(n) **Sale.** "Sale" has the same meaning as "sale" in chapter 82.08 RCW, which includes by reference RCW 82.04.040. RCW 82.04.040 includes by reference the definition of "retail sale" in RCW 82.04.050. "Sale" includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

(o) **Site.** "Site" means the location at which the manufacturing or testing takes place.

(p) **Support facility.** "Support facility" means a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under a microchip clean room, is a support facility. Without the slab, the delicate instruments in the clean room would not function properly. The ceiling and walls of the clean room are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.

(q) **Tangible personal property.** "Tangible personal property" has its ordinary meaning.

(r) **Testing.** "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(s) **Testing operation.** "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. The testing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the testing operation, unless specifically excepted by law.

(3) **Retail sales and use tax exemptions.** The M&E exemptions provide retail sales and use tax exemptions for machinery and equipment used directly in a manufacturing operation or research and development operation, except for such sales or use relating to (~~marijuana~~) cannabis effective June 12, 2014. Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying machinery and equipment are also exempt from sales tax, except for such sales or charges relating to (~~marijuana~~) cannabis effective June 12, 2014. However, because the exemption is limited to items with a useful life of one year or more, some charges for repair, labor, services, and replacement parts may not be eligible for the exemption. In the case of labor and service charges that cover both qualifying and nonqualifying repair and replacement parts, the labor and services charges are presumed to be exempt. If all of the parts are nonqualifying, the labor and service charge is not exempt, unless the parts are incidental to the service being performed, such as cleaning, calibrating, and adjusting qualifying machinery and equipment.

The exemption may be taken for qualifying machinery and equipment used directly in a testing operation by a person engaged in testing for a manufacturer or processor for hire, with the exception of such testing relating to (~~marijuana~~) cannabis effective June 12, 2014.

Sellers remain subject to the retailing B&O tax on all sales of machinery and equipment to consumers if delivery is made within the state of Washington, notwithstanding that the sale may qualify for an exemption from the retail sales tax.

(a) **Sales tax.** The purchaser must provide the seller with an exemption certificate. The exemption certificate must be completed in its entirety. The seller must retain a copy of the certificate as a part of its records. This certificate may be issued for each purchase or in blanket form certifying all future purchases as being exempt from sales tax. Blanket certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of (~~twelve~~) 12 consecutive months. RCW 82.08.050 (7)(c).

The form must contain the following information:

- (i) Name, address, and registration number of the buyer;
- (ii) Name of the seller;
- (iii) Name and title of the authorized agent of the buyer/user;
- (iv) Authorized signature;

(v) Date; and

(vi) Whether the form is a single use or blanket-use form.

A copy of an M&E certificate form may be obtained from the department's website at dor.wa.gov, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

(b) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount on the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. For additional information on use tax see chapter 82.12 RCW and WAC 458-20-178. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or the use tax directly to the department unless the purchase and/or use is exempt from the retail sales and/or use taxes. A qualifying person using eligible machinery and equipment in Washington in a qualifying manner is exempt from the use tax. If an item of machinery and equipment that was eligible for use tax or sales tax exemption fails to overcome the majority use threshold or is entirely put to use in a nonqualifying manner, use tax is due on the fair market value at the time the item was put to nonqualifying use. See subsection (9) of this rule for an explanation of the majority use threshold.

(4) **Who may take the exemption?** The exemption may be taken by a manufacturer or processor for hire who manufactures articles, substances, or commodities for sale as tangible personal property (excluding (~~marijuana~~) cannabis), and who, for the item in question, meets the used directly test and overcomes the majority use threshold. (See subsection (8) of this rule for a discussion of the "used directly" criterion and see subsection (9) of this rule for an explanation of the majority use threshold.) However, for research and development operations, there is no requirement that the operation produce tangible personal property for sale. A processor for hire who does not sell tangible personal property is eligible for the exemption if the processor for hire manufactures articles, substances, or commodities that will be sold by the manufacturer. For example, a person who is a processor for hire but who is manufacturing with regard to tangible personal property that will be used by the manufacturer, rather than sold by the manufacturer, is not eligible. For additional information on manufacturing, processing for hire, or fabricating, see WAC 458-20-136 and RCW 82.04.110. Persons who engage in testing for manufacturers or processors for hire are eligible for the exemption. To be eligible for the exemption, the taxpayer need not be a manufacturer or processor for hire in the state of Washington, but must meet the definition of manufacturer provided in subsection (2)(g) of this rule.

(5) **What is eligible for the exemption?** Machinery and equipment used directly in a qualifying operation by a qualifying person is eligible for the exemption, subject to overcoming the majority use threshold.

There are three classes of eligible machinery and equipment: Industrial fixtures, devices, and support facilities. Also eligible is tangible personal property that becomes an ingredient or component of

the machinery and equipment, including repair parts and replacement parts. "Machinery and equipment" also includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

(6) **What is not eligible for the exemption?** In addition to items that are not eligible because they do not meet the used directly test or fail to overcome the majority use threshold, the following four categories of property are statutorily excluded from eligibility:

(a) **Hand-powered tools.** Screw drivers, hammers, clamps, tape measures, and wrenches are examples of hand-powered tools. Electric powered, including cordless tools, are not hand-powered tools, nor are calipers, plugs used in measuring, or calculators.

(b) **Property with a useful life of less than one year.** All eligible machinery and equipment must satisfy the useful life criterion, including repair parts and replacement parts. For example, items such as blades and bits are generally not eligible for the exemption because, while they may become component parts of eligible machinery and equipment, they generally have a useful life of less than one year. Blades generally having a useful life of one year or more, such as certain sawmill blades, are eligible. See subsection (7) of this rule for thresholds to determine useful life.

(c) **Buildings.** Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. Buildings provide work space for people or shelter machinery and equipment or tangible personal property. The building itself is not eligible, however some of its components might be eligible for the exemption. The industrial fixtures and support facilities that become affixed to or part of the building might be eligible. The subsequent real property status of industrial fixtures and support facilities does not affect eligibility for the exemption.

(d) **Building fixtures.** Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical. Examples of nonqualifying fixtures are: Fire sprinklers, building electrical systems, or washroom fixtures. Fixtures that are integral to the manufacturing operation might be eligible, depending on whether the item meets the other requirements for eligibility, such as the used directly test.

(7) **The "useful life" threshold.** RCW 82.08.02565 has a per se exception for "property with a useful life of less than one year." Property that meets this description is not eligible for the M&E exemption. The useful life threshold identifies items that do not qualify for the exemption, such as supplies, consumables, and other classes of items that are not expected or intended to last a year or more. For example, tangible personal property that is acquired for a one-time use and is discarded after use, such as a mold or a form, has a useful life of less than one year and is not eligible. If it is clear from taxpayer records or practice that an item is used for at least one year, the item is eligible, regardless of the answers to the four threshold questions. A taxpayer may work directly with the department to establish recordkeeping methods that are tailored to the specific circumstances of the taxpayer. The following steps should be used to determine whether an item meets the "useful life" threshold. The series of questions progress from simple documentation to complex docu-

mentation. To substantiate qualification under any step, a taxpayer must maintain adequate records or be able to establish by demonstrating through practice or routine that the threshold is overcome. Catastrophic loss, damage, or destruction of an item does not affect eligibility of machinery and equipment that otherwise qualifies. Assuming the machinery and equipment meets all of the other M&E requirements and does not have a single one-time use or is not discarded during the first year, useful life should be determined by answering the following questions for an individual piece of machinery and equipment:

(a) Is the machinery and equipment capitalized for either federal tax purposes or accounting purposes?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(b) Is the machinery and equipment warranted by the manufacturer to last at least one year?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(c) Is the machinery and equipment normally replaced at intervals of one year or more, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(d) Is the machinery and equipment expected at the time of purchase to last at least one year, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no," it does not qualify for the exemption.

(8) **The "used directly" criteria.** Items that are not "used directly" in a qualifying operation are not eligible for the exemption. The statute provides eight descriptions of the phrase "used directly." The manner in which a person uses an item of machinery and equipment must match one of these descriptions. Examples of items that are not used directly in a qualifying operation are cafeteria furniture, safety equipment not part of qualifying M&E, packaging materials, shipping materials, or administrative equipment. Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation, if the machinery and equipment meets any one of the following criteria:

(a) **Acts on or interacts with.** It acts on or interacts with an item of tangible personal property. Examples include drill presses, concrete mixers (agitators), ready-mix concrete trucks, hot steel rolling machines, rock crushers, and band saws. Also included is machinery and equipment used to repair, maintain, or install tangible personal property. Computers qualify under this criterion if:

(i) They direct or control machinery or equipment that acts on or interacts with tangible personal property; or

(ii) If they act on or interact with an item of tangible personal property.

(b) **Conveys, transports, handles, or temporarily stores.** It conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or the testing site. Examples include wheelbarrows, handcarts, storage racks, forklifts, tanks, vats, robotic arms, piping, and concrete storage pads. Floor space in buildings does not qualify under this criterion. Also not eligible under this criterion are items that are used to ship the product or in

which the product is packaged, as well as materials used to brace or support an item during transport.

(c) **Controls, guides, measures, verifies, aligns, regulates or tests.** It controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site. Examples of "away from the site" are road testing of trucks, air testing of planes, or water testing of boats, with the machinery and equipment used off site in the testing eligible under this criterion. Machinery and equipment used to take readings or measurements is eligible under this criterion.

(d) **Provides physical support.** It provides physical support for or access to tangible personal property. Examples include catwalks adjacent to production equipment, scaffolding around tanks, braces under vats, and ladders near controls. Machinery and equipment used for access to the building or to provide a work space for people or a space for tangible personal property or machinery and equipment, such as stairways or doors, is not eligible under this criterion.

(e) **Produces power or lubricates.** It produces power for or lubricates machinery and equipment. A generator providing power to a sander is an example of machinery and equipment that produces such power. An electrical generating plant that provides power for a building is not eligible under this criterion. Lubricating devices, such as hoses, oil guns, pumps, and meters, whether or not attached to machinery and equipment, are eligible under this criterion.

(f) **Produces another item.** It produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation. Examples include machinery and equipment that make dies, jigs, or molds, and printers that produce camera-ready images.

(g) **Packs.** It places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(h) **Is integral to research and development.** It is integral to "research and development" as it is defined in RCW 82.63.010.

(9) **The majority use threshold.**

(a) **M&E used both in a qualifying and nonqualifying manner.** Machinery and equipment used both directly in a qualifying operation and also in a nonqualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Examples of situations in which an item of machinery and equipment is used for qualifying and nonqualifying purposes include: The use of machinery and equipment in manufacturing and repair activities, such as using a power saw to make cabinets in a shop versus using it to make cabinets at a customer location; the use of machinery and equipment in manufacturing and constructing activities, such as using a forklift to move finished sheet rock at the manufacturing site versus using it to unload sheet rock at a customer location; and the use of machinery and equipment in manufacturing and transportation activities, such as using a mixer truck to make concrete at a manufacturing site versus using it to deliver concrete to a customer. Majority use can be expressed as a percentage, with the minimum required amount of qualifying use being greater than ((fifty)) 50 percent compared to overall use. To determine whether the majority use requirement has been satisfied, the person claiming the exemption must retain records documenting the measurement used to substantiate a claim for exemption or, if time, value, or volume is not the basis for measurement, be able to establish by demonstrating through practice or routine that the re-

quirement is satisfied. Majority use is measured by looking at the use of an item during a calendar year using any of the following:

(i) **Time.** Time is measured using hours, days, or other unit of time, with qualifying use of the M&E the numerator, and total time used the denominator. Suitable records for time measurement include employee time sheets or equipment time use logs.

(ii) **Value.** Value means the value to the person, measured by revenue if both the qualifying and nonqualifying uses produce revenue. Value is measured using gross revenue, with revenue from qualifying use of the M&E the numerator, and total revenue from use of the M&E the denominator. If there is no revenue associated with the use of the M&E, such as in-house accounting use of a computer system, the value basis may not be used. Suitable records for value measurement include taxpayer sales journals, ledgers, account books, invoices, and other summary records.

(iii) **Volume.** Volume is measured using amount of product, with volume from qualifying use of the M&E the numerator and total volume from use of the M&E the denominator. Suitable records for volume measurement include production numbers, tonnage, and dimensions.

(iv) **Other comparable measurement for comparison.** The department may agree to allow a taxpayer to use another measure for comparison, provided that the method results in a comparison between qualifying and nonqualifying uses. For example, if work patterns or routines demonstrate typical behavior, the taxpayer with the department's approval can satisfy the majority use test using work site surveys as proof.

(b) **Bundling similar M&E into classes.** Each piece of M&E does not require a separate record if the taxpayer can establish that it is reasonable to bundle M&E into classes. Classes may be created only from similar pieces of machinery and equipment and only if the uses of the pieces are the same. For example, forklifts of various sizes and models can be bundled together if the forklifts are doing the same work, as in moving wrapped product from the assembly line to a storage area. An example of when not to bundle classes of M&E for purposes of the majority use threshold is the use of a computer that controls a machine through numerical control versus use of a computer that creates a camera ready page for printing.

(c) **Industry-wide standards.** Typically, whether the majority use threshold is met is decided on a case-by-case basis, looking at the specific manufacturing operation in which the item is being used. However, for purposes of applying the majority use threshold, the department may develop industry-wide standards. For instance, the aggregate industry uses concrete mixer trucks in a consistent manner across the industry. Based on a comparison of selling prices of the processed product picked up by the customer at the manufacturing site and delivery prices to a customer location, and taking into consideration the qualifying activity (interacting with tangible personal property) of the machinery and equipment compared to the nonqualifying activity (delivering the product) of the machinery and equipment, the department has determined that concrete trucks qualify under the majority use threshold. Only in those limited instances where it is apparent that the use of the concrete truck is atypical for the industry would the taxpayer be required to provide recordkeeping on the use of the truck to support the exemption.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-07-046, § 458-20-13601, filed 3/14/16, effective 4/14/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.04.120, 82.04.213, 82.04.260,

82.04.4266, 82.08.02565, 82.12.022, and 82.12.02565. WSR 15-01-005, § 458-20-13601, filed 12/4/14, effective 1/4/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.02565, and 82.12.02565. WSR 08-14-024, § 458-20-13601, filed 6/20/08, effective 7/21/08. Statutory Authority: RCW 82.32.300. WSR 00-11-096, § 458-20-13601, filed 5/17/00, effective 6/17/00.]

OTS-4106.1

AMENDATORY SECTION (Amending WSR 15-01-007, filed 12/4/14, effective 1/4/15)

WAC 458-20-209 Farming for hire and horticultural services performed for farmers. (1) **Introduction.** This rule provides tax reporting information for persons performing horticultural services for farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226 (Landscape and horticultural services). Farmers and persons making sales to farmers may also want to refer to the following rules:

(a) WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers); and

(b) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements, and related services).

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

(a) "Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals defined as pet animals under RCW 16.70.020. Effective June 12, 2014, "agricultural product" may not be construed to include (~~marijuana. Marijuana~~) cannabis. Cannabis is any product with a THC concentration greater than (~~(.03)~~) .3 percent. RCW 82.04.213.

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products.

(i) The term "horticultural services" includes, but is not limited to, the following:

(A) Soil preparation services such as plowing or weed control before planting;

(B) Crop cultivation services such as planting, thinning, pruning, or spraying; and

(C) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

(ii) Effective June 12, 2014, horticultural services does not include services related to the cultivation of (~~marijuana. Marijuana~~) cannabis. Cannabis is any product with a THC concentration greater than (~~(.03)~~) .3 percent.

(3) **Business and occupation (B&O) tax.** Persons performing horticultural services for farmers are generally subject to the service and other business activities B&O tax upon the gross proceeds. However, if the person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to either the wholesaling or retailing B&O tax, depending on the nature of the sale. Persons making sales of tangible personal property to farmers should refer to WAC 458-20-210 to determine whether the wholesaling or retailing tax applies, and under what circumstances retail sales tax must be collected.

(a) A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.

(b) The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.

(c) In cases where doubt exists in determining whether or not a person is engaged in the business of performing horticultural services, all pertinent information should be submitted to the department of revenue (department) for a specific ruling. The department may be contacted using the website dor.wa.gov and selecting "contact us"; or by telephone at 1-800-647-7706.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of machinery, machinery parts and repair, tools, and cleaning materials by persons performing horticultural services are subject to retail sales tax.

(b) Persons taxable under the service and other business activities B&O tax classification are defined as consumers of anything they use in performing their services. (Refer to RCW 82.04.190.) As such, these persons are required to pay retail sales or use tax upon the purchase of all items used in performing the service, such as fertil-

izers, spray materials, and baling wire, which are not sold separate and apart from the service they perform.

(5) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) John Doe is a wheat farmer owning threshing equipment which is generally used only for threshing his own wheat. Occasionally a neighbor's threshing equipment may break down and John will use his own equipment to assist the neighbor in completing the neighbor's wheat harvest. While John receives payment for providing the threshing assistance, this activity is considered to be a casual and isolated sale. John does not hold himself out as being in the business of performing farming (threshing) for hire. John Doe is not considered to be engaging in taxable business activities. The amounts John Doe receives for assisting in the harvest of his neighbors' wheat is not subject to tax.

(b) X Spraying applies fertilizer to orchards owned by Farmer A. The sales invoice provided to Farmer A by X Spraying reflects a "lump sum" amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X Spraying would report the total charge under the service B&O tax classification. X Spraying must also remit retail sales or use tax upon the purchase of the fertilizer. The entire amount charged by X Spraying is for horticultural services, and X Spraying is considered the consumer of the fertilizer.

(c) Z Flying aerial sprays pesticides on crops owned by Farmer B. The sales invoice Z Flying provides to Farmer B segregates the charge for the pesticides and the charge for the application. When reporting its tax liability, Z Flying would report the charge for the application under the service B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax provided it is properly documented by a reseller permit. Reseller permits replaced resale certificates effective January 1, 2010. For additional information on reseller permits see WAC 458-20-102. Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by Z Flying for five years from the date of last use or December 31, 2014, whichever first occurs.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-01-007, § 458-20-209, filed 12/4/14, effective 1/4/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-070, § 458-20-209, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300. WSR 94-07-050, § 458-20-209, filed 3/10/94, effective 4/10/94; WSR 83-08-026 (Order ET 83-1), § 458-20-209, filed 3/30/83; Order ET 70-3, § 458-20-209 (Rule 209), filed 5/29/70, effective 7/1/70.]

OTS-4107.1

AMENDATORY SECTION (Amending WSR 19-02-057, filed 12/27/18, effective 1/27/19)

WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers. (1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers. Farmers should refer to WAC 458-20-101 (Tax registration and tax reporting) to determine whether they must obtain a tax registration endorsement or a temporary registration certificate from the department of revenue (department).

(a) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(b) **Other rules that may be relevant.** Farmers and persons making sales to farmers may also want to refer to rules in the following list for additional information:

(i) WAC 458-20-178 Use tax and the use of tangible personal property;

(ii) WAC 458-20-209 Farming for hire and horticultural services performed for farmers;

(iii) WAC 458-20-222 Veterinarians;

(iv) WAC 458-20-239 Sales to nonresidents of farm machinery or implements, and related services;

(v) WAC 458-20-243 Litter tax; and

(vi) WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing.

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, on the person's own lands or on the lands in which the person has a present right of possession, any agricultural product to be sold. Effective July 1, 2015, a "farmer" also includes eligible apiarists that grow, raise, or produce honey bee products for sale, or provide bee pollination services. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. Effective July 1, 2015, "agricultural product" includes honey bee products. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." Effective June 12, 2014, RCW 82.04.213 excludes (~~marijuana~~) cannabis from the definition of

"agricultural product." ((Marijuana)) Cannabis is any product with a THC concentration greater than ((.03)) .3 percent. RCW 82.04.213.

(4) **Who is an eligible apiarist?** An "eligible apiarist" is a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(5) **What are honey bee products?** "Honey bee products" are queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" do not include manufactured substances or articles.

(6) **What is ((marijuana)) cannabis?** ((Marijuana)) Cannabis is any product with a THC concentration greater than ((.03)) .3 percent. For additional information on ((marijuana)) cannabis see RCW 69.50.101.

(7) **Sales to farmers.** Persons making sales of tangible personal property to farmers are generally subject to wholesaling or retailing B&O tax, as the case may be, on the gross proceeds of sales. Sales of some services performed for farmers, such as installing or repairing tangible personal property, are retail sales and subject to retailing B&O tax on the gross proceeds of such sales. Persons making retail sales must collect retail sales tax from the buyer, unless the sale is specifically exempt by law. Refer to subsection (9) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must take and retain from the buyer a copy of the buyer's reseller permit, or a completed "Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions" to document the wholesale nature of any transaction.

(b) **Buyer's responsibility when the seller does not collect retail sales tax on a retail sale.** If the seller does not collect retail sales tax on a retail sale, the buyer must pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless the sale is specifically exempt by law. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement from the department, the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. For detailed information regarding use tax see WAC 458-20-178.

The Consumer Use Tax Return may be obtained by calling the department's telephone information center at 1-800-647-7706. The return may also be obtained from the department's website at dor.wa.gov.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

However, when these items are sold to consumers for purposes other than producing agricultural products for sale, the sales are retail sales. For example, sales of feed to riding clubs, racetrack operators, boarders, or similar persons who do not resell the feed at a specific charge are retail sales. Sales of feed for feeding pets or work animals, or for raising animals for the purpose of producing agricultural products for personal consumption are also retail sales.

Sales of seed, fertilizer, and spray materials for use on lawns and gardens, or for any other personal use, are likewise retail sales.

(i) **What is feed?** "Feed" is any substance used as food to sustain or improve animals, birds, fish, bees, or other insects, including whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, sugar, pollen patties, bone meal, fish meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. Food additives that are given for their beneficial growth or weight effects are "feed."

Hormones or similar products that do not make a direct nutritional or energy contribution to the body are not "feed," nor are products used as medicines.

(ii) **What is seed?** "Seed" is the propagative portions of plants commonly used for seeding or planting whether true seed, bulbs, plants, seed-like fruits, seedlings, or tubers. For purposes of this rule, "seed" does not include seeds or propagative portions of plants used to grow ((marijuana)) cannabis.

(iii) **What is fertilizer?** "Fertilizer" is any substance containing one or more recognized plant nutrients and is used for its plant nutrient content and/or is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures. There is no requirement that fertilizers be applied directly to the soil.

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mite, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **Examples.**

(A) **Example 1.** Sue grows vegetables for retail sale at a local market. Sue purchases fertilizers and spray materials that she applies to the vegetable plants. She also purchases feed for poultry that she raises to produce eggs for her personal consumption. Because the vegetables are an agricultural product produced for sale, retail sales tax does not apply to Sue's purchases of fertilizers and spray materials, provided she gives the seller a copy of her reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Retail sales tax applies to her purchases of poultry feed, as the poultry is raised to produce eggs for Sue's personal consumption.

(B) **Example 2.** WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions.

(C) **Example 3.** Seed Co. contracts with farmers to raise seed. Seed Co. provides the seed and agrees to purchase the crop if it meets specified standards. The contracts provide that ownership of the crop is retained by Seed Co., and the risk of crop loss is borne by the farmers. The farmers must pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the

seed to each farmer is a wholesale sale, provided Seed Co. obtains a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from that farmer.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay are wholesale sales.

(e) **Farming equipment.** Sales to farmers of farming equipment such as machinery, machinery parts and repair, tools, and cleaning materials are retail sales and subject to retailing B&O and retail sales taxes, unless specifically exempt by law. Refer to subsections (7)(i) and (9) of this rule for information about sales tax exemptions available to farmers.

(f) **Packing materials and containers.** Sales of packing materials and containers, or tangible personal property that will become part of a container, to a farmer who will sell the property to be contained therein are wholesale sales, provided the packing materials and containers are not put to intervening use by the farmer. Thus, sales to farmers of binder twine for binding bales of hay that will be sold or wrappers for fruit and vegetables to be sold are subject to wholesaling B&O tax. However, sales of packing materials and containers to a farmer who will use the items as a consumer are retail sales and subject to retailing B&O and retail sales taxes. Thus, sales of binder twine to a farmer for binding bales of hay that will be used to feed the farmer's livestock are retail sales.

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property who is unable to determine at the time of purchase whether the particular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than ~~((fifty))~~ 50 percent.

If a buyer makes a purchase for dual purposes and does not give a copy of their reseller permit for any of the purchase and thereafter resells some of the articles purchased, the buyer may claim a "taxable amount for tax paid at source" deduction. For additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction see WAC 458-20-102.

(i) **Potential deferred sales tax liability.** If the buyer gives a copy of its reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer is liable for deferred sales tax and must remit the tax directly to the department. Refer to (b) of this subsection, WAC 458-20-102 and 458-20-178 for more information regarding deferred sales tax and use tax.

(ii) **Example 4.** A farmer purchases binder twine for binding bales of hay. Some of the hay will be sold and some will be used to feed the farmer's livestock. More than ~~((fifty))~~ 50 percent of the binder twine is used for binding bales of hay that will be sold. Because the farmer principally uses the binder twine for binding bales of hay that will be sold, the farmer may provide a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions to the seller for the entire purchase. The farmer is liable for deferred sales tax on the binder twine used for binding bales of

hay that are used to feed the farmer's livestock and must remit the tax directly to the department.

(h) **"Fruit bin rentals" by fruit packers.** Fruit packers often itemize their charges to farmers for various services related to the packing and storage of fruit. An example is a charge for the bins that the packer uses in the receiving, sorting, inspecting, and storing of fruit (commonly referred to as "bin rentals"). The packer delivers the bins to the grower, who fills them with fruit for eventual storage in the packer's warehouse. Charges by fruit packers to farmers for such bin rentals do not constitute the rental of tangible personal property to the farmer where the bins are under the control of the packer for use in the receiving, sorting, inspecting, and storing of fruit. These charges are income to the packer related to the receipt or storage of fruit. The packer, as the consumer of the bins, is subject to retail sales or use tax on the purchase or use of the bins. For information regarding the taxability of fruit packing by cooperative marketing associations and independent dealers acting as agents for others in the sales of fruit and produce see WAC 458-20-214.

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales and use taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. These exemptions are commonly referred to as the M&E exemption. Farmers who use agricultural products that they have grown, raised, or produced as ingredients in a manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. For more information on the M&E exemption see WAC 458-20-13601.

(8) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. Effective July 1, 2015, bee pollination services provided to farmers by eligible apiarists also qualify for the exemption provided by RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to (b) of this subsection for tax-reporting information.

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced on the seller's own land or on land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. For more information about the small business B&O tax credit see WAC 458-20-104.

(a) **Litter tax.** The gross proceeds of sales of certain products, including food for human or pet consumption, are subject to litter tax. RCW 82.19.020. Litter tax does not apply to sales of agricultural products that are exempt from B&O tax under RCW 82.04.330. RCW 82.19.050. Thus, farmers are not subject to litter tax on wholesale sales of agricultural products but are liable for litter tax on the gross proceeds of retail sales of agricultural products that constitute food for human or pet consumption. In addition, farmers that man-

ufacture products for use and consumption within this state (e.g., a farmer who produces wine from grapes that the farmer has grown) may be liable for litter tax measured by the value of the products manufactured. For more information about the litter tax see chapter 82.19 RCW and WAC 458-20-243.

Example 5. RD Orchards (RD) grows apples at its orchards. Most apples are sold at wholesale, but RD operates a seasonal roadside fruit stand from which it sells apples at retail. The wholesale sales of apples are exempt from both B&O and litter taxes. The retail sales of apples are subject to retailing B&O and litter taxes but are exempt from sales tax because the apples are sold as a food product for human consumption. Refer to subsection (9)(d) of this rule for more information about the retail sales tax exemption applicable to sales of food products for human consumption.

(b) **Farmers using agricultural products in a manufacturing process.** The B&O tax exemption provided by RCW 82.04.330 does not apply to any person selling manufactured substances or articles. Thus, farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing B&O tax on the value of products manufactured. Farmers who sell their manufactured products at retail or wholesale in the state of Washington are also generally subject to the retailing or wholesaling B&O tax, as the case may be. In such cases, a multiple activities tax credit (MATC) may be available. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits), respectively, for more information about the manufacturing B&O tax and the MATC.

(i) **Manufacturing fresh fruits and vegetables.** RCW 82.04.4266 provides a B&O tax exemption to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables. For purposes of this rule, "fruits" and "vegetables" does not include (~~marijuana~~) cannabis.

Wholesale sales of fresh fruits or vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport the goods out of this state in the ordinary course of business are also eligible for this exemption. A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state.

(A) A person claiming the exemption must file a complete annual tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4266 is scheduled to expire July 1, 2025, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(ii) **Manufacturing dairy products.** RCW 82.04.4268 provides a B&O tax exemption to persons manufacturing dairy products, not including any (~~marijuana-infused~~) cannabis-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135. These products include milk, buttermilk, cream, yogurt, cheese, and ice cream, and also include by-products from the manufacturing of dairy products such as whey and casein.

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods out of Washington state in the ordinary course of business. Unlike the exemption for certain wholesale sales of fresh fruits or vegetables (see (b)(i) of this sub-

section), the exemption for sales of qualifying dairy products does not require that the sales be made at wholesale.

A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state or the goods were sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(A) A person claiming the exemption must file a complete annual tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4268 is scheduled to expire July 1, 2025, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(C) Effective October 1, 2013, the exemption provided by RCW 82.04.4268 expanded to include wholesale sales by a dairy product manufacturer to a purchaser who uses the dairy products as an ingredient or component in the manufacturing in Washington of another dairy product. The definition of dairy products was expanded to include products comprised of not less than (~~seventy~~) 70 percent dairy products measured by weight or volume.

(c) **Raising cattle for wholesale sale.** RCW 82.04.330 provides a B&O tax exemption to persons who raise cattle for wholesale sale provided that the cattle are held for at least (~~sixty~~) 60 days prior to the sale. Persons who hold cattle for fewer than (~~sixty~~) 60 days before reselling the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

Example 6. A feedlot operation purchases cattle and feeds them until they attain a good market condition. The cattle are then sold at wholesale. The feedlot operator is exempt from B&O tax on wholesale sales of cattle if it held the cattle for at least (~~sixty~~) 60 days while they were prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than (~~sixty~~) 60 days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, several other B&O tax exemptions available to farmers are discussed in this subsection.

(i) **Growing, raising, or producing agricultural products owned by other persons.** RCW 82.04.330 exempts amounts received by a farmer for growing, raising, or producing agricultural products owned by others, such as custom feed operations.

Example 7. A farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the farmer held the cattle for at least (~~sixty~~) 60 days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least (~~sixty~~) 60 days while the cattle are prepared for market. (See (c) of this subsection.)

(ii) **Processed hops shipped outside Washington for first use.** RCW 82.04.337 exempts amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state.

However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

(iii) **Sales of hatching eggs or poultry.** RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

(9) **Retail sales tax and use tax exemptions.** This subsection provides information about a number of retail sales tax and corresponding use tax exemptions available to farmers and persons buying tangible personal property at retail from farmers. Some exemptions require the buyer to provide the seller with an exemption certificate. Refer to subsection (10) of this rule for additional information regarding exemption certificates.

(a) **Pollen.** RCW 82.08.0277 and 82.12.0273 exempt the sale and use of pollen from retail sales and use taxes.

(b) **Semen.** RCW 82.08.0272 and 82.12.0267 exempt the sale and use of semen used in the artificial insemination of livestock from retail sales and use taxes.

(c) **Feed for livestock at public livestock markets.** RCW 82.08.0296 and 82.12.0296 exempt the sale and use of feed to be consumed by livestock at a public livestock market from retail sales and use taxes.

(d) **Food products.** RCW 82.08.0293 and 82.12.0293 exempt the sale and use of food products for human consumption from retail sales and use taxes. These exemptions also apply to the sale or use of livestock for personal consumption as food. For more information about food products that qualify for this exemption see WAC 458-20-244.

(e) **Auction sales of farm property.** RCW 82.08.0257 and 82.12.0258 exempt from retail sales and use taxes tangible personal property, including household goods, which has been used in conducting a farm activity, if the property is purchased from a farmer, as defined in RCW 82.04.213, at an auction sale held or conducted by an auctioneer on a farm. Effective June 12, 2014, these exemptions do not apply to personal property used by a person in the production of (~~marijuana~~) cannabis.

(f) **Poultry.** RCW 82.08.0267 and 82.12.0262 exempt from retail sales and use taxes the sale and use of poultry used in the production for sale of poultry or poultry products.

Example 8. A poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales tax under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (8)(d)(iii) of this rule.)

(g) **Leases of irrigation equipment.** RCW 82.08.0288 and 82.12.0283 exempt the lease or use of irrigation equipment from retail sales and use taxes, but only if:

(i) The lessor purchased the irrigation equipment for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part;

(iv) Effective June 12, 2014, the irrigation equipment is not used in the production of (~~marijuana~~) cannabis; and

(v) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land.

(h) **Beef and dairy cattle.** RCW 82.08.0259 and 82.12.0261 exempt the sale and use of beef and dairy cattle, to be used by a farmer in producing an agricultural product, from retail sales and use taxes.

Example 9. John operates a farm where he raises beef and dairy cattle for sale. He also raises other livestock for sale including hogs, sheep, and goats. John's sales of beef and dairy cattle for use on a farm are exempt from retail sales tax. However, John must collect retail sales tax on all retail sales of sheep, goats, and hogs unless the sales qualify for either the food products exemption described in (d) of this subsection, or the exemption for sales of livestock for breeding purposes described in this subsection (9)(i) of this rule.

(i) **Livestock for breeding purposes.** RCW 82.08.0259 and 82.12.0261 exempt the sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association from retail sales and use taxes.

Example 10. ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives and retains a completed exemption certificate from the buyer.

(j) **Bedding materials for chickens.** RCW 82.08.920 and 82.12.920 exempt from retail sales and use taxes the sale to and use of bedding materials by farmers to accumulate and facilitate the removal of chicken manure, provided the farmer is raising chickens that are sold as agricultural products.

(i) **What are bedding materials?** "Bedding materials" are wood shavings, straw, sawdust, shredded paper, and other similar materials.

(ii) **Example 11.** Farmer raises chickens for use in producing eggs for sale. When the chickens are no longer useful for producing eggs, Farmer sells them to food processors for soup and stew meat. Farmer purchases bedding materials used to accumulate and facilitate the removal of chicken manure. The purchases of bedding materials by Farmer are exempt from retail sales tax as long as Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

The exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily raises the chickens to produce eggs.

(k) **Propane or natural gas used to heat structures housing chickens.** RCW 82.08.910 and 82.12.910 exempt from retail sales and use taxes the sale to and use of propane or natural gas by farmers to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures, and the structures must be used exclusively to house chickens that are sold as agricultural products.

(i) **What are "structures"?** "Structures" are barns, sheds, and other similar buildings in which chickens are housed.

(ii) **Example 12.** Farmer purchases natural gas that is used to heat structures housing chickens. The natural gas is used exclusively to heat the structures, and the structures are used exclusively to house chickens. The chickens are used to produce eggs. When the chickens are no longer useful for producing eggs, Farmer sells the chickens

to food processors for soup and stew meat. The purchase of natural gas by Farmer is exempt from retail sales tax as long as Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

The exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily houses these chickens to produce eggs.

(iii) **Example 13.** Farmer purchases natural gas that is used to heat structures used in the incubation of chicken eggs and structures used for washing, packing, and storing eggs. The natural gas used to heat these structures is not exempt from retail sales tax because the structures are not used exclusively to house chickens that are sold as agricultural products.

(l) **Farm fuel used for agricultural purposes.**

(i) **Diesel, biodiesel and aircraft fuels.** RCW 82.08.865 and 82.12.865 exempt from retail sales and use taxes the sale and use of diesel fuel, biodiesel fuel, and aircraft fuel, to farm fuel users for agricultural purposes. The exemptions apply to a fuel blend if all of the component fuels of the blend would otherwise be exempt if the component fuels were sold as separate products. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

(A) The exemptions apply to nonhighway uses for production of agricultural products and for providing horticultural services to farmers. Horticultural services include:

- (I) Soil preparation services;
- (II) Crop cultivation services;
- (III) Crop harvesting services.

(B) The exemptions do not apply to uses other than for agricultural purposes. Agricultural purposes do not include:

- (I) Heating space for human habitation or water for human consumption; or
- (II) Transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

(ii) **Propane and natural gas used in distilling mint on a farm.** Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and use by farmers of propane or natural gas used exclusively to distill mint on a farm. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. The seller must retain a copy of the exemption certificate for its records. See subsection (10) of this rule for where to find an exemption certificate. The seller must also report amounts claimed for exemption when electronically filing excise tax returns. This exemption is scheduled to expire July 1, 2017.

(m) **Nutrient management equipment and facilities.** RCW 82.08.890 and 82.12.890 provide retail sales and use tax exemptions for the sale to or use by eligible persons of:

- (i) Qualifying livestock nutrient management equipment;

(ii) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(iii) Labor and services rendered in respect to repairing, cleaning, altering, or improving qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving such facilities.

(iv) Nonqualifying labor and services. This subsection (9)(m)(iii) of this rule does not include the sale of or charge made for labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities, or tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing qualifying livestock nutrient management facilities.

(v) Nutrient management plan must be certified or approved. The exemptions provided by RCW 82.08.890 and 82.12.890 apply to sales made after the livestock nutrient management plan is:

(A) Certified under chapter 90.64 RCW;

(B) Approved as part of the permit issued under chapter 90.48 RCW; or

(C) Approved by a conservation district and who qualifies for the exemption provided under RCW 82.08.855. Effective June 12, 2014, the requirement for the department to issue exemption certificates was removed. A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions should be completed and provided to the seller.

(vi) **Definitions. For the purpose of these exemptions, the following definitions apply:**

(A) **"Animal feeding operation"** means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

- Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of (~~forty-five~~) 45 days or more in any (~~twelve-month~~) 12-month period; and
- Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(B) **"Conservation district"** means a subdivision of state government organized under chapter 89.08 RCW.

(C) **"Eligible person"** means a person:

- Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; or

- Who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or

- Who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who qualifies for the exemption provided under RCW 82.08.855.

(D) **"Handling and treatment of livestock manure"** means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(E) **"Permit"** means either a state waste discharge permit or a National Pollutant Discharge Elimination System permit, or both.

(F) **"Qualifying livestock nutrient management equipment"** means the tangible personal property listed below for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for the same equipment:

- Aerators
- Agitators
- Augers
- Conveyers
- Gutter cleaners
- Hard-hose reel traveler irrigation systems
- Lagoon and pond liners and floating covers
- Loaders
- Manure composting devices
- Manure spreaders
- Manure tank wagons
- Manure vacuum tanks
- Poultry house cleaners
- Poultry house flame sterilizers
- Poultry house washers
- Poultry litter saver machines
- Pipes
- Pumps
- Scrapers
- Separators
- Slurry injectors and hoses
- Wheelbarrows, shovels, and pitchforks.

(G) **"Qualifying livestock nutrient management facilities"** means the exclusive use in the handling and treatment of livestock manure of the facilities listed below:

- Flush systems
- Lagoons
- Liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks
- Structures used solely for dry storage of manure, including roofed stacking facilities.

(n) **Anaerobic digesters (effective July 1, 2018).**

(i) RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons:

(A) In respect to equipment necessary to process biogas from a landfill into marketable coproducts including, but not limited to, biogas conditioning, compression, and electrical generation equipment, or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving equipment necessary to process biogas from a landfill into marketable coproducts; and

(B) Establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. Anaerobic digester means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts in-

cluding, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment.

(ii) **Exemption certificate.** Effective July 24, 2015, eligible persons no longer need to apply for an exemption certificate. An "eligible person" is any person establishing or operating an anaerobic digester or landfill or processing biogas from an anaerobic digester or landfill into marketable coproducts.

(iii) **Records retention.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files. See subsection (10) of this rule for where to find an exemption certificate.

(o) **Anaerobic digesters (effective until July 1, 2018).** RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. The anaerobic digester must be used primarily (more than (~~fifty~~) 50 percent measured by volume or weight) to treat livestock manure. Anaerobic digester is a facility that processes manure from livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

(i) **Exemption certificate.** Effective July 24, 2015, eligible persons no longer need to apply for an exemption certificate. An "eligible person" is any person establishing or operating an anaerobic digester to treat primarily livestock manure.

(ii) **Records retention.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files. See subsection (10) of this rule for where to find an exemption certificate.

(p) **Animal pharmaceuticals.** RCW 82.08.880 and 82.12.880 exempt from retail sales and use taxes the sale of and use of certain animal pharmaceuticals when sold to, or used by, farmers or veterinarians. To qualify for the exemption, the animal pharmaceutical must be administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale. In addition, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

(i) **Who is a veterinarian?** A "veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW.

(ii) **How can I determine whether the FDA or USDA has approved an animal pharmaceutical?** The FDA and USDA have an established approval process set forth in federal regulations. The FDA maintains a list of all approved animal pharmaceuticals called the "Green Book." The USDA maintains a list of approved biotechnology products called the "Veterinary Biologics Product Catalogue." Pharmaceuticals that are not on either of these lists have not been approved and are not eligible for the exemption.

(iii) **Example 17.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips, antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA.

(iv) **What type of animal must the pharmaceutical be administered to?** As explained above, the exemptions are limited to the sale and use of animal pharmaceuticals administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. The conditions under which a farmer may purchase and use tax-exempt animal pharmaceuticals are similar to those under which a farmer may purchase and use feed at wholesale. Both types of purchases and uses require that the particular product be sold to or used by a farmer (or a veterinarian in the case of animal pharmaceuticals), and that the product be given or administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale.

(v) **Examples of animals raised for the purpose of producing agricultural products for sale.** For purposes of the exemptions, the following is a nonexclusive list of examples of animals that are being raised for the purpose of producing an agricultural product for sale, presuming all other requirements for the exemption are met:

- (A) Horses, cattle, or other livestock raised by a farmer for sale;
- (B) Cattle raised by a farmer for the purpose of slaughtering, if the resulting products are sold;
- (C) Milk cows raised and/or used by a dairy farmer for the purpose of producing milk for sale;
- (D) Horses raised by a farmer for the purpose of producing foals for sale;
- (E) Sheep raised by a farmer for the purpose of producing wool for sale; and
- (F) "Private sector cultured aquatic products" as defined by RCW 15.85.020 (e.g., salmon, catfish, and mussels) raised by an aquatic farmer for the purpose of sale.

(vi) **Examples of animals that are not raised for the purpose of producing agricultural products for sale.** For purposes of the exemptions, the following nonexclusive list of examples do not qualify because the animals are not being raised for the purpose of producing an agricultural product for sale:

- (A) Cattle raised for the purpose of slaughtering if the resulting products are not produced for sale;
- (B) Sheep and other livestock raised as pets;
- (C) Dogs or cats, whether raised as pets or for sale. Dogs and cats are pet animals; therefore, they are not considered to be agricultural products. (See subsection (3) of this rule); and
- (D) Horses raised for the purpose of racing, showing, riding, and jumping. However, if at some future time the horses are no longer raised for racing, showing, riding, or jumping and are instead being raised by a farmer for the purpose of producing foals for sale, the exemption will apply if all other requirements for the exemption are met.

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales and uses of products that are used to administer animal pharmaceuticals (e.g., syringes) do not qualify for the exemptions, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales and uses of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) qualify for the exemption.

(q) **Replacement parts for qualifying farm machinery and equipment.** RCW 82.08.855 and 82.12.855 exempt from retail sales and use taxes sales to and uses by eligible farmers of replacement parts for qualifying farm machinery and equipment. Also included are: Labor and services rendered during the installation of repair parts; and labor and services rendered during repair as long as no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of the qualifying equipment other than replacement parts.

(i) **The following definitions apply to this subsection:**

(A) "Eligible farmer" as defined in RCW 82.08.855(4).

(B) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products, and effective July 1, 2015, providing bee pollination services, or both.

(C) "Qualifying farm machinery and equipment" does not include:

- Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles and other farm implements. "Farm implements" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

- Aircraft;

- Hand tools and hand-powered tools; and

- Property with a useful life of less than one year.

(D) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment. Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined here or making repairs as described above in (p) of this subsection.

(ii) **Exemption certificate.** Prior to June 12, 2014, the department was required to provide an exemption certificate to an eligible farmer or renew an exemption certificate when the eligible farmer applied for a renewal.

(A) Persons claiming the exemptions must keep records necessary for the department to verify eligibility. Sellers making tax-exempt sales must obtain, and retain in its files, a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from the farmer. In lieu of the exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(B) The exemptions provided by RCW 82.08.890 and 82.12.890 do not apply to sales made from July 1, 2010, through June 30, 2013.

(10) **Sales tax exemption certificates.** As indicated in subsection (9) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. A person claiming an exemption must keep records necessary for the department to verify eligibility for each claimed exemption. Effective June 12, 2014, the requirement for the department to issue certificates to qualified farmers was removed. Instead, farmers may complete and use the department's Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's website at dor.wa.gov for the exemption certificate. In lieu of an exemption certificate, a seller may capture the relevant data elements as provided under the streamlined sales and use tax agreement as allowed under RCW 82.08.050. Sellers must retain a copy of the exemption certificate or the data elements in their files. Without proper documentation, sellers are liable for payment of the retail sales tax on sales claimed as exempt.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 19-02-057, § 458-20-210, filed 12/27/18, effective 1/27/19. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070, 82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-210, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 82.32.300, 82.01.060(2), 2015 3rd sp.s. c 6 part XI and 2015 c 86 § 202. WSR 16-03-002, § 458-20-210, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-01-007, § 458-20-210, filed 12/4/14, effective 1/4/15; WSR 14-14-091, § 458-20-210, filed 6/30/14, effective 7/31/14. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 34.05.230. WSR 03-18-024, § 458-20-210, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.32.300. WSR 94-07-048, § 458-20-210, filed 3/10/94, effective 4/10/94; WSR 86-21-085 (Order ET 86-18), § 458-20-210, filed 10/17/86; WSR 86-07-005 (Order ET 86-3), § 458-20-210, filed 3/6/86; WSR 83-08-026 (Order ET 83-1), § 458-20-210, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. WSR 78-07-045 (Order ET 78-4), § 458-20-210, filed 6/27/78; Order ET 70-3, § 458-20-210 (Rule 210), filed 5/29/70, effective 7/1/70.]

OTS-4108.1

AMENDATORY SECTION (Amending WSR 22-14-014, filed 6/23/22, effective 7/24/22)

WAC 458-20-244 Food and food ingredients. (1) Introduction.

This rule provides guidelines for determining if food or food ingredients qualify for the retail sales tax and use tax exemptions under RCW 82.08.0293 and 82.12.0293 (collectively referred to in this rule as the "exemptions").

There is no corresponding business and occupation (B&O) tax exemption. Even if a sale of food or food ingredients is exempt from retail sales tax or use tax under the exemptions, gross proceeds from sales of food or food ingredients remain subject to the retailing B&O tax.

(2) **Other rules that may apply.** Rules in the following list may contain additional relevant information:

(a) WAC 458-20-119 Sales by caterers and food service contractors;

(b) WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses;

(c) WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, hostels, trailer camps, short-term rentals and similar lodging businesses;

(d) WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools;

(e) WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities;

(f) WAC 458-20-169 Nonprofit organizations;

(g) WAC 458-20-229 Refunds; and

(h) WAC 458-20-243 Litter tax.

(3) **Items qualifying for the exemptions.**

(a) **In general.** The exemptions apply to food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(b) **Items not used solely for ingestion or chewing.** Items that are commonly ingested or chewed by humans for their taste or nutritional value but which may also be used for other purposes are generally treated as food or food ingredients. For example, pumpkins are presumed to be a food or food ingredient unless the pumpkin is sold painted or is otherwise clearly for decorative purposes rather than consumption. This is true even though the purchaser may use an undecorated pumpkin for carving and display rather than for eating.

(4) **Items not qualifying for the exemptions.** The exemptions do not apply to the following items, which are not considered "food or food ingredients" or which are otherwise specifically excluded from the exemptions:

(a) **Items sold for medical or hygiene purposes.** Items commonly used for medical or hygiene purposes, such as cough drops, breath sprays, toothpaste, etc., are not ingested for taste or nutrition and are not considered a food or food ingredient. In contrast, breath mints are commonly ingested for taste and are considered a food or food ingredient.

(b) **Bulk sales of ice.** Ice sold in bags, containers, or units of greater than 10 pounds and blocks of ice of any weight are not considered a food or food ingredient. Ice sold in cubed, shaved, or crushed form in packages or quantities of 10 pounds or less is considered a food or food ingredient. Refer to WAC 458-20-120, Sales of ice, for additional guidance on the sale of ice.

(c) **Alcoholic beverages.** Alcoholic beverages are excluded from the definition of food and food ingredients. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(d) **Tobacco.** Tobacco is excluded from the definition of food and food ingredients. "Tobacco" includes cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(e) (~~(**Marijuana.** Marijuana, useable marijuana, marijuana concentrates, or marijuana-infused~~) **Cannabis.** Cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products, as defined in RCW 69.50.101, are excluded from the definition of food and food ingredients. "~~(**Marijuana**)~~ **Cannabis**" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis.

(f) **Bottled water.** Bottled water is excluded from the exemptions for food and food ingredients. "Bottled water" means water that is placed in a safety sealed container or package for human consumption.

(i) Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain:

- (A) Antimicrobial agents;
- (B) Fluoride;
- (C) Carbonation;
- (D) Vitamins, minerals, and electrolytes;
- (E) Oxygen;
- (F) Preservatives; and
- (G) Only those flavors, extracts, or essences derived from a

spice or fruit.

(ii) **Exemptions for tax on bottled water.** There are limited retail sales tax exemptions on bottled water. Sellers must collect the retail sales tax on all sales of bottled water, unless the bottled water is delivered to the buyer as described in (f)(ii)(C) of this subsection. Any buyer that has paid at least \$25.00 in state and local taxes on purchases of bottled water subject to the exemptions described in (f)(ii)(A) and (B) of this subsection may apply for a refund of the taxes directly from the department.

(A) **Prescription issued bottled water.** Bottled water prescribed to patients for use in the cure, mitigation, treatment, or prevention of disease or other medical condition is exempt. RCW 82.08.9994. The bottled water must be prescribed, through an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission, by a licensed practitioner authorized by Washington law to prescribe.

(B) **Primary water source unsafe.** Bottled water for human use by persons whose primary source of drinking water is unsafe is exempt. RCW 82.08.99941. A person's primary source of drinking water is unsafe if:

(I) The public water system providing the drinking water has issued a public notification that the drinking water may pose a health risk, and the notification is still in effect on the date that the bottled water was purchased;

(II) Test results on the person's drinking water, which are no more than 12 months old, from a laboratory certified to perform drinking water testing show that the person's drinking water does not meet safe drinking water standards applicable to public water systems; or

(III) The person otherwise establishes, to the department's satisfaction, that the person's drinking water does not meet safe drinking water standards applicable to public water systems.

(C) **Bottled water delivered to the buyer in a reusable container not sold with the water.** Buyers claiming an exemption listed in (f)(ii)(A) or (B) of this subsection that have the qualifying water delivered in a reusable container that is not sold with the water must

complete a retail sales exemption certificate and provide it to the seller. The seller must retain a copy of the certificate.

(iii) For information regarding exemption certificates and refund requests, visit dor.wa.gov.

(g) **Soft drinks.** Soft drinks are excluded from the exemptions for food and food ingredients. "Soft drinks" means any nonalcoholic beverage that contains natural or artificial sweeteners, except beverages that contain:

(i) Milk or milk products;

(ii) Soy, rice, or similar milk substitutes; or

(iii) More than 50 percent by volume of vegetable or fruit juice.

For example, sweetened sports beverages are considered "soft drinks," but a sweetened soy beverage is a food or food ingredient.

Beverage mixes that are not sold in liquid form are not soft drinks even though they are intended to be made into a beverage by the customer. Examples include powdered fruit drinks, powdered tea or coffee drinks, and frozen concentrates. These items are food or food ingredients and are not subject to retail sales tax.

(h) **Dietary supplements.** Dietary supplements are excluded from the exemptions for food and food ingredients. "Dietary supplement" means any product intended to supplement the diet, other than tobacco, which meets all of the following requirements:

(i) Contains a vitamin; mineral; herb or other botanical; an amino acid; a substance for use by humans to increase total dietary intake; or a concentrate, metabolite, constituent, extract; or a combination of any of these ingredients;

(ii) Is intended for ingestion in tablet, capsule, powder, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled with a Food and Drug Administration "supplement facts" box. If a product is otherwise considered a food or food ingredient and labeled with both a "supplement facts" box and "nutrition facts" box, the product is treated as a food or food ingredient.

Nutrition products formulated to provide balanced nutrition as a sole source of a meal or of the diet are considered a food or food ingredient and not a dietary supplement. Refer to RCW 82.08.925 for information on the retail sales tax exemption applicable to dietary supplements dispensed under a prescription.

(i) **Prepared food.** Prepared food is excluded from the exemptions for food and food ingredients. Prepared food generally means heated foods, combined foods, or foods sold with utensils provided by the seller, as described in more detail in subsection (5) of this rule.

(5) **Items designated as prepared foods.** Food or food ingredients are "prepared foods" if any one of the following is true:

(a) **Heated foods.** Food or food ingredients are "prepared foods" if sold in a heated state or are heated by the seller, except bakery items. "Bakery items" include bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. Food is sold in a heated state or is heated by the seller when the seller provides the food to the customer at a temperature that is higher than the air temperature of the seller's establishment. Food is not sold in a heated state or heated by the seller if the customer, rather than the seller, heats the food in a microwave provided by the seller.

(b) **Combined foods.** Food or food ingredients are "prepared foods" if the item sold consists of two or more foods or food ingredients mixed or combined by the seller for sale as a single item, unless the food or food ingredients are any of the following:

- (i) Bakery items (defined in (a) of this subsection);
- (ii) Items that the seller only cuts, repackages, or pasteurizes;
- (iii) Items that contain eggs, fish, meat, or poultry, in a raw or undercooked state requiring cooking as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of *The Food Code*, published by the Food and Drug Administration, as amended or re-numbered as of January 1, 2003, so as to prevent foodborne illness; or
- (iv) Items sold in an unheated state as a single item at a price that varies based on weight or volume.

(c) **Food sold with utensils provided by the seller.** Food or food ingredients are "prepared foods" if sold with utensils provided by the seller. Utensils include plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.

(i) **Utensils are customarily provided by the seller.** A food or food ingredient is "sold with utensils provided by the seller" if the seller's customary practice for that item is to physically deliver or hand a utensil to the customer with the food or food ingredient as part of the sales transaction. If the food or food ingredient is pre-packaged with a utensil, the seller is considered to have physically delivered a utensil to the customer unless the food and utensil are prepackaged together by a food manufacturer classified under sector 311 of the NAICS. Examples of utensils provided by such manufacturers include juice boxes that are packaged with drinking straws, and yogurt or ice cream cups that are packaged with wooden or plastic spoons.

(ii) **Utensils are necessary to receive the food.** Individual food or food ingredient items are "sold with utensils provided by the seller" if a plate, glass, cup, or bowl is necessary to receive the food or food ingredient and the seller makes those utensils available to its customers. For example, items obtained from a self-serve salad bar are sold with utensils provided by the seller, because the customer must use a bowl or plate provided by the seller in order to receive the items.

(iii) **More than 75 percent prepared food sales with utensils available.** All food and food ingredients sold at an establishment, including foods prepackaged with a utensil by a manufacturer classified under sector 311 of the NAICS, are "sold with utensils provided by the seller" if the seller makes utensils available to its customers and the seller's gross retail sales of prepared food under (a), (b), and (c)(ii) of this subsection equal more than 75 percent of the seller's gross retail sales of all food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements.

(A) **Exception for four or more servings.** Even if a seller has more than 75 percent prepared food sales, four servings or more of food or food ingredients packaged for sale as a single item and sold for a single price are not "sold with utensils provided by the seller" unless the seller's customary practice for the package is to physically hand or otherwise deliver a utensil to the customer as part of the sales transaction. Whenever available, the number of servings included in a package of food or food ingredients is to be determined based on the manufacturer's product label. If no label is available, the seller must reasonably determine the number of servings.

(B) **Determining total sales of prepared foods.** The seller must determine a single prepared food sales percentage annually for all the seller's establishments in the state based on the prior year of sales. The seller may elect to determine its prepared food sales percentage based either on the prior calendar year or on the prior fiscal year. A seller may not change its elected method for determining its prepared food percentage without the written consent of the department of revenue. The seller must determine its annual prepared food sales percentage as soon as possible after accounting records are available, but in no event later than 90 days after the beginning of the seller's calendar or fiscal year. A seller may make a good faith estimate of its first annual prepared food sales percentage if the seller's records for the prior year are not sufficient to allow the seller to calculate the prepared food sales percentage. The seller must adjust its good faith estimate prospectively if its relative sales of prepared foods in the first 90 days of operation materially depart from the seller's estimate.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) **Example 1.** Fast Cafe sells hot and cold coffee and mixed coffee and mixed milk beverages, cold soft drinks, milk and juice in single-serving containers, sandwiches, whole fruits, cold pasta salad, cookies and other pastries. Fast Cafe prepares the pasta salad on-site. It orders the pastries from a local bakery, including specialty cakes which it sells both as whole cakes and by the slice. It purchases its sandwiches from a local caterer. The sandwiches are delivered by the caterer prewrapped in plastic with condiments and a plastic knife. Fast Cafe makes straws, napkins and cup lids available for all customers by placing them on a self-service stand. In its first full year of operation, Fast Cafe's annual gross retail sales of all food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements is \$100,000. Of this gross retail sales total, \$80,000 is from the sale of hot coffee and hot and cold mixed coffee and milk beverages, all sold in disposable paper or plastic cups with the Fast Cafe logo.

Because more than 75 percent of Fast Cafe's total retail sales of food and food ingredients, including prepared food, soft drinks, bottled water, and dietary supplements are sales of food or food ingredients that are heated or combined by the seller or sold with a utensil (cups) necessary to receive the food, Fast Cafe has more than 75 percent prepared food sales. Because Fast Cafe makes utensils available for its customers, all food and food ingredients sold by Fast Cafe are considered "prepared food," including the cold milk beverages, cookies and pastries, pasta salad, sandwiches and whole fruits. The only exception is the sale of whole specialty cakes. Because a whole cake contains four or more servings, it is not subject to retail sales tax unless Fast Cafe customarily hands a utensil to the customer as part of the sale transaction.

(ii) **Example 2.** Assume the same facts as in Example 1, but that only \$60,000 of Fast Cafe's Year 1 gross retail sales were sales of hot coffee and hot and cold mixed coffee and milk beverages. The remainder of its retail sales were sales of sandwiches, whole fruits, cookies and other pastries. Under these facts, Fast Cafe does not have more than 75 percent prepared food sales. Thus, the items sold by Fast Cafe are taxed as follows:

(A) Hot coffee and milk beverages are heated by the seller and are also sold by Fast Cafe with a utensil (a paper cup) necessary to receive the food. The hot coffee and milk beverages are "prepared food" for either reason and are subject to retail sales tax.

(B) Cold mixed milk beverages are a combination of two or more foods or food ingredients and are also sold by Fast Cafe with a utensil (a paper or plastic cup) necessary to receive the food. The cold milk beverages are "prepared food" for either reason and are subject to retail sales tax.

(C) Cold soft drinks are not exempt and are subject to retail sales tax.

(D) Sandwiches prepared by the caterer are subject to retail sales tax. Even though the caterer, rather than the seller, combines the ingredients and includes a utensil, Fast Cafe is considered to have provided the utensil because the caterer is not a food manufacturer classified under sector 311 of the NAICS.

(E) Pasta salad is combined by the seller and is subject to retail sales tax. Note that if the pasta salad was sold by the pound, rather than by servings, it would not be subject to retail sales tax.

(F) Milk and juice in single serving containers, whole fruit, cookies, pastries, slices of cake, and whole cakes are not subject to retail sales tax unless the seller's customary practice is to hand a utensil to the customer as part of the sales transaction. None of these items are heated by the seller, combined by the seller, or require a plate, glass, cup, or bowl in order to receive the item. Even if Fast Cafe heats the pastries for its customers, the pastries are not subject to retail sales tax.

(iii) **Example 3.** A pizza restaurant sells whole hot pizzas, hot pizza by the slice, and unheated ready-to-bake pizzas. The whole hot pizzas and hot pizza sold by the slice, including delivered pizzas, are "prepared food" because these items are sold in a heated state. If the unheated ready-to-bake pizzas are prepared by the seller, they are "prepared food" because the seller has mixed or combined two or more food ingredients. This is true even though some ingredients in the unheated pizzas are raw or uncooked, because those ingredients do not require cooking to prevent foodborne illness. If the unheated ready-to-bake pizzas are prepared by a manufacturer other than the seller, they will be taxable as "prepared food" only if sold with utensils provided by the seller.

(6) **Combined sales of taxable and exempt items.** Where two or more distinct and identifiable items of tangible personal property, at least one of which is a food or food ingredient, are sold for one nonitemized price that does not vary based on the selection by the purchaser of items included in the transaction:

(a) The entire transaction is taxable if the seller's purchase price or sales price of the taxable items is greater than 50 percent of the combined purchase price or sales price; and

(b) The entire transaction is exempt from retail sales tax if the seller's purchase price or sales price of the taxable items is 50 percent or less of the combined purchase price or sales price.

The seller may make the determination based on either purchase price or sales price, but may not use a combination of the purchase price and sales price.

Example. A combination wine and cheese picnic basket contains four items packaged together: A bottle of wine, a wine opener, single-serving cheeses, and the picnic basket holding these items. The seller's purchase price for the wine, wine-opener, and picnic basket to-

tals \$10.00. The seller's purchase price for the cheeses is two dollars. The seller must collect retail sales taxes on the entire package, because the seller's purchase price for the taxable items (\$10.00) is greater than 50 percent of the combined purchase price (\$12.00).

(c) **Incidental packaging.** "Distinct and identifiable items" does not include packaging which is immaterial or incidental to the sale of another item or items. For example, a decorative bag sold filled with candy is not the sale of "distinct and identifiable" items where the bag is merely ornamental packaging immaterial in the sale of the candy.

(d) **Free items.** "Distinct and identifiable items" does not include items provided free of charge. An item is only provided free of charge if the seller's sales price does not vary depending on whether the item is included in the sale.

(7) **Seller's accounting requirements.** All sales of food and food ingredients at an establishment will be treated as taxable unless the seller separately accounts for sales of exempt and nonexempt food and food ingredients. It is sufficient separation for accounting purposes if cash registers or the like are programmed to identify items that are not tax exempt and to calculate and assess the proper sales tax accordingly.

(8) **Other retail sales tax exemptions that may apply.**

(a) **Meals served to certain persons.** The exemptions apply to food and food ingredients furnished, prepared, or served as meals:

(i) Under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(ii) Provided to senior citizens, individuals with disabilities, or low-income persons by a nonprofit organization organized under chapter 24.03A or 24.12 RCW; or

(iii) Provided to residents, 62 years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (a)(iii) if at least one of the spouses or domestic partners is at least 62 years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(A) That meets the definition of a qualified low-income housing project under Title 26 U.S.C. Sec. 42 of the federal Internal Revenue Code, as existing on August 1, 2009;

(B) That has been partially funded under Title 42 U.S.C. Sec. 1485 of the federal Internal Revenue Code; and

(C) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under Title 26 U.S.C. Sec. 42 of the federal Internal Revenue Code.

(b) **Foods exempt under the Supplemental Nutrition Assistance Program (SNAP).** Under RCW 82.08.0297, eligible foods purchased with food benefits under the SNAP or a successor program are exempt from the retail sales tax. This is a separate and broader exemption than the retail sales tax exemption for food and food ingredients under RCW 82.08.0293. For example, bottled water, soft drinks, garden seeds, and plants which produce food for the household to eat are "eligible foods" but are not "food or food ingredients." If such items are purchased with food benefits under SNAP or a successor program, they are

exempt from the retail sales tax under RCW 82.08.0297, even though the items do not qualify for the exemption under RCW 82.08.0293.

(i) **Use of food benefits combined with other means of payment.**

When both food benefits and other means of payment are used in the same sales transaction, for purposes of collecting retail sales taxes, the other means of payment must be applied first to items which are food and food ingredients exempt under RCW 82.08.0293. The intent is to apply the benefits and other means of payment in such a way as to provide the greatest possible exemption from retail sales tax.

(ii) **Example.** A customer purchases the following at a grocery store: Meat for three dollars, cereal for three dollars, canned soft drinks for five dollars, and soap for two dollars for a total of \$13.00. The customer pays with seven dollars in benefits and six dollars in cash. The cash is applied first to the soap because the soap is neither exempt under RCW 82.08.0293 nor an eligible food under SNAP. The remaining cash (four dollars) is applied first to the meat and the cereal. The food benefits are applied to the balance of the meat and cereal (two dollars) and to the soft drinks (five dollars). Retail sales tax is due only on the soap.

(9) **Vending machine sales.** The exemptions do not apply to sales of food and food ingredients dispensed from vending machines. There are special requirements for reporting retail sales tax collected on vending machine sales, discussed in (a) of this subsection. "Honor box" sales (sales of snacks or other items from open display trays) are not considered vending machine sales.

(a) **Calculating and reporting retail sales tax collected on vending machine sales.** Vending machine owners do not need to state the retail sales tax amount separately from the selling price. See RCW 82.08.050 and 82.08.0293. Instead, vending machine owners must determine the amount of retail sales tax collected on the sale of food or food ingredients by using one of the following methods:

(i) **Food or food ingredients dispensed in a heated state, soft drinks, and bottled water.** For food or food ingredients dispensed from vending machines in a heated state (e.g., hot coffee, soups, tea, and hot chocolate) and vending machine sales of soft drinks and bottled water, a vending machine owner must calculate the amount of retail sales tax that has been collected ("tax in gross") based on the gross vending machine proceeds. The "tax in gross" is a deduction against the gross amount of both retailing B&O and retail sales. The formula is:

$$\text{gross machine proceeds} - [(\text{gross machine proceeds}) / (1 + \text{sales tax rate})] = \text{tax in gross}$$

(ii) **All other food or food ingredients.** For all other food and food ingredients dispensed from vending machines, a vending machine owner must calculate the amount of retail sales tax that has been collected ("tax in gross") based on 57 percent of the gross vending machine proceeds. The "tax in gross" is a deduction against the gross amount of both retailing B&O and retail sales. The formula is:

$$(\text{gross machine proceeds} \times .57) \times \text{sales tax rate} = \text{tax in gross}$$

The remaining 43 percent of the gross vending machine proceeds, less the "tax in gross" amount, is reported as an exempt food sales deduction against retail sales proceeds only calculated as follows:

$$(\text{gross machine proceeds} \times .43) - \text{tax in gross} = \text{exempt food deduction}$$

(b) **Example.** Jane owns a vending machine business with machines in Spokane and Seattle. In each location, she has a vending machine

selling candy and a second vending machine selling hot cocoa and coffee drinks. Her annual sales for the vending machines and the combined retail sales tax rates for Seattle and Spokane are as follows:

	Coffee Machine (cocoa & coffee)	Candy Machine	Combined Retail Sales Tax Rate
Seattle	\$2,500	\$10,000	.101
Spokane	\$3,000	\$6,000	.089

To determine the amount of retail sales tax she collected on the sale of cocoa and coffee (food dispensed in a heated state, subject to retail sales tax), Jane calculates the "tax in gross" deduction amount as follows:

$$\text{gross machine proceeds} - [(\text{gross machine proceeds}) / (1 + \text{sales tax rate})] = \text{tax in gross}$$

$$\begin{aligned} \$2,500 - (\$2,500 / 1.101) &= \$229.34 && \text{(Seattle coffee machine)} \\ \$3,000 - (\$3,000 / 1.089) &= \$245.18 && \text{(Spokane coffee machine)} \\ & && \underline{\$474.52} \end{aligned}$$

Thus, for both retailing B&O and retail sales, Jane must report her total gross coffee machine proceeds of \$5,500 with a "tax in gross" deduction of \$474.52.

To determine the amount of retail sales tax she collected on the sale of candy, Jane calculates the "tax in gross" deduction amount as follows:

$$(\text{gross machine proceeds} \times .57) \times \text{sales tax rate} = \text{tax in gross}$$

$$\begin{aligned} \$10,000 \times .57 \times .101 &= \$575.70 && \text{(Seattle candy machine)} \\ \$6,000 \times .57 \times .089 &= \$304.38 && \text{(Spokane candy machine)} \\ & && \underline{\$880.08} \end{aligned}$$

Thus, for both retailing B&O and retail sales, Jane must report her total gross candy machine proceeds of \$16,000 with a "tax in gross" deduction of \$880.08.

Jane must also report an exempt food sales deduction representing the remaining 43 percent of the gross candy machine proceeds.

$$(43\% \times \text{gross machine proceeds}) - \text{tax in gross} = \text{exempt food deduction}$$

$$(.43 \times \$16,000) - \$880.08 = \$5999.92$$

Jane reports the exempt food sales deduction only against the gross amount of her retail sales. The deduction does not apply to retailing B&O.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 22-14-014, § 458-20-244, filed 6/23/22, effective 7/24/22. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0293, 82.12.0293, 82.08.9994, 82.08.99941, 82.12.9994, and 82.12.99941. WSR 19-20-061, § 458-20-244, filed 9/26/19, effective 10/27/19. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-01-006, § 458-20-244, filed 12/4/14, effective 1/4/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0293 and 82.12.0293. WSR 12-01-027, § 458-20-244, filed 12/12/11, effective 1/12/12; WSR 10-21-010, § 458-20-244, filed 10/7/10, effective 11/7/10. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 07-24-038, § 458-20-244, filed 11/30/07, effective 12/31/07; WSR 07-11-066, § 458-20-244, filed 5/14/07, effective 6/14/07; WSR 03-24-031, § 458-20-244, filed 11/25/03, effective

1/1/04. Statutory Authority: RCW 82.32.300. WSR 88-15-066 (Order 88-4), § 458-20-244, filed 7/19/88; WSR 87-19-139 (Order 87-6), § 458-20-244, filed 9/22/87; WSR 86-21-085 (Order ET 86-18), § 458-20-244, filed 10/17/86; WSR 86-02-039 (Order ET 85-8), § 458-20-244, filed 12/31/85; WSR 83-17-099 (Order ET 83-6), § 458-20-244, filed 8/23/83; WSR 82-16-061 (Order ET 82-7), § 458-20-244, filed 7/30/82. Statutory Authority: RCW 82.01.060(2) and 82.32.300. WSR 78-05-041 (Order ET 78-1), § 458-20-244 (Rule 244), filed 4/21/78, effective 7/1/78.]

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

WSR 22-24-097

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 1:57 p.m., effective January 6, 2023]

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

Purpose: The department is amending these rules to incorporate the following legislation: SHB 1510 (2006), SB 5468 (2007), SSB 6211 (2016), HB 2390 (2020), SB 5505 (2022), and SB 5713 (2022).

Citation of Rules Affected by this Order: Amending WAC 458-16-110 Initial application and renewal declaration, 458-16-150 Cessation of use—Taxes collectible for prior years, 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption, 458-16-190 Churches, parsonages and convents, 458-16-300 Public meeting hall—Public meeting place—Community meeting hall, 458-16-310 Community celebration facilities, and 458-16-330 Sheltered workshops for the handicapped.

Statutory Authority for Adoption: RCW 84.36.865.

Adopted under notice filed as WSR 22-20-076 on September 30, 2022.

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

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

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

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

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

Date Adopted: December 6, 2022.

Atif Aziz
Rules Coordinator

OTS-4128.1

AMENDATORY SECTION (Amending WSR 21-01-063, filed 12/9/20, effective 1/9/21)

WAC 458-16-110 Initial application and renewal declaration.

(1) **Introduction.** This rule explains the requirements in RCW 84.36.815 that property owners must follow to apply for and renew all real and personal property exemptions or leasehold excise tax exemptions under chapter 84.36 RCW. It also explains the late filing penalty that is due whenever an application or renewal declaration is received after the filing deadline.

(2) **Application required.** All foreign national governments; cemeteries; nongovernmental nonprofit corporations, organizations, or associations; soil and water conservation districts; hospitals estab-

lished under chapter 36.62 RCW; and public hospital districts established under chapter 70.44 RCW, seeking a property tax exemption or a leasehold excise tax exemption under chapter 84.36 RCW must submit an application for exemption with supporting documentation to the department of revenue (department). Unless otherwise exempted by law, no real or personal property or leasehold interest is exempt from taxation until an application is submitted and an exemption is granted.

(3) **Where to obtain initial application and renewal declaration forms.** An initial application for exemption may be obtained from any county assessor's office or on the department's website at dor.wa.gov. Renewal declaration forms are provided by the department to all entities receiving a property tax or leasehold excise tax exemption, except for certain cemeteries, military housing providers, and tribal governments. Refer to subsection (8) of this rule for additional information on renewal declarations.

(4) **Initial application.** Generally, initial applications for exemption must be filed with the department on or before March 31st to exempt the property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW. For property acquired or converted after March 31st, the initial application must be submitted within ~~((sixty))~~ 60 days of acquisition or conversion to an exempt use. If an initial application is not received within this ~~((sixty-day))~~ 60-day period, the late filing penalty described in subsection (12) of this rule is imposed.

The following requirements apply to all initial applications:

(a) The application must be made on a form prescribed by the department and signed by the applicant or the applicant's authorized agent;

(b) One application can be submitted for all real property that is contiguous and part of a homogeneous unit. If exemption is sought for multiple parcels of real property, which are not contiguous or not part of a homogeneous unit, a separate application for each parcel must be submitted. However, multiple applications are not required for church property with a noncontiguous parsonage or convent.

(i) "Contiguous property" means real property adjoining other real property, all of which is under the control of a single applicant even though the properties may be separated by public roads, railroads, rights of way, or waterways.

(ii) "Homogeneous unit" means the property is controlled by a single applicant and the operation and use of the property is integrated with and directly related to the exempt activity of the applicant.

(5) **Documentation required for initial application.** Unless the following information was previously submitted to the department and is still current, the applicant must submit the following in addition to the initial application:

(a) A legal description of all real property, listing the county tax parcel number;

(b) A copy of the deed for real property owned by the applicant or a copy of the lease agreement if the property is being leased. If leased, the applicant must also indicate how the property is being used, and the monthly amount of maintenance and operation costs related to rented or loaned property if a nonprofit entity is claiming an exemption for property leased to another party;

(c) A copy of the bylaws of the nonprofit entity, and articles of incorporation or association, constitution, or other establishing

documents, as well as all current amendments to these documents showing nonprofit status, if requested by the department;

(d) A copy of any current letter issued by the Internal Revenue Service that exempts the applicant from federal income taxes; and

(e) An accurate map identifying by dimension the use or proposed use of all real property that shows buildings, building sites, parking areas, landscaping, vacant areas, and if requested by the department, floor plans of the buildings. The map will be used to determine whether the property is entitled to a total or partial exemption based upon the use of the total area.

(6) **Initial application review and notice of determination.** Upon receipt of an initial application for exemption, the department will review the application and all supporting documentation. Additional information may be requested by the department about the ownership and use of the property to determine if the exemption should be granted. An application for exemption is not considered complete until all required and requested information is received by the department.

(a) Physical inspection. The department may physically inspect the property as part of the application review process.

(b) Deadline. If a complete application is received by March 31st of the assessment year, the department will issue a determination about the application by August 1st of that same year. If a complete application is not received by March 31st, the determination will be made within (~~thirty~~) 30 days of the date the complete application is received by the department or by August 1st, whichever is later.

(c) Notice to applicant. The department will issue a written determination about the exemption application to the applicant. An application may be approved or denied, in whole or in part. If the application is denied for any portion of the property covered by the application, the department must clearly explain its reason for denial in its written determination.

(d) Notice to assessor. Once the department makes its determination about the application for exemption, it will notify the assessor of the county in which the property is located regarding the determination. The assessor will then take appropriate action so the department's determination is reflected on the county's assessment roll.

(7) **Effective date of exemption.** If an initial application is approved, the property is exempt from property taxes due the year immediately following the year the application for exemption is submitted.

For example, if an application for exemption is submitted to the department in 2020 and the application is approved for assessment year 2020, the property will be exempt from taxes due in 2021.

Retroactive initial applications for exemption for previous years are accepted, up to a maximum of three years from the date taxes were due on the property, if the applicant provides the department with acceptable proof that the property qualified for exemption during the pertinent assessment years and pays the late filing penalties described in subsection (12) of this rule.

(8) **Renewal declarations.** The renewal declaration is a form provided by the department and may be submitted electronically.

(a) Annual renewal declaration. Except as provided in (b) and (c) of this subsection, any entity receiving an exemption must annually submit a renewal declaration certifying that the use and exempt status of the real and personal property has not changed.

(b) Other renewal declarations. Nonprofits receiving an exemption under RCW 84.36.560 or 84.36.675 must file a renewal declaration on or before March 31st of every third year following initial qualification

for the exemption. (~~Except for~~) In addition to this renewal requirement, all other requirements in this rule apply to (~~this~~) these exemptions. Refer to WAC 458-16-560 Housing for qualifying households, for additional information about this exemption.

(c) No renewal declaration. Nonprofit cemeteries receiving an exemption under RCW 84.36.020 and nonprofits (~~low-income housing developers~~) receiving an exemption under RCW 84.36.049, are not required to file a renewal declaration. See subsection (11) of this rule for additional information on renewal declarations for cemeteries.

(9) **Documentation required for renewal declaration.** Unless otherwise indicated in subsection (8) of this rule, the following requirements apply to all renewal declarations:

(a) On or before January 1st of each year, the department will send information about the renewal declaration to the entity receiving an exemption for the property. If an entity changes its mailing or contact information at any time during the year, it must notify the department within (~~sixty~~) 60 days about the change.

(b) The renewal declaration, signed by the exempt entity or the exempt entity's authorized agent, must be submitted to the department no later than March 31st of each year.

(i) The renewal declaration must include information about any change of use of the exempt property and a statement certifying the truth and accuracy of the information listed.

(ii) The renewal declaration is due on or before March 31st of each year even if the department fails to send the declaration to the exempt entity. A renewal declaration form may be requested from the department to renew the exemption or the exempt entity may use the department's online system to submit the declaration.

(c) If the renewal declaration (~~and renewal fee are~~) is not received by March 31st, the department will send a second notice to the exempt entity. If the exempt entity fails to respond to the second notice, the department will remove the exemption from the property and notify the assessor of the county in which the property is located that the exemption has been canceled.

(d) Real property, which was previously exempt from taxation, is assessed and taxed as provided in RCW 84.40.350 through 84.40.390 when it loses its exempt status.

(i) Property that no longer retains its exempt status is subject to a pro rata portion of the taxes allocable to the remaining portion of the year after the date the property lost its exempt status.

(ii) The assessor lists and assesses the property with reference to its true and fair value on the date the property lost its exempt status.

(iii) RCW 84.40.380 provides the dates that taxes are payable when property loses its exempt status. Taxes due and payable under RCW 84.40.350 through 84.40.390 constitute a lien on the property that attaches on the date the property loses its exempt status.

(10) **Failure to submit a renewal declaration.** When property loses its exempt status because the renewal declaration was not submitted and the owner wishes to reapply for the property tax exemption:

(a) If the owner reapplies within the same assessment year the exemption was removed, the owner must submit the renewal declaration and pay the required late filing penalties; or

(b) If the owner reapplies after the assessment year the exemption was removed, the owner must submit an initial application and pay the required late filing penalties.

(11) **Initial application and renewal declaration procedures for cemeteries.** There are several types of cemeteries. The initial application for exemption and renewal declaration procedures are specific as to the type of cemetery at issue.

(a) The assessor will consider the following types of cemeteries exempt from property tax, and no initial application or renewal declaration is required for:

(i) Cemeteries owned, controlled, operated, and maintained by a cemetery district authorized by RCW 68.52.090; or

(ii) Indian cemeteries, which are considered to be held by the tribe or held in trust for the tribe by the United States.

(b) An initial application is submitted to the department, but no renewal declaration is required, for:

(i) Family cemeteries;

(ii) Historical cemeteries;

(iii) Community cemeteries; and

(iv) Cemeteries belonging to nonprofit organizations, associations, or corporations.

(c) An initial application is submitted to the department, and a renewal declaration is required annually by all for-profit cemeteries seeking a property tax exemption.

(12) **Late filing penalty.** When an initial application or renewal declaration is submitted after the due date, a late filing penalty of (~~ten dollars~~) \$10.00 is due for every month, or portion of the month. This penalty is calculated from the date the initial application or renewal declaration was due until the postmark date shown on the application or declaration or the date the application or declaration is received by the department. RCW 84.36.825.

(13) **Refund of filing penalty.** No late filing penalty is refunded after a determination on the application is issued by the department. However, the late filing penalty will be refunded under the following circumstances:

(a) A duplicate application or renewal declaration for the same property is submitted during the same calendar year;

(b) An application or renewal declaration is received by the department and the department has no authority to grant the exemption requested; or

(c) A written request to withdraw the application is received before the department issues a determination. The withdrawal request must be submitted by the owner or the owner's authorized agent.

(14) **Appeals.** Any applicant that receives a negative determination from the department on either an initial application or a renewal declaration may appeal this determination to the state board of tax appeals (BTA). Similarly, any assessor who disagrees with the department's determination may appeal the determination to the BTA. See WAC 458-16-120 Appeals, for specific information about the appeal process.

[Statutory Authority: RCW 84.36.865. WSR 21-01-063, § 458-16-110, filed 12/9/20, effective 1/9/21. Statutory Authority: RCW 84.08.010, 84.08.070, and 84.36.865. WSR 10-23-060, § 458-16-110, filed 11/12/10, effective 12/13/10. Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. WSR 02-02-009, § 458-16-110, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. WSR 98-18-006, §

458-16-110, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-110, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. WSR 85-05-025 (Order PT 85-1), § 458-16-110, filed 2/15/85; WSR 81-05-017 (Order PT 81-7), § 458-16-110, filed 2/11/81; Order PT 77-2, § 458-16-110, filed 5/23/77; Order PT 76-2, § 458-16-110, filed 4/7/76. Formerly WAC 458-12-146.]

AMENDATORY SECTION (Amending WSR 21-01-063, filed 12/9/20, effective 1/9/21)

WAC 458-16-150 Cessation of use—Taxes collectible for prior years. (1) **Introduction.** This rule explains what occurs when property loses its tax exempt status and is placed back on the tax rolls. It also describes the back taxes and interest that are collected when an exempt use ceases, unless the property has been exempt for more than (~~ten~~) 10 consecutive years or is otherwise exempt from the provisions of RCW 84.36.810. This rule does not apply to property that received an exemption as a nature conservancy under RCW 84.36.260. RCW 84.36.262 and WAC 458-16-290 Nature conservancy lands, provide additional information about the collection of back taxes for nature conservancies.

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

(a) "Back taxes" means the property taxes that would have been paid but for the existence of the property tax exemption during the three years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as delinquent property taxes. However, if the property was exempt under RCW 84.36.050(2), "back taxes" means the taxes that would have been collected but for the existence of the property tax exemption during the seven years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less.

(b) "Cessation of use" means that an owner or user of exempt real property has ceased to use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

(c) "Department" means the (~~state~~) department of revenue.

(d) "Relocation of the activity" means that a portion or all of an exempt use has been relocated from the original site to a new location. The term does not include undeveloped property of camp facilities.

(e) "Rollback" means the back taxes and interest imposed in accordance with RCW 84.36.810 because the exempt property has lost its exempt status and is now taxable. However, when an exemption granted to a nature conservancy under RCW 84.36.260 is canceled or removed different rollback procedures apply. See RCW 84.36.262 and WAC 458-16-290 Nature conservancy lands, for additional information.

(3) **Applicability of this rule.** Upon cessation of a use for which an exemption was granted under one of the statutes listed below, and if directed to do so by the department, the county treasurer must collect all taxes which would have been paid if not for the existence of

the property tax exemption. If the property was exempt for more than ~~((ten))~~ 10 consecutive years, no back taxes or interest are due. Back taxes and interest will be collected only when ownership of property is transferred or when ~~((fifty-one))~~ 51 percent or more of the total exempt property loses its exempt status.

(a) **Generally applied rollback - Three years of back taxes plus interest.** When the status of real property changes from exempt to taxable, all taxes that would have been collected if not for the existence of the exemption during the three preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that on delinquent property taxes are due. The rollback provisions of RCW 84.36.810 apply if the property was previously exempt from property tax under any of the following statutes:

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A nonprofit character building, benevolent, protective, or rehabilitative social service organization, association or corporation	RCW 84.36.030
A church camp owned by a nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives	RCW 84.36.030
A nonprofit organization or association engaged in character building of boys and girls under ((eighteen)) <u>18</u> years of age or to serve boys and girls up to ((twenty-one)) <u>21</u> years if the charter of the nonprofit organization or association requires it	RCW 84.36.030
An organization or society of veterans of any war of the United States	RCW 84.36.030
Corporations formed under an act of Congress to furnish volunteer aid to members of the armed forces of the United States	RCW 84.36.030
Corporations formed under an act of Congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities	RCW 84.36.030

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
Nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans	RCW 84.36.030
Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility	RCW 84.36.037
Nonprofit day care centers	RCW 84.36.040
Free public libraries	RCW 84.36.040
Nonprofit orphanages	RCW 84.36.040
Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick	RCW 84.36.040
Nonprofit outpatient dialysis facilities	RCW 84.36.040
Public hospital district established under chapter 36.62 or 70.44 RCW for hospital purposes	RCW 84.36.040
Nonprofit homes for the aging	RCW 84.36.041
A nonprofit organization, corporation, or association providing housing for low income eligible persons with developmental disabilities	RCW 84.36.042
Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence	RCW 84.36.043
A nonprofit organization, corporation, or association in connection with a nonprofit cancer clinic or center	RCW 84.36.046
Nonprofit schools or colleges	RCW 84.36.050
Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit	RCW 84.36.060
Associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit	RCW 84.36.060
Fire companies for preventing and fighting fires	RCW 84.36.060
Humane societies	RCW 84.36.060

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
Nonprofit organizations created for the solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for the distribution of funds to at least five other nonprofit organizations or associations that provide such social services	RCW 84.36.550
A nonprofit organization, corporation, or association providing rental housing for qualifying households	RCW 84.36.560
A nonprofit organization, corporation, or association providing a demonstration farm with research and extension facilities, a public agricultural museum, and an educational tour site, which is used by a state university for agricultural research and education programs	RCW 84.36.570
Nonprofit organizations soliciting or collecting donations, gifts, or grants for artists	RCW 84.36.650
<u>Limited equity cooperatives</u>	<u>RCW 84.36.675</u>

(b) **Exception to general rollback provision - Property exempt under RCW 84.36.050(2) - Seven years of back taxes plus interest.** If property owned by a not-for-profit foundation but leased to and used by an institution of higher education, as defined in RCW 28B.10.016, loses its exempt status and it has not been exempt for at least ~~(ten)~~ 10 consecutive years under RCW 84.36.050(2), the county treasurer, if directed by the department to do so, will collect all taxes that would have been paid on the property but for the existence of the exemption during the seven preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that on delinquent property taxes are due.

(c) **No rollback imposed.** Back taxes and interest are not imposed if the cessation of use results solely from any of the following:

- (i) Transfer to a nonprofit organization, association, or corporation for a use that also qualifies for and is granted exemption under the provisions of chapter 84.36 RCW;
- (ii) A taking through an exercise of the power of eminent domain;
- (iii) A sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power;
- (iv) An official action by an agency of the state of Washington or by the county or city within which the exempt property is located that disallows the present exempt use of the property;
- (v) A natural disaster (such as a flood, windstorm, earthquake, or other such calamity) that changes the use of the property;
- (vi) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempt under RCW 84.36.030. This exemption does not apply to property leased to a

state institution of higher education and exempt under RCW 84.36.050(2);

(vii) Cancellation of a lease on property previously exempt as:

- (A) A nonprofit child day care center;
- (B) A library as defined under WAC 458-16-260;
- (C) An orphanage or orphan shelter;
- (D) A home for the sick or infirm;
- (E) A hospital;
- (F) An outpatient dialysis facility;
- (G) A nonprofit home for the aging;
- (H) A nonpermanent shelter for low-income homeless persons or

victims of domestic violence;

(I) An organization that either produces or performs, or both, musical, dance, artistic, dramatic, or literary works;

(J) Housing for low-income eligible persons with developmental disabilities;

(K) A nonprofit cancer clinic or center; or

(L) Rental housing for qualifying households.

(viii) A change in the exempt portion of a home for the aging under RCW 84.36.041(3) that is partially exempt from property tax, as long as some portion of the home remains exempt; or

(ix) Transfer to an agency of the state of Washington or the city or county within which the property is located.

(4) Duty to notify.

(a) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property must notify the department of this change. If any portion of the exempt property is loaned or rented, the owner is required to report this change to the department because the loan or rental may affect the taxable status of the property. RCW 84.36.813.

(b) Any other person who knows or has information regarding a change in use of exempt property is to notify the county assessor of any such change. The assessor is required to report this information to the department.

(c) The department may physically inspect exempt property after being notified about a change in the use or ownership of exempt property. It may also conduct physical inspections at any time it deems necessary to determine the exempt use of the property and may conduct routine inspections.

(d) The department will determine whether the property may retain its exempt status or whether it will become taxable after a change in use is reported.

(5) **Notice to owner.** The department must notify the current owner and, in the case of a transfer, the previous legal owner of the exempt property that the cessation of use of the property for an exempt purpose has changed the property's taxable status. The notice must address the applicability of the rollback provisions in subsection (3) of this rule. Within (~~thirty~~) 30 days of receiving this notice, the owner(s) may submit comments or information to the department as to why the exemption should not be removed or rollback provisions should not be applied. The department will then issue a final determination.

(6) **County treasurer.** The treasurer will calculate and collect the back taxes and interest due when the department notifies the treasurer that the property tax exemption is to be canceled or removed. The interest will be computed at the same rate and in the same manner as that on delinquent property taxes. The back taxes collected are disbursed to the taxing districts impacted by the previous proper-

ty tax exemption. The interest collected is placed in the county current expense fund.

[Statutory Authority: RCW 84.36.865. WSR 21-01-063, § 458-16-150, filed 12/9/20, effective 1/9/21. Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. WSR 02-02-009, § 458-16-150, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-150, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. WSR 86-12-034 (Order PT 86-2), § 458-16-150, filed 5/30/86; WSR 85-05-025 (Order PT 85-1), § 458-16-150, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. WSR 83-19-029 (Order PT 83-5), § 458-16-150, filed 9/14/83. Statutory Authority: RCW 84.36.865. WSR 82-22-060 (Order PT 82-8), § 458-16-150, filed 11/2/82; WSR 81-05-017 (Order PT 81-7), § 458-16-150, filed 2/11/81; Order PT 77-2, § 458-16-150, filed 5/23/77; Order PT 76-2, § 458-16-150, filed 4/7/76. Formerly WAC 458-12-151.]

AMENDATORY SECTION (Amending WSR 18-04-006, filed 1/25/18, effective 2/25/18)

WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption.

(1) **Introduction.** This rule describes the conditions in RCW 84.36.805 and 84.36.840 that most nonprofit organizations, associations, and corporations must satisfy in order to receive a property tax exemption under chapter 84.36 RCW.

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

(a) "Department" means the department of revenue.

(b) "Inadvertent use" or "inadvertently used" means the use of the property in a manner inconsistent with the purpose for which the exemption is granted through carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt property.

(d) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of maintenance and operation expenses attributable to the portion of the property loaned or rented.

(e) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example ((contained)) in subsection (5)(c) of this rule.)

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

(4) **Applicability of this rule.** This rule does not apply to exemptions granted to:

- (a) Public burying grounds or cemeteries under RCW 84.36.020;
- (b) Churches, parsonages, convents, and church grounds under RCW 84.36.020;
- (c) Administrative offices of nonprofit recognized religious organizations under RCW 84.36.032;
- (d) Nonprofit homeownership development entities under RCW 84.36.049;
- (e) Water distribution property owned by a nonprofit corporation or cooperative association under RCW 84.36.250;
- (f) Nonprofit fair associations under RCW 84.36.480(2); or
- (g) Multipurpose senior citizen centers under RCW 84.36.670.

(5) **Exclusive use.** Exempt property must be exclusively used for the actual operation of the activity for which the nonprofit organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, received the property tax exemption unless the authorizing statute states otherwise. The property exempted from taxation must not exceed an area reasonably necessary to facilitate the exempt purpose.

(a) Loan or rental of exempt property. As a general rule, the loan or rental of exempt property does not make it taxable if:

- (i) The rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and
- (ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060 (1)(a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented.

(b) Fund-raising events. The use of exempt property for fund-raising events conducted by an exempt organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, does not jeopardize the exemption if the fund-raising events are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising event limited to less than five days in length that disburses (~~(fifty-one)~~) 51 percent or more of the profits realized from the event to the exempt nonprofit entity conducting the fund-raising event.

(i) Example 1. A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. The event must be less than five days in length and (~~(fifty-one)~~) 51 percent of the profits must be disbursed to the social service agency because the fund-raising event is being held on exempt property.

(ii) Example 2. A nonprofit school has a magazine subscription drive to raise funds and the subscriptions are being sold door-to-door by students. There are no limitations on this fund-raising event because the subscription drive is not being held on exempt property.

(c) Personal service contract - Exempt programs. Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

(iii) A summary of all receipts and expenses of the program are provided to the department upon request.

(iv) Example 3. A nonprofit school may decide to contract with a provider to offer aerobic classes to promote general health and fitness. All brochures and bulletins advertising these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobics instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) Personal service contract - Nonexempt programs. Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses, or (ii) in which the instructor is paid a fee based on the number of people who attend the program will be viewed as a rental agreement and will subject the property to property tax.

(e) Inadvertent use. An inadvertent use of the property in a manner inconsistent with the purpose for which the exemption was granted does not subject the property to tax if the inadvertent use is not part of a pattern of use. A "pattern of use" is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(6) **No discrimination allowed.** The exempt property and the services offered must be available to all persons regardless of race, color, national origin, or ancestry.

(7) **Compliance with licensing or certification requirements.** A nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW seeking or receiving a property tax exemption must comply with all applicable licensing and certification requirements imposed by law or regulation.

(8) **Property sold subject to an option to repurchase.** Property sold to a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW with an option to be repurchased by the seller cannot qualify for an exemption. This prohibition does not apply to:

(a) Limited equity cooperatives as defined in RCW 84.36.675; or

(b) Property sold to a nonprofit entity, as defined in RCW 84.36.560 ((7)), by:

((a)) (i) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code;

((b)) (ii) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

((c)) (iii) A housing authority created under RCW 35.82.030;

((d)) (iv) A housing authority meeting the definition of RCW 35.82.210 (2) (a); or

((e)) (v) A housing authority established under RCW 35.82.300.

(9) **Duty to produce financial records.** ~~((In order))~~ To determine whether a nonprofit entity is entitled to receive a property tax exemption under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the entity claiming exemption must submit a signed statement made under oath, with the department. This sworn statement must include a declaration that the income, receipts, and donations of the entity seeking the exemption have been used to pay the actual expenses incurred to maintain and operate the exempt facility or for its capital expenditures and to no other purpose. It must also include a statement listing the receipts and disbursements

of the organization, association, or corporation. This statement must be made on a form prescribed and furnished by the department.

(a) The provisions of this subsection do not apply to an entity either applying for or receiving an exemption under RCW 84.36.020 (~~(09)~~), 84.36.030, or 84.36.049.

(b) This signed statement must be submitted on or before March 31st each year by any entity currently receiving a tax exemption. If this statement is not received on or before March 31st, the department will remove the tax exemption from the property. However, the department will allow a reasonable extension of time for filing if the exempt entity has submitted a written request for an extension on or before the required filing date and for good cause.

(10) **Caretaker's residence.** If a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW exempt from property tax under chapter 84.36 RCW employs a caretaker to provide either security or maintenance services and the caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling the exempt property, and routine maintenance services;

(b) The nonprofit entity, hospital established under chapter 36.62 RCW, or the public hospital district established under chapter 70.44 RCW demonstrates the need for a caretaker at the facility;

(c) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utility expenses created by the caretaker's presence is not considered rent.

(11) **Nonexempt uses of property.** The use of property exempt under this chapter, other than as specifically authorized by this chapter, nullifies the exemption otherwise available for the property for the assessment year. However, the exemption is not nullified by the use of the property by any individual, group, or entity, where such use is not otherwise authorized by this chapter, for not more than ~~((fifty))~~ 50 days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than ~~((fifteen))~~ 15 of the ~~((fifty))~~ 50 days in each calendar year. The ~~((fifty and fifteen-day))~~ 50 and 15-day limitations do not include days for setup and takedown activities that take place immediately preceding or following a meeting or other event. If these requirements are not met, the exemption is removed for the affected portion of the property for that assessment year.

(12) **Farmers markets.** The 50 and 15-day limitations in subsection (11) of this rule do not apply to exempt property under RCW 84.36.037 if the property is used for activities related to a qualifying farmers market, for up to 53 days each calendar year, and all income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes. For purposes of this rule, "farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170.

(13) **Segregation of nonqualifying property.** Any portion of exempt property not meeting the qualifications of this rule will lose its exempt status. Nonqualifying property must be segregated from property

used for exempt purposes. For example, if a portion of a building owned by a nonprofit hospital is rented to a sandwich shop, this portion of the hospital must be segregated from the remainder of the building that is being used for exempt hospital purposes. The portion of the building rented to the sandwich shop is subject to property tax.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.36.389, 84.52.0502, and 84.55.060. WSR 18-04-006, § 458-16-165, filed 1/25/18, effective 2/25/18. Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.36.389, and 84.36.865. WSR 15-07-021, § 458-16-165, filed 3/10/15, effective 4/10/15. Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. WSR 02-02-009, § 458-16-165, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. WSR 98-18-006, § 458-16-165, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-165, filed 3/3/94, effective 4/3/94.]

AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

WAC 458-16-190 Churches, parsonages and convents. (1) **Introduction.** This rule explains the property tax exemption available under the provisions of RCW 84.36.020 to churches, parsonages, and convents.

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

(a) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed. The term "use" includes real property owned by a nonprofit religious organization upon which a church will be built.

(b) "Clergy person" means a person ordained or regularly licensed for religious service and includes both male and female individuals.

(c) "Commercial" refers to an activity or enterprise that has profit making as one of its primary purposes.

(d) "Convent" means a house or set of buildings occupied by a community of clergy or nuns devoted to religious life under a superior.

(e) "Eleemosynary" means charitable, including types of activities in which some social objective is served or general welfare is advanced.

(f) "Owned" means owned in fee or by contract purchase.

(g) "Parsonage" means a residence, owned by a church, that is occupied by a clergy person designated for a particular congregation and who holds regular services for that congregation.

(h) "Regular services" means religious services that are conducted on a routine and systematic basis at prearranged times, days, and places. This term includes religious services that are conducted by a visiting or circuit clergy person who may only hold services once a

month in a particular location if that person is scheduled to conduct services on a routine and prearranged basis on the exempt property.

(i) "Unoccupied land" means land that is undeveloped, unused, and upon which no structures or improvements have been built.

(i) This land includes, but is not limited to, greenbelt, wetland, and other undeveloped areas contiguous to an exempt church, parsonage, or convent.

(ii) This land does not include parking lots, landscaped grounds, or playing fields.

(3) **Property exempt and extent of exemption.** The church and the ground upon which a church is or will be built, together with a parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required to maintain and safeguard the property owned by a nonprofit religious organization and wholly used for church purposes will be exempt from property taxation to the following extent:

(a) The exempt area must not exceed five acres of land, including ground that is occupied and unoccupied. Occupied ground is ground covered by the church, parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required for the maintenance and security of such property.

(b) The unoccupied land included within this five-acre limitation may not exceed one-third of an acre (~~((fourteen thousand four hundred))~~ 14,400 square feet), unless additional unoccupied land is required to conform with state or local codes, zoning, or licensing requirements.

(4) **Noncontiguous property.** A parsonage or convent may qualify for exemption even if located on land that is not contiguous to the church property; however, the five acre limitation still applies, as does the limitation described in subsection (3)(b) of this rule with respect to unoccupied land.

(5) **Exemption of caretaker's residence.** A caretaker's residence located on church property may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance and patrolling of the property;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(c) The caretaker is required to provide either security or maintenance service described as follows:

(i) Security of the premises is provided by the caretaker, not merely by his or her presence, but by regular surveillance and patrolling of the grounds, locking gates if necessary, and generally acting in a manner to ensure the security of the property; or

(ii) Maintenance service is provided on a daily basis to open and close the premises, activate or shut down environmental systems, and provide other maintenance and custodial services necessary for the effective operation and utilization of the facilities; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created by the caretaker's presence will not be considered as rent.

(6) **Property not used for church purposes.** Except as provided in this rule, when property is not used for church purposes, the exemption is lost. If a portion of the exempt property is used for commercial rather than church purposes, that portion must be segregated and

taxed whether or not the proceeds received by the church from the commercial use are applied to church purposes.

(7) **Loan, rental, or use of exempt property.** If the rental income or donations, if any, are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property being loaned or rented, the tax exempt status of any property exempt under this rule will not be affected by:

(a) The loan or rental to a nonprofit organization, association, corporation, or school to conduct eleemosynary activities (~~or to conduct activities related to a farmers market. Activities related to a farmers market may not occur on the property more than fifty-three days each assessment year. For the purposes of this rule, "farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170~~);

(b) The rental or use of the property by any individual, group, or entity, where such rental or use is not otherwise authorized by this rule, for not more than ~~((fifty))~~ 50 days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than ~~((fifteen))~~ 15 of the ~~((fifty))~~ 50 days in each calendar year. The ~~((fifty and fifteen-day))~~ 50 and 15-day limitations do not include days for setup and takedown activities preceding or following a meeting or event; ~~((or))~~

(c) The rental or use of the property by any individual, group, or entity, to conduct activities related to a qualifying farmers market for up to 53 days each calendar year. The 15-day and 50-day limitations provided in (b) of this subsection do not apply to the use of the property for pecuniary gain or for business activities if the property is used for activities related to a qualifying farmers market, and all income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes. For purposes of this rule, "qualifying farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170; or

(d) An inadvertent use of the property in a manner inconsistent with the purpose for which the exemption was granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(8) **Fund-raising events.** The use of exempt property for fund-raising events sponsored by an exempt organization, association, or corporation does not subject the property to taxation if the fund-raising events are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising event limited to less than five days in length, that disburses ~~((fifty-one))~~ 51 percent or more of the profits realized from the event to the exempt nonprofit organization, association, or corporation that is holding the fund-raising, and that takes place on exempt property.

(a) Example 1. An exempt nonprofit social service agency holds an art auction in the church basement to raise funds. Since the fund-raising event is being held on exempt property, the event must be less than five days in length and ~~((fifty-one))~~ 51 percent of the profits must be disbursed to the social service agency.

(b) Example 2. ~~((The women's))~~ A church's auxiliary ~~((of the church))~~ has a candy sale to raise funds for the church's program to provide meals to the homeless during which the candy is sold door-to-door by members of the auxiliary. Since the candy sale is not being held on the exempt property, the sale is not limited to five days in

duration nor do ((~~fifty-one~~)) 51 percent of the profits from this fund-raising event have to be remitted to the church.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.36.389, and 84.36.865. WSR 15-07-021, § 458-16-190, filed 3/10/15, effective 4/10/15. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-190, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. WSR 82-22-060 (Order PT 82-8), § 458-16-190, filed 11/2/82; WSR 81-21-009 (Order PT 81-13), § 458-16-190, filed 10/8/81; Order PT 77-2, § 458-16-190, filed 5/23/77; Order PT 76-2, § 458-16-190, filed 4/7/76. Formerly WAC 458-12-195.]

AMENDATORY SECTION (Amending WSR 16-16-005, filed 7/20/16, effective 8/20/16)

WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall. (1) **Introduction.** This rule explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public meeting hall, public meeting place, or community meeting hall.

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

(a) "Affiliate" means an association, organization, or corporation that is a branch, unit, chapter, or appendant body of the property owner.

(b) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(c) "Public gathering" means a meeting or event in which attendance is not limited or restricted to only members of the organization, association, or corporation that owns the property or members of an affiliate. Refer to subsection (4) of this rule for examples of public gatherings.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public assembly hall, public meeting place, or community meeting hall will be exempt from taxation under the following conditions:

(a) **Exclusive use.** The property is used exclusively for public gatherings and is available to any individual, organization, association, or corporation that may desire to use or rent the property. Membership in the organization, association, or corporation that owns the property or membership in an affiliate of the property owner cannot be a requirement or condition for those persons desiring to rent or use the property.

(i) **Availability of property.** To ensure the public is aware of the availability of the property, the property owner must provide written notification to the public that the property is available for use or rental. This written notification may include, but is not limited to, advertising in community newsletters or websites, on facility reader boards or signs, or in local newspapers. The property owner must make substantial and actual efforts to ensure that the public knows that the property is available for use or rental. Examples of substantial and actual efforts by the owner to ensure public awareness

of the property availability can be found in subsection (4) of this rule.

(ii) Qualifying use of property. In a calendar year, the total number of hours used for public gatherings, as that term is defined in this rule, held at the property must exceed the total number of hours used for nonpublic gatherings held at the property, regardless of whether the owner, the owner's affiliate, or renter, hosted or benefited from the public gathering.

(b) Exemption for real property - Area. The area of real property exempt under this rule may not exceed one acre including the building(s), the land under the building(s), and any additional area needed for parking.

(c) Statement of availability and fees required. The owner of the property must prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose conditions or restrictions reasonably necessary to safeguard the property and to comply with the purposes of this exemption.

(d) Annual summary required. The owner must provide the department of revenue with a detailed summary containing the following information regarding the manner in which the exempt property was used during the preceding year:

(i) The name of the person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) Whether the meeting or event was a public gathering;

(v) The duration of the meeting or event;

(vi) The methods used to advertise the availability of the property to the public;

(vii) The income derived from the rental of the property; and

(viii) The expenses incurred relating to the use of the property.

(4) **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.

(a) Example 1. Prior to a member only meeting, a fraternal organization hosts a dinner at its facility that is open to nonmembers. The fraternal organization advertised the dinner on its website and reader board, which clearly conveyed the public could attend. The dinner and the member only meeting are considered two separate events. The dinner is considered a public gathering because nonmembers are allowed to attend. However, the member only meeting following the dinner is not considered a public gathering.

(b) Example 2. A (~~boys~~) youth organization hosts a spaghetti feed at its facility to raise money for a camping trip. The organization advertised the spaghetti feed in the local newspaper, which stated nonmembers are allowed to attend. The spaghetti feed is considered a public gathering.

(c) Example 3. A (~~girls~~) youth organization has weekly club meetings at its facility. The weekly meetings are advertised on the organization's public website as being open for nonmembers to also attend. The weekly club meetings are considered public gatherings.

(d) Example 4. A member only organization allows its public assembly hall to be rented for weddings, receptions, reunions, funerals, and other special events. The organization advertises the availability of its facility for rental by the public in a community newsletter.

There are no restrictions on who can rent the hall, so these events are considered public gatherings. However, if the ability to rent the hall is based on membership in the owning organization or membership in an affiliate of the owning organization, then the events would not be considered public gatherings.

(e) Example 5. A garden club offers horticultural workshops for a fee at its facility one day each month. The workshop is advertised in the community newsletter as being open to anyone who wants to attend. The workshops are considered public gatherings because members of the public can attend, even if registration and/or payment are required. Although a fee is charged, the monthly workshops offered by the garden club do not count towards the ~~((fifteen-day))~~ 15-day pecuniary gain limitation described in subsection (5)(a) of this rule because the fee only covers the materials and supplies necessary to conduct the workshop.

(f) Example 6. A member only organization rents a public assembly hall for its monthly board meetings. The board meetings are not open to the public. The organization that owns the facility advertises its availability to the public in the local newspaper. The two organizations are not affiliated with each other. Although the monthly board meetings are not open to the public, they are considered public gatherings for the purpose of this exemption because the rental of the facility is not being restricted to only members of the owning organization or to members of affiliates of the owning organization.

(5) Use of property for pecuniary gain or to promote business activities. If a public meeting hall, public meeting place, or community meeting hall exempt under subsection (3) of this rule is used for pecuniary gain or to promote business activities, the property tax exemption will be lost. However, the exemption will not be lost if:

(a) ~~The ((exempt property is used for pecuniary gain or to promote business activities fifteen days or less in an assessment year))~~ rental or use of the property by any individual, group, or entity, where such rental or use is not otherwise authorized by this rule, for not more than 50 days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than 15 of the 50 days in each calendar year. The 50 and 15-day limitations do not include days for setup and takedown activities preceding or following a meeting or event;

(b) The rental or use of the property by any individual, group, or entity to conduct activities related to a qualifying farmers market for up to 53 days each calendar year. The 15-day and 50-day limitations provided in (a) of this subsection do not apply to the use of the property for pecuniary gain or for business activities if the property is used for activities related to a qualifying farmers market, and all income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes. For purposes of this rule, "qualifying farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170;

(c) ~~In a county with a population of less than ((twenty thousand))~~ 20,000 people, the exempt property is used to promote the following business activities: Dance lessons; art classes; or music lessons. The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; or

~~((c) The exempt property is used to conduct a farmers market, as defined in RCW 66.24.170, for fifty-three days or less each assessment~~

year. The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; or)

(d) All income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation expenses of the exempt property, or exempt purposes.

(6) **Additional requirements.** Any nonprofit organization, association, or corporation that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 provides additional conditions and requirements that must be satisfied to obtain a property tax exemption pursuant to RCW 84.36.037.

[Statutory Authority: RCW 84.08.010 and 84.36.865. WSR 16-16-005, § 458-16-300, filed 7/20/16, effective 8/20/16. Statutory Authority: RCW 84.36.865, RCW 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. WSR 98-18-006, § 458-16-300, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-300, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. WSR 81-21-010 (Order PT 81-14), § 458-16-300, filed 10/8/81.]

AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

WAC 458-16-310 Community celebration facilities. (1) **Introduction.** This rule explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events.

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

(a) "Public gathering" has the same meaning as provided in WAC 458-16-300.

(b) "Property" has the same meaning as provided in WAC 458-16-300.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events may be exempt from taxation under the following conditions:

(a) Exemption for real property - Area. The area of real property to be exempt may not exceed (~~twenty-nine~~) 29 acres.

(b) Primary use. The property has been primarily used for annual community celebration events for at least (~~ten~~) 10 years.

(c) Essentially unimproved property. The property is essentially unimproved except for restroom facilities and covered shelters. A "covered shelter," for example, may consist of a covered area that is not enclosed but allows some protection from the elements or it may provide a sheltered eating area with or without a picnic table or outside grill, or both.

(d) Purpose. The purpose of the property is to provide a facility for an annual community celebration.

(e) Statement of availability and fees required. The owner of the property must prepare and make available upon request a schedule of

fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose conditions and restrictions that are reasonably necessary to safeguard the property and to promote the purposes of this exemption.

(f) Annual summary required. The owner must annually provide the department of revenue with a detailed summary containing the following information regarding the manner in which the exempt property was used during the preceding year:

(i) The name of any person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) The income derived from the rental of the property; and

(v) The expenses incurred relating to the use of the property.

(4) **Use of property for pecuniary gain or to promote business activities.** If a community celebration facility exempt under subsection (3) of this rule is used for pecuniary gain or to promote business activities, the property tax exemption will be lost. However, the exemption will not be lost if:

(a) The ((exempt property is used for pecuniary gain or to promote business activities fifteen days or less in an assessment year)) rental or use of the property by any individual, group, or entity, where such rental or use is not otherwise authorized by this rule, for not more than 50 days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than 15 of the 50 days in each calendar year. The 50 and 15-day limitations do not include days for setup and takedown activities preceding or following a meeting or event;

(b) The rental or use of the property by any individual, group, or entity, to conduct activities related to a qualifying farmers market for up to 53 days each calendar year. The 15-day and 50-day limitations provided in (a) of this subsection do not apply to the use of the property for pecuniary gain or for business activities if the property is used for activities related to a qualifying farmers market, and all income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes. For purposes of this rule, "qualifying farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170;

(c) In a county with a population of less than ((twenty thousand)) 20,000 people, the exempt property is used to promote the following business activities: Dance lessons; art classes; or music lessons. The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; or

((c) The exempt property is used to conduct a farmers market, as defined in RCW 66.24.170, for fifty-three days or less each assessment year. The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; or))

(d) All income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation expenses of the exempt property, or for exempt purposes.

(5) **Additional requirements.** Any nonprofit organization, association, or corporation that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165. WAC

458-16-165 provides additional conditions and requirements that must be satisfied to obtain a property tax exemption pursuant to RCW 84.36.037.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.36.389, and 84.36.865. WSR 15-07-021, § 458-16-310, filed 3/10/15, effective 4/10/15. Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. WSR 98-18-006, § 458-16-310, filed 8/20/98, effective 9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-310, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. WSR 81-21-010 (Order PT 81-14), § 458-16-310, filed 10/8/81.]

AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-330 Sheltered workshops for (~~the handicapped~~) persons with disabilities. (1) **Introduction.** This (~~section~~) rule explains the property tax exemption available under the provisions of RCW 84.36.350 (~~to~~) for real and personal property owned by a non-profit organization, association, or corporation and used in operating a sheltered workshop for (~~handicapped~~) persons with disabilities.

(2) **Definitions.** For purposes of this (~~section~~) rule, the following definitions apply:

(a) "~~Handicapped~~) Person with disabilities" means an individual who is physically, mentally, or developmentally disabled. For purposes of this (~~section~~) rule, a person who engages in substance abuse, either drug or alcohol, (~~abuser~~) is considered physically disabled.

(b) "Sheltered workshop" means a facility, or (~~any~~) portion (~~thereof~~) of a facility, operated by a nonprofit organization, association, or corporation where business activities are carried on and whose primary purpose is:

(i) To provide gainful employment or rehabilitative services to (~~the handicapped~~) persons with disabilities as an interim step in the rehabilitation process to individuals who cannot be readily absorbed into the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or

(ii) To provide evaluation and work adjustment services to (~~handicapped individuals~~) persons with disabilities.

(c) "Property" means real or personal property owned and used by a nonprofit organization, association, or corporation in operating a sheltered workshop for (~~handicapped~~) persons with disabilities.

(d) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(3) **Exemption.** The real or personal property owned and used by a nonprofit organization, association, or corporation in connection with the operation of a sheltered workshop for (~~handicapped~~) persons with disabilities and used primarily to manufacture and handle, sell, or distribute goods constructed, processed, or repaired in a sheltered workshop is exempt from ad valorem taxation.

(a) Inventory owned by a sheltered workshop is also exempt from taxation if the inventory is for sale or lease by the sheltered workshop or the inventory is to be furnished under a contract of service.

For example, "inventory" includes, but is not limited to, raw materials, work in process, and finished products.

(b) The primary use of any property exempt under this ~~((section))~~ rule must be to provide training, gainful employment, or rehabilitation services to persons who meet the definition of "~~((handicapped))~~ person with disabilities" contained in subsection (2) of this ~~((section))~~ rule.

(c) Example. A sheltered workshop that teaches trade skills and work habits to the blind so that trainees might enter the competitive labor market may qualify for this exemption. This workshop may also qualify if it provides training in recreational activities and living skills, such as housekeeping and cooking.

(d) If any portion of the organization's, association's, or corporation's property is used for a commercial purpose rather than for an exempt purpose, that portion of the property must be segregated and taxed.

(4) **Cross reference to excise tax exemption.** A nonprofit organization, association, or corporation that receives a property exemption under RCW 84.36.350 may also be exempt from certain excise taxes. See RCW 82.04.385 for more specific information.

(5) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this ~~((section))~~ rule must also comply with the provisions of WAC 458-16-165. Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption, that explains the additional ~~((conditions and))~~ requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.350.

[Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-330, filed 3/3/94, effective 4/3/94.]

WSR 22-24-098

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 2:09 p.m., effective January 6, 2023]

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

Purpose: The department is updating WAC 458-20-195 due to changes from recent legislation, SHB 1703. The changes include minor grammatical changes and removing the word "enhanced" from "enhanced 911."

Citation of Rules Affected by this Order: Amending WAC 458-20-195.

Statutory Authority for Adoption: RCW 82.01.060 and 82.32.300.

Adopted under notice filed as WSR 22-20-010 on September 22, 2022.

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

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

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

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

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

Date Adopted: December 6, 2022.

Atif Aziz
Rules Coordinator

OTS-4096.1

AMENDATORY SECTION (Amending WSR 22-08-114A, filed 3/31/22, effective 5/1/22)

WAC 458-20-195 Taxes, deductibility. (1) **Introduction.** This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business and occupation tax, retail sales tax, and public utility tax. It also lists deductible and nondeductible taxes.

(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business and occupation (B&O) tax, the retail sales tax, and the public utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification with respect to which the deduction is sought, and have not been otherwise deducted through inclusion in the amount of another allowable deduction, such as credit losses.

The amount of taxes which are not allowable as deductions or exclusions must in every case be included in the gross amount reported. License and regulatory fees are not deductible. Questions regarding

the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the department of revenue for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

Fuel tax.....	chapter 82.38 RCW;
Federal tax on diesel and special motor fuels (including leaking underground storage tank taxes), except train and aviation fuels.....	26 U.S.C.A. Sec. 4041;
Federal tax on inland waterway commercial fuel... ..	26 U.S.C.A. Sec. 4042;
Federal tax on gasoline and diesel fuel for use in highway vehicles and motorboats.	26 U.S.C.A. Sec. 4081.

(4) **Taxes collected as an agent of municipalities, the state, or the federal government.** The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification of the Revenue Act under which the gross amount from such sales or services must be reported.

This deduction applies only where the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

FEDERAL—	
Tax on communications services (telephone and teletype-writer exchange services).....	26 U.S.C.A. Sec. 4251;
Tax on transportation of persons.....	26 U.S.C.A. Sec. 4261;
Tax on transportation of property.....	26 U.S.C.A. Sec. 4271;
STATE—	
988 crisis hotline tax collected from subscribers.....	chapter 82.86 RCW;
Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42.010.....	chapter 82.42 RCW;
Leasehold excise tax collected from lessees.....	chapter 82.29A RCW;
Oil spill response tax collected from taxpayers by marine terminal operators. . .	chapter 82.23B RCW;

Retail sales tax collected from buyers.	chapter 82.08 RCW;
Solid waste collection tax collected from buyers.	chapter 82.18 RCW;
State ((enhanced)) 911 tax collected from subscribers. . .	chapter 82.14B RCW;
Use tax collected from buyers.	chapter 82.12 RCW;
MUNICIPAL—	
City admission tax.	RCW 35.21.280;
County admissions and recreations tax.	chapter 36.38 RCW;
County ((enhanced)) 911 tax collected from subscribers. . .	chapter 82.14B RCW;
Local retail sales and use taxes collected from buyers.	chapter 82.14 RCW.

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

FEDERAL—	
Agricultural Adjustment Act (A.A.A.) compensating tax.	7 U.S.C.A. Sec. 615(e);
A.A.A. processing tax.	7 U.S.C.A. Sec. 609;
Aviation fuel.	26 U.S.C.A. Sec. 4091;
Distilled spirits, wine, and beer taxes.	26 U.S.C.A. chapter 51;
Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and ((motor boats)) motorboats.	26 U.S.C.A. Sec. 4041;
Employment taxes.	26 U.S.C.A. chapters 21-25;
Estate taxes.	26 U.S.C.A. chapter 11;
Firearms, shells, and cartridges.	26 U.S.C.A. Sec. 4181;
Gift taxes.	26 U.S.C.A. chapter 12;
Importers, manufacturers, and dealers in firearms.	26 U.S.C.A. Sec. 5801;
Income taxes.	26 U.S.C.A. Subtitle A;
Insurance policies issued by foreign insurers.	26 U.S.C.A. Sec. 4371;
Sale and transfer of firearms tax.	26 U.S.C.A. Sec. 5811;
Sporting goods.	26 U.S.C.A. Sec. 4161;
Superfund tax.	26 U.S.C.A. Sec. 4611;
Tires.	26 U.S.C.A. Sec. 4071;
Tobacco excise taxes.	26 U.S.C.A. chapter 52;
Wagering taxes.	26 U.S.C.A. chapter 35;

STATE —

Ad valorem property taxes.	Title 84 RCW;
Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors, and wineries).	chapter 66.24 RCW;
Aviation fuel tax when not collected as agent for the state.	chapter 82.42 RCW;
Boxing, sparring and wrestling tax.	chapter 67.08 RCW;
Business and occupation tax.	chapter 82.04 RCW;
Cigarette tax.	chapter 82.24 RCW;
Estate tax.	Title 83 RCW;
Insurance premiums tax	chapter 48.14 RCW;
Hazardous substance tax.	chapter 82.21 RCW;
Litter tax.	chapter 82.19 RCW;
Pollution liability insurance fee.	RCW 70A.149.080;
Parimutuel tax.	RCW 67.16.100;
Petroleum products - underground storage tank tax.	chapter 82.23A RCW;
Public utility tax.	chapter 82.16 RCW;
Real estate excise tax. .	chapter 82.45 RCW;
Tobacco products tax. .	chapter 82.26 RCW;
Use tax when not collected as agent for state.	chapter 82.12 RCW;
MUNICIPAL—	
Local use tax when not collected as agent for cities or counties.	chapter 82.14 RCW;
Municipal utility taxes.	chapter 54.28 RCW;
Municipal and county real estate excise taxes.	chapter 82.46 RCW.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 22-08-114A, § 458-20-195, filed 3/31/22, effective 5/1/22. Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 20-22-093, § 458-20-195, filed 11/3/20, effective 12/4/20. Statutory Authority: RCW 82.32.300. WSR 00-16-015, § 458-20-195, filed 7/21/00, effective 8/21/00; WSR 99-13-053, § 458-20-195, filed 6/9/99, effective 7/10/99; WSR 83-08-026 (Order ET 83-1), § 458-20-195, filed 3/30/83; Order ET 70-3, § 458-20-195 (Rule 195), filed 5/29/70, effective 7/1/70.]

WSR 22-24-101

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 4:26 p.m., effective January 6, 2023]

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

Purpose: The department is updating WAC 458-20-262 to reflect the changes made to RCW 82.12.02685 from ESB 5800 from the 2022 legislative session and updates to RCW 82.08.02745 and 82.12.02685 from 2SSB 5396 from the 2021 legislative session.

Citation of Rules Affected by this Order: Amending WAC 458-20-262.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Adopted under notice filed as WSR 22-20-103 on October 4, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 6, 2022.

Atif Aziz
Rules Coordinator

OTS-4145.1

AMENDATORY SECTION (Amending WSR 08-14-017, filed 6/20/08, effective 7/21/08)

WAC 458-20-262 Retail sales and use tax exemptions for (~~agricultural employee~~) farmworker housing. (1) **Introduction.** RCW 82.08.02745 and 82.12.02685 provide a retail sales and use tax exemption for (~~agricultural employee~~) farmworker housing. This section also explains the exemptions, who is entitled to the exemptions and how to obtain an exemption certificate.

(2) **Definitions.** The following definitions apply throughout this section.

(a) (~~"Agricultural employee"~~) "Farmworker" means (~~any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity (RCW 19.30.010))~~) a single person, or all members of a household, whether such persons are related or not, if the combined household income earned from farm work is at least \$3,000 per calendar year.

(b) "Farm work" means services relating to:

(i) Cultivating the soil, raising or harvesting, or catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agricultural or aquacultural commodity;

(ii) Delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity; or

(iii) Working in a processing plant and directly handling agricultural or aquacultural product.

(c) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash, the harvest of Christmas trees, and other related activities ((+)) as defined in RCW 19.30.010(+)); and including any employer engaged in aquaculture as defined in RCW 15.85.020.

~~((e) "Agricultural employee"))~~ (d) "Farmworker housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. sec. 501(c)), or for-profit provider of housing for housing ((agricultural employees)) farmworkers on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories(, and includes)); and including labor camps as defined under RCW 70.114A.110.

~~((The term also includes but is not limited to))~~ (i) "Farmworker housing" may include the following:

(A) Mobile homes, travel trailers, mobile bunkhouses, modular homes, fabricated components of a house, and tents((. Agricultural employee)); and

(B) Housing occupied by a household with at least one member who is a farmworker; and

(C) Housing occupied by a farmworker on a seasonal basis, where the housing is not used as farmworker housing for a portion of the year, such as when it is rented to the general public when not being used for farmworker housing.

(ii) "Farmworker housing" does not include:

(A) Housing regularly provided on a commercial basis to the general public((. Agricultural employee housing does not include)); and

(B) Housing provided by a housing authority unless at least ((eighty)) 80 percent of the occupants are ((agricultural employees)) farmworkers whose adjusted income is less than ((fifty)) 50 percent of median family income, adjusted for household size, for the county where the housing is provided; and

(C) Housing provided to farmworkers providing services related to the growing, raising, or producing of cannabis.

~~((d))~~ (e) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether

mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. ((+)RCW 82.04.030(+)).

((e)) (f) "Agricultural land" has the same meaning as "farm and agricultural (and farm) land" in RCW 84.34.020(2).

(3) **Retail sales and use tax exemptions for ((agricultural employee)) farmworker housing.** RCW 82.08.02745 and 82.12.02685, respectively, provide retail sales tax and use tax exemptions for the purchase, construction, and use of ((agricultural employee)) farmworker housing. ((Both exemptions require that agricultural employee housing provided to year-round employees of the agricultural employer must be built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW. Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.))

(a) ((The)) Retail sales tax levied under RCW 82.08.020 does not apply to charges for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures, in which at least 50 percent of housing units in the development are used as ((agricultural employee)) farmworker housing ((. Also exempt are sales of tangible personal property that becomes an ingredient or component of the buildings or other structures, including but not limited to septic tanks, pump houses, cisterns, and driveways.)), or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures.

(b) Use tax levied under RCW 82.12.020 does not apply to the use of tangible personal property that becomes an ingredient or component of buildings or other structures, in which at least 50 percent of the housing units in the development are used as farmworker housing, during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(i) The use tax exemption for tangible personal property incorporated into buildings or other structures used as farmworker housing also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. See also WAC 458-20-17001 on government contracting.

(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.

(c) Both exemptions require that farmworker housing provided on a year-round basis only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(d) Any farmworker housing built under this section must be used according to this section for at least five consecutive years from the date the housing is approved for occupancy.

(e) Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(f) The exemption does not apply to housing built exclusively for workers in the United States on an H-2A visa under the United States citizenship and immigration services. If during any agricultural season in the qualifying five years the housing is occupied by a farm-

worker who does not have an H-2A visa, then the housing will be considered not to be exclusively built for workers on an H-2A visa.

(g) The exemption is provided for all housing units in the development and is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(h) Examples of tangible personal property that may become ingredients or components of buildings or other structures include, but are not limited to, cement, lumber, nails, paint, and wallpaper.

(i) Appliances and furniture ~~((τ))~~ including, but not limited to, stoves, refrigerators, bed frames, lamps and television sets, bolted or strapped directly to the building or structure are considered components of the building or structure. Additionally, appliances and furniture bolted or strapped to another item that is bolted or strapped directly to the building or structure (e.g., a television set bolted to a refrigerator that is strapped to the structure) are considered components of the building or structure.

(ii) Items that are not bolted or strapped directly to the building or structure, or to another item similarly bolted or strapped, do not qualify for this exemption. These items include, but are not limited to, kitchen utensils, mattresses, bedding, portable heating units, and throw rugs. Stoves, refrigerators, bed frames, lamps and television sets that are not bolted or strapped as discussed in (a)(i) of this subsection, also do not qualify as components of the building or structure.

(iii) Purchases of labor and transportation charges necessary to move and set up mobile homes, mobile bunkhouses, and other property and component parts as ~~((agricultural employee))~~ farmworker housing are exempt ~~((ϕ))~~ from retail sales tax.

(iv) As a condition for exemption, the seller must take from the buyer an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department of revenue's "Farmers' ~~((Retail))~~ Certificate for Wholesale Purchases and Sales Tax Exemptions ~~((Certificate))~~" which can be obtained through the following means:

(A) From the department's internet site at <http://dor.wa.gov>;

(B) By calling taxpayer services at ~~((1-800-647-7706))~~
360-705-6705; or

(C) By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

The seller may accept a legible fax or duplicate copy of an original exemption certificate. In all cases, the exemption certificate must be retained by the seller for a period of at least five years. An exemption certificate may be provided for a single purchase or for multiple purchases over a period of time. If the certificate is provided for multiple purchases over a period of time, the certificate is valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of ~~((twelve))~~ 12 consecutive months. RCW 82.08.050 (7)(c). Failure to comply with the provisions in this section may result in a denial of the exemption and the agricultural employer may be subject to use tax plus penalties and interest.

~~((b) The use tax exemption is available for the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person. Again, appliances and furniture that are bolted or strapped to the actual building or structure are considered components of the building or structure.~~

~~(i) The exemption for materials incorporated into buildings or other structures used as agricultural employee housing also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. (See also WAC 458-20-17001 on government contracting.)~~

~~(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.)~~

(4) Requirement to remit payment of tax if ((agricultural)) farmworker housing fails to continue to satisfy the conditions of exemption. ((The agricultural employee))

(a) Farmworker housing must be used for that purpose at least five consecutive years from the date the housing is approved for occupancy to retain the retail sales and use tax exemption. If this condition is not satisfied, the full amount of tax otherwise due ((shall be)) is immediately due and payable together with interest, but not penalties, from the date the housing ((is approved for occupancy)) ceases to be used as farmworker housing until the date of payment.

(b) If at any time ((agricultural employee)) farmworker housing ((that is not located on agricultural land)) ceases to ((be used as agricultural employee housing)) comply with the state's current building codes for single-family or multifamily dwellings, the full amount of tax otherwise due ((shall be)) is immediately due and payable with interest, but not penalties, from the date the housing ((ceased)) ceases to be used as ((agricultural employee)) farmworker housing until the date of payment.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.02745 and 82.12.02685. WSR 08-14-017, § 458-20-262, filed 6/20/08, effective 7/21/08. Statutory Authority: RCW 82.32.300 and 82.08.02745. WSR 98-24-069, § 458-20-262, filed 11/30/98, effective 12/31/98.]

WSR 22-24-102

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 4:28 p.m., effective January 6, 2023]

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

Purpose: The department of revenue intends to update WAC 458-20-240 to recognize 2022 legislation to include the statutory expiration period for unused credits, minor grammatical changes, and updating department contact information.

Citation of Rules Affected by this Order: Amending WAC 458-20-240 Manufacturer's new employee tax credits.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Adopted under notice filed as WSR 22-20-093 on October 4, 2022.

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

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

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

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

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

Date Adopted: December 6, 2022.

Atif Aziz
Rules Coordinator

OTS-4118.2

AMENDATORY SECTION (Amending WSR 16-12-075, filed 5/27/16, effective 6/27/16)

WAC 458-20-240 Manufacturer's new employee tax credits—Applications filed after June 30, 2010. (1) **Introduction.** Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue (department) within ((ninety)) 90 consecutive days after the first qualified employment position is filled. See subsection (6) of this rule for additional information regarding this application requirement.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under

chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means:

(i) Manufacturing, commercial testing, or research and development activities conducted by an applicant;

(ii) In an eligible area at a specific facility;

(iii) Where employment increases as described under subsection (3) of this rule; and

(iv) Does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must increase by (~~fifteen~~) 15 percent in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

New businesses meeting all requirement of the program, whether new to Washington or newly formed, are eligible for all qualified employment positions filled during the four consecutive full calendar quarters immediately preceding the quarter during which the first qualified employment position is filled.

(b) **What is an eligible area?** An "eligible area" is:

(i) A rural county, which is a county with fewer than (~~one hundred~~) 100 persons per square mile or, a county smaller than (~~two hundred twenty-five~~) 225 square miles, as determined annually by the office of financial management and published by the department effective for the period of July 1st through June 30th (see RCW 82.14.370); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce. For a business located in a CEZ, credit is only earned for those employees, who at the time of hire, are residents of the CEZ in which the project is located.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet website at www.ofm.wa.gov/pop/popden/rural.asp. The department has instituted a geographic information system (GIS), referred to as the Tax Rate Lookup Tool, to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at dor.wa.gov.

(c) **What are manufacturing and research and development activities?**

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW, "manufacturing" also includes the activities performed by research and development laboratories and commercial testing laboratories.

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. "Commercial sales" does not include

sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed (~~one million dollars~~) \$1,000,000.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility will be at least (~~fifteen~~) 15 percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for four consecutive full calendar quarters. Once a full-time position is established and filled it will continue to be considered "filled" even during periods of vacancy, provided the cumulative period of any vacancies in that position is not more than (~~one hundred twenty~~) 120 days in the four quarter period and the employer is training or actively recruiting a permanent replacement, full-time employee for the position.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works (~~thirty-five~~) 35 hours per week for (~~fifty-two~~) 52 consecutive weeks;

(ii) Works (~~four hundred fifty-five~~) 455 hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works (~~one thousand eight hundred twenty~~) 1,820 hours, excluding overtime, during a period of (~~twelve~~) 12 consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than (~~fifty~~) 50 percent of their employees to work on a seasonal basis, a "permanent full-time employee" is a permanent full-time employee as described above or an employee(s) that works the equivalent amount of hours on a seasonal basis.

(4) **How to determine if the (~~fifteen~~) 15 percent employment increase requirement is met.** The credit is only available to applicants who satisfy the (~~fifteen~~) 15 percent employment increase.

(a) **Determining the (~~fifteen~~) 15 percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the (~~fifteen~~) 15 percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or (~~fifteen~~) 15 percent. The resulting number equals the number of new positions that must be filled to meet the (~~fifteen~~) 15 percent increase. Numbers are rounded down to the nearest whole number.

(b) **When does hiring have to occur?** All hiring increases must occur during the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled for purposes of meeting the (~~fifteen~~) 15 percent threshold

test. Positions hired in the four consecutive full calendar quarters prior to the first qualified employment position being filled are not eligible for a credit but the positions are used as a base when calculating whether the (~~fifteen~~) 15 percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the (~~fifteen~~) 15 percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions for the four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled was 98. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for the four consecutive full calendar quarters after the calendar quarter for which the first qualified positions is filled is $98 \times .15 = 14.7$ (rounding down to 14 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employees satisfies the 15% employment increase requirement.

(ii) ABC anticipates increasing employment positions at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the following four consecutive full calendar quarters for a total of 128 positions. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for these four consecutive full calendar quarters is 16 ($113 \times .15 = 16.95$, rounding down to 16). Therefore, ABC Company's plan to hire 15 full-time qualified employees does not satisfy the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department to receive tax credits under this program. A new application must be submitted after each group of four consecutive full calendar quarters that you project employment to increase over 15(%) percent. RCW 82.62.020 requires that application for the tax credits be filed within the first (~~ninety~~) 90 days after the first qualified employment position is filled. Ap-

plications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** (~~(Application)~~) Rural Area Application for New Employee B&O Tax Credit forms (~~(will be)~~) are provided by the department (~~(upon request either by calling 360-902-7175 or from)~~) at the department's internet website at dor.wa.gov under the option for forms. The completed application may be sent by fax (~~(to 360-586-0527 or mailed to the following address:~~

~~Taxpayer Account Administration
Washington State Department of Revenue
P.O. Box 47476~~

~~Olympia, WA 98504-7476))~~ or mail to the addresses provided in the application form.

The U.S. Post Office postmark or fax date will be used as the date of application.

(b) **Confidentiality.** Applications, reports, or any other information received by the department in connection with this tax credit program, except applications not approved by the department, are not confidential and are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within (~~(sixty)~~) 60 days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within (~~(sixty)~~) 60 days. If approved, the department will issue a credit approval (~~(notice)~~) letter containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within (~~(thirty)~~) 30 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews).

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment of the application will be made for the four calendar quarters for which the application was approved.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of qualified employment positions created and the wages and benefits paid to these qualified employees.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays (~~(forty thousand dollars)~~) \$40,000 or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than (~~(forty thousand dollars)~~) \$40,000 in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation,

holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on excise tax returns filed using the department's (~~Efile~~) electronic filing system. These tax credits may not exceed the B&O tax liability.

(a) **When can credits be used?** The credits cannot be used until the department has approved the application. After approval, a recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next reporting period(s), until used or expired.

(c) **Expiration of unused credits.** All unused credits earned by the recipient expire on January 1st of the year that is six years after the year in which the latest of any one of the following events occurs:

(i) The department receives notice from the recipient or its representative that the recipient has ceased engaging in business in the state as those terms are defined in chapter 82.04 RCW;

(ii) The department closes the recipient's tax reporting account;
or

(iii) The filing with the department of the recipient's last return that claimed the credit.

(9) **Report to be filed by recipient.** A recipient of tax credits under this program must complete and submit a report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit is earned. Based upon this report, the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. Rural Area Annual Report for New Employee B&O Tax Credit forms are provided by the department at the department's internet website dor.wa.gov under the option for forms. The completed report may be sent by fax (~~to 360-586-0527 or mailed to the following address:~~

~~Taxpayer Account Administration
Washington State Department of Revenue
P.O. Box 47476~~

~~Olympia, WA 98504-7476))~~ or mail to the addresses provided in the report form.

The U.S. Post Office postmark or fax date will be used as the date of filing.

(a) **Verification of report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the four consecutive full calendar quarters prior to the quarter for which the first qualified employment position is filled, the five calendar quarters for which the credits are claimed (this includes the quarter for which

the first qualified employment position is filled), and the four consecutive full calendar quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for four consecutive full calendar quarters.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's website at dor.wa.gov or by calling the department's information center at ((~~1-800-647-7706~~)) 360-705-6705.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed ((~~seven million five hundred thousand dollars~~)) \$7,500,000 in any fiscal year. RCW 82.62.030. A "fiscal year" is the ((~~twelve-month~~)) 12-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-12-075, § 458-20-240, filed 5/27/16, effective 6/27/16; WSR 15-15-033, § 458-20-240, filed 7/8/15, effective 8/8/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0293, and 82.12.0293. WSR 10-23-035, § 458-20-240, filed 11/9/10, effective 12/10/10. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 05-01-079, § 458-20-240, filed 12/10/04, effective 1/10/05. Statutory Authority: RCW 82.32.300, 82.62.070 and chapter 82.62 RCW. WSR 01-17-069, § 458-20-240, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 82.32.300. WSR 88-17-047 (Order 88-5), § 458-20-240, filed 8/16/88; WSR 87-19-007 (Order ET 87-5), § 458-20-240, filed 9/8/87; WSR 86-14-019 (Order ET 86-13), § 458-20-240, filed 6/24/86; WSR 83-08-026 (Order ET 83-1), § 458-20-240, filed 3/30/83; Order ET 71-1, § 458-20-240, filed 7/22/71;

Order ET 70-3, § 458-20-240 (Rule 240), filed 5/29/70, effective
7/1/70.]

WSR 22-24-103

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 4:31 p.m., effective January 6, 2023]

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

Purpose: The department is amending WAC 458-20-265 to reflect 2022 legislation, ESB 5800, which changes the period that a requestor for the credit must report, to the employment security department, at least 100 average employment positions with an average annualized wage of \$80,000.

Citation of Rules Affected by this Order: Amending WAC 458-20-265.

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

Adopted under notice filed as WSR 22-20-072 on September 30, 2022.

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

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

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

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

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

Date Adopted: December 6, 2022.

Atif Aziz
Rules Coordinator

OTS-4129.1

AMENDATORY SECTION (Amending WSR 17-09-089, filed 4/19/17, effective 5/20/17)

WAC 458-20-265 Sales and use tax exemption—Airplane maintenance repair stations. (1) (a) **Introduction.** This rule explains the retail sales and use tax exemption, as described in RCW 82.08.025661 and 82.12.025661, for the construction of airplane maintenance repair stations operated by an eligible maintenance repair operator.

(b) **Other rules that may apply.** Readers may also want to refer to additional rules for further information, including the following:

(i) WAC 458-20-229 Refunds.

(ii) WAC 458-20-267 Annual tax performance reports for certain tax preferences.

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

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

(a) **"Airplane maintenance repair station"** has the same meaning as "repair station" adopted by the National Air Transportation Association and is a maintenance facility that has a certificate issued by the Federal Aviation Administration under Title 14 of the Code of Federal Regulations (14 C.F.R.) Part 145 that is engaged in the maintenance, preventive maintenance, inspection, alteration of airplanes, and alteration of airplane products.

(b) **"Commercial airplane,"** as defined in RCW 82.32.550(1), is an airplane certified by the Federal Aviation Administration for transporting persons or property, and any military derivative of such an airplane.

(c) **"Component,"** as defined in RCW 82.32.550(2), means a part or system certified by the Federal Aviation Administration for installation or assembly into a commercial airplane.

(d) **"Eligible maintenance repair operator"** means a person classified by the Federal Aviation Administration as qualified to operate a Federal Aviation Regulation Part 145 certified repair station that is located in an international airport owned by a county with a population greater than (~~one million five hundred thousand~~) 1,500,000.

(e) **"Operationally complete"** means constructed to the point of being functionally capable of hosting the repair and maintenance of airplanes.

(3) **Retail sales or use tax exemption.**

(a) Subject to the requirements of RCW 82.08.025661 and this rule, state and local retail sales and use taxes do not apply to the items and services as described in (b) of this subsection that are charged or sold to, or purchased or used by:

(i) An eligible maintenance repair operator engaged in the maintenance of airplanes; or

(ii) A port district, political subdivision, or municipal corporation, if the new airplane maintenance repair station is to be leased to an eligible maintenance repair operator engaged in the maintenance of airplanes.

(b) The exempt items and services include:

(i) Labor and services to construct a new airplane maintenance repair station;

(ii) Tangible personal property that will be incorporated as an ingredient or component during the course of constructing the new airplane maintenance repair station; and

(iii) Labor and services to install, during the course of constructing the new airplane maintenance repair station, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565.

(c) To qualify for the exemption described in this rule, the port district, political subdivision, or municipal corporation must have first entered into an agreement with an eligible maintenance repair operator to build the new facility, prior to starting construction of the new facility.

(4) **Remittance application.** The exemption described in this rule is a remittance.

(a) A business claiming the state and local retail sales or use tax exemption must first pay all applicable state and local retail sales or use taxes on all purchases qualifying for the exemption under subsection (3)(b) of this rule.

(b) The business may then file a quarterly remittance application with the department for the previously paid retail sales or use tax that is determined by the department to qualify for the exemption. The

remittance form may be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(i) The remittance application must specify and separately identify the amount of the exempted state and local retail sales and use taxes claimed and the qualifying purchases or acquisitions for which the exemption is claimed, along with any supporting documents required by the department. Refer to the department's website at (~~dor.wa.gov~~) <https://www.dor.wa.gov> for documentation requirements.

(ii) The application for remittance is titled "Application for Refund or Credit" and is available on the department's website at (~~dor.wa.gov~~) <https://www.dor.wa.gov>. You may also contact the telephone information center at (~~800-647-7706~~) 360-705-6705 or write to the following address:

Attn: New Construction for FAR Part 145
 Repair Station Refunds
 Taxpayer Account Administration Division
 Department of Revenue
 P.O. Box 47476
 Olympia, WA 98504-7476

(c) Local retail sales and use taxes that qualify for this exemption are eligible for remittance beginning on the exemption's effective date of July 1, 2016.

(d) State retail sales and use taxes that qualify for this exemption are eligible for remittance the later of either:

(i) The date on which the airplane maintenance and repair station has been operationally complete for four years; or

(ii) December 1, 2021.

(e) The business must provide written notice to the department when the maintenance and repair station is operationally complete as defined in subsection (2)(e) of this rule. The notice should be sent electronically to the department or to the mailing address found in (b)(ii) of this subsection.

(f) The state and local retail sales and use taxes described in this rule are not eligible for remittance on purchases of items or services under subsection (3)(b) of this rule that occur on or after the exemption's expiration date of January 1, 2027.

(5) Department must determine eligibility.

(a) The department must determine eligibility for the exemption based on information provided by the business and through audit and other administrative records.

(b) The business must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this rule, construction invoices and documents including, but not limited to, invoices, proof of tax paid, and documents describing the location and size of new structures.

(c) By the end of the calendar quarter that follows the quarter in which the refund application was submitted, the department will remit qualified exempted amounts to a qualifying business, in accordance with subsection (4)(c) and (d) of this rule, for local and state retail sales and use taxes.

(d) The department may not remit the state portion of the retail sales and use taxes paid if the business did not report at least (~~one hundred~~) 100 average employment positions to the employment security department for (~~September~~) October 1, 2020, through September (~~1~~) 30, 2021, with an average annualized wage of (~~eighty thousand dollars~~) \$80,000. The business must provide the department with the un-

employment insurance number provided to the employment security department for verification of employment levels.

If a new airplane maintenance repair station owned by a port district, political subdivision, or municipal corporation is leased to an eligible maintenance repair operator engaged in the maintenance of airplanes, only the business lessee, and not the lessor, must meet the employment requirement described in (d) of this subsection.

(6) **Annual tax performance report ((and annual survey required))**. An eligible maintenance repair operator receiving a remittance under this rule must electronically file an annual report with the department ((an annual report under)) in accordance with RCW 82.32.534 ((and an annual survey under RCW 82.32.585)). For more information about filing an annual report ((or survey)), see WAC 458-20-267 and visit the department's website at ((dor.wa.gov)) <https://www.dor.wa.gov> or contact the telephone information center at ((800-647-7706)) [360-705-6705](tel:360-705-6705).

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 17-09-089, § 458-20-265, filed 4/19/17, effective 5/20/17.]

WSR 22-24-104

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 4:34 p.m., effective January 6, 2023]

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

Purpose: The department is amending WAC 458-20-267 to incorporate 2022 legislation, chapter 56, Laws of 2022 (ESB 5800).

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

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 22-20-064 on September 29, 2022.

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

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

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

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

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

Date Adopted: December 6, 2022.

Atif Aziz
Rule Coordinator

OTS-4126.1

AMENDATORY SECTION (Amending WSR 20-22-089, filed 11/3/20, effective 12/4/20)

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

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

- (i) WAC 458-20-267A Annual reports for certain tax preferences;
- (ii) WAC 458-20-268 Annual surveys for certain tax preferences.

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

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

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

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

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

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

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

(2) **Tax preferences requiring an annual tax performance report.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Performance Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual tax performance report. Taxpayers may also contact the telephone information center at (~~800-647-7706~~) 360-705-6210 to determine whether they must file an annual tax performance report.

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

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

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

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

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

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

(e) **Due date of annual tax performance report for tax preferences other than deferrals.** Every person claiming a tax preference that requires an annual tax performance report under RCW 82.32.534 must file

the report annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the report is May 31st.

(f) **Due date of annual tax performance report for tax preferences that are deferrals.** If the tax preference is a deferral of tax, an annual tax performance report must be filed by May 31st in the year following the calendar year in which the investment project is certified by the department as operationally complete, and by May 31st (~~of each of the seven succeeding calendar years~~) succeeding calendar year through the calendar year in which the deferred taxes are fully repaid or are immediately due and payable because the recipient of the deferral is no longer eligible for the deferral.

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

(h) **Example 1.** A manufacturer of commercial airplanes begins construction on a new facility in Washington. This facility will be used to manufacture fuselages of commercial airplanes. This firm first claimed the sales and use tax exemption provided by RCW 82.08.980 for construction of new facilities used to manufacture commercial airplanes, fuselages, or wings of commercial airplanes in 2020. By May 31, 2021, the aerospace firm was required to submit an annual tax performance report covering calendar years 2019 and 2020. If the aerospace firm continues to utilize the exemption provided by RCW 82.08.980 during calendar year 2021, an annual tax performance report is due by May 31, 2022, covering calendar year 2021.

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

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

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

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

(i) **Alternative to reporting employment and wage data.** A person may elect to allow, on their behalf, the employment security department to release wage and employment data to the department and the joint legislative audit and review committee. Each taxpayer electing this option must affirm that election in accordance with procedures approved by the employment security department.

(ii) **Additional reporting requirements for public research institutions claiming an exemption for machinery and equipment.** For a person that claimed an exemption provided in RCW 82.08.025651 or RCW 82.12.025651, the report must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual tax performance report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual tax performance report for the aerospace manufacturing industry tax preferences?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual tax performance report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration (FAA) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual tax performance report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual tax performance report provided that the jobs located at the manufacturing sites have equivalent employment positions, and wages. A person may request written approval to consolidate manufacturing sites by contacting the department at:

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

(c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes claims the Aerospace Property and Leasehold Excise Tax B&O credit provided by RCW 82.04.4463 for property taxes paid on qualified buildings used exclusively in manufacturing commercial airplanes or component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual tax performance reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax preference.

(6) **What jobs are included in the annual tax performance report?** The annual tax performance report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in

subsection (5)(b) of this rule, at the manufacturing site as of December 31st of the calendar year for which an applicable tax preference is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax preference are included in the report if the job is located in Washington state or, for persons filing as provided in subsection (5)(b) of this rule, at the manufacturing site.

Example 4. XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual tax performance report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.

(7) How is employment detailed in the annual tax performance report? The annual tax performance report requires reporting of the total hours and wages for employees in Washington for each quarter or for the calendar year, as determined by the department.

(8) What is total employment? The annual tax performance report must provide information on all full-time, part-time, and temporary employment positions located in Washington. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(9) What are full-time, part-time, and temporary employment positions? An employer must provide information on the total number of employees that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax preference is claimed.

(a) Full-time and part-time employment positions. For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least (~~(fifty-two)~~) 52 consecutive weeks or (~~(twelve)~~) 12 consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works (~~(thirty-five)~~) 35 hours per week for (~~(fifty-two)~~) 52 consecutive weeks;

(ii) Works (~~(four hundred fifty-five)~~) 455 hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works (~~(one thousand eight hundred twenty)~~) 1,820 hours, excluding overtime, during a period of (~~(twelve)~~) 12 consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) Temporary positions. A temporary position is a position that is intended to be filled for period of less than (~~(twelve)~~) 12 consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing com-

panies regardless of the duration of the placement with the person required to file the annual tax performance report.

(c) **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures wings for commercial airplanes. National Airplane Inc. begins construction of a new facility to store raw materials used in manufacturing wings for commercial planes in Tacoma, WA, and claims the Aerospace Manufacturing Site Sales and Use Tax Exemption in RCW 82.08.980 and 82.12.980. National Airplane Inc. employs (~~one hundred~~) 100 people. Seventy-five of the employees work directly in the manufacturing operation and are classified as (U.S. Department of Labor Standard Occupation Code) SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example 5.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns each work (~~twenty~~) 20 hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than (~~twelve~~) 12 consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of (~~eleven~~) 11 employment positions in SOC Architect and Engineering Occupations with five in full-time employment positions and six in temporary employment positions.

(ii) **Example 6.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday through Friday. The second shift works six hours from 6:00 p.m. to midnight Monday through Friday. The second shift works fewer hours per week (~~thirty~~) 30 hours) than the first shift (~~forty~~) 40 hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work (~~forty~~) 40 hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example 7.** On December 1st, (~~ten~~) 10 National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for (~~twelve~~) 12 weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the (~~ten~~) 10 employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual tax performance report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of (~~eighty~~) 80 employment positions in SOC Production Occupations with (~~seventy-five~~) 75 in full-time employment positions and five in temporary employment positions.

(iv) **Example 8.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enter-

prises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual tax performance report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example 9.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work (~~(forty)~~) 40 hours a week, (~~(fifty-two)~~) 52 weeks a year. On November 1st, one employee must limit the number of hours worked to (~~(thirty)~~) 30 hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than (~~(thirty-five)~~) 35 hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with four in full-time employment positions and one in part-time employment positions.

(10) **What are wages?** For the purposes of the annual tax performance report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Generally, compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(11) **How are wages detailed for the annual tax performance report?**

(a) An employer must report the total wages for employees in Washington for each quarter or for the calendar year, as determined by the department.

(b) For purposes of the annual tax performance report, wages are measured on December 31st of the calendar year for which an applicable tax preference is claimed.

(12) **Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual tax performance report must provide the following information:

(a) Total number of staffing company employees furnished by staffing companies;

(b) Average duration of all staffing company employees.

(13) **Additional reporting for aluminum smelters and electrolytic processing businesses.** For an aluminum smelter or electrolytic processing business, the annual tax performance report must indicate the quantity of product produced in this state during the time period covered by the report.

(14) **Are annual tax performance reports confidential?** Except for the additional information that the department and the joint legislative audit and review committee may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual tax performance reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(15) **What are the consequences for failing to file a complete annual tax performance report?**

(a) **What is a "complete annual tax performance report"?** An annual tax performance report is complete if:

- (i) The annual tax performance report is filed on the form required by this rule or in an electronic format as required by law; and
- (ii) The person makes a good faith effort to substantially respond to all report questions required by this rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) **Amounts due for late filing.** Except for deferrals, if a person does not timely file a required annual tax performance report, then the following amounts are immediately due and payable:

For reports due on or after July 1, 2017 or annual tax performance reports due on or after May 31, 2019:

- (i) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and
- (ii) An additional (~~fifteen~~) 15 percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b) of this subsection for failure to timely submit a report for the same tax preference.

(c) **Tax deferrals.** If the tax preference is a deferral of tax, (~~twelve and one-half percent of the deferred tax~~) an amount equal to the deferred tax divided by the number of years in the waiver/repayment period is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b) and (c) of this subsection.

(e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of (~~thirty~~) 30 days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(f) **One-time only extension.** A taxpayer that fails to file an annual tax performance report, as required under this rule, by the due date of the report is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual tax performance reports, annual reports and annual surveys, if any, due in prior years by their respective due dates, beginning with annual reports and annual surveys due in the calendar year 2010.

(ii) The extension is for (~~ninety~~) 90 days from the original due date of the annual tax performance report.

(iii) No taxpayer may be granted more than one (~~ninety-day~~) 90-day extension.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 20-22-089, § 458-20-267, filed 11/3/20, effective 12/4/20. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070, 82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-267, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 17-09-086, § 458-20-267, filed 4/19/17, effective 5/20/17; WSR 16-06-040, § 458-20-267, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.04.250, 82.32.600, and 82.32.534. WSR 14-19-018, § 458-20-267, filed 9/5/14, effective 10/6/14. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 10-22-087, § 458-20-267, filed 11/1/10, effective 12/2/10; WSR 10-10-037, § 458-20-267, filed 4/27/10, effective 5/28/10; WSR 06-20-004, § 458-20-267, filed 9/21/06, effective 10/22/06.]

WSR 22-24-105

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 6, 2022, 4:36 p.m., effective January 6, 2023]

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

Purpose: The department of revenue is updating WAC 458-29A-400 to incorporate the following legislation passed by Washington's legislature in 2022: SSB 5910 and HB 2058. Specifically, language has been added to this rule to incorporate RCW 82.29A.125, which grants an exemption from leasehold excise tax for electric vehicle infrastructure. Additionally, language has been added to this rule to incorporate RCW 82.29A.130(22), which grants an exemption from leasehold excise tax for certain facilities owned by the state park and recreation committee.

Citation of Rules Affected by this Order: Amending WAC 458-29A-400 Leasehold excise tax—Exemptions.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060; chapter 29A.140 RCW.

Adopted under notice filed as WSR 22-20-048 on September 28, 2022.

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

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

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

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

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

Date Adopted: December 6, 2022.

Atif Aziz
Rules Coordinator

OTS-4119.1

AMENDATORY SECTION (Amending WSR 20-07-102, filed 3/17/20, effective 4/17/20)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) Introduction.

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.125, 82.29A.130, 82.29A.132, 82.29A.134, 82.29A.135, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department, except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) **Operating properties of a public utility.**

(a) All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

(b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company are exempt from leasehold excise tax because ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(4) **Student housing at public and nonprofit schools and colleges.**

(a) All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

(b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with this building is exempt from the leasehold excise tax. This is because the dormitory is used to house State Public University's students.

(5) **Subsidized housing.**

(a) All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

(b) **Example.** Assume an apartment building and the property on which it is located is:

- Owned in fee simple by the state of Washington; and
- Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

(6) **Nonprofit fair associations.**

(a) All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

(b) **Example.** Assume a leasehold interest held by Local Nonprofit Fair Association is exempt from leasehold excise tax. Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds to private parties for storage during the winter. These subleases are subject to the leasehold excise tax.

(7) **Public employee housing.**

(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

(b) **Examples.**

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call (~~(twenty-four)~~) 24 hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would

be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(8) Interests held by enrolled Indians.

(a) Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

(c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery. The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

(9) Leases on Indian lands to non-Indians.

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ~~((ninety))~~ 90 percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ~~((ninety))~~ 90 percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ~~((ninety))~~ 90 percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

(10) Annual taxable rent is less than ~~((two hundred fifty dollars))~~ \$250.

(a) Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a ~~((twelve-month))~~ 12-month period will be combined to determine annual rent; however, a single lease

for a period of less than one year will not be projected on an annual basis.

(b) **Examples.**

(i) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(ii) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run (~~(thirty to forty)~~) 30 to 40 days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(iv) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for (~~(6)~~) six weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

(11) Leases for a continuous period of less than (~~(thirty)~~) 30 days. Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than (~~(thirty)~~) 30 days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than (~~(thirty)~~) 30 days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(12) Month-to-month leases in residential units to be demolished or removed.

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do

not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

(b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(13) **Public works contracts.**

(a) Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(14) **Correctional industries in state adult correctional facilities.**

(a) Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

(b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

(ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

(15) **Camp facilities for persons with disabilities.**

(a) Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

(b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled per-

sons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

(16) Public or entertainment areas of certain baseball stadiums.

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over (~~one million~~) 1,000,000 people, with a seating capacity of over (~~forty thousand~~) 40,000, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

(b) "Public or entertainment areas" for the purposes of this subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(17) Public or entertainment areas of certain football stadiums and exhibition centers. Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection (16) of this rule.

(18) Public facilities districts. All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(19) State route 16 corridor transportation systems. All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(20) Sales/leasebacks by regional transit authorities. All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

(21) Interests consisting of (~~three thousand~~) 3,000 or more residential and recreational lots. All leasehold interests consisting of (~~three thousand~~) 3,000 or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least (~~three thousand~~) 3,000 satisfies the requirement of this exemption. RCW 82.29A.136.

(22) Historic sites owned by the United States government or municipal corporations. All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(23) Amphitheaters.

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for (~~one hundred~~) 100 percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over (~~seventeen thousand~~) 17,000 reserved and general admission seats and is in a county that had a population of over (~~three hundred fifty thousand~~) 350,000, but less than (~~four hundred twenty five thousand~~) 425,000 when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominantly by the lessee.

(24) Military housing.

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(25) Community colleges and technical colleges.

(a) All leasehold interests in facilities owned or used by a community college or technical college are exempt from leasehold excise tax if the leasehold interest provides:

(i) Food services for students, faculty, and staff;

(ii) The operation of a bookstore on campus; or

(iii) Maintenance, operational, or administrative services to the community college or technical college.

(b) Provisions of RCW 82.32.805 and 82.32.808 do not apply to the exemption specified in this subsection.

(26) Anaerobic digesters.

(a) Beginning July 1, 2018, all leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the operation of an anaerobic digester are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) Claims for the exemption described in (a) of this subsection must be filed with the department on the form *Leasehold excise tax exemption to operate an anaerobic digester* available at <https://dor.wa.gov>. Once filed, the exemption is valid for six assessment years following the date on which the facility or the addition to the existing facility becomes operational and may not be renewed. The department must verify and approve claims as it determines to be justified and in accordance with this subsection. No claims may be filed after December 31, 2024.

(c) For the purposes of this subsection, "anaerobic digester" means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment. See RCW 82.08.900.

(27) **Exemption for public or entertainment areas of certain arenas.** Leasehold interests in the public or entertainment areas of an arena are exempt from the leasehold excise tax if the arena has seating capacity of more than (~~two thousand~~) 2,000, and is located on land owned by a city with a population over (~~two hundred thousand~~) 200,000 within a county with a population of less than (~~one million five hundred thousand~~) 1,500,000. For the purpose of this subsection, the term "public or entertainment areas" has the same meaning as set forth in subsection (23) of this rule.

(28) **Certain facilities owned by the state parks and recreation commission.** Beginning January 1, 2023, leasehold interests in facilities owned by the state parks and recreation commission that are listed on the national register of historic places or the Washington heritage register are exempt from leasehold excise tax. This exemption expires January 1, 2034.

(29) **Electric vehicle infrastructure.**

(a) Until July 1, 2025, leasehold interests in public lands for the purpose of installing, maintaining, and operating electric vehicle infrastructure are exempt from leasehold excise tax.

(b) For purposes of this subsection, the following definitions apply:

(i) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(ii) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(iii) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, green electrolytic hydrogen production facilities, and renewable hydrogen production facilities. See RCW 82.29A.125.

(iv) "Green electrolytic hydrogen" means hydrogen produced through electrolysis, and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(v) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(vi) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for energy input into the production process.

(vii) "Renewable resource" means: Water, wind, solar energy; geothermal energy; renewable natural gas; renewable hydrogen; wave, ocean, or tidal power; biodiesel fuel not derived from crops raised on land cleared from old growth or first growth forests; or biomass energy.

(30) Expiration date for new tax preferences.

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ~~(ten)~~ 10 years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 20-07-102, § 458-29A-400, filed 3/17/20, effective 4/17/20; WSR 19-02-057, § 458-29A-400, filed 12/27/18, effective 1/27/19. Statutory Authority: RCW 82.29A.140. WSR 18-09-040, § 458-29A-400, filed 4/12/18, effective 5/13/18. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.805, and 82.29A.025. WSR 15-04-103, § 458-29A-400, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 82.29A.140. WSR 10-18-034, § 458-29A-400, filed 8/25/10, effective 9/25/10. Statutory Authority: RCW 82.01.060 and 82.29A.140. WSR 10-07-039, § 458-29A-400, filed 3/10/10, effective 4/10/10. Statutory Authority: RCW 82.29A.140. WSR 05-23-092, § 458-29A-400, filed 11/16/05, effective 12/17/05; WSR 02-18-036, § 458-29A-400, filed 8/26/02, effective 9/26/02; WSR 99-20-053, § 458-29A-400, filed 10/1/99, effective 11/1/99.]

WSR 22-24-110

PERMANENT RULES

HORSE RACING COMMISSION

[Filed December 7, 2022, 10:19 a.m., effective January 7, 2023]

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

Purpose: Amends the distribution of source market fees to offset the reduction of the parimutuel tax.

Citation of Rules Affected by this Order: Amending WAC 260-49-070 Distribution of source market fees.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 22-22-015 on October 21, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 7, 2022.

Douglas L. Moore
Executive Secretary

OTS-4097.1

AMENDATORY SECTION (Amending WSR 22-02-047, filed 1/3/22, effective 2/3/22)

WAC 260-49-070 Distribution of source market fee. (1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) One hundred percent of the total source market fee directly to the class 1 racing association.

(b) The class 1 racing association shall submit monthly (~~eight~~) 12.5 percent of the total source market fee to the commission of which two and one-half percent to be deposited into the Washington bred owners' bonus fund and (~~five and one-half~~) 10 percent to be deposited into the commission's operating account.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to

the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

[Statutory Authority: RCW 67.16.020. WSR 22-02-047, § 260-49-070, filed 1/3/22, effective 2/3/22; WSR 20-19-062, § 260-49-070, filed 9/11/20, effective 10/12/20; WSR 11-17-056, § 260-49-070, filed 8/15/11, effective 9/15/11. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 09-21-015, § 260-49-070, filed 10/9/09, effective 11/9/09; WSR 05-19-015, § 260-49-070, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 67.16.020. WSR 04-21-053, § 260-49-070, filed 10/18/04, effective 11/18/04.]

WSR 22-24-111

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 7, 2022, 10:31 a.m., effective January 7, 2023]

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

Purpose: The department of revenue is amending WAC 458-30-200 to recognize 2022 legislation (2SHB 1210), which changes the terminology referencing "marijuana" to "cannabis."

Citation of Rules Affected by this Order: Amending WAC 458-30-200 Definitions.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070.

Adopted under notice filed as WSR 22-20-004 on September 21, 2022.

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

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

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

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

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

Date Adopted: December 7, 2022.

Atif Aziz
Rules Coordinator

OTS-4103.1

AMENDATORY SECTION (Amending WSR 18-02-109, filed 1/3/18, effective 2/3/18)

WAC 458-30-200 Definitions. (1) **Introduction.** This rule provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW. The terms listed in this rule are intended to act in concert with each other as appropriate.

(2) **Definitions.** For purposes of land classified under chapter 84.34 RCW, the following definitions apply:

(a) "Additional tax" means the additional property taxes that will be collected when classification is withdrawn or removed from land classified under chapter 84.34 RCW.

(b) "Affidavit" means the real estate excise tax affidavit required by chapters 82.45 RCW and ((chapter)) 458-61 WAC. The affidavit will be prescribed by the department and furnished to county treasurers. This form is used by landowners to report sales or transfers of classified land. The owner or transferor and the purchaser or transferee, or agents of each, must sign the affidavit under penalty of perjury.

(c) "Agreement" means an agreement executed between an owner and the granting authority regarding the classification or reclassification of land as either open space or timber land under chapter 84.34 RCW.

(d) "Agricultural product" means livestock and plants that are produced for commercial purposes and includes any agricultural, horticultural, or aquacultural produce or crop; the raising of livestock, poultry, bees, or fur-bearing animals; or the production of milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. When used in relation to livestock or fur-bearing animals used for food or fiber, "raising" means breeding or increasing the value, size, or weight of the animal. Agricultural product does not include (~~marijuana, useable marijuana, or marijuana-infused~~) cannabis, useable cannabis, or cannabis-infused products as those terms are defined in RCW 69.50.101.

(e) "Applicant" means the owner who submits an application for classification or reclassification of land under chapter 84.34 RCW.

(f) "Application" means an application for classification or reclassification of land under chapter 84.34 RCW.

(g) "Approval" means a determination by the granting authority that land qualifies for classification or reclassification under chapter 84.34 RCW.

(h) "Appurtenance" refers to something used with, and related to or dependent upon another thing; that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land was classified under chapter 84.34 RCW.

(i) In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and is widely and routinely used in the operation of the commercial agricultural enterprise.

(ii) For example, an appurtenance may be an outhouse, barn, or tool shed or it may be equipment used for a particular purpose or task, such as tools, instruments, or machinery.

(i) "Aquaculture" means the growing and harvesting of marine or fresh water flora or fauna in a soil or water medium for commercial agricultural purposes.

(j) "Assessor" means the county assessor or any agency or person who is authorized to act on behalf of the assessor.

(k) "Assessment year" means the year in which the property is listed and valued by the assessor and precedes the year in which the taxes on the property are due and payable.

(l) "Change in use" means a direct action taken by an owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed between the owner and the granting authority or to a use that is otherwise not in compliance with the provisions of chapter 84.34 RCW.

(m) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under chapter 84.34 RCW.

(n) "Commercial agricultural purposes" means the use of farm and agricultural land on a continuous and regular basis, prior to and subsequent to application for classification or reclassification, that demonstrates that the owner or lessee is engaged in and intends to ob-

tain through lawful means, a monetary profit from cash income by producing an agricultural product.

An owner or lessee must engage in commercial agricultural activities on the land to demonstrate a commercial agricultural purpose.

(o) "Contiguous" means land that adjoins and touches other land owned by the same owner or held under the same ownership. Land that is an integral part of a farming operation is considered contiguous even though the land may be separated by a public road, railroad, right of way, or waterway.

For purposes of this subsection (2) (o):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in (o) (i) (B) (III) of this subsection.

(p) "County financial authority" and "financial authority" mean the treasurer or any agency or person charged with the responsibility of billing and collecting property taxes.

(q) "County legislative authority" means the county commission, council, or other legislative body.

(r) "County recording authority" means the auditor or any agency or person charged with the recording of documents.

(s) "Current" and "currently" means as of the date on which property is to be listed and valued by the assessor.

(t) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following its classification or reclassification under chapter 84.34 RCW.

(u) "Department" means the department of revenue.

(v) "Farm and agricultural conservation land" means either:

(i) Land previously classified as farm and agricultural land that no longer meets the criteria and is reclassified as open space land; or

(ii) Traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, has not been irrevocably devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture.

(w) "Farm and agricultural land" means:

(i) Any parcel of land (~~(twenty)~~) 20 or more acres in size or multiple parcels of land that are contiguous and total (~~(twenty)~~) 20 or more acres in size when the lands are:

(A) Primarily used to produce agricultural products for commercial agricultural purposes;

(B) Enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(C) Primarily used for other commercial agricultural purposes as established by rule.

(ii) Any parcel of land or contiguous parcels of land at least five acres, but less than (~~(twenty)~~) 20 acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or

(B) Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

For the purposes of meeting the minimum gross income requirements as described in (w)(ii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(iii) Any parcel of land or contiguous parcels of land at least five acres, but less than (~~(twenty)~~) 20 acres in size that are primarily used for commercial agricultural purposes and that have:

(A) Standing crops with an expectation of harvest within seven years and a demonstrable investment in the production of those crops equivalent to (~~(one hundred dollars)~~) \$100 or more per acre in the current or previous calendar year; or

(B) Standing crops of short rotation hardwoods with an expectation of harvest within (~~(fifteen)~~) 15 years and a demonstrable investment in the production of those crops equivalent to (~~(one hundred dollars)~~) \$100 or more per acre in the current or previous calendar year.

For the purposes of meeting the minimum investment requirements as described in (w)(iii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income invested by the lessee in the production of the standing crop on the owner's classified farm and agricultural land.

(iv) Any parcel of land or contiguous parcels of land less than five acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or

(B) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

For the purposes of meeting the minimum gross income requirements as described in (w)(iv)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(v) Farm and agricultural land also includes:

(A) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified farm and agricultural land parcel of (~~twenty~~) 20 acres or more or multiple parcels that are contiguous and total (~~twenty~~) 20 acres or more, and the use of the housing or residence is integral to the use of the classified farm and agricultural land for commercial agricultural purposes;

(B) Land on which appurtenances necessary for the production, preparation, or sale of the agricultural products are situated when the appurtenances are used in conjunction with the land(s) producing agricultural products, such as a machinery maintenance shed or a shipping facility located on farm and agricultural land that produces the products to be shipped;

(C) Land incidentally used for an activity or enterprise that is compatible with commercial agricultural purposes as long as the incidental use does not exceed (~~twenty~~) 20 percent of the classified land. An incidental use of classified farm and agricultural land may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand;

(D) A noncontiguous parcel of land from one to five acres in size that constitutes an integral part of the commercial agricultural operation being conducted on land qualifying as "farm and agricultural land." As used in this paragraph, noncontiguous means not adjoining or touching but held by the same ownership as defined in RCW 84.34.020;

(E) Land used primarily for equestrian related activities for which a charge is made including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meets the requirements in (w)(i), (ii), or (iv) of this subsection; or

(F) Land used primarily for horticultural purposes including growing plants in the ground or in a container, regardless of whether under a structure, such as a greenhouse, subject to the following:

(I) The land is not primarily used for the storage, care, or selling of plants purchased from other growers for retail sale;

(II) If the land is less than five acres and used primarily to grow plants in containers, such land does not qualify as "farm and agricultural land" if more than (~~twenty-five~~) 25 percent of the land used primarily to grow plants in containers is open to the general public for on-site retail sales;

(III) If more than (~~twenty~~) 20 percent of the land used for growing plants in containers is covered by pavement, none of the paved area is eligible for classification as "farm and agricultural land." However, this limitation does not prevent up to (~~twenty~~) 20 percent of the paved area from qualifying as "incidental use" as described in (bb) of this subsection; and

(IV) If the land classified under (w)(v)(F) of this subsection, in addition to any contiguous land classified under (w) of this subsection, is less than (~~twenty~~) 20 acres, it must meet the applicable

income or investment requirements described in (w) (ii), (iii), or (iv) of this subsection.

(x) "Farm employee or farm and agricultural employee" means an individual who is employed on farm and agricultural land on a full-time basis or a seasonal or migratory worker who works on farm and agricultural land only during the planting, growing, and/or harvesting seasons. For purposes of (x) of this subsection, "full-time basis" refers to an individual who is employed at least (~~twenty-five~~) 25 hours per week on farm and agricultural land. It does not include a person who is employed full time by a business activity that is not conducted on classified farm and agricultural land and who only works occasional weekends or during the harvest season on classified farm and agricultural land.

(y) "Farm woodlot" means an area of land within a parcel(s) of classified farm and agricultural land that is used in a manner compatible with commercial agricultural purposes including, but not limited to, the growing and cutting of trees for the use of the owner or the sheltering of livestock.

(z) "Granting authority" means the appropriate agency or official that acts on an application for classification or reclassification under chapter 84.34 RCW. The granting authority for:

(i) Open space land classification under RCW 84.34.020(1) and 84.34.037 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative authority and three members of the city legislative authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications;

(ii) Farm and agricultural land classification under RCW 84.34.020(2) and 84.34.035 is the assessor or the assessor's designee; and

(iii) Timber land classification under RCW 84.34.020(3) and 84.34.041 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative authority and three members of the city legislative authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications.

(aa) "Gross income" means cash income derived from commercial agricultural purposes, as defined in (n) of this subsection. Gross income includes payments received from the United States Department of Agriculture for participating in a crop reduction or acreage set-aside program when such payments are based on the productive capacity of the land. It also includes the wholesale value of agricultural products produced from any parcel of classified land of at least five acres but less than (~~twenty~~) 20 acres in which the agricultural products are donated to nonprofit food banks or feeding programs. The term does not include the following:

(i) The value of any products produced on the land and consumed by the owner or lessee;

(ii) Cash income derived from leases for the use of the land for noncommercial agricultural purposes;

(iii) Payments for soil conservation programs; or

(iv) The value represented from an exchange of goods or services for other goods or services (bartering).

(bb) "Incidental use" means a use of land classified as farm and agricultural land or timber land that is compatible with commercial agricultural purposes or the commercial growing and harvesting of timber. Incidental use for land classified as farm and agricultural land cannot exceed (~~twenty~~) 20 percent of the total classified land, while incidental use for timber land cannot exceed (~~ten~~) 10 percent of the total classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand.

(cc) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural purposes. To be considered integral to the farming operation, the residence of the farm operator or owner and/or housing for farm employees must be the place(s) from which the farmer conducts his/her commercial agricultural business.

(dd) "Interest" means the amount of applicable interest upon additional tax.

(ee) "Net cash rental" means the earning or productive capacity of farm and agricultural land less the production costs customarily or typically paid by an owner or landlord. See WAC 458-30-260 for a more detailed explanation of net cash rental.

(ff) "Notice of continuance" means the notice signed when land classified under chapter 84.34 RCW is sold or transferred if the new owner of the land intends to continue the classified use of the land and elects to have the land remain classified under chapter 84.34 RCW. This notice is part of the real estate excise tax affidavit or may be a separate document prepared by the department and attached to this affidavit.

(gg) "Open space land" means one of the following:

(i) Any parcel(s) of land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly;

(ii) Any parcel(s) of land, by preserving it in its present use would either:

(A) Conserve and enhance natural or scenic resources;

(B) Protect streams or water supply;

(C) Promote conservation of soils, wetlands, beaches, or tidal marshes;

(D) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space;

(E) Enhance recreation opportunities;

(F) Preserve historic sites;

(G) Preserve visual quality along highway, road, or street corridors, or scenic vistas;

(H) Retain in its natural state, tracts of land of not less than one acre in size situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority; or

(iii) Any parcel(s) of farm and agricultural conservation land.

(hh) "Owner" means:

(i) Any person(s) having a fee interest in a parcel of land; or

(ii) The contract vendee when the land is subject to a real estate contract.

(ii) "Parcel of land" means a property identified as such on the assessment roll. For purposes of chapter 84.34 RCW and this WAC chapter, a parcel does not include any land area not owned by the applicant including, but not limited to, a public road, right of way, railroad, or waterway.

(jj) "Penalty" means the amount due when land is removed from classification under chapter 84.34 RCW. The amount of the penalty is equal to (~~twenty~~) 20 percent of the additional tax and interest calculated in accordance with RCW 84.34.080 or 84.34.108.

(kk) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

(ll) "Primary use" means the existing use of a parcel or parcels of land so prevalent that when the characteristic use of the land is evaluated a conflicting or nonrelated use appears to be very limited or excluded. The primary use of a parcel does not represent a specific percentage of the total classified land.

(mm) "Qualification of land" means the approval of an application for classification or reclassification of land by a granting authority in accordance with chapter 84.34 RCW.

(nn) "Rating system" means a public benefit rating system adopted for classified open space land according to RCW 84.34.055.

(oo) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to a different classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as open space land under RCW 84.34.020(1).

(pp) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor because the owner requests removal, the new owner fails to sign the notice of continuance, the assessor does not approve a notice of continuance, or the land is no longer being used for the purpose for which classification was granted.

(qq) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for valuable consideration.

(rr) "Standing crop" includes short rotation hardwoods, Christmas trees, vineyards, fruit trees, or other perennial crops that:

(i) Are planted using agricultural methods normally used in the commercial production of that particular crop; and

(ii) Typically do not produce harvestable quantities in the initial years after planting.

(ss) "Tax year" means the year when property tax is due and payable.

(tt) "Timber land" means any parcel of land, five or more acres in size, or multiple parcels of land that are contiguous and total five or more acres in size, that are primarily used for the commercial growth and harvesting of forest crops.

(i) Timber land refers only to the land and also includes:

(A) Land incidentally used for an activity or enterprise that is compatible with the commercial growing and harvesting of timber as long as the incidental use does not exceed (~~ten~~) 10 percent of the classified land; and

(B) Land on which appurtenances necessary for the production, preparation, or sale of commercial timber products are situated when

the appurtenances are used in conjunction with the land(s) producing timber products.

(ii) Timber land does not include:

(A) Land listed on the assessment roll as designated forest land according to chapter 84.33 RCW;

(B) Land on which nonforest crops are located; or

(C) Land used as a residential home site.

(uu) "Timber management plan" is synonymous with a "forest management plan" and details an owner's plan regarding the management of classified timber land including, but not limited to, the planting, growing and/or harvesting of timber. The elements of such a plan are set forth in WAC 458-30-232.

(vv) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration and may include situations where classified land is donated to an owner, corporation, partnership, or limited liability corporation.

(ww) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use. The term also refers to market value, that is, the amount of money a buyer of property willing, but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might reasonably be applied.

(xx) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain classified for at least (~~ten~~) 10 assessment years from the date of classification. After the initial (~~ten-year~~) 10-year classification period has elapsed, the owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner. However, if the assessor has given written notice of removal as provided in RCW 84.34.108 (1)(d)(i) for all or a portion of the land prior to the owner providing the assessor with a request for withdrawal, then the land will be removed from classification.

[Statutory Authority: RCW 84.08.010, 84.08.070, and 84.34.141. WSR 18-02-109, § 458-30-200, filed 1/3/18, effective 2/3/18. Statutory Authority: RCW 84.34.141. WSR 15-03-093, § 458-30-200, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 84.08.070 and 84.08.010(2). WSR 12-07-059, § 458-30-200, filed 3/19/12, effective 4/19/12. Statutory Authority: RCW 84.34.141, 84.34.020, and 84.34.030. WSR 02-20-041, § 458-30-200, filed 9/24/02, effective 10/25/02. Statutory Authority: RCW 84.34.141. WSR 01-24-030, § 458-30-200, filed 11/27/01, effective 12/28/01. Statutory Authority: RCW 84.08.110, 84.08.070, 84.34.141 and 84.34.360. WSR 95-21-002, § 458-30-200, filed 10/4/95, effective 11/4/95. Statutory Authority: RCW 84.08.010 and 84.08.070. WSR 90-24-087, § 458-30-200, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW 84.08.010(2), 84.34.141 and chapter 84.34 RCW. WSR 88-23-062 (Order PT 88-12), § 458-30-200, filed 11/15/88.]